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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2016-UP-253 (S.C. Ct. App. filed June 8, 2016)

Melissa J. Lackey-Oremus and James T. Oremus..... Respondents

v.

4 K&D Corporation, d/b/a Grand Estates Auction Company,
Stacy Kirk and Valaria Devine..... Petitioners.

APPENDIX – VOLUME I

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010-CP-02-03055

Melissa J. Lackey-Oremus and James T. Oremus Appellants

v.

4 K&D Corporation, d/b/a Grand Estates Auction Company,
Stacy Kirk and Valaria Devine Respondents.

RECORD ON APPEAL – VOL. I

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS)
AND JAMES T. OREMUS,)

CIVIL ACTION NO.: 2010-CP-02-03055

PLAINTIFFS,)

Vs.)

ORDER

4 K & D CORPORATION,)
D/B/A GRAND ESTATES)
AUCTION COMPANY, GRAND)
ESTATES ADVERTISING, LLC,)
STACY KIRK,)
VALARIA DEVINE,)
DEFENDANTS.)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
11th day of June 20014
Liz Godard
Clerk of Court, Aiken County, S.C.
Deputy Clerk

FILED June 11 20014
Liz Godard
Clerk of Court, Aiken County, S.C.
Deputy Clerk
1:30 pm

This matter came before the Court for a hearing on June 2, 2014, on Defendants' Motion for Summary Judgment. After considering the briefs, affidavits, deposition excerpts and exhibits filed, as well as the arguments of counsel, I grant Defendants' motion with regard to Valaria Devine as to all causes of action without prejudice for Plaintiffs to renew their claim for piercing the corporate veil/alter ego should they obtain a verdict against the remaining Defendants and prove that Ms. Devine should be liable under that theory. In addition, I grant the motion as to Grand Estates Advertising, LLC, with the consent of the Plaintiffs. With regard to the remaining Defendants, 4K&D Corporation, dba Grand Estates Auction Company ("GEA") and Stacy Kirk, I grant them summary judgment as to the Second Cause of Action, alleging Negligence, Recklessness and Willfulness, the Third Cause of Action, alleging Intentional Interference with

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Contract, the Fourth Cause of Action, alleging Unfair Trade Practice, and the Sixth Cause of Action alleging Promissory Estoppel. The Fifth Cause of Action is asserted solely against Ms. Devine. The sole remaining cause of action is the First Cause of Action, alleging Fraud against Stacy Kirk and GEA.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

FINDINGS OF FACT¹

In 2009, the Defendants, GEA and Stacy Kirk, President of GEA, negotiated a contract to sell The Balcony, a residence in Aiken, with its owners, the Hirschhorns. On February 9, 2010, Stacy Kirk and other agents and employees of GEA, conducted the auction. There were certain requirements for a bidder to qualify to participate. Prior to the beginning of the auction, Ms. Kirk announced that one of the proposed bidders was not eligible because he had not met the requirements and would not be allowed to bid. The auction then proceeded with the Plaintiffs having the highest bid in the amount of \$1,875,000.00, which amount was less than the owners had hoped for.

At some point after the auction, Ms. Kirk approached the Plaintiffs and told them that there was a problem, because the bidder declared to be ineligible had actually

¹ For purposes of summary judgment, the Court must consider the facts in the light most favorable to the non-moving party, in this case the Plaintiffs.

submitted the required paperwork and should have been allowed to bid, that he had submitted an opening bid of \$2,000,000.00 and that the disqualified bidder and the owners were threatening to sue her and GEA. Although Plaintiffs knew that they could go forward with the purchase of the property, they told Ms. Kirk that they would release their bid. Shortly thereafter, Plaintiffs signed releases, received their \$50,000 deposit back from GEA and gave up their right to buy the property.

Subsequently, GEA sold the property to a third party, who was not the disqualified bidder or even a bidder at the auction, for \$2,500,000.00. The Plaintiffs brought this action.

CONCLUSIONS OF LAW

Claims against Grand Estates Advertising, LLC

Plaintiffs conceded at the hearing that Grand Estate Advertising, LLC was entitled to summary judgment, and the Court so concludes.

Claims against Valaria Devine

Defendant Valaria Devine is the CEO of GEA. She was not at the auction, and Plaintiffs have admitted that they had no interactions with her concerning the auction. The Court finds that the Plaintiffs have presented insufficient evidence to support their claim against Devine under the piercing the corporate veil /alter ego theory and grants Ms. Devine summary judgment. However, the Court will allow Plaintiffs the right to reargue their claim for piercing the corporate veil against Ms. Devine if Plaintiffs obtain a judgment against GEA ~~and have established the elements of either of these theories.~~ *none* Thus, Ms. Devine is entitled to summary judgment without prejudice to the Plaintiffs' right to attempt to prove that the corporate veil of GEA should be pierced or that she is

the alter ego of GEA. These matters are equitable claims that will be directed to the Court and not the jury.

Negligence, Recklessness and Willfulness Claim

The elements of a claim for negligence are: (1) Defendants owed Plaintiffs a duty of care; and (2) Defendants breached the duty of care by a negligent act or omission. An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co., 586 S.E.2d 586, 588 (2003) (refusing to recognize a duty of care that would permit non parties to insurance contracts to sue independent adjusters in negligence). Defendants owed no duty of care to Plaintiffs and are entitled to summary judgment as to Plaintiffs' Second Cause of Action alleging Negligence, Recklessness and Willfulness.

Tortious Interference with Contract Claim

The elements of a claim for Tortious Interference with a Contract are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) damages. DeBerry v. McCain, 274 S.E.2d 293 (1981). A claim for tortious interference with contract cannot be made against a party to a contract. Threlkeld v. Critoph, 312 S.E.2d 14, 16 (S.C. Ct. App. 1984). The cause of action is only valid against a third party, or outsider. Id. Agents of parties to a contract are considered parties for the purpose of the tortious interference with contract analysis when the agents are acting within the scope of their authority. Dutch Fork Development Group II v. SEL Properties, 2012 WL 3667374, *5 (S.C. 2012).

Because the Plaintiffs had not entered into a contract for the purchase of the property at the time that they released their right to purchase it, Plaintiffs have failed to prove all of the elements. In addition, Stacy Kirk and GEA were agents of the owners/sellers of the party, so they cannot be liable for this claim. Defendants are entitled to summary judgment as to the Third Cause of Action alleging Tortious Interference with Contract.

Unfair Trade Practice Claim

A claim is actionable under the South Carolina Unfair Trade Practices Act ("SCUTPA") if the plaintiff can prove (1) unfair or deceptive acts or practices in the conduct of any business; (2) the alleged unfair and deceptive acts affect the public interest of South Carolina; and (3) monetary or property loss caused by the unfair or deceptive act. Plaintiffs presented no evidence that the alleged unfair and deceptive acts, of making allegedly false statements about the amount of a pre-opening bid at a real estate auction, affected the public interest of South Carolina.

In Schnellmann v. Roettger, 627 S.E.2d 742, 745 (S.C. Ct. App. 2006) aff'd as modified, 645 S.E.2d 239 (2007), the buyer of real property alleged that the seller violated the SCUTPA by making an allegedly false statement concerning the number of square feet in a home. On appeal, the South Carolina Court of Appeals affirmed the trial court's decision because no evidence was presented that the seller had previously misrepresented square footages or that "any procedure regularly employed by" the seller would cause the misstatement to be made again. Id. at 746. Plaintiffs failed to present any such evidence in this case.

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#5

The Court grants summary judgment to the Defendants as to the Fourth Cause of Action alleging a violation of SCUTPA.

Promissory Estoppel Claim

The elements of a promissory estoppel cause of action are (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury in reliance on the promise. Satcher v. Satcher, 351 S.C. 477, 483-84 570 S.E.2d 535, 538 (Ct. App. 2002). The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice. Citizens Bank v. Gregory's Warehouse, Inc., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988).

Plaintiffs stated that the alleged unambiguous promise was that the high bidder at the auction would own the Balcony. However, there was no such promise made, because there were many steps to fulfill between bidding and owning the property. In addition, Plaintiffs testified that they did not lose anything out of pocket from participating in the auction.

Defendants are entitled to summary judgment as to the Sixth Cause of Action alleging Promissory Estoppel.

Fraud Claim

Plaintiff's Fifth Cause of Action alleges fraud. The Court concludes that there are material issues of fact that preclude summary judgment as to this claim.

IT IS, THEREFORE, ORDERED that Defendant Valaria Devine is granted summary judgment as to all causes of action asserted against her, except that, if Plaintiffs

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP0203055

Melissa J Lackey-Oremus

James T Oremus

4 K & D Corporation

Grand Estates Auction

FILED

June 11 2014

Grand Estates
Advertising L L C
Scott KirkCompany
Stacy Kirk

Amy Hoover

PLAINTIFF(S)

2:30 pm

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 6-11-2014, and a copy mailed first class or placed in the appropriate attorney's box on 6-12-2014, to attorneys of record or to parties (when appearing pro se) as follows:

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Robert L. Buchanan Jr
PO Box 463 Aiken, SC 29802-0463

Alice F. Paylor
PO Box 893
Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard - Clerk of Court

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

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

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010- CP-02-03055

Melissa J. Lackey-Oremus and James T. Oremus

4 K&D Corporation, D/B/A Grand Estates Auction
Company, Grand Estates Advertising, LLC, Stacy Kirk
and Valaria Devine

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ 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: Plaintiff's Motion to Alter or Amend Order Entered June 11, 2014 is DENIED. 7.10.14

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : *Anita Knoche* 115
1x only 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

0136
Judge Code

7/10/14
Date

For Clerk of Court Office Use Only

This judgment was entered on 7-16-14, and a copy mailed first class or placed in the appropriate attorney's box on 7-16-14, to attorneys of record or to parties (when appearing pro se) as follows:

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463 Aiken, SC 29802-0463

Alice F. Paylor PO Box 893 Charleston, SC 29402
Russell Britton Kelly PO Box 893 Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Court Reporter

Liz Godard - Clerk of Court

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

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

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Melissa J. Lackey-Oremus and James T. Oremus,
Plaintiff(s)

vs.

4 K & D Corporation, d/b/a Grand Estates Auction
Company, Grand Estates Advertising, LLC,
Stacy Kirk, Scott Kirk, Valeria Devine,
Karl Wesley Hirschhorn and Erin Francis
Hirschhorn, Individually and as Trustees of the
Karl Wesley Hirschhorn and Erin Francis
Hirschhorn Revocable Trust Dated May 24, 1993
Defendant(s)

(Please Print)

Submitted By: Robin A. Braithwaite

Address: Braithwaite, Farmer, Boni and Timmerman
Post Office Box 324
Aiken, South Carolina 29802-0324 and

Robert L. Buchanan, Jr.
Buchanan Law Office, P.A.
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Aiken, South Carolina 29802-0463

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 02- 03055

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Ockard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

DEC 17 2010

C.C.P. & G. S., Aiken County, S.C.

Deputy Clerk

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20____-CP-____-	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☒ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
	Civil Conspiracy	☐ Other (399)	☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)

SCCA / 234 (01/2010)

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0012

- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

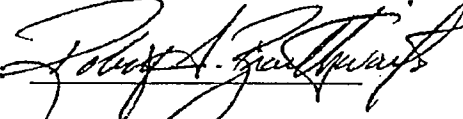
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: 

Date: December 10, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

MELISSA J. LACKEY-OREMUS
AND JAMES T. OREMUS,

PLAINTIFFS,

Vs.

4 K & D CORPORATION,
D/B/A GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC,
STACY KIRK, SCOTT
KIRK, VALERIA DEVINE,
KARL WESLEY HIRSCHHORN
AND ERIN FRANCIS HIRSCHHORN,
INDIVIDUALLY AND AS TRUSTEES
OF THE KARL WESLEY HIRSCHHORN
AND ERIN FRANCIS HIRSCHHORN
REVOCABLE TRUST DATED
MAY 24, 1993,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-02- 03055

SUMMONS

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Golder, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

DEC 17 2010

CCC.P. & G. S., Aiken County, S.C.

Deputy Clerk

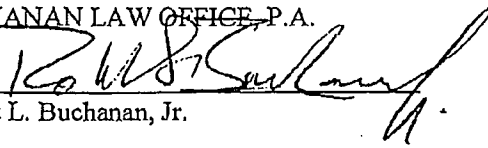
TO: ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the same Complaint on the subscriber at his office at 759 Richland Avenue, West, Aiken, South Carolina 29801 within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

BRAITHWAITE, FARMER,
BONT AND DIMMERMAN

Robin A. Braithwaite

BUCHANAN LAW OFFICE, P.A.


Robert L. Buchanan, Jr.

ATTORNEYS FOR PLAINTIFFS

Aiken, South Carolina

December 10, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS
AND JAMES T. OREMUS,

CIVIL ACTION NO.: 2010-CP-02-03056

PLAINTIFFS,

Vs.

COMPLAINT
(JURY TRIAL DEMANDED)

4 K & D CORPORATION,
D/B/A GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC,
STACY KIRK, SCOTT
KIRK, VALERIA DEVINE,
KARL WESLEY HIRSCHHORN
AND ERIN FRANCIS HIRSCHHORN,
INDIVIDUALLY AND AS TRUSTEES
OF THE KARL WESLEY HIRSCHHORN
AND ERIN FRANCIS HIRSCHHORN
REVOCABLE TRUST DATED
MAY 24, 1993,

DEFENDANTS.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz O'Quinn, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

DEC 17 2010

Liz O'Quinn
C.C.C.P. & U.S., Aiken County, S.C.

Anita Knoepfle
Deputy Clerk

The Plaintiffs James T. Oremus and Melissa J. Lackey-Oremus ("Plaintiffs"),
complaining of the Defendants, would respectfully show and allege unto the Court:

GENERAL ALLEGATIONS

1. Plaintiffs are citizens and residents of Aiken County, South Carolina.
2. Defendant 4 K & D Corporation is a North Carolina corporation, doing business as Grand Estates Auction Company ("Grand Estates"), which is authorized to do business in South Carolina, and at all relevant times Grand Estates transacted substantial business in Aiken County, South Carolina.

3. Plaintiffs are informed and believe that Defendant Grand Estates Advertising, LLC ("Grand Estates Advertising"), is a limited liability company organized and existing under the laws of the State of North Carolina, and at all relevant times Grand Estates Advertising transacted substantial business in Aiken County, South Carolina for itself and as an agent of Grand Estates, within the course and scope of said agency.

4. Plaintiffs are informed and believe that Defendant Stacy Kirk is a citizen and resident of Charlotte, North Carolina and at all relevant times transacted substantial business in Aiken County, South Carolina, individually and as agent of both Grand Estates and Grand Estates Advertising, within the course and scope of said agencies.

5. Plaintiffs are informed and believe that Defendant Scott Kirk is a citizen and resident of Charlotte, North Carolina and at all relevant times was a licensed South Carolina broker and transacted substantial business in Aiken County, South Carolina, individually and as agent of Grand Estates, within the course and scope of said agencies.

6. Plaintiffs are informed and believe that Defendant Valeria Devine is a citizen and resident of Palm Beach, Florida and at all relevant times transacted substantial business in Aiken County, South Carolina, individually and as agent of Grand Estates, within the course and scope of said agencies.

7. On information and belief, Defendants Karl Wesley Hirschhorn and Erin Francis Hirschhorn, individually (the "Hirschhorns"), previously resided at certain improved real property situate in Aiken County, South Carolina, known as "The Balcony," which is hereinafter more fully described, but now reside in a state other than South Carolina; Defendants Karl Wesley Hirschhorn and Erin Francis Hirschhorn, as Trustees of the Karl Wesley Hirschhorn and

Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993 (the "Hirschhorns, as Trustees"), previously owned The Balcony.

8. Grand Estates acted as the agent of the Hirschhorns, individually, within the course and scope of the agency, at all relevant times with respect to the marketing of The Balcony, the auction of The Balcony and, ultimately, the sale of The Balcony.

9. The improved real property, known as The Balcony, is described as follows:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the southern section of the City of Aiken, Aiken County, South Carolina, being shown and designated as **The Balcony" containing 5.82 acres, more or less,** upon that certain plat prepared for Roma Food Enterprises, Inc., by Hass & Hilderbrand, Inc., RLS, dated October 4, 1994, and recorded in Plat Book 32, at page 198, in the Office of the Register of Deeds for Aiken County, South Carolina; reference being made to said plat for a more complete and accurate description thereof.

Being the same property conveyed unto Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993 by deed of Louis G. Piancone dated April 13, 2007 and recorded April 13, 2007 in Record Book 4130 at Page 395, RMC for Aiken County, South Carolina, and thereafter conveyed by Karl Wesley Hirschhorn and Erin Francis Hirschhorn, As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993, to James Hornor Davis, IV and Frederica M. Davis, as tenants in common, by deed dated March 15, 2010 and recorded March 17, 2010 in Record Book 4299, at page 2053, records of Aiken County, South Carolina.

TMS # 121-13-13-002

Property Address: 836 Whiskey Road
Aiken, SC 29801

FOR A FIRST CAUSE OF ACTION

**(Cause of Action for Damages for Civil Conspiracy
Against the Hirschhorns, Individually and as Trustees, Grand Estates, Stacy Kirk,
Scott Kirk and Valeria Devine)**

10. All allegations made above are incorporated herein where relevant.

11. Beginning April 13, 2007 and continuing until February 9, 2010, the Hirschhorns, as Trustees, owned The Balcony.

12. Sometime prior to February 9, 2010, the Hirschhorns, as Trustees, engaged Grand Estates to promote and market the sale of The Balcony and to sell the same at an absolute auction, with no minimum bid requirement and no reserve, requiring the sale of The Balcony to the highest bidder at the auction.

13. Grand Estates, by and through Grand Estates Advertising, thereafter designed the advertising and widely advertised the auction of The Balcony and its many unique features, as well as the registration requirements for interested bidders and the aforesaid terms of sale; the auction was scheduled and advertised for, and conducted at 2:00 p.m. on February 9, 2010 at The Balcony.

14. Prior to the auction, the Plaintiffs properly registered James Oremus as their bidder in accordance with the advertised terms of the auction, and Plaintiffs thereafter entered the highest bid at the auction, pursuant to which the auctioneer hammered down Plaintiffs' bid and announced the sale of The Balcony to Plaintiffs.

15. On information and belief, after the hammer dropped, the Hirschhorns, individually, and Grand Estates, and three shareholders of Grand Estates, Stacy Kirk, Scott Kirk and Valeria Devine, agreed that the amount of Plaintiffs' bid was unacceptably low to the Hirschhorns, as Trustees, and provided inadequate sales commissions for Grand Estates.

16. On information and belief, the Hirschhorns, individually and as Trustees, Grand Estates and Stacy Kirk, Scott Kirk and Valeria Devine, combined to misrepresent to Plaintiffs that there was a higher bidder who was not permitted to attend the auction because of issues related to his paper work.

17. On information and belief, said misrepresentations were made for the purpose of harming Plaintiffs by depriving them of their opportunity and right to own this unique property

and to derive a return of their investment, enabling a subsequent sale of The Balcony at a price acceptable to both the Hirschhorns, as Trustees, and the remaining Defendants.

18. As a result of the aforesaid civil conspiracy, Plaintiffs have sustained special damage in their loss of The Balcony and the return on their investment in The Balcony, for which Plaintiffs are informed and believe they are entitled to actual damages in such amount as they shall prove at trial.

19. Plaintiffs are informed and believe that they are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SECOND CAUSE OF ACTION
(Cause of Action for Damages for Fraud against the Hirschhorns,
Individually and as Trustees, Grand Estates, Stacy Kirk,
Scott Kirk and Valeria Devine)

22. All allegations made above are incorporated herein where relevant.

23. On information and belief, after the close of the auction, Stacy Kirk, Scott Kirk, Valeria Devine, Grand Estates and the Hirschhorns, acting individually and as Trustees, represented to Plaintiffs there was a higher bidder who was not permitted to attend the auction because of issues related to his paper work and that Plaintiffs needed to sign a release.

24. Plaintiffs are informed and believe that said representations were false, known by Defendants to be false, material, and intended by the Defendants to be relied on by Plaintiffs.

25. Plaintiffs, being unfamiliar with the auction process, were ignorant of the falsity of the representations and relied on the representations as they had a right to do.

26. As a direct and proximate result, Plaintiffs lost their opportunity and right to own The Balcony, as well as a return on their investment in The Balcony, in such actual amount as Plaintiffs shall prove at trial.

27. On information and belief, Plaintiffs are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A THIRD CAUSE OF ACTION
(Cause of Action for Damages for Negligence, Recklessness and Willfulness
Against All Defendants)

28. All allegations made above are incorporated herein where relevant.

29. On information and belief, all Defendants, acting individually and/or through their duly authorized agents, undertook and/or otherwise owed to Plaintiffs one or more of the following duties, to wit:

- (a) The duty to treat the Plaintiffs fairly in relation to the auction;
- (b) The duty to disclose to the Plaintiffs information material to their decision to bid;
- (c) The duty to deal with the Plaintiffs honestly;
- (d) The duty to exhibit to Plaintiffs the highest standards of professionalism and integrity in dealing with them;
- (e) The duty to recommend legal counsel to Plaintiffs when it would serve their interests;
- (f) The duty to refrain from the unauthorized practice of law in dealings with the Plaintiffs; and/or
- (g) The duty to avoid misrepresenting and/or concealing pertinent facts and, in light of said Defendants' pecuniary interest in making statements to Plaintiffs, the duty to see that truthful information was communicated.

30. On information and belief, the Defendants, acting individually and/or by and through their duly authorized agents, were negligent, reckless, willful and wanton in one or more of the following particulars:

- (a) In failing to disclose to Plaintiffs issues possibly affecting the auction prior to auctioning The Balcony as advertised;

- (b) In failing to advise the Plaintiffs of issues possibly affecting the auction prior to acknowledging and announcing Plaintiffs as the winning bidder;
- (c) In failing to recommend to the Plaintiffs that they seek legal counsel after announcing the Plaintiffs' winning bid, rather than materially misrepresenting the facts and urging the Plaintiffs, based on the misrepresentations, to sign documents purporting to be releases;
- (d) In advertising the auction as absolute when Defendants knew there was a reserve;
- (e) In changing the terms of the auction from absolute auction to auction with reserve without disclosing or announcing the change prior to the auction;
- (f) In failing to conduct an absolute auction as advertised;
- (g) In consciously disregarding known facts or in otherwise failing to exercise due care in communicating untruthful information to the Plaintiffs, upon which the Plaintiffs justifiably relied under the circumstances; and/or
- (h) In failing to facilitate a closing for Plaintiffs who were ultimately determined to have submitted the highest proper bid at the auction.

31. As a direct and proximate result of said negligent, reckless, willful and wanton acts or omissions, Plaintiffs are entitled to recover actual damages for their injuries and damages, including pecuniary loss, in such amount as they shall prove to a jury.

32. On information and belief, the Plaintiffs are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A FOURTH CAUSE OF ACTION

**(Cause of Action for Damages for Breach of Contract
Against Karl and Erin Hirschhorn, as Trustees)**

33. All allegations made above are incorporated herein where relevant.

34. Through their duly authorized agents, the Hirschhorns, as Trustees, offered to sell the property at auction to the highest bidder.

35. Plaintiffs, as *bona fide* bidders, accepted the offer by submitting the highest bid for The Balcony at the auction, as acknowledged, hammered down and announced by the auctioneer, for good, valuable and adequate consideration.

36. The Defendants Hirschhorns, as Trustees, have breached the contract by failing and/or refusing to close the sale and convey The Balcony to the Plaintiffs in accordance with their contract with the Plaintiffs.

37. As a result of said breach of contract, Plaintiffs are entitled to recover such actual damages as they shall prove at trial, together with their costs in complying with the bid requirements and attending the auction as consequential and/or incidental damages.

FOR A FIFTH CAUSE OF ACTION

**(Cause of Action for Breach of Contract Accompanied by a Fraudulent Act
Against Karl and Erin Hirschhorn, as Trustees)**

38. All allegations made above are incorporated herein where relevant.

39. The aforesaid breach of contract was accompanied by one or more of the fraudulent acts of the Hirschhorns, as Trustees, acting individually and/or through their duly authorized agents, as follows, to wit:

- (a) In misrepresenting to the Plaintiffs that there was a higher bidder who was not permitted to attend the auction because of issues related to his paper work;
- (b) In misrepresenting to the Plaintiffs that there was a qualified higher bidder;
- (c) In discouraging the Plaintiffs from investigating their rights by suggesting that Plaintiffs sign not one, but two purported releases of any and all claims arising out of the auction, when they were fully aware that there was no consideration for the releases and the Plaintiffs' execution of such documents was based solely on said Defendants' materially untrue statements.

40. The Plaintiffs are entitled to recover such actual damages as they shall prove at trial as a direct result of said Defendants' breach of contract accompanied by fraudulent acts.

41. On information and belief, the Plaintiffs are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SIXTH CAUSE OF ACTION

**(Cause of Action for Damages for Intentional Interference with Contract
Against the Hirschhorns, Individually, and Stacy Kirk, Scott Kirk, Valeria Devine and
Grand Estates)**

42. All allegations made above are incorporated herein where relevant.

43. Having submitted the highest bid at auction, Plaintiffs contracted to purchase The Balcony in accordance with their bid.

44. On information and belief, having solicited, observed and/or received notice of the Plaintiffs' winning bid, and having discussed the Plaintiffs' bid immediately subsequent to the auctioneer's hammering down of the sale, Stacy Kirk, Scott Kirk, Valeria Devine, Grand Estates and the Hirschhorns intentionally procured the breach of the Plaintiffs' contract by making false statements to the Plaintiffs, by securing documents from them purporting to be releases but for which there was no consideration, by failing to facilitate a closing of the sale of The Balcony to the Plaintiffs, and by subsequently marketing and selling The Balcony to other purchasers, with knowledge of Plaintiffs' rights and to the exclusion of Plaintiffs' rights.

45. As a result of the Defendants' intentional interference with the Plaintiffs' contract, the Plaintiffs are entitled to recover actual damages in such amount as they shall prove at trial.

46. On information and belief, the Plaintiffs are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SEVENTH CAUSE OF ACTION
**(Alternative Cause of Action for Damages for Promissory Estoppel
Against the Hirschhorns, as Trustees)**

47. All allegations made above are incorporated herein where relevant.

48. Karl and Erin Hirshhorn, as Trustees, through their duly authorized agents, made an unambiguous promise to Plaintiffs that they would sell The Balcony to the highest bidder at the auction, which induced Plaintiffs to invest the time and money in registering to bid and in thereafter submitting the highest bid for The Balcony.

49. Plaintiffs' reliance was reasonable and expected and foreseeable by the Hirshhorn, as Trustees, and their agents.

50. Plaintiffs, having submitted the highest bid at auction, have unjustly lost the opportunity and right to own this unique property known as The Balcony and to realize an expected return on their investment, and they are entitled to recover actual damages in such amount as they shall prove at trial.

FOR A EIGHTH CAUSE OF ACTION
**(Cause of Action for Damages for Unfair Trade Practice against
Stacy Kirk, Scott Kirk, Valeria Devine and Grand Estates)**

51. All allegations made above are incorporated herein where relevant.

52. The aforesaid acts or omissions of Stacy Kirk, Scott Kirk, Valeria Devine and/or Grand Estates constituted unfair or deceptive acts or practices in the conduct of trade or commerce.

53. The Plaintiffs are informed and believe that said unfair or deceptive acts or practices affect the public interest by chilling the sale of property by auction and/or in having the potential for repetition.

54. Plaintiffs suffered an ascertainable loss of money or property in the loss of this unique property and in the loss of an expected return on their investment in The Balcony as a result of the aforesaid unfair or deceptive acts or practices.

55. Plaintiffs are entitled to recover actual damages in such amount as the plaintiff shall prove at trial.

56. Said Defendants knew or should have known that the aforesaid acts or practices were unfair or deceptive; accordingly, Plaintiffs are entitled to recover trebled damages.

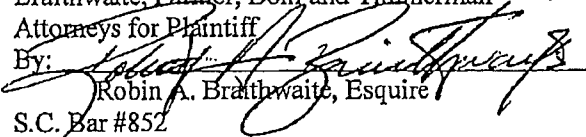
57. Plaintiffs are entitled to recover reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for judgment against said Defendants as follows:

- (a) For actual and punitive damages against the Hirschhorns, individually and as Trustees, Grand Estates, Stacy Kirk, Scott Kirk and Valeria Devine pursuant to the **first** cause of action;
- (b) For actual and punitive damages against the Hirschhorns, individually and as Trustees, Grand Estates, Stacy Kirk, Scott Kirk and Valeria Devine pursuant to the **second** cause of action;
- (c) For actual and punitive damages against all Defendants pursuant to the **third** cause of action;
- (d) For actual, consequential and incidental damages against the Hirschhorns, as Trustees, pursuant to the **fourth** cause of action;
- (e) For actual and punitive damages against the Hirschhorns, as Trustees, pursuant to the **fifth** cause of action;
- (f) For actual and punitive damages against the Hirschhorns, individually, Stacy Kirk, Scott Kirk, Valeria Devine and Grand Estates pursuant to the **sixth** cause of action;
- (g) For actual damages against the Hirschhorns, as Trustees, pursuant to the **seventh** cause of action;
- (h) For actual and trebled damages and reasonable attorneys fees and costs against Stacy Kirk, Scott Kirk, Valeria Devine and Grand Estates pursuant to the **eighth** cause of action; and

- (i) For such other and further relief as the Court shall deem just and proper.

Braithwaite, Farmer, Boni and Timmerman
Attorneys for Plaintiff

By: 

Robin A. Braithwaite, Esquire

S.C. Bar #852

Post Office Box 324

759 Richland Avenue, W. (29801)

Aiken, South Carolina 29802-0324

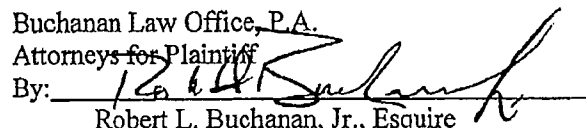
Telephone: (803) 649-4144

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Buchanan Law Office, P.A.

Attorneys for Plaintiff

By: 

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rlbuchananjr@bellsouth.net

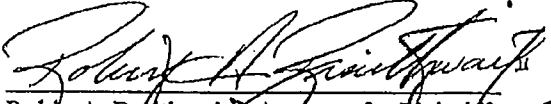
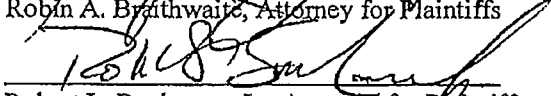
ATTORNEYS FOR PLAINTIFFS

December 10, 2010

Aiken, South Carolina

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as to the first, second, third, fourth, fifth, sixth, eighth and ninth causes of action pursuant to Rule 38, SCRCP; and Plaintiff requests the Court, of its own initiative, try the issues with respect to the seventh cause of action by the same jury sitting as an advisory jury pursuant to Rule 39(c), SCRCP.


Robin A. Brathwaite, Attorney for Plaintiffs

Robert L. Buchanan, Jr., Attorney for Plaintiffs

December 10, 2010

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS
AND JAMES T. OREMUS,

CIVIL ACTION NO.: 2010-CP-02-03055

PLAINTIFFS,

vs.

AMENDED SUMMONS

4 K. & D CORPORATION,
D/B/A GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC,
STACY KIRK,
VALARIA DEVINE,

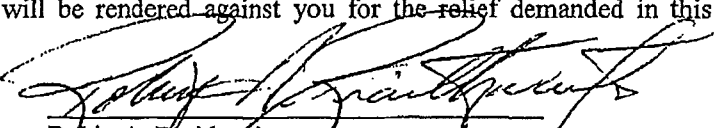
DEFENDANTS.

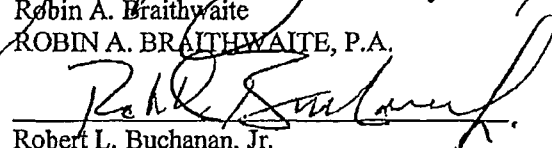
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NOV 13 2013
18 455
AIKEN COUNTY
CLERK OF COURT

TO: ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the same Amended Complaint on the subscriber at his office at 759 Richland Avenue, West, Aiken, South Carolina 29801 within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Amended Complaint.


Robin A. Braithwaite
ROBIN A. BRAITHWAITE, P.A.


Robert L. Buchanan, Jr.
BUCHANAN LAW OFFICE, P.A.

ATTORNEYS FOR PLAINTIFFS

Aiken, South Carolina

November 13, 2013.

0030

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS
AND JAMES T. OREMUS,

CIVIL ACTION NO.: 2010-CP-02-03055

PLAINTIFFS,

vs.

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

4 K & D CORPORATION,
D/B/A GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC,
STACY KIRK,
VALARIA DEVINE,

DEFENDANTS.

C O P Y
ORIGINAL FILED

NOV 13 2013
AIKEN COUNTY
CLERK OF COURT

The Plaintiffs James T. Oremus and Melissa J. Lackey-Oremus ("Jim Oremus" and "Melissa Oremus"; collectively "the Oremuses"), complaining of the Defendants, would respectfully show and allege unto the Court:

GENERAL ALLEGATIONS

1. Jim Oremus and Melissa Oremus are citizens and residents of Aiken County, South Carolina.

2. Defendant 4 K & D Corporation is a North Carolina corporation, doing business as Grand Estates Auction Company ("Grand Estates"), a real estate auction company which is authorized to do business in South Carolina, and at all relevant times Grand Estates transacted substantial business in Aiken County, South Carolina.

3. Defendant Grand Estates Advertising, LLC ("Grand Estates Advertising"), is a limited liability company organized and existing under the laws of the State of North Carolina, and at all relevant times Grand Estates Advertising transacted substantial business in Aiken County, South Carolina for itself and as an agent of Grand Estates.

4. Defendant Stacy Kirk ("Stacy Kirk") is a citizen and resident of Charlotte, North Carolina and at all relevant times transacted substantial business in Aiken County, South Carolina, individually and as agent of both Grand Estates and Grand Estates Advertising.

5. Defendant Valaria Devine ("Valaria Devine") is a citizen and resident of Naples, Florida and at all relevant times transacted substantial business in Aiken County, South Carolina, individually and as agent of Grand Estates.

6. Grand Estates, Grand Estates Advertising, Stacy Kirk and Valaria Devine, acting as the authorized agent and as the *alter ego* of each other, jointly and severally represented Mr. and Mrs. Hirschhorne, as Trustees ("the Hirschhornes"), in the marketing and sale of their property, "The Balcony", a wonderful equestrian estate in Aiken's historic district. The Hirschhornes acquired The Balcony by a deed recorded on April 13, 2007 (RB 4130, Pg. 395), and thirty-five months later they sold the Balcony by deed recorded March 17, 2010 (RB 4299, Pg. 2053).

7. In addition to the approximate 5.85 beautifully landscaped acres located at 836 Whiskey Road, Aiken, SC, the Balcony consists of a stately home of approximately 11,000 square feet and outdoor amenities as well as a 20-stall barn with multiple tack rooms, a feed room, a tool room, grooms quarters, a hay loft, a laundry room, 2 paddocks and a sand riding arena.

8. At all relevant times, Grand Estates, Grand Estates Advertising, Stacy Kirk and Valaria Devine acted within the course and scope of the agencies alleged in paragraphs 3, 4, 5 and 6 above, and in paragraphs 16, 27, 28, 33 and 37 below, in marketing The Balcony for sale by auction, in an unsuccessful attempt to sell the Balcony by absolute auction, and in subsequently effecting the sale of The Balcony by means other than an auction.

FOR A FIRST CAUSE OF ACTION

(Fraud)

9. All allegations made above and below are incorporated herein where relevant.

10. In late 2009, the Hirschhorns engaged Grand Estates to promote and market the sale of The Balcony and to sell the same at an absolute auction, with no minimum bid requirement and no reserve, requiring the sale of The Balcony to the highest bidder at the auction.

11. Grand Estates, by and through Grand Estates Advertising and/or otherwise, thereafter designed the advertising and widely advertised the auction of The Balcony and its many unique features, as well as the registration requirements for interested bidders, the terms of sale and the date, time and place of the auction; the auction was scheduled and advertised for 2:00 p.m. on February 9, 2010 at The Balcony, and the auction was conducted on that date at or near the advertised time.

12. Prior to the auction, Jim Oremus and Melissa Oremus properly registered Jim Oremus as their bidder in accordance with the advertised terms of the auction, and pursuant to the terms and conditions of the registration the Oremuses then entered their written opening bid of \$1,500,000.00.

13. On February 9, 2010, just prior to the auction, an agent appearing for a potential bidder from Florida who was not present at the auction, was asked to leave because the potential bidder had not properly submitted the requisite paper work to participate in the auction.

14. At the auction on February 9, 2010, the Oremuses were present and entered a bid of \$1,875,000.00, the highest bid at the auction, pursuant to which the auctioneer hammered down the Oremuses' bid as the winning bid and announced the sale of The Balcony to the Oremuses.

15. Within a very short time after the auction concluded, and while the Oremuses were being congratulated by other auction participants, the follow transpired:

(a) Stacy Kirk, the president of Grand Estates and the agent directing the auction in Aiken, made a telephone call to her mother, Valaria Devine, the owner and chief executive officer (CEO) of Grand Estates and the owner and manager of Grand Estates Advertising, who was at her home in Naples, Florida, to report the results of the auction.

(b) Valaria Devine then placed a telephone call to the Hirschornes, who had not attended the auction, to advise them of the Oremuses' winning bid. The Hirschhornes, who were unhappy with the sales price but willing to live with it, nevertheless communicated their displeasure by telephone to Valaria Devine. In the conversation, Valaria Devine suggested that the Hirschhornes attempt to buy the Oremuses off by offering them some money to withdraw their bid.

(c) Stacy Kirk joined the telephone call with the Hirschhornes and her mother. Stacy Kirk stated that the Oremuses did not appear to be happy. Valaria Devine directed Stacy Kirk to approach the Oremuses to see if they could get the Oremuses to withdraw their bid.

(d) Stacy Kirk then told Jim Oremus that there were problems: (i) that another bidder whose agent was told to leave prior to the auction was, in fact, a properly registered bidder, and his agent should have been allowed to participate in the auction and to bid; (ii) that the same qualified bidder whose agent had been excluded had entered a written opening bid of \$2,000,000.00; and (iii) that both the bidder and the owner were threatening a suit against Grand Estates.

(e) Upon hearing that a qualified bidder had properly entered a bid of \$2,000,000.00, Jim Oremus and Melissa Oremus, who were not willing to bid more than \$1,875,000.00 and believed they had been legitimately outbid, agreed to do what was necessary to prevent Grand Estates from being sued;

(f) Valaria Devine placed a telephone call to Desiree Watson, the auction coordinator at the Charlotte, NC office, and instructed her to tell anyone who called that there had been a \$2,000,000.00 opening bid by a properly registered bidder;

(g) Stacy Kirk asked the Oremuses to sign releases, and the Oremuses signed the releases for no consideration.

16. In fact, on the date of the auction, just after the Oremuses were announced by the auctioneer as the successful purchasers, Stacy Kirk, acting as the authorized agent and/or as the *alter ego* of Valaria Devine, Grand Estates and Grand Estates Auction, made the following representations to the Oremuses, to wit:

- (a) That the agent of a qualified bidder had been improperly excluded;
- (b) That a qualified bidder had properly entered a written opening bid of \$2,000,000.00; and
- (c) That the sellers were threatening a lawsuit against Grand Estates.

17. Said representations were false in the following particulars:
- (a) The bidder whose agent was turned away was not really a qualified bidder;
 - (b) The bidder whose agent was turned away had actually made a written opening bid in the amount of \$750,000.00, not a \$2,000,000.00 bid as represented; and
 - (c) The sellers had not threatened to sue Grand Estates but, to the contrary, they had agreed to abide by the Oremuses' high bid even though they were displeased with the sales price.
18. Said representations were material – they indicated to the Oremuses that they had lost the auction to a higher bid made by a qualified bidder who was improperly excluded from the auction.
19. Stacy Kirk knew the falsity of the representations – when she made the representations she had documents in her possession establishing that the bidder was not a qualified bidder and that the excluded bidder had not previously bid \$2,000,000.00 in his written opening bid.
20. Stacy Kirk intended for the representations be acted on by the Oremuses – which is why she asked them to withdraw their bid and sign releases.
21. The Oremuses were ignorant of the falsity of Stacy Kirk's representations as they were not privy to the documents in Stacy Kirk's possession and had no other information at the time indicating the representations were not truthful when made.
22. The Oremuses relied on the truth of the representations in agreeing to withdraw their bid and in signing releases.
23. The Oremuses, having no experience with a real estate auction, having no access to the documents in Stacy Kirk's possession, having no reason to doubt Stacy Kirk at the time,

and having no opportunity or inclination under the circumstances to investigate the truth of the representations, had a right to rely on the representations as they did.

24. As a consequent and proximate injury, the Oremuses have been deprived of their opportunity and right to own and enjoy this unique property, including, without limitation, their right to use the property and to derive a return on their investment in the property, for which they are entitled to recover actual damages in such amount as they shall prove at trial.

25. The Oremuses are entitled to recover punitive damages from Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising in such amount as a jury shall find to be fair, reasonable and just.

FOR A SECOND CAUSE OF ACTION

(Negligence, Recklessness and Willfulness)

26. All allegations made above are incorporated herein where relevant.

27. Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, acting individually and as authorized agents and/or as the *alter ego* of each other, undertook and/or otherwise owed to the Oremuses one or more of the following duties, to wit:

- (a) The duty to treat the Oremuses fairly in relation to the auction;
- (b) The duty to disclose to the Oremuses information material to their decision to bid;
- (c) The duty to deal with the Oremuses honestly;
- (d) The duty to exhibit to Oremuses the highest standards of professionalism and integrity in dealing with them;
- (e) The duty to recommend legal counsel to the Oremuses when it would serve their interests;
- (f) The duty to refrain from the unauthorized practice of law in dealings with the Oremuses; and/or

- (g) The duty to avoid misrepresenting and/or concealing pertinent facts and, in light of the pecuniary interests of Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, the duty to see that truthful information was communicated to the Oremuses.

28. Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, acting individually and as agents and/or as the *alter ego* of each other, were negligent, reckless, willful and wanton in one or more of the following particulars:

- (a) In failing to disclose to the Oremuses issues possibly affecting the auction prior to auctioning The Balcony as advertised;
- (b) In failing to advise the Oremuses of issues possibly affecting the auction prior to acknowledging and announcing the Oremuses as the winning bidder;
- (c) In failing to recommend to the Oremuses that they seek legal counsel after announcing the Oremuses' winning bid, rather than materially misrepresenting the facts and urging the Oremuses, based on the misrepresentations, to sign documents purporting to be releases;
- (d) In advertising the auction as absolute when Valaria Devine, Stacy Kirk, and agents of Grand Estates and Grand Estates Advertising had no intention of allowing the property to be sold to the winning bidder if, in their estimation and judgment, the winning bid was too low;
- (e) In failing to conduct an absolute auction as advertised;
- (f) In consciously disregarding known facts or in otherwise failing to exercise due care by communicating untruthful information to the Oremuses, upon which the Oremuses justifiably relied under the circumstances; and/or
- (g) In failing to honor the Oremuses highest proper bid at the auction.

29. As a direct and proximate result of said negligent, reckless, willful and wanton acts or omissions, Oremuses are entitled to recover actual damages for their injuries and damages, including pecuniary loss, in such amount as they shall prove to a jury.

30. The Oremuses are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A THIRD CAUSE OF ACTION

(Intentional Interference with Contract

31. All allegations made above and below are incorporated herein where relevant.

32. By virtue of having submitted the highest bid at auction and having the auctioneer hammer down their bid as the winning bid, the Oremuses contracted with the Hirschhornes to purchase The Balcony in accordance with their bid.

33. Nevertheless, having solicited, observed and received notice of the Oremuses' winning bid, and having discussed the Oremuses' bid immediately subsequent to the auctioneer's hammering down the sale, Valeria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, acting individually and as agents and/or as the *alter ego* of each other, intentionally procured the breach of the Oremuses' contract by making false statements to the Oremuses, by securing documents from them purporting to be releases but for which there was no consideration, by failing to provide the necessary paper work for the Oremuses, by failing to facilitate a closing of the sale of The Balcony to the Oremuses, and by subsequently marketing and selling The Balcony to persons who did not participate in the auction, with knowledge of the rights of the Oremuses and to the exclusion of their rights.

34. As a result of the aforesaid intentional interference with the Oremuses' contract, the Plaintiffs are entitled to recover actual damages in such amount as they shall prove at trial.

35. The Oremuses are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A FOURTH CAUSE OF ACTION

(Unfair Trade Practice)

36. All allegations made above and below are incorporated herein where relevant.

37. The aforesaid acts or omissions of Valeria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, acting individually and as authorized agents and/or as the *alter ego* of each other, constituted unfair or deceptive acts or practices in the conduct of trade or commerce.

38. Said unfair or deceptive acts or practices affect the public interest by chilling the sale of property by auction and/or in having the potential for repetition.

39. The Oremuses suffered an ascertainable loss of money or property in the loss of this unique property and in the loss of an expected return on their investment in The Balcony as a result of the aforesaid unfair or deceptive acts or practices.

40. The Oremuses are entitled to recover actual damages in such amount as the plaintiff shall prove at trial.

41. Valeria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising knew or should have known that the aforesaid acts or practices were unfair or deceptive; accordingly, the Oremuses are entitled to recover trebled damages.

42. The Oremuses are entitled to recover reasonable attorneys' fees and costs.

FOR A FIFTH CAUSE OF ACTION

(Declaratory Judgment)

43. All allegations made above and below are incorporated herein where relevant.

44. The Oremuses are informed and verily believe they are entitled to pierce the corporate veils of Grand Estates and Grand Estates Advertising on one or more of the following grounds, to wit:

- (1) Grand Estates and Grand Estates Advertising are grossly undercapitalized;
- (2) Grand Estates and Grand Estates Advertising fail to observe corporate and limited liability formalities, respectively;
- (3) the owner and CEO of Grand Estates and the owner and manager of Grand Estates Advertising, Valaria Devine, together with her children, including her daughter Stacy Kirk, who are officers and employees, are siphoning off funds of Grand Estates and Grand Estates Advertising for themselves, leaving said entities as a mere shell;
- (4) The officers, directors and managers of Grand Estates and Grand Estates Auction Company have not functioned as officers, directors and/or managers in having regular meetings and have otherwise failed to observe the requisite formalities of corporations and/or limited liability companies;
- (5) Grand Estates and Grand Estates Advertising are merely a façade for the operations of the sole stockholder/owner, Valaria Devine, and her children, including Stacy Kirk; and
- (6) The owner/CEO of each entity, Valaria Devine, has engaged in a course of conduct by which she has attempted to insulate assets to prevent legitimate creditors from obtaining redress for the misdeeds of Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising.

45. Pursuant to S.C. Code Ann. Section 15-53-20, the Court should declare the rights of the Oremuses to pierce the corporate veils of both Grand Estates and Grand Estates Advertising and to obtain a judgment in this case against the sole owner of said entities, Valaria Devine, for the aforesaid acts and/or omissions of said entities.

FOR A SIXTH CAUSE OF ACTION

(Promissory Estoppel)

46. All allegations made above are incorporated herein where relevant.

47. Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, as the duly authorized agents Hirschhornes, made an unambiguous promise to the Oremuses that they

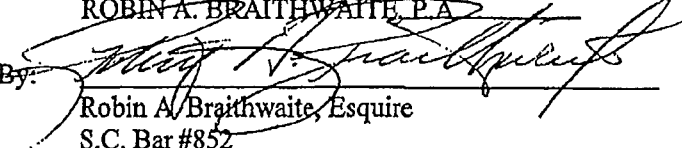
would sell The Balcony to the highest bidder at the auction, which induced the Oremuses to invest the time and money in registering to bid and in thereafter submitting the highest bid for The Balcony.

48. The Oremuses' reliance was reasonable and expected and foreseeable by the Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising.

49. The Oremuses, having submitted the highest bid at auction, have unjustly lost the opportunity and right to own this unique property known as The Balcony and to realize an expected return on their investment, and they are entitled to recover actual damages in such amount as they shall prove at trial.

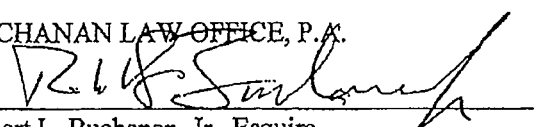
WHEREFORE, The Oremuses pray for judgment against Valaria Devine, Stacy Kirk, Grand Estates and Grand Estates Advertising, jointly and severally, as follows:

- (a) For actual and punitive damages pursuant to the First, Second and Third causes of action;
- (b) For actual and trebled damages and reasonable attorney fees and costs pursuant to the Fourth cause of action; and
- (c) For a declaration that Valaria Devine is liable for the acts or omissions of Grand Estates and Grand Estates Advertising pursuant to the Fifth cause of action;
- (d) For actual damages pursuant to the Sixth cause of action; and
- (e) For such other and further relief as the Court shall deem just and proper.

ROBIN A. BRAITHWAITE, P.A.
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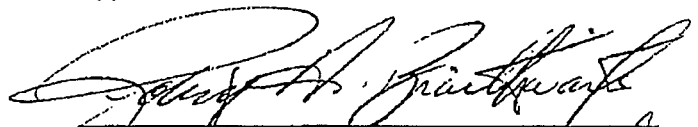
ATTORNEYS FOR PLAINTIFFS

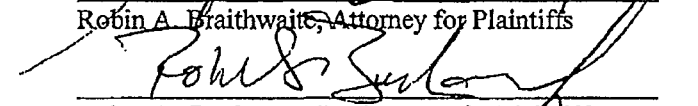
November 13, 2013

Aiken, South Carolina

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as to the first, second, third, fourth, fifth, sixth, eighth and ninth causes of action pursuant to Rule 38, SCRPC; and Plaintiff requests the Court, of its own initiative, try the issues with respect to the seventh cause of action by the same jury sitting as an advisory jury pursuant to Rule 39(c), SCRPC.


Robin A. Braithwaite, Attorney for Plaintiffs


Robert L. Buchanan, Jr., Attorney for Plaintiffs

November 13, 2013

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS
AND JAMES T. OREMUS,

CIVIL ACTION NO.: 2010-CP-02-03055

PLAINTIFFS,

Vs.

DEFENDANTS' ANSWER TO
AMENDED COMPLAINT

4 K & D CORPORATION,
D/B/A GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC,
STACY KIRK,
VALARIA DEVINE,

(JURY TRIAL DEMANDED)

DEFENDANTS.

COPY
ORIGINAL FILED

KC
2:10 FEB 28 2014
AIKEN COUNTY
CLERK OF COURT

Defendants, by and through undersigned counsel, answer Plaintiffs' Amended Complaint,
as follows:

FOR A FIRST DEFENSE

Each and every allegation not hereinafter specifically admitted, modified or
explained is hereby denied.

1. Answering Paragraph 1, Defendants admit the allegations.
2. Answering Paragraph 2, Defendants admit the allegations.
3. Answering Paragraph 3, Defendants admit the allegations.
4. Answering Paragraph 4, Defendants admit the allegations.
5. Answering Paragraph 5, Defendants admit the allegations except that they deny
that Defendant DeVine transacted substantial business in Aiken County.

6. Answering Paragraph 6, Defendants deny the allegations, except that Grand Estates admits that it had a contract with the Hirschhornes to market and sell their property as described in Paragraph 6.

7. Answering Paragraph 7, Defendants admit the allegations.

8. Answering Paragraph 8, Defendants refer to their answers to the referenced paragraphs for their responses thereto and deny all allegations regarding agency except that Grand Estates admits that it had a contract with the Hirschhornes to market and sell their property.

9. Answering Paragraph 9, Defendants reallege their answers set forth hereinabove as if fully repeated herein.

10. Answering Paragraph 10, Defendants refer to the contract executed by Grand Estates and the Hirschhornes for the terms thereof and deny any allegations inconsistent therewith.

11. Answering Paragraph 11, Defendants refer to the written advertising for the terms thereof and deny any allegations inconsistent therewith.

12. Answering Paragraph 12, Defendants admit the allegations.

13. Answering Paragraph 13, Defendants admit that an agent for a potential bidder was asked to leave because Defendant Kirk believed that the potential bidder had not submitted the requisite paper work to participate in the auction. Any other, and/or inconsistent, allegations are denied and strict proof thereof is demanded.

14. Answering Paragraph 14, Defendants admit the allegations.

15. Answering Paragraph 15 preface, Defendants have no knowledge as to whether the Oremuses were being congratulated by other auction participants.

- (a) Answering 15(a), Defendants admit the allegations with the exception that Defendant DeVine is not the owner of Grand Estates but is a voting shareholder.
- (b) Answering 15(b), Defendants deny the allegations.
- (c) Answering 15(c), Defendants deny the allegations.
- (d) Answering 15(d), Defendants deny the allegations.
- (e) Answering 15(e), Defendants deny the allegations.
- (f) Answering 15(f), Defendants deny the allegations.
- (g) Answering 15(g), Defendants admit that Kirk asked the Plaintiffs to sign releases and that they did sign them but deny that it was for no consideration.
- 16. Answering Paragraph 16, Defendants deny the allegations.
- 17. Answering Paragraph 17 preface, Defendants deny the allegations.
- (a) Answering 17(a), Defendants deny the allegations.
- (b) Answering 17(b), Defendants admit that the bidder's opening bid was \$750,000 but deny that there was any representation as to that bid.
- (c) Answering 17(c), Defendants admit the allegations.
- 18. Answering Paragraph 18, Defendants deny the allegations.
- 19. Answering Paragraph 19, Defendants deny that any false representations were made.
- 20. Answering Paragraph 20, Defendants deny the allegations.
- 21. Answering Paragraph 21, Defendants deny the allegations.
- 22. Answering Paragraph 22, Defendants deny the allegations.
- 23. Answering Paragraph 23, Defendants deny the allegations.
- 24. Answering Paragraph 24, Defendants deny the allegations.

25. Answering Paragraph 25, Defendants deny the allegations.

26. Answering Paragraph 26, Defendants reallege their answers set forth hereinabove as if fully repeated herein.

27. Answering Paragraph 27, Defendants deny the allegations.

28. Answering Paragraph 28, Defendants deny the allegations.

29. Answering Paragraph 29, Defendants deny the allegations.

30. Answering Paragraph 30, Defendants deny the allegations.

31. Answering Paragraph 31, Defendants reallege their answers set forth hereinabove as if fully repeated herein.

32. Answering Paragraph 32, Defendants deny the allegations.

33. Answering Paragraph 33, Defendants deny the allegations.

34. Answering Paragraph 34, Defendants deny the allegations.

35. Answering Paragraph 35, Defendants deny the allegations.

36. Answering Paragraph 36, Defendants reallege their answers set forth hereinabove as if fully repeated herein.

37. Answering Paragraph 37, Defendants deny the allegations.

38. Answering Paragraph 38, Defendants deny the allegations.

39. Answering Paragraph 39, Defendants deny the allegations.

40. Answering Paragraph 40, Defendants deny the allegations.

41. Answering Paragraph 41, Defendants deny the allegations.

42. Answering Paragraph 42, Defendants deny the allegations.

43. Answering Paragraph 43, Defendants reallege their answers set forth hereinabove as if fully repeated herein.

44. Answering Paragraph 44, Defendants deny the allegations.
45. Answering Paragraph 45, Defendants deny the allegations.
46. Answering Paragraph 46, Defendants reallege their answers set forth hereinabove as if fully repeated herein.

47. Answering Paragraph 47, Defendants deny the allegations.
48. Answering Paragraph 48, Defendants deny the allegations.
49. Answering Paragraph 49, Defendants deny the allegations.

FOR A SECOND DEFENSE
(Failure to State a Claim)

50. Plaintiffs' Amended Complaint fails to state sufficient facts to constitute the stated causes of action and, therefore, the various causes of action asserted therein should be dismissed.

FOR A THIRD DEFENSE
(Release)

51. Plaintiffs executed releases of any and all claims arising from the facts alleged in their Amended Complaint, and their claims are therefore barred.

FOR A FOURTH DEFENSE
(Laches)

52. Further and affirmatively answering the Plaintiffs' Amended Complaint and as an additional and complete defense thereto, Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

53. Plaintiffs knew of all of the facts giving rise to their Amended Complaint prior to the sale of the property by the Hirschhornes, and Plaintiffs failed to file a Lis Pendens on the

property or to in any way assert their rights to the property so as to preserve their interest in the property and prevent the sale of the property.

FOR A FIFTH DEFENSE
(Estoppel)

54. Further and affirmatively answering Plaintiffs' Amended Complaint and as an additional and complete defense thereto, Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

55. Plaintiffs knew that they could purchase the property because of their high bid at the auction, but they elected to withdraw their bid and sign releases of the sellers, as well as the Defendants.

56. In addition, Plaintiffs knew shortly after the date of the auction that the property did not sell and failed to take any action to purchase the property prior to its being sold to a third party.

57. Defendants relied on the failure of the Plaintiffs to assert their right to buy the property at the auction, their voluntary execution of release and their failure to assert any right to buy the property during the period after the auction and prior to the sale to a third party by continuing to market the property and ultimately consummating a sale to a third party.

58. Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

59. If Defendants have any liability to Plaintiffs, which is denied, Plaintiffs had a duty to mitigate their damages and failed to take the necessary steps to buy the property when they learned that there was no sale, thereby barring their claims.

FOR A SEVENTH DEFENSE
(Waiver)

60. Plaintiffs' actions in executing releases and in failing to take steps to purchase the property after learning that it did not sell constitute a waiver of any rights Plaintiffs claim herein.

FOR AN EIGHTH DEFENSE
(Accord and Satisfaction)

61. Plaintiffs voluntarily withdrew their bid and executed releases of Defendants and the sellers of the property in order to be relieved of their obligation to purchase the property.

62. Plaintiffs received the return of their \$50,000 deposit, as well as relief from their obligation to fulfill the purchase terms for the property as consideration.

63. Plaintiffs' claims are barred by the doctrine of Accord and Satisfaction.

WHEREFORE, having fully answered the Amended Complaint, Defendants pray that the Amended Complaint be dismissed with prejudice, with costs awarded to Defendants, and for such other and further relief as the Court may deem to be just and proper.

ROSEN, ROSEN & HAGOOD, LLC.

By: 

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R. Britton Kelly, Esquire
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Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina
February 24, 2014

State of South Carolina

Court of Common Pleas

County of Aiken

Melissa J. Lackey-Oremus)
and James T. Oremus)

Plaintiffs,)

v.)

Transcript of Record
2010-CP-02-03055

4 K&D Corporation,)
d/b/a Grand Estates,)
Stacey Kirk)
and Valaria Devine)

Defendants.)

June 2, 2014
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Robin A. Braithwaite, Esquire
Attorney for the Plaintiffs

Robert L. Buchanan, Jr., Esquire
Attorney for the Plaintiffs

Alice F. Paylor, Esquire
Attorney for the Defendants

Bethanie K. Patterson
Circuit Court Reporter

0051

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1 (The following proceedings were held on June 2,
2 2014.)

3 THE COURT: All right. This is Ms. Paylor's
4 Motion For Summary Judgment; is that correct.

5 MS. PAYLOR: Yes, Your Honor.

6 THE COURT: This deals with the auction on the
7 property here in Aiken that was auctioned off with
8 Absolute Auction. The bid was a-million-750;
9 subsequent to the bid, based on certain
10 conversations, the bid was withdrawn or whatever,
11 releases were signed and litigation ensued.

12 MS. PAYLOR: Correct. And it did sell again.

13 THE COURT: It did sell again some time later
14 for 2 million?

15 MS. PAYLOR: 2.5 million.

16 MR. BRAITHWAITE: 2.5 million. And the number
17 bid by our client was 1.875 million. But it sold --
18 a contract was entered into eight days after the
19 auction.

20 THE COURT: I understand, read everything --
21 not everything. I read all of your memos, not all
22 of the exhibits. There's a lot of exhibits.

23 MS. PAYLOR: Yes, Your Honor.

24 MR. COURT: Yes, ma'am.

25 MS. PAYLOR: Thank you, Your Honor.

1 Your Honor understand the facts. And basically
2 we're here on a Motion For Summary Judgment with
3 regard to the six causes of action that Plaintiffs
4 have pled in their amended complaint.

5 Our first basis for summary judgment is that
6 the plaintiffs signed releases and all claims are
7 barred by the releases; that there was no cause of
8 action to set aside nor rescind releases. They're
9 valid, they received consideration, which was the
10 return of their \$50,000 deposit, as well as no
11 requirement to buy the property for the 1.875.
12 Plus, there was kicker on there; it was going to be
13 about 2 million, if it had gone through.
14 Plaintiffs --

15 THE COURT: The kicker being the buyers'
16 premium and so forth?

17 MS. PAYLOR: Yes, sir. And in there, there was
18 a premium -- I think the ultimate price that they
19 would have had to have paid was like \$2,011,000,
20 just below more than \$2 million. And the plaintiffs
21 knew that the property didn't sell to this bidder,
22 unidentified bidder, and they didn't do anything to
23 assert their right to the property at that time. So
24 we believe those releases are valid. They haven't
25 asked for them to be set aside or rescinded, and we

1 believe that they bar all of the claims.

2 The next -- these are kind of like my short
3 easy ones before I get to the argument. There is a
4 defendant called GEA Advertising, and they made no
5 argument about that defendant in their brief and I
6 don't believe that they -- that that defendant has
7 anything to do with it. So I would ask that summary
8 judgment be given to GEA Advertising.

9 Now, going to Ms. Devine, who is one of the
10 defendants, she was not at the auction. The
11 plaintiffs testified they had never had any
12 interactions with her or communications. And
13 Mr. Oremus testified the only reason he sued her was
14 because she was the owner of the auction company.
15 The auction company is a corporation. Plaintiffs
16 have asserted that the corporate veil of the
17 corporation should be pierced or that their -- or
18 that Ms. Devine was the alterego of that
19 corporation. There's absolutely no evidence to
20 support that, Your Honor.

21 With regard to alterego, the elements are total
22 domination and control of one entity by another and
23 inequitable consequences caused thereby. There's no
24 evidence. Ms. Kirk testified that she's the
25 president of the auction company. And they want to

1 talk about the fact that she didn't know that the
2 name of the corporation was this 4 K&D, doing
3 business as Grand Estates Auction Company. I don't
4 see how that's really relevant. She was running the
5 auction company, she was the president, and she
6 testified that she managed employees, participated
7 in sales, and was involved in general forecasting.
8 She did say she was not involved in the finances of
9 the company and she let her mother, who was the CEO,
10 handle finances, she handled lawyers, she handled
11 those things.

12 The company was based in Charlotte, North
13 Carolina, which is where Ms. Kirk, the president,
14 lived. Ms. Devine lives in Naples, Florida. She
15 consulted with them, gave them advice and -- you
16 know, I'm not the alterego of my mother, but she
17 still wants to give me advice, so I can see how that
18 happens.

19 The only testimony is that she wasn't there. I
20 mean, there's some testimony from some of the other
21 witnesses who say she was involved in decisions in
22 the company. She was the CEO. She had every right
23 to be involved in the decisions, but she and the
24 company were not one in the same. One of the
25 interesting things is the Hirschhorns said they

1 never had any contact. They are the people that own
2 The Balcony and entered into the auction contract.
3 The had no interactions with Ms. Devine until the
4 day of the auction itself, that Ms. Kirk had done
5 everything. There's just absolutely no evidence of
6 the total dominion and control that is necessary to
7 establish an alterego.

8 Piercing the corporate veil -- and both of
9 these, Your Honor, are equitable remedies; they
10 don't go to the jury, it's a question of law. We've
11 got our statutes that say the shareholder is not
12 personally liable for the acts of the corporation.
13 Courts do not pierce the corporate veil unless the
14 corporation and the individual become one in the
15 same.

16 And we have a two-prong test. The first prong
17 has eight factors. The plaintiffs have not proved
18 any of these factors, Your Honor. They have no
19 evidence.

20 Was the corporation grossly undercapitalized?
21 There's no evidence of that.

22 Failure to observe corporate formalities;
23 there's no evidence of that. They didn't even ask
24 for us to produce that, so they can't -- so they
25 can't prove it. But the burden of proof is on the

1 plaintiffs.

2 Nonpayment of dividends, well, if the dividends
3 were paid, they would have gone to Ms. Devine. So I
4 don't see how that's something that's really
5 relevant.

6 Insolvency of debtor corporation at the time.
7 There's no evidence of that.

8 Scrutiny of funds of the corporation by
9 dominant shareholder. There's no evidence of that.

10 Nonfunctioning of other officers or other
11 directors. There's no evidence of that. Ms. Kirk
12 was running the day-to-day operations and doing
13 everything about getting the auctions going.

14 Absence of corporate records. There's no
15 evidence of that. They were never requested.

16 The corporation was merely a facade for the
17 operations of the dominant shareholder. There's no
18 evidence of that. The corporation was a company
19 that had many employees and they conducted auctions
20 all over the country.

21 Plaintiffs have failed to prove any of those
22 eight factors, Your Honor. And, you know, if you
23 look -- and it has to relay back to when this all
24 occurred, which was in February of 2010. They cite
25 *Hunting vs. Elders*. That's where facts were totally

1 different. In that case, the person who was
2 being -- they were asking to pierce the corporate
3 veil on -- and they did ultimately pierce the
4 corporate veil. But he had named his wife and
5 daughter as officers. They didn't go to work, they
6 didn't do anything, they didn't even know they were
7 officers. Everything that came into the corporation
8 he took out, put it in his own bank account and
9 spent it on himself. That's siphoning funds.

10 This is a totally different case. We have an
11 auction company where it was family owned and
12 operated, Ms. Devine was the sole shareholder. She
13 had two of her children working there and they got
14 paid nice salaries, but they were also running the
15 business. There is absolutely no evidence to
16 support a piercing of the corporate veil.

17 And getting to the second prong, which you only
18 get to if you can prove the first prong, an element
19 of injustice or fundamental unfairness if the acts
20 of the corporation are not regarded as the acts of
21 the individual. There's been nothing with regard to
22 that, Your Honor. I can't imagine what that is.
23 But there's nothing, absolutely nothing present
24 here. They're not telling why it would be an unjust
25 not to pierce the corporate veil, and that's

1 something that they also have to prove if they were
2 to prove any of their eight factors. There's
3 nothing in the memo about it.

4 As I said, this is a corporation that basically
5 auctions properties. They have an office, they have
6 equipment. I know that he's attached as one of his
7 exhibits the tax returns. They bring in money, they
8 pay \$400,000 in salaries to employees other than
9 Ms. Devine and her two children. It's operated.
10 It's not one of these where it's just one person
11 who's doing everything for herself. This is not a
12 piercing or an alterego case, Your Honor. And we'd
13 ask that she be granted summary judgment because the
14 only way you get to Ms. Devine is if you pierce the
15 corporate veil or find an alterego.

16 She was not at the auction, she made no
17 representations to the plaintiffs, and there's
18 just -- she had absolutely nothing to do with it.
19 She was on the telephone talking to her daughter,
20 but she wasn't there and got off, and they never
21 talked to her. She didn't say a word to any of
22 them, and they testified to it.

23 The first cause of action is fraud, Your Honor.
24 And so, as a we know, there are nine elements of
25 fraud. And this is pled against all of the

1 defendants, but there had to be a representation.
2 First of all, Ms. Devine made no representations, so
3 she would be entitled to summary judgment. The
4 alleged representations, according to the
5 plaintiffs, were made by Stacey. And for purposes
6 of this motion, we assume that they were made. She
7 was an agent of Grand Estates Auction Company, and
8 we're not challenging that. She was there on behalf
9 Grand Estates and she -- according to the
10 plaintiffs, there were three misrepresentations --
11 or three representations that they claim are false.
12 She said that the agent of a qualified bidder was
13 improperly excluded; that a qualified bidder had
14 properly entered a written opening bid of \$2
15 million; that the sellers were threatening a lawsuit
16 against Grand Estates.

17 When you look at the testimony of the
18 plaintiffs, Mr. Oremus said that the driver of all
19 of this was that she told them that the qualified
20 bidder had entered a written opening bid of \$2
21 million. He wouldn't have released but for hearing
22 that. So they've got alleged representations that
23 they allege are false.

24 The next thing they have to prove is material,
25 that these were material representations.

1 Materiality is based on the Reasonable Man Standard.
2 It's an objective one involving the significance of
3 an omitted or misrepresented fact to a reasonable
4 investor. Mr. Oremus said that he was buying this
5 as an investment property. He also has many years
6 of experience as an investor and he testified about
7 that. They were already building a house in the
8 area -- a \$2 million house in the area, and they
9 testified about their business acumen and experience
10 in investing. So Ms. Kirk, according to them, said
11 that there was a disqualifying bidder had been
12 improperly excluded and had put in an opening
13 written bid for \$2 million. And she feared that the
14 sellers of the house and perhaps even this
15 disqualifying bidder were going to sue her and Grand
16 Estates for selling it too low.

17 As a reasonable investor, if they heard that
18 somebody wanted to pay more money, that's kind of
19 the opposite of that. That would say, I got a good
20 deal, because they're also going to tell you that
21 nobody forced them to sign a release; they did it
22 voluntarily. No one forced them to do anything.
23 They could have bought it at the 1.875 plus the
24 kicker. These were not material misrepresentations,
25 Your Honor, with respect to a Reasonable Man

1 investment.

2 The next element of fraud is, did they have the
3 right to rely on the truth of the representations?
4 The case that the plaintiffs cited, Your Honor, was
5 a 1945 case, *Thomas vs. American Workmen*. If you
6 read that case, the plaintiffs could not read or
7 write and relied upon someone to read them the
8 contract. This is not what have here, Your Honor.
9 What we have here is that every person must exercise
10 reasonable diligence for his own protection and no
11 action for fraud will lie when a simple inquiry
12 would have exposed the misrepresentation.

13 Every person had to submit a written opening
14 bid. And they could have asked, let us see the
15 written opening bid. In fact, Mrs. Oremus testified
16 that she asked her husband how they knew that
17 Ms. Kirk was telling the truth. All they had to do
18 was say, show us the written opening bid, if in fact
19 that's what they were relying on, and they didn't do
20 it. That's just kind of common sense. Okay. If
21 you're concerned about it, show me the bid.

22 And there was a case that I know Your honor is
23 familiar with, there's *Schnellman vs. Roettger* where
24 the fraud case was a -- they had miscited the square
25 footage. This is a very similar case. All they had

1 to do -- no one forced them to sign those releases;
2 all they had to say was, well, let us see the
3 written opening bid. Same reasoning applies here as
4 in the Schnellman case, Your Honor.

5 There's really no proof of damages in this
6 case, Your Honor. The only testimony that's been
7 given about damages is that the plaintiff believed
8 that the house, if he bought it and he held onto it
9 for a while, he might be able to sell it for
10 \$3 million at some point. That is -- I don't think
11 that's sufficient to even get to the damages, Your
12 Honor; it's a total speculation. The wife testified
13 she wanted to use the property as a bed and
14 breakfast and the husband testified that that was
15 not -- he didn't see that as being an alternative
16 and that the only reason -- they might do that for a
17 short period of time until the property gained value
18 and they could sell it for \$3 million.

19 The next cause of action was negligence. And
20 there were a lot of duties set forth. I don't
21 believe that any of those were legal duties to act,
22 Your Honor. There was no special relationship
23 between Ms. Kirk or Grand Estates Auction Company or
24 Ms. Devine and the plaintiffs; no statute, no
25 contract, no property interest. None of these was

1 present in this case. The defendants owed a duty of
2 care to the sellers. They were their agents, they
3 had a contract with them. But they owed no duty of
4 care to the plaintiffs. It was a little unclear to
5 me in their complaint, the negligent
6 misrepresentation is kind of caught up in the
7 negligence cause of action. And I will address that
8 one because that's really all that they argue in
9 their memorandum.

10 There are six elements of negligent
11 misrepresentation and they're very similar to fraud.
12 You have to have a false representation. The next
13 one, the one that different is, Defendant had a
14 pecuniary interest in making the representation.
15 And they claim -- the plaintiffs are claiming that
16 Ms. Kirk and Grand Estates had a pecuniary interest
17 in making the representation because they
18 subsequently sold it for \$2.5 million. They didn't
19 know at the time -- they didn't have -- they didn't
20 know at the time that they were even going to be
21 able to sell it for anything. So they could have
22 actually -- there was no pecuniary interest one way
23 or the other because they did have a right to sell
24 it afterwards. But that house had been on the
25 market for a long time and had not sold. So they

1 had no pecuniary interest in making that
2 representation, Your Honor, and there's no proof
3 that they did. The only thing they base it on is,
4 okay, they sold it a month later for \$2.5 million
5 and they make a little bit more money. But they
6 didn't have a sale of it at that time. If they had,
7 they would have sold it to those people beforehand.

8 And then we have the same reliance on
9 representation, Your Honor, and that they owed them
10 duty of care. And I don't believe that they owed
11 them any duty in this case. There's nothing --
12 there's no legal duty that they owed to the
13 plaintiffs.

14 Their next cause of action is for
15 interference -- tortious interference with the
16 contract. And we argue that the first element is
17 not there, which is a contract. And I know that
18 they have brought up some cases on auctions. We
19 have stated that in the materials given to them, the
20 terms of sale contemplated additional acts to create
21 a binding contract, earnest money and executing a
22 binding contract. We've also argued the statute of
23 frauds. But even if there were a contract created
24 when they hammered down the auction, Ms. Kirk and
25 Grand Estates were agents of the sellers. And for

1 you to have a tortious interference, it has to be
2 not a party to the contract that's interfering. And
3 as an agent, she couldn't -- she was a party to the
4 contract.

5 THE COURT: Has to be a third party.

6 MS. PAYLOR: She has to be a totally removed
7 third party in order to get tortious interference
8 with the contract, and she was not; she was agents
9 of the sellers.

10 They've also asserted an unfair trade practice
11 claim. And what we have in this case is -- the
12 claim is that the unfair or deceptive act or
13 practices are these misrepresentation about there
14 having been a bidder, an opening bidder, who was
15 disqualified and they were going to bid \$2 million,
16 and that's the allegation.

17 So to have an unfair trade practice case, they
18 have to show that that alleged unfair, deceptive act
19 affected the public interest. So to do that, they
20 can show that it's been repeated or capable of
21 repetition.

22 So what we have here is they went out and got
23 some testimony from some former employees that Grand
24 Estates Auctions may have used shills before, which
25 is kind of the exact opposite of what they claim

1 they did here. A shill is somebody who comes in and
2 bids it up. Well, if they had a shill in this case,
3 then I guess they would have never sold it to the
4 plaintiffs because somebody would have built it up.
5 There's no proof that the defendants ever made
6 similar misrepresentations to induce winning bidders
7 to release their rights to purchase the property.
8 They have no evidence that that's ever been done by
9 them before or in the last four years since this did
10 they have that.

11 You Honor, this is a purely private dispute.
12 There's no impact on the public interest. And it's
13 very -- again, very close to the Schnellman case
14 which also had an unfair trade practice claim in it.

15 The last cause of action is one for promissory
16 estoppel, Your Honor. And the plaintiffs, in their
17 memo, say -- and they say what the unambiguous
18 promise was, was to sell The Balcony to the highest
19 to the highest bidder at absolute auction. And
20 that's true, that promise was made. And plaintiffs
21 admit that they could have bought the property if
22 they had not released their bids and no one forced
23 them to do that.

24 Reasonable reliance on the promise. They
25 put. -- and that was they put up \$50,000 earnest

1 money, which they got back. Reliance was expected
2 and foreseeable. And the reliance on that promise,
3 I agree, was expected and foreseeable.

4 Injury from relying on promise. There's no
5 injury from relying on the promise that it was an
6 absolute auction because they're the ones who
7 voluntarily signed the release and gave it up. And
8 they testified they could have bought the property,
9 no one forced them to do it. They took no action in
10 reliance on the absolute auction promise that caused
11 them injury. Their claim is that they took action
12 based on a false representation that was made, not
13 the promise. So it's not promissory estoppelment.
14 They didn't do anything other than come and bid in
15 reliance on that. And they could have bought it if
16 they had gone forward with it.

17 So those are our motions, Your Honor, as to all
18 of the claims. And we believe the defendants are
19 entitled to summary judgment on all of Plaintiffs'
20 claims, Your Honor. Thank you.

21 THE COURT: All right.

22 MR. BRAITHWAITE: Thank you, Your Honor. If I
23 may beg the Court's indulgence just a moment to
24 preface the arguments with facts that are contained
25 within the various affidavits that have been

1 submitted, that in the deposition testimony that has
2 submitted. And I know you've indicated that you did
3 not and have not -- and I understand --

4 THE COURT: Don't we have people who go to an
5 auction, they win, talk to the people in charge of
6 the auction, and if they decide to back out of it,
7 they sign a release? How are they hurt?

8 MR. BRAITHWAITE: Let me -- if I may, Judge --

9 THE COURT: Answer my question.

10 MR. BRAITHWAITE: Well, I'm going to do that by
11 way of explaining how they were hurt and how it ends
12 up that they were hurt, Your Honor, because we have
13 a situation where a couple decided to bid on this
14 very expensive property in Aiken. They put up
15 \$50,000. They receive a plethora of information
16 which sets forth all of the details of the auction,
17 what they have to do to become a qualified bidder.
18 They comply with everything. They go to the
19 auction. Just immediately prior to the auction,
20 everyone there sees Stacey Kirk dismiss a bidder --
21 an agent for a bidder on the grounds that his
22 paperwork was not in order; they hadn't received the
23 final terms and conditions and they certainly had
24 not received what they indicated was an absolute
25 requirement of power of attorney, which was not

1 notarized or witnessed, at which point she was well
2 within her rights to dismiss that individual and
3 say, you cannot appear here for your bidder.

4 So the auction gets under way. Mr. and
5 Mrs. Oremus win the auction with their winning bid
6 of \$1.875 million. They go outside, they're
7 celebrating. Immediately within ten minutes of that
8 celebration, they get approached by Stacey Kirk who
9 says, we've got a problem, and the problem is I
10 actually released a bidder who was -- you heard me
11 say that he was not qualified; turns out, he was
12 qualified. We received the paperwork up in
13 Charlotte and he made an opening bid of \$2 million.

14 So, Your Honor, at that point, she's telling
15 this to Mr. and Mrs. Oremus. And Mr. Oremus says,
16 I'm not going that high. Now, I don't want the
17 Court to be confused with this amount that has
18 tacked on to the end of the bid.

19 THE COURT: I'm not confused.

20 MR. BRAITHWAITE: Well, 1.875 is what they bid,
21 Your Honor. And this gentleman had bid \$2 million.
22 He said, I'm not going that high, let him have the
23 house. And that's in his deposition testimony,
24 that's in the testimony of other witnesses who were
25 present, Your Honor. So what we have here is a

1 situation where they then were asked to sign a
2 release based on that representation. Somebody
3 outbid you, we don't want to sued, we've got people
4 threatening to sue us right now. Jim and Melissa
5 Oremus are decent people, Your Honor. And at that
6 point, they --

7 THE COURT: Well, surely they didn't have to
8 sign the release, did they? They could have
9 called --

10 MR. BRAITHWAITE: Your Honor, they had just
11 been told they had been outbid. To them, it was a
12 done deal. You'll also see in the testimony they
13 never intended --

14 THE COURT: Most people will say, I'm sorry,
15 but I want the low bid; that's your tough luck, my
16 good luck.

17 MR. BRAITHWAITE: Your Honor, they testified
18 they had never participated in an auction of any
19 kind like this before. They're told they have been
20 outbid. They're asked to sign the releases.

21 THE COURT: Okay.

22 MR. BRAITHWAITE: I think it is a -- I don't
23 think there's any question about the fact that it is
24 a jury question as to whether that representation
25 fraudulently -- because we will prove, Your Honor --

1 and these are all questions of fact and, therefore,
2 for the jury. But we will demonstrate that there
3 was no \$2 million bid, that that was quick-thinking
4 on their feet, as Valaria Devine put it later, to
5 the auction coordinator, that they came up with a
6 means of blowing up the auction.

7 Now, I will tell you that in terms of --

8 THE COURT: Why would they want to blow up an
9 auction for \$1.85 million?

10 MR. BRAITHWAITE: Because, Your Honor, it
11 wasn't enough. You heard testimony from -- that
12 there is testimony that the auctioneer states that
13 Stacey Kirk says, and I quote, the owner is going to
14 be pissed. And at that point, Your Honor, they --
15 the testimony is that Valaria -- that Stacey Kirk
16 got on the phone with her mother, Valaria Devine, at
17 which point this whole series of events transpires
18 where the fraudulent misrepresentation is made that
19 the man has been outbid at \$2 million.

20 Now, the defendants want to contend that
21 because of the fact that the Oremuses did not move
22 for rescission of the contract -- of course the
23 contract in this case, Your Honor, is the
24 releases -- that for some reason that should bar
25 them and that should be their only remedy.

1 They said there's two remedies; void the
2 contract through an action for rescission or elect to
3 affirm the contract and sue for damages. Well,
4 first and foremost, Your Honor, one of the
5 fundamental requirements, as I'm sure the Court is
6 aware of, a rescission action is being able to return
7 the parties to what the cases refer to as the status
8 quo ante, the position they were in immediately
9 prior to the excuse of the contract.

10 Let me say, Your Honor, that there's no way
11 that could happen. At the point that the Oremuses
12 discovered that they had been duped, that they --
13 there had been this fraudulent misrepresentation.
14 First and foremost you will see the deposition and
15 the affidavit of Jim Oremus where Jim Oremus states
16 that he did not know until after the sale of The
17 Balcony to the Davises who entered into a contract
18 to purchase the property just eight days later for
19 \$2.5 million. He did not know until after that that
20 it was not the excluded bidder that purchased the
21 property. In fact, he found out that it was someone
22 who did not even participate in the auction.

23 And the record is clear also, Your Honor, that
24 he did not find out that there was a situation where
25 the \$2 million number was a misrepresentation until

1 late November which is when the affidavit of Desiree
2 Watson, the auction coordinator, who says, no, there
3 was never a \$2 million bid. And moreover she talks
4 about the fact that she got the call from Valaria
5 Devine saying, if anybody asks, there's a \$2 million
6 bid, nod, nod, wink, wink.

7 So, Your Honor, the point is, they could not be
8 returned to the status quo --

9 THE COURT: Well, I understand that. But they
10 didn't have to sign the release either.

11 MR. BRAITHWAITE: Your Honor, if someone makes
12 a fraudulent misrepresentation which is relied upon
13 -- and again, the question is going to come down to
14 the reasonable reliance. And I think that our brief
15 is replete with citations which talk about the fact
16 that unless no other conclusion can be reached,
17 that's a jury question.

18 And, you know, it's a -- I find very
19 interesting that these folks should claim that we
20 don't have a right to reliance, because this defense
21 sort of says, hey, you shouldn't have been so
22 stupid, you shouldn't have been so gullible as to
23 believe our fraudulent misrepresentation, therefore,
24 you can't --

25 THE COURT: That's the same holding in the case

1 in Charleston where they claimed it wasn't enough
2 square footage. All it took was for somebody to
3 look at it.

4 MR. BRAITHWAITE: Your Honor, the point of the
5 matter is, the court has clearly stated -- and if
6 you look at the Law of Torts, Fourth Edition, they
7 talk about the fact that unless you can demonstrate
8 that --

9 THE COURT: Are you talking about the
10 fraudulent cause of action or the negligence cause
11 of action?

12 MR. BRAITHWAITE: Well, right now I'm talking
13 about fraud, Your Honor.

14 THE COURT: All right.

15 MR. BRAITHWAITE: But they have -- it's been
16 made very clear that from the standpoint of being
17 able to demonstrate that there was no right to rely,
18 then they're going to have to show that my clients
19 were reckless and willful in entering into that
20 release.

21 And, Your Honor, as pointed out by Professors
22 Hubbard and Felix, South Carolina is in accord with
23 rule of many jurisdictions that the victim has the
24 right to rely so long as he's not reckless or
25 grossly negligent. And we've got two very, very

1 recent cases from 2011, Your Honor. There is the
2 *Slack vs. James*, which is actually a 2005 case, but
3 *Moseley vs. All Things Possible*, where they talk
4 about the fact, Your Honor, that in this particular
5 case, if the buyers had gone and checked the
6 records, they would have seen that there was an
7 easement that had been misrepresented. And the
8 Court said that's a question for the jury as to
9 whether it was unreasonable for them to go and
10 whether that should be something that should put
11 them out of court in light of the alleged fraud on
12 the part of the defendants.

13 And, Your Honor, what I would suggest to you,
14 there is a great case -- I know it's out North
15 Carolina. But it talks about the fact that we
16 shouldn't have to, in our daily business, consider
17 that everyone -- the North Carolina courts calls it
18 everyone is being a rascal. The question is, should
19 we be able to rely on what people tell us,
20 especially in this kind of a setting, Your Honor?
21 And what I would like for you to consider is the
22 fact that we've got a situation where these folks
23 are being told, we just got paperwork in, we just
24 got paperwork in that says --

25 THE COURT: All your folks have to say is, too

1 bad, we got outbid and if they want to buy it for 2
2 million, we'll sell it to them.

3 MR. BRAITHWAITE: Your Honor, if that was
4 unreasonable action on their part, I'm suggesting to
5 you that that is a jury question. That is a jury
6 question as to whether they relied recklessly on
7 that particular representation, Your Honor.

8 So from that standpoint, this paperwork was
9 supposedly in Charlotte, it wasn't present. We will
10 have testimony -- and I would ask for the Court to
11 take a look of the deposition testimony of Steven
12 Jedael who was their former marketing director who
13 the -- Stacey Kirk and her mother testified they
14 didn't know any reason why he should have an axe to
15 grind. And he talked about the use of shills and he
16 talked about the fact that they're used for two
17 reasons --

18 THE COURT: Well, shills weren't used in this
19 case.

20 MR. BRAITHWAITE: Well, Your Honor, I would
21 suggest to you that it's a variation on a theme. A
22 shill is someone who is a fake bidder, a fake bidder
23 who is --

24 THE COURT: I know what a shill is.

25 MR. BRAITHWAITE: -- either used to do one of

1 two things; either the shill gets the bidding to go
2 higher or the shill makes the final bid, as
3 testified to by Steven Jedael, and blows up the
4 auction to make sure that the property doesn't sell
5 for an unreasonably low price in eyes of the seller
6 and the auction client.

7 THE COURT: But, Mr. Braithwaite, your clients
8 win the auction. All they got to do is say, you
9 know, that's y'all's problem not mine, I own the
10 property now for 1.85, y'all can do what you want
11 to.

12 MR. BRAITHWAITE: No, Your Honor. I don't
13 believe that that was the position that Mr. Oremus
14 saw himself in. He had just been told that he had
15 lost the auction. He had been told that someone bid
16 \$2 million and that that was a valid bid. He wasn't
17 willing to go that high, Your Honor.

18 THE COURT: Show me the bid. I mean, my
19 goodness, Mr. Braithwaite, people that easily just
20 back out of this \$1.85 million deal just because you
21 tell me to? Come on.

22 MR. BRAITHWAITE: Your Honor, as I've stated,
23 they'd just come in from an intense verbal
24 transaction, the auction. Ten minutes later they're
25 in there, the auctioneer is there, their realtor is

1 there, this lady is making representations to them
2 that someone made a \$2 million bid. So at that
3 juncture, Your Honor, I would suggest to you, as Jim
4 Oremus put in his affidavit, it was his
5 understanding based upon what the auction company
6 said, whoever is the highest bidder is going to walk
7 out of here as the proud new owner of The Balcony.
8 And so he sees their job as being to sell the
9 auction that day, then and there. And for -- he
10 could not understand or conceive of any reason why
11 it would be that the auction company would come to
12 him and say, somebody out bid you at \$2 million.

13 So, Your Honor, I'm just suggesting to you that
14 they had plenty of reason to believe it. I think
15 it's a question for the jury as to whether that was
16 reasonable or unreasonable --

17 THE COURT: All right. Move along. Give me
18 any arguments you've got.

19 MR. BRAITHWAITE: Your Honor, I'm going to turn
20 it over to Mr. Buchanan.

21 MR. BUCHANAN: May it please the Court, Your
22 Honor. Let me just mention also in furtherance of
23 what Mr. Braithwaite is saying, there's evidence in
24 the record that Valaria Devine, when she commented
25 to the people in Charlotte about whether disaster of

1 the auction almost was except for their quick
2 thinking and wink, wink, nod, nod, all of that.
3 There's also evidence in this record that Valaria
4 Devine told the people in Charlotte to have somebody
5 delete the database on the Aiken auction.

6 So according to what Stacey Kirk said in Aiken
7 at the auction, the corroborating documentation was
8 in Charlotte, which wasn't true. She had actually
9 in her possession the \$750,000 bid that the
10 so-called \$2 million bidder had made. But she said
11 corroborating documentation was in Charlotte.
12 Now -- so, you know, this is not -- some of these
13 cases -- in fact, we've cited some other cases where
14 factual information was recorded, either in the
15 clerk's office or the RMC office. And the Court
16 said it's a jury issue about whether it was
17 reasonable, you know, for you not to go to RMC and
18 look it up. We don't have that kind of situation.
19 There's nothing recorded here. Whatever
20 documentation that Stacy Kirk says is in Charlotte
21 is in the hands of the people who've been told to
22 delete the database. So how in the world are they
23 going to ever get to it anyway? The very people who
24 are defrauding these people, the very people who are
25 knowingly saying there's a \$2 million bid when they

1 knew better, by a qualified bidder when they knew
2 better, are the people up there with the documents
3 who have been told to get rid of it.

4 I just wanted to point out --

5 THE COURT: Thank you.

6 MR. BUCHANAN: -- in furtherance of what
7 Mr. Braithwaite said on those issues.

8 THE COURT: All right.

9 MR. BUCHANAN: Your Honor, I would like to talk
10 a little bit about the alterego and piercing the
11 corporate veil. Obviously we have a statute that
12 creates corporation. We do them all the time, we
13 set them up -- you know, we set them up and hope
14 that the clients are going to do what they're
15 supposed to do in accordance with the requirements
16 of being incorporated. They're going to have
17 records, they're going to have meetings, they're
18 going to do things.

19 But we also have some law, and it's
20 particularly strong in areas of fraud although it's
21 not limited to fraud. But we have some law that
22 says, look, we're going to let somebody just hide
23 behind the corporate shield to perpetuate a fraud or
24 an act of injustice. And so we've got -- in South
25 Carolina we've got this two-prong test, and one test

1 deals with eight factors -- and, by the way, the
2 case law says it doesn't require all of the factors
3 and the case law says we don't tell you what weight
4 the factfinder puts on whichever factors they
5 consider and we don't tell you whether one factor
6 carries more weight than another factor, it's just
7 that we've got eight factors that deal with the
8 issue of determining control.

9 And in this case, Your Honor, we've got Valaria
10 Devine who owns this company and she owns some
11 affiliating companies. And, by the way, Ms. Paylor
12 said something about Grand Estates Advertising. And
13 we're not going to pursue Grand Estates Advertising.
14 It is a company that's aligned; it's a sister
15 company to Grand Estates Auction Company. But we --

16 THE COURT: Well, isn't -- piercing the
17 corporate veil and alterego, aren't those equitable
18 issues?

19 MR. BUCHANAN: They're all questions of fact,
20 Your Honor. They're all questions of fact by the
21 factfinder. And it's true --

22 THE COURT: But you don't get to that until you
23 are able to get a judgment against the corporation,
24 is that correct, and then you go to the actual
25 situation as to whether or not you can pierce the

1 corporate veil and collect the --

2 MR. BUCHANAN: Well, I find the issue come up
3 in a variety of circumstances. Sometimes -- you
4 know, as in our case, we actually have a cause of
5 action to pierce the veil. It's a declaratory
6 judgment cause of action within the pleadings.

7 And so, you know, in this case we've got
8 Valaria Devine who is the sole owner of this auction
9 company, she's the CEO. She spends 100 percent of
10 her time in the business. She lives in Naples,
11 Florida, Your Honor, she doesn't live in Charlotte.
12 But she's all over the place with this.

13 And if you take a look at some of the tax
14 returns in terms of these particular factors and
15 whether or not the company's -- whether or not the
16 company is grossly undercapitalized, whether they're
17 filing corporate formalities, nonpayment of
18 dividends, insolvency of the vendor corporation at
19 the time, siphoning the funds of the corporation by
20 the dominant stockholder, nonfunctioning of officers
21 and directors, absence of records, in other words,
22 the company is a facade for the dominant
23 stockholder. And if you take a look at those
24 factors and then look at what was going on in just
25 2008, 2009, 2010, which is documents that they

1 produced, you'll see that in 2008, for example --

2 THE COURT: Yeah. But, Mr. Buchanan, don't we
3 normally handle that -- until you get a verdict
4 against one or more causes of action than in --
5 isn't that where we address that as to whether or
6 not she was acting outside the corporation or acting
7 on her own and we put -- pierce the veil?

8 MR. BUCHANAN: Well, I think we've set forth a
9 request for declaratory adjustment on piercing the
10 veil as part of this lawsuit, based on the facts.
11 We've got huge siphoning of funds by the dominant
12 stockholder and her children.

13 THE COURT: All right. Move along to any other
14 causes you --

15 MR. BUCHANAN: Your Honor, I've set out in the
16 memo some factual issues related to those, the
17 alterego and piercing of the corporate veil. And
18 again, I would just highlight what Mr. Braithwaite
19 said about Mr. Jedael; he's a man who testified in
20 his affidavit that he spoke daily with Valaria
21 Devine and that Valaria Devine was in charge in
22 terms of all of these auctions. She was the last
23 word about what was going to happen with those
24 things. And in this very case, of what was going to
25 happen with these things. And in this very case, as

1 Mr. Braithwaite pointed out, Valaria Devine was
2 calling Stacey Kirk and the auctioneer, Mr. Higgins,
3 before the auction and she was obviously called by
4 Stacy Kirk after the auction, and that preceded,
5 immediately, the misrepresentation that, A, there
6 was a qualified bidder and, B, there was \$2 million
7 opening bid.

8 THE COURT: Thank you.

9 MR. BUCHANAN: Desiree Watson as well. Thank
10 you, Your Honor.

11 THE COURT: Ms. Paylor, anything in reply? I
12 think I can rely on your briefs, unless you need
13 to --

14 MS. PAYLOR: Yes. I did want to clear one
15 thing up about Mr. Jedael's testimony. He said that
16 Ms. Devine and Stacey Kirk ran it together. It
17 wasn't that -- she was totally in charge. And I
18 just refer you to two cases that -- piercing the
19 corporate veil is one in equity, one is *Hunting vs.*
20 *Elders* and the other is the *Dumas vs. Info Safe*
21 *Corporations*, Your Honor. They are for the Court.
22 Thank you.

23 THE COURT: Thank you. All right. I'm going
24 to take it under advisement. I'll get back to y'all
25 shortly on this.

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the captioned cause, relative to appeal in the Common Pleas Court for Aiken County, South Carolina, on the 2nd of July, 2014.

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

September 6, 2014

Bethanie K. Creppon
Circuit Court Reporter

State of South Carolina
County of Aiken

Court of Common Pleas

Melissa J. Lackey-Oremus)
and James T. Oremus)

Plaintiffs,)

v.)

;

4 K&D Corporation,)
d/b/a Grand Estates,)
Stacey Kirk)
and Valaria Devine)

Defendants.)

Transcript of Record
2010-CP-02-03055

July 7, 2014
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Robin A. Braithwaite, Esquire
Attorney for the Plaintiffs

Robert L. Buchanan, Jr., Esquire
Attorney for the Plaintiffs

Alice F. Paylor, Esquire
Attorney for the Defendants

Bethanie K. Patterson
Circuit Court Reporter

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1 (The following proceedings were held on July 7,
2 2014.)

3 THE COURT: Mr. Buchanan, your Motion to
4 Reconsider.

5 MR. BUCHANAN: Thank you. May it please the
6 Court. Your Honor, I've handed up and I've handed
7 to Ms. Paylor several affidavits.

8 THE COURT: I got those last week.

9 MR. BUCHANAN: Several affidavits and the
10 testimony of Mr. Gedale. And the first affidavit
11 there -- and this one, of course, is highlighted, so
12 I've given Ms. Paylor a copy of the highlighted
13 affidavit, the same that you have there.

14 THE COURT: This is Higgins?

15 MR. BUCHANAN: That's Higgins, yes, sir. It's
16 an affidavit that Mr. Higgins gave in April of 2012.

17 And I simply wanted to point out to the Court
18 that Mr. Higgins was in a position to and did
19 observe that the owner was going to be unhappy with
20 the results of this auction. The auctioneer,
21 Mr. Higgins, was in a position to and did observe
22 that Stacey Kirk called her mother, who is the CEO
23 of the company, Valaria Devine, to ask her what to
24 do, and Mr. Higgins was in a position to observe and
25 did observe and did overhear Stacey Kirk advise

1 Mr. and Mrs. Oremus that there was a problem and
2 that there had been a \$2 million bid.

3 The next affidavit, Your Honor, that I've
4 handed up is the affidavit of Desiree Watson. And
5 this is the 2012 affidavit. I've handed up two
6 affidavits of Desiree Watson. And it establishes
7 that on the date of the auction, February 9, 2010,
8 she was the auction coordinator and the
9 documentation specialist for Grand Estates Auction
10 Company and that shortly after the auction was
11 scheduled to have occurred -- because she was in
12 her -- she was in the office in Charlotte; she was
13 not at the site of the auction. Shortly after the
14 auction was scheduled to have occurred on the
15 afternoon of February 9, she received a telephone
16 call from Valaria Devine, the CEO, was instructed to
17 refer any calls regarding the auction of The Balcony
18 to her or to her daughter, Stacey Kirk. And
19 Ms. Watson was advised if anyone asks, the high bid
20 we received on The Balcony was \$2 million, nod, nod,
21 wink, wink. And that's important because it shows
22 that Valaria Devine knew about the \$2 million
23 excuse.

24 Now, it goes on to say that later in the
25 afternoon on February 9th she received another call

1 from Ms. Devine, was advised. And Ms. Devine
2 basically here is sort of bragging about having
3 saved this property from this auction; advised that
4 the auction almost had been a disaster but that she,
5 Valaria Devine, and Stacey Kirk had done some quick
6 thinking on their feet and had saved the day.

7 The next affidavit is a 2014 affidavit of
8 Desiree Watson. And this is an affidavit in which
9 she says in paragraph 5 that in the past, Grand
10 Estates Auction Company, through the direction of
11 Valaria Devine and Stacey Kirk, had created false
12 documentation to support the illusion of the
13 existence of bidders who were, in fact, fake
14 bidders. It goes on to say that on the afternoon of
15 February 9, 2010, following the auction, she was
16 contacted by Valaria Devine who instructed her to
17 tell anyone who asks that she -- that was Desiree
18 Watson at the office -- was in possession -- in
19 receipt and possession of documents that showed a
20 \$2 million opening bid existed. There is no such
21 document.

22 Going on, she -- Ms. Watson indicates Valaria
23 Devine also instructed her to call Lori and instruct
24 her to remove the names of all of the contact
25 persons and bidders associated with the Aiken

1 auction from the computer database. So Ms. Valaria
2 Devine receives the phone call from her daughter
3 Stacey, and she -- her daughter is asking her what
4 to do. Stacey then says, we got a qualified bidder
5 who was excluded who's made a \$2 million opening
6 bid.

7 Oremuses are outbid; they haven't won anything,
8 they lost it. Their bid was less than \$2 million.
9 Then we've got Valaria Devine who's doing all the
10 talking. She's the only one -- except for one
11 telephone call in which she patched her daughter in,
12 she's the only one who originated a call to the
13 sellers of this property that day. The owner
14 testified in his deposition, when he heard the sales
15 price, he was shocked.

16 Now, Your Honor, respectfully we'd move on to
17 this deposition of Mr. Jedael. And what I've done
18 is I have just included the entire deposition, it's
19 only 15 pages. But I have some highlighted portions
20 that I'd like to call your attention to. On page 4,
21 there's testimony from Mr. Jedael establishing that
22 he was the marketing director for five years, for a
23 period '04 to '09. On page 5 there's testimony from
24 Mr. Jedael:

25 When asked, do you know Valaria Devine and

1 Stacy Kirk?

2 I do very well.

3 And how closely would you work with them
4 during your employment at Grand Estates?

5 I would talk with them on a daily basis.

6 So he's very familiar. His five years as
7 marketing director of this company, he's very
8 familiar with how it operates and how Valaria Devine
9 and Stacey Kirk operate this company.

10 And proceeding on, on page 6:

11 And let me ask you, is that a risky
12 proposition for a seller to sell at an absolute
13 auction?

14 Answer: It definitely can be. Answer
15 continued: The process with Grand Estates,
16 because the only auctions that we got sort of
17 enough participants were absolute auctions after
18 that 2007 point. So that was the push to make
19 all auctions absolute auctions. And the policy
20 was to tell the seller that, you know, mechanisms
21 are in place, so we're not going to give the
22 property away.

23 Question: And do you know what those
24 mechanisms were that were in place?

25 Answer: Yes. They were the use of shills.

1 within the auction. A skill is essentially a
2 fake bidder.

3 Question: Who directed or instituted or
4 instigated the use of skills at an auction that
5 Grand Estates conducted?

6 Answer: It would be the major sales people,
7 Valaria Devine, Stacey Kirk, anyone who has, you
8 know, half of that particular auction.

9 Question: How would you describe Valaria
10 Devine's role?

11 Answer: She's the CEO of the company.

12 Question: Was she active?

13 Answer: Absolutely. All -- in fact, all
14 decisions as to whether an auction moved forward
15 or not and whether we took a deal was pretty much
16 based on Val's decision. It had to meet her
17 approval.

18 Continuing on that same page, 8 at a line
19 22. Question: Well, how did do you know that
20 Stacy or Val had anything to do with that?

21 Answer: That was common. They're in charge
22 of all the auctions. They know exactly what's
23 going on in all the auctions.

24 Continuing at page 9, line 4: Did you ever
25 hear Val or Stacey or both talking about their

1 use of shills at a particular auction?

2 Answer: Yes. It's served as a safety
3 mechanism, like I said before, to not give the
4 property away.

5 Continuing with the answer: Well, absolute
6 auctions are, of course, very risky. So you want
7 to tell the seller that essentially, just as a
8 reserve auction, a shill may be used to bid up to
9 a certain price. This is the exact same way
10 we're going to use in an absolute auction. And
11 then once it gets to a satisfactory level, then
12 the shill will, you know, cease bidding, or
13 that's supposedly how it's supposed to work.

14 Question: You describe the shill as a fake
15 bidder?

16 Answer: Correct.

17 Question: Is that fake bidder present at an
18 auction?

19 Answer: Sometimes they are, sometimes they
20 are over the phone.

21 Question on line 24: How do they serve as
22 the safety mechanism?

23 Answer: They serve as a sort of impetus to
24 drive bids higher than they normally would be to
25 encourage a counter bid. That's their

1 essential function within an auction.

2 And line 9, the question: The fake
3 bidder -- would the fake bidder ever be the
4 highest bidder at an auction?

5 Answer: Yes, absolutely, that would occur.

6 Question: Okay. If that's a fake bidder,
7 does that fake bidder purchase the property?

8 Answer: No, they do not. Essentially the
9 whole transaction is ignored for the most part
10 like the auction never happened.

11 Your Honor, we would respectfully submit under
12 the law of this state, there's ample evidence in
13 this case for us to have a jury trial on the cause
14 of action of fraud against Valaria Devine as well as
15 Stacey Kirk. They are essentially equal; they work
16 together, they're both in charge, they exclusively
17 direct and operate what happens within that company,
18 they were both involved in this auction.

19 Valaria Devine talked to Stacey and the
20 auctioneer before this auction ever happened on the
21 premises right down the street. She -- Valaria
22 Devine was at her home in Florida. She lives in
23 Florida. And then as soon as this auction happened,
24 Stacey calls her mother to report. Stacey doesn't
25 call the sellers, she calls her mother to report.

1 She calls her mother to ask her to do.

2 Her mother gets on the phone with the owners
3 who are in Georgia, in Seattle, all these
4 conversations going on. The very next thing that
5 happens is Stacey Kirk tells the Oremuses, you
6 remember the guy we didn't let bid because his
7 paperwork wasn't right? Well, we should have let
8 him bid and he had a \$2 million opening bid.

9 So my people, having never attended a real
10 estate auction before in their lives, and having
11 gone through this intense -- very brief, but very
12 intense oral auction, we got outbid. We have been
13 outbid. We didn't win it. He hammered down 1.875,
14 but now we're told there was an original written bid
15 of \$2 million, and that never existed.

16 So we have enough. You know, fraud can be
17 proved with direct or circumstantial evidence.
18 Fraud can be proved in intermittent events that
19 happen, occurrences that happen, that together
20 constitute this misrepresentation, the material. We
21 have enough evidence in this record right now to
22 proceed against Valaria Devine as well as the other
23 defendants on the fraud cause of action which Your
24 Honor left in under the previous order.

25 Now, we also -- we also have enough evidence in

1 this record to show not just the potential for
2 repetition; we have evidence in this record of
3 actual repetition, and that is this mechanism, this
4 fake bid, false bid, however it's done in any way,
5 you know, that these people can imagine under the
6 circumstances, but the concept, the mechanism is the
7 same. They use a fake bid or a fake bidder to
8 ultimately get out of the sale when as here, this
9 property, my client believed it was worth three --
10 as soon as it was hammered down, my client believed
11 it was worth \$3 million. Nancy Sarah, who is a
12 witness in this case, testified -- and you've seen
13 it, I submitted it with that motion, I submitted it
14 as part of the documents. You've seen where she
15 testified that Stacey Kirk told her that there was a
16 qualified bidder who bid \$2 million in advance and
17 who was prepared to go to \$3 million.

18 THE COURT: Well, why in the world would your
19 client sign a release? That doesn't make any sense.

20 MR. BUCHANAN: Because he didn't win.

21 THE COURT: He hadn't bid.

22 MR. BUCHANAN: He had -- no, he had not,
23 because they told him he had not. They told him
24 that Mark Blazer had submitted a \$2 million opening
25 bid. Our clients had submitted a \$1 million opening

1 bid before this auction started. Everybody had to
2 do that. It's of no moment that all these -- that
3 our clients got their \$50,000 back because every
4 single one of the bidders got their \$50,000 back.

5 THE COURT: Well, I understand the facts that
6 once the bidding was over, your client wins;
7 a-million-eight or whatever it is.

8 MR. BUCHANAN: No, sir. If the \$2 million
9 representation had been true, my client lost,
10 because the opening written bid was, she said, \$2
11 million. My client said, well, you know, my opening
12 bid was 1 million, which was true --

13 MR. BRAITHWAITE: 1 and a half --

14 MR. BUCHANAN: 1 and a half. Okay.

15 Our claim --

16 THE COURT: And then it stopped at 1.8,
17 whatever it was. When your client says 1.8 and
18 there was no further bidding, hammers down, that's
19 not what happened?

20 MR. BUCHANAN: That's not what happened. It's
21 the highest opening bid or the highest bid at the
22 auction. We were outbid 2 million to 1.875.

23 THE COURT: That's not how I understand the
24 facts. Maybe I've misread the depositions of your
25 clients. I thought they had won it at 1.8 or

1 whatever it was --

2 MR. BUCHANAN: Well, in truth --

3 THE COURT: -- and then signed a release
4 saying, oh, we're going to get out of this thing.

5 MR. BUCHANAN: Well, you know what? By
6 December of 2009, when we discovered the \$2 million
7 falsity in Charlotte, we realized that there really
8 wasn't a \$2 million bid; it was false, it was fake.

9 THE COURT: All right. Anything else?

10 MR. BUCHANAN: Bear with me, Your Honor, just
11 one minute.

12 Your Honor, I would in summary say that the
13 same evidence that we provided to you supports the
14 cause of action against Ms. Devine under both of the
15 causes of action for fraud and for unfair trade
16 practice. We put in the evidence that this is a
17 standard practice used by the -- this was a standard
18 practice used by this company prior to the event of
19 this auction on February 9th of 2009. So the very
20 same evidence that we had provided Your Honor
21 supports our right to proceed to a jury trial on
22 those two causes of action.

23 THE COURT: Thank you. Ms. Paylor?

24 MR. BUCHANAN: Your Honor, may I make one
25 additional statement?

1 THE COURT: Absolutely.

2 MR. BUCHANAN: When Valaria Devine told Desiree
3 Watson in Charlotte, if anybody asks, there's a
4 \$2 million bid, she couldn't have said that if she
5 hadn't known about it. She's a participant, if not
6 director, of this fraud and this unfair trade
7 practice cause of action. Thank you, Your Honor.

8 THE COURT: Ms. Paylor?

9 MR. BUCHANAN: Thank you, Your Honor.

10 Mr. Buchanan is not arguing this case, he's
11 arguing a case that's not before you. I have
12 Mr. Oremus' deposition testimony on page 32:

13 Question: So right there on the spot, did
14 you feel like you could have said, no, I'm not
15 signing them, referring to the releases, I want
16 the contract and I want the house?

17 Answer: Could I have?

18 Question: Could you have?

19 Answer: Yes, absolutely. We were not
20 forced to sign these documents.

21 Well, why didn't you just say, I want my
22 property for 1.875?

23 Answer: Because I don't think we're that
24 kind of people. I don't consider us
25 sharks. We came to the auction looking for a

1 deal. This is what I do.

2 Then he goes on about he's 50/50 partners:

3 I look for opportunities to find deals, and
4 this looked like it was going to be a great deal.

5 Then the question: Well, I think you said
6 that you felt like, at that point, you could have
7 gotten the property for 1.875.

8 Answer: Yes.

9 Question: But you didn't?

10 Answer: That's right. That was great, but
11 at the same time, that was a great deal at 1.875.
12 But as the ticker kept going higher and higher
13 and higher, the deal wasn't. Remember that we
14 had already been in post-crash -- you know,
15 post-crash real estate. So, yes, this was still
16 a hell of a deal, but nobody knew exactly when
17 the market was coming back. So, you know, I felt
18 pretty good with that bid at a-million-8.

19 Question: But you didn't feel so good about
20 it to enforce it?

21 Answer: Not when somebody is saying that
22 they're going to get sued by multiple people.

23 He then goes on when he's talking about what
24 he's going to do with the property, he's saying he
25 really didn't have a use for it, he was going to

1 have to wait for the real estate market to come
2 back, when he thought he might be able to sell it at
3 some unknown time for \$3 million. He knew he could
4 walk away from it. He was given an opportunity to
5 get out of it, and he jumped on it. Nobody made him
6 sign a release. If there was a high bid, as they
7 say, why would he have signed the release? There
8 would have been no reason for him to, if, as they're
9 arguing to you, he had been outbid. There's no
10 provision that says that an opening bid is good
11 unless the person is there and making it. That
12 bidder was excluded, the bidder wasn't there.

13 They want to bring Ms. Devine in. The only
14 evidence against her, Your Honor, is the plaintiffs
15 state they never had a single interaction with her,
16 none. They only had limited interactions with
17 Stacey Kirk, basically when she was running the
18 auction and after the fact. Ms. Devine testified
19 that she did not tell Ms. Kirk to do anything with
20 respect to trying to nullify the outcome of the
21 auction. She said she did tell her that they had a
22 problem, that the excluded bidder was properly
23 registered.

24 Ms. Kirk -- what Ms. Devine testified is that
25 Ms. Kirk told her that she was not sure that the

1 plaintiffs really wanted the property because she
2 understood that they were building an expensive
3 house in Aiken. The testimony supports this; the
4 plaintiff said that he was building a \$2 million
5 house and really had no use for this property except
6 as a potential investment hoping that real estate
7 prices would go up. Ms. Devine said that she told
8 Ms. Kirk to find out if the bidder was willing to
9 walk away from the auction and release his right to
10 buy the property. There's no evidence in the record
11 anywhere that she said anything other than that.
12 Ms. Kirk did not testify that Ms. Devine directed
13 her to do anything at all.

14 Mr. Higgins, he says that Ms. Kirk said, what
15 should we do? He said he didn't hear what
16 Ms. Devine said, so he doesn't support that she said
17 anything about, you know, giving any kind of a false
18 statement. Ms. Watson's deposition testimony was
19 she didn't talk to Ms. Devine until late in the
20 afternoon.

21 There's no evidence of shills here, Your Honor.
22 If there had been shills, then they would have
23 outbid their client. So that is totally a red
24 herring, has nothing whatsoever to do about our
25 case. They also, when they were reading

1 Mr. Jedael's testimony, they left out where he said
2 that Ms. Kirk had just as much authority as
3 Ms. Devine. He says, right along with Ms. Devine;
4 she was in charge of auctions, she was one of the
5 lead sales people, she was the president of the
6 company. I mean, as far as all the major decisions
7 on how to move forward with a particular auction,
8 she was right there with Val. So that doesn't
9 support their position either that Ms. Devine had
10 anything -- they just have absolutely no evidence,
11 Your Honor, direct or circumstantial.

12 Then they want to say they're the same person.
13 Well, they're not the same person, they're obviously
14 different people. And the case law is that you
15 can't -- a person cannot be the alterego of another
16 person. And that's where they're trying to take
17 this right now, Your Honor. These were all of the
18 same arguments that plaintiffs made at summary
19 judgment, they just now want to ignore Mr. Oremus'
20 testimony where he said that he knew he could buy
21 for 1.875, but he chose, because of the real estate
22 market and these statements, to walk away from it.
23 Interestingly, he didn't bring a lawsuit until after
24 the property sold for \$2-and-a-half million. So
25 that's when he decided, you know, that he was going

1 to bring a lawsuit.

2 The same with the alleged unfair trade
3 practice, Your Honor. There's nothing that supports
4 that they've ever done what the plaintiffs claim
5 which is to tell a winning bidder that there was a
6 higher opening bid from a person not allowed to bid.
7 And I don't know why anybody would make that
8 statement, but if I was a buyer and somebody wanted
9 it for 2 million and I found out I was paying 1.875,
10 I'd say, thank you very much, I've got a good deal.

11 So again, Your Honor, I don't believe that
12 there's materiality, the same arguments that we made
13 before, and would ask that when you're re-looking at
14 it, that you grant our Motion For Summary Judgment
15 as to the fraud action, Your Honor. I think the
16 plain testimony that Mr. Oremus gave that he
17 voluntarily gave the release that he knew he could
18 buy it for 1.875. He then rambles around about the
19 real estate market not being as great as, you know,
20 as he was hoping it was going to be.

21 And they talked about circumstantial evidence.
22 Circumstantial evidence is he leaped on a chance to
23 get out from buying a house he really didn't want.
24 So we'd ask Your Honor that you -- when you're
25 considering this, that you grant the summary

1 judgment motion for fraud, Your Honor, and deny the
2 requests that they have made. Thank you.

3 THE COURT: Anything in reply, Mr. Buchanan?

4 MR. BUCHANAN: Yes, Your Honor. I will just
5 give you kind of the rest of the testimony of
6 Mr. Oremus in a nutshell. Okay? Very quickly --

7 THE COURT: No, sir. Take whatever time you
8 need.

9 MR. BUCHANAN: As was pointed out by James
10 Oremus in his deposition, the biggest reason for
11 their signing the releases was, one, the man outbid
12 us, we weren't going higher than \$1.875 million.
13 That's high. They have a bid of \$2 million. And
14 then in another place in his deposition, he
15 answers -- they ask him about the sympathy thing
16 because when Stacey Kirk told him, you know,
17 everybody's mad, everybody is threatening to sue me,
18 the owner is threatening to sue me, the excluded
19 buyer is threatening to sue me, he did have some
20 sympathy for her, but he goes on to say, no, the
21 sympathy factor wouldn't have made me change my
22 mind. I think it was Reese Williams who asked -- he
23 said:

24 Suppose they had just come to you and said,
25 hey, we just made a horrible mistake, we don't

1 want to get sued, will you sign this?

2 He said: No. He says: I still don't think
3 we would have signed it. The sympathy thing is
4 one thing, but it's -- there still was the fact
5 that we were outbid. That was really -- that's
6 the driver. We -- we're -- you know, we're -- we
7 were outbid.

8 He knew the process because he had done it. He
9 had made an opening written bid, that was required,
10 for \$1.5 million. So how was he to know -- how
11 was -- particularly with Valaria Devine telling
12 Desiree Watson in a home office what to say, what to
13 destroy, how was he to know that there really wasn't
14 a -- we found out there was not a \$2 million bidder
15 in November or December of 2009, and the house sold
16 weeks after this auction.

17 So, you know, Ms. Paylor has made a very good
18 presentation, in my view, of our entitlement to jury
19 trial because we got -- we got --

20 THE COURT: I've left the jury trial in there.
21 I've just excluded her --

22 MR. BUCHANAN: Well --

23 THE COURT: What you're arguing with me is they
24 include the other person.

25 MR. BUCHANAN: I'm arguing that both --

1 THE COURT: And the unfair trade practice.

2 MR. BUCHANAN: -- that both of the people who
3 are responsible for this should be defendants in
4 this case. And we're arguing based on the routine
5 practice that existed in this company, that they
6 both directed and authorized, based on the testimony
7 of Mr. Jedael, you know. And then Valaria Devine
8 brags about it; you know, quick thinking on our
9 feet, you know, we saved the day.

10 THE COURT: All right. Thank you both very
11 much. I'll take it under advisement and --

12 MR. BUCHANAN: One final thing, Your Honor. In
13 the terms and conditions it says the bid offer made
14 by the bidder or bidders on auction day shall be
15 binding. So the opening bids were not binding
16 unless you showed up and bid --

17 THE COURT: Thank you.

18 MR. BUCHANAN: We did have one other thing,
19 Your Honor, telephone records, which we've been
20 trying to get since January to show that we believe
21 he was talking to a lawyer the whole time this was
22 going on, Mr. Oremus. We asked for them in January.
23 We reached an agreement with the plaintiffs' lawyers
24 on April 15th that they were going to provide them
25 to us. We still don't have them and the trial is

1 set to begin two weeks from today, Your Honor.

2 And I told them before we came if they hadn't
3 gotten them to me a week ago, I was going to have to
4 ask you to continue the trial because those are very
5 important documents and records that we've been
6 trying to get for six months.

7 MR. BUCHANAN: Okay. Your Honor, because we
8 felt so badly that we couldn't provide these
9 documents, I actually subpoenaed them on June 11th.
10 Why my clients couldn't get them, I don't know. Why
11 that subpoena we served on them isn't any good, I
12 don't know. We have communicated with them
13 subsequently last --

14 THE COURT: Who is them?

15 MR. BUCHANAN: The subpoena -- the subpoena
16 division of AT&T. So we communicated with them on
17 the phone last Tuesday, we did also this afternoon.
18 They assured us two hours ago that they would get
19 them to us within the next hour or two. I can call
20 Pam and see if they've come in since we had to leave
21 to get here for the hearing on time. But they told
22 us that last week too. And I'm trying -- I'm doing
23 everything I can do --

24 THE COURT: I know. I know you are,
25 Mr. Buchanan. But if they're going to stonewall, I

1 mean, we can bring them in to court and I can hold
2 them in contempt. I told them you would do that.

3 MR. BUCHANAN: Frankly, we told them that. We
4 told them that, and that's why they said they'd have
5 them to us in the next hour or two.

6 THE COURT: Well, if you don't have them by
7 tomorrow -- I'll be here tomorrow -- we'll have a
8 telephone conference and I'll issue an order and
9 rule to show cause.

10 MR. BUCHANAN: All right, sir.

11 MS. PAYLOR: And, Your Honor, we would need to
12 get the trial continued. It's getting closer and
13 closer to being here and we need to --

14 THE COURT: We'll cross that bridge tomorrow.

15 MS. PAYLOR: Thank you, Your Honor.

16 -- END OF TRANSCRIPT OF RECORD --

17

18

19

20

21

22

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24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the captioned cause, relative to appeal in the Common Pleas Court for Aiken County, South Carolina, on the 7th of July, 2014.

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

September 6, 2014

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

MELISSA J. LACKY-OREMUS)
AND JAMES T. OREMUS,)

PLAINTIFFS,)

VERSUS)

4 K&D CORPORATION,)
D/B/A GRAND ESTATES AUCTION)
COMPANY, GRAND ESTATES)
ADVERTISING, LLC,)
STACY KIRK,)
VALARIA DEVINE)

DEFENDANTS.)

IN THE COURT OF COMMONS PLEAS
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-02-03055

AFFIDAVIT OF BRADLEY L. BONI

PERSONALLY APPEARED before me the undersigned, Bradley L. Boni, who being
duly sworn, deposes and says:

1. That he is a lawyer in Aiken, South Carolina and that now, and at all times relevant, he has been a sole practitioner whose focus has been in the area of real estate.
2. That shortly after the auction of the "Balcony", which took place in Aiken, South Carolina in February of 2010, he was contacted by James and Melissa Oremus, who had questions about the auction process in general and concerns about the manner in which the auction of the Balcony was conducted.
3. That shortly after the Oremuses came to see him, the undersigned contacted Stacy Kirk of Grand Estates Auction Company by telephone and requested that she provide him with a copy of the Releases that had been executed by the Oremuses following the auction.
4. The undersigned emphatically denies that there was any conversation between himself and Stacy Kirk or anyone at Grand Estates to the effect that the excluded bidder had not bought the property. The undersigned also emphatically denies that Stacy Kirk inquired as to whether the Oremuses were interested in purchasing the property.
4. The undersigned did not learn until after the sale of the Balcony to Mr. and Mrs. Davis that they (Mr. and Mrs. Davis) did not participate in the auction.

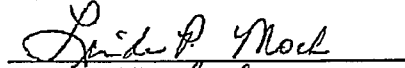
5. Prior to the sale of the Balcony to Mr. and Mrs. Davis, the undersigned never had any factual basis upon which to advise the Oremuses to file a Lis Pendens in connection with the property in question and would have been concerned about a Slander of Title action against the Oremuses given this lack of knowledge.

FURTHER, the Deponent sayeth not.



Bradley L. Boni

Sworn to before me this the 28th
day of May, 2014.



Notary Public for DC
My Commission Expires: 7-27-19

11/2/10
11/2/10
file

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS AND
JAMES T. OREMUS,

Civil Action No.: 2010-CP-02-03055

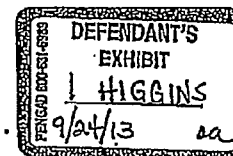
Plaintiffs,

vs.

4K&D CORPORATION, D/B/A
GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC, STACY KIRK,
SCOTT KIRK, VALERIE DEVINE,
KARL WESLEY HIRSCHHORN, AND
ERIN FRANCIS HIRSCHHORN,
INDIVIDUALLY AND AS TRUSTEES
OF THE KARL WESLEY
HIRSCHHORN AND ERIN FRANCIS
HIRSCHHORN REVOCABLE TRUST
DATED MAY 24, 1983,

AFFIDAVIT OF
WILLIAM A. HIGGINS

Defendants.



Personally appeared before me the undersigned William A. Higgins, who being duly sworn, deposes and says:

1. That he is William A. Higgins, who resides at 225 Sardis View Lane, Charlotte, NC 28270.
2. That on February 9, 2010, the undersigned, an auctioneer licensed in South Carolina, served as auctioneer of a property known as the Balcony located in Aiken, South Carolina.
3. That the undersigned had provided auctioneer services to Grand Estates Auction Company as an independent contractor for approximately a year prior to February 9, 2010.
4. With respect to the February 9, 2010 auction of the Balcony, the only roles fulfilled by the undersigned were as auctioneer of record and bid caller, for which service he was paid \$1,500.00 by Grand Estates Auction Company.
5. That the undersigned did not serve as the real estate broker of record for the auction in question as Scott Kirk, an officer and part owner of Grand Estates Auction Company, was the real estate broker of record for this transaction.

6. That the undersigned did not perform any duties nor did he have any responsibilities with respect to the registration and/or qualification of auction participants/potential buyers in the February 9, 2010 auction.

7. That the only compensation to which the undersigned was entitled as a result of services provided by him in connection to this auction was solely limited to the sum of \$1,500.00 and no more regardless of the outcome of the auction or the amount for which the property was sold.

8. That within thirty minutes of the start of the auction on February 9, 2010, the undersigned observed Stacy Kirk inform a gentleman (unknown to the undersigned) that he had to leave the auction for reasons that were totally unknown to the undersigned at the time.

9. That the undersigned was advised by Stacy Kirk subsequent to the auction that the gentleman was asked to leave because he was not properly registered.

10. That the auction in-question began at or near 2:00 p.m. on February 9, 2010 and lasted for approximately twenty minutes at which time the undersigned hammered down the sale of the property for the sum of \$1,875,000.00 and declared the winning paddle number.

11. The undersigned subsequently learned that the winning bidders were Mr. and Mrs. Oremus.

12. Shortly after the undersigned declared the winning bidder, Stacy Kirk stated to the undersigned that "The owner is going to be pissed" and immediately departed from the auction room.

13. The undersigned subsequently followed Stacy Kirk and found her on a cell phone speaking with her mother at which time Stacy Kirk was clearly distressed at the outcome of the sale and asked her mother what to do; however, the undersigned was unable to hear the response to that question.

14. After conferring with her mother, Stacy Kirk went out the front door at which time she conferred with Mr. and Mrs. Oremus.

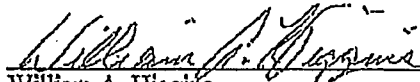
15. At that time, the undersigned approached Stacy Kirk and Mr. and Mrs. Oremus and heard Stacy Kirk advise Mr. and Mrs. Oremus that there was a problem with the sale which could result in Grand Estates being subjected to legal action from the seller and also from a bidder who had previously submitted a higher bid of \$2,000,000.00.

16. The undersigned had no way of knowing the truth or falsity of the representations made by Stacy Kirk to Mr. and Mrs. Oremus.

17. After the aforementioned conversation, Stacy Kirk hand wrote a release and the undersigned was asked to and did witness the signatures of Mr. and Mrs. Oremus.

18. That witnessing the signatures was the only involvement that the undersigned had with respect to the release in question.

FURTHER AFFIANT SAYETH NOT


William A. Higgins

SWORN to and subscribed before me

this 5th day of April, 2012.

Christine L. Steedman (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/25/2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
MELISSA J. LACKEY-OREMUS	)	CIVIL ACTION NO.: 2010-CP-02-03055
AND JAMES T. OREMUS,	)	
	)	
PLAINTIFFS,	)	
	)	
VERSUS	)	AFFIDAVIT OF WILLIAM A. HIGGINS
	)	
4 K&D CORPORATION,	)	
D/B/A GRAND ESTATES AUCTION	)	
COMPANY, GRAND ESTATES	)	
ADVERTISING, LLC,	)	
STACY KIRK,	)	
VALARIA DEVINE	)	
	)	
DEFENDANTS.	)	

PERSONALLY APPEARED before me the undersigned, William A. Higgins, who being duly sworn, deposes and says:

1. That he was an independent contractor and a licensed auctioneer who was hired by Grand Estates Auction Company to serve as the auctioneer for the auction of the "Balcony", the property located in Aiken, South Carolina, on February 9, 2010.

2. That in approximately the first week of November, 2010, he received a copy of unfiled pleadings prepared by Robin A. Braithwaite and Robert L. Buchanan, Jr., which consisted of a proposed Complaint that was to be filed by Melissa Oremus and James Oremus against Grand Estates Auction Company, himself, and others arising out of the auction of the Balcony.

3. That after consulting with counsel, the undersigned contacted attorney Braithwaite and suggested that they meet to discuss the facts of the case, together with Desiree Watson, who had been the Auction Coordinator for Grand Estates Auction Company at the time of the auction in question.

4. That in late November of 2010, the undersigned, together with Desiree Watson, met with attorneys Braithwaite and Buchanan at which time the attorneys were advised, among other things, of the following:

a. a bidder who had been excluded from the auction by Stacy Kirk was not a qualified bidder due to the fact that the appropriate paperwork and documents had not been submitted by the bidder.

b. that neither the excluded bidder nor any other bidder made a \$2,000,000.00 opening bid in connection with the auction in question.

5. That Attorneys Braithwaite and Buchanan appeared to be shocked by the revelation that there had been no \$2,000,000.00 opening bid at the auction.

6. That as stated in a previous affidavit, the undersigned heard Stacy Kirk represent to the Oremuses that the excluded bidder was, in fact, a qualified bidder who had made an opening bid of \$2,000,000.00.

7. That with respect to the representation that was made by Stacy Kirk to the Oremuses regarding the excluded bidder, the undersigned was unaware of the identity of the excluded bidder and based on the representations made by Stacy Kirk to the Oremuses in his presence, it was his understanding that the documentation which qualified the excluded bidder and which set forth his \$2,000,000.00 bid had been received in the Charlotte, North Carolina Office of Grand Estates Auction Company. Accordingly, the undersigned had no way of knowing on the date of the auction whether the representation in this regard that was made by Stacy Kirk was false, and that he did not learn of the falsity of those representations until after the date of the auction when he was advised of the falsity of the representations by Desiree Watson.

FURTHER, the Deponent sayeth not.

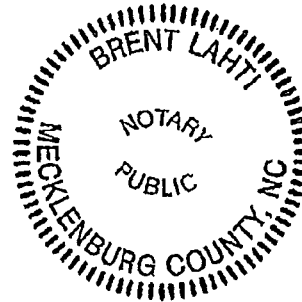
SIGNATURES ON THE FOLLOWING PAGE

William A. Higgins
William A. Higgins

SWORN to before me this

28 day of May, 2014.

[Signature]
Notary Public of North Carolina
My Commission Expires: Dec 16 2018



STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

MELISSA J. LACKEY-OREMUS)
AND JAMES T. OREMUS,)

PLAINTIFFS,)

VERSUS)

4 K&D CORPORATION,)
D/B/A GRAND ESTATES AUCTION)
COMPANY, GRAND ESTATES)
ADVERTISING, LLC,)
STACY KIRK,)
VALARIA DEVINE)

DEFENDANTS.)

IN THE COURT OF COMMONS PLEAS
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-02-03055

AFFIDAVIT OF JAMES T. OREMUS

PERSONALLY APPEARED before me the undersigned, James T. Oremus, who being
duly sworn, deposes and says:

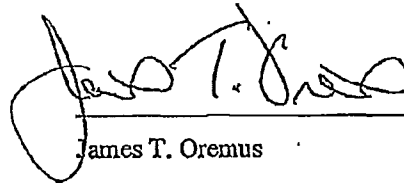
1. That he is a Plaintiff in the above referenced case.
2. That immediately prior to the commencement of the bidding, Stacy Kirk of Grand Estates Auction Company told all in attendance at the auction that since it was an absolute auction, whoever was the highest bidder was going to become the new owner of the Balcony.
3. That within minutes of the auctioneer hammering down his winning bid in the amount of \$1,875,000.00, he was approached by Stacy Kirk who advised him that she had learned that a bidder, who she had excluded from the auction as being unqualified due to that bidder's failure to submit appropriate documentation, was, in fact, qualified as she had been notified that his paperwork had been properly received by the Grand Estates Auction Company's Charlotte, North Carolina office.
4. That Stacy Kirk further informed him at that time that the excluded bidder had made an opening bid of \$2,000,000.00.
5. That with respect to Stacy Kirk's representation that the excluded bidder had made a \$2,000,000.00 opening bid, the undersigned did not learn of the falsity of that representation until late November of 2010.

6. That at the time the representation regarding the \$2,000,000.00 bid was made following the auction, the undersigned had no reason to question the veracity of what he was being told by the auction company as

a. it was his understanding that it was the auction company's job to get the property sold then and there that day; and

b. he could not conceive of any possible incentive or motive for Stacy Kirk to lie with respect to there being a higher bidder.

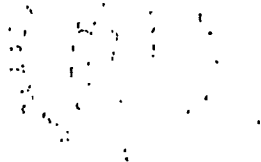
FURTHER, the Deponent sayeth not.



James T. Oremus

Sworn to before me this the 29th
day of May, 2014.

Pamela W. Holmes
Notary Public SC
My Commission Expires: 02/07/2022



STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

MELISSA J. LACKEY-OREMUS AND
JAMES T. OREMUS,

PLAINTIFFS,

VERSUS

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2010-CP-02-03055

) AFFIDAVIT OF DESIREE

) WATSON

4 K&D CORPORATION, d/b/a GRAND
ESTATES AUCTION COMPANY, GRAND
ESTATES ADVERTISING, LLC, STACY
KIRK, SCOTT KIRK, VALARIA DEVINE,
KARL WESLEY HIRSCHHORN AND
ERIN FRANCIS HIRSCHHORN,
INDIVIDUALLY AND AS TRUSTEES OF
THE KARL WESLEY HIRSCHHORN AND
ERIN FRANCIS HIRSCHHORN REVOCABLE
TRUST DATES MAY 24, 1993,

DEFENDANTS,

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

1. That she is Desiree Watson and is a resident of Charlotte, North Carolina.
2. That on February 9, 2010, she was employed as the auction coordinator and documentation specialist for the Defendant, 4 K&D Corporation, d/b/a Grand Estates Auction Company (hereinafter "Grand Estates").
3. That in her capacity as auction coordinator for Grand Estates, the undersigned was entirely familiar with the manner in which auctions were conducted by Grand Estates during her employment with that company to include the manner in which auctions were advertised, the registration requirements for persons bidding, the documentation that was required to be submitted by potential bidders, and the specific manner in which the auctions were conducted.
4. That undersigned is specifically familiar with the circumstances giving rise to the auction of the property known as The Balcony located in Aiken, South Carolina which was held on February 9, 2010.

[Handwritten signature]

5. That at the time of the auction of The Balcony, the undersigned had knowledge of the identities of the registrants that had qualified to bid and the amount of the bids which had been made by each such registrant at all times prior to 2 pm on February 9, 2010, which was the time and date that the auction actually occurred in Aiken, South Carolina.

6. That the undersigned was physically present at the office of Grand Estates Auction Company in Charlotte, North Carolina at the time of the auction.

7. That shortly after the auction was scheduled to have occurred on the afternoon of February 9, 2010, the undersigned received a phone call from Valeria Devine, the CEO of Grand Estates, instructing the undersigned to refer any calls regarding what had transpired at the auction of The Balcony to her or to Valeria Devine's daughter, Stacy Kirk, and that "If anyone asks, the high bid we received on The Balcony was \$2,000,000.00, nod nod, wink wink".

8. That the undersigned was specifically aware that no bid had been received at the offices of Grand Estates in the amount of \$2,000,000.00 and that any representation to that effect would be false.

9. That later on in the afternoon of February, 9, 2010, the undersigned received another phone call from Valeria Devine at which time Devine advised her that the auction had almost been a disaster but that she and Stacy Kirk had done some "quick thinking on their feet" and had "saved the day".

10. That within days following The Balcony auction, the undersigned decided that she could no longer work for Grand Estates due to the unethical, if not illegal, activity of which she was aware in connection with the sale of The Balcony and subsequently resigned from the company.

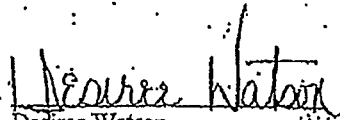
11. That in April of 2010, the undersigned filed a claim with the Employment Security Commission of North Carolina for unemployment benefits on the grounds that she had been compelled to leave her employment with Grand Estates as a result of unethical and illegal practices by her employer and her employer's request that she participate in said unethical and illegal practices in connection with the auction of The Balcony on February 9, 2010.

Handwritten signature

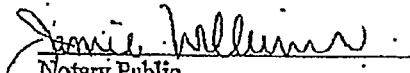
12. That since the auction of The Balcony, the undersigned never communicated with the Plaintiffs or any attorney or representative of the Plaintiffs in this matter until November of 2010 when she was contacted by Bill Higgins, the auctioneer of The Balcony, who advised her that he had been notified by counsel for the Plaintiffs of their intention to bring suit over the matter, at which time both the undersigned and Bill Higgins met with the lawyers for the Plaintiffs in Charlotte.

13. That the document attached hereto as Exhibit 1 to this affidavit is a true and accurate copy of the Order that she received from the Employment Security Commission of North Carolina in connection with her claim for unemployment benefits that she made subsequent to her resignation from Grand Estates.

Further the Deponent sayeth not:


Desiree Watson

Sworn to before me this the 4
day of January, 2012.


Notary Public
My Commission Expires: 8/26/21

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS
AND JAMES T. OREMUS,

PLAINTIFFS,

VS.

4 K&D CORPORATION,
D/B/A GRAND ESTATES AUCTION
COMPANY, GRAND ESTATES
ADVERTISING, LLC,
STACY KIRK,
VALARIA DEVINE,

DEFENDANTS.

CIVIL ACTION NO.: 2010-CP-02-03055

AFFIDAVIT OF
DESIREE M. WATSON

PERSONALLY APPEARED before me the undersigned, Desiree M. Watson,
who being duly sworn, deposes and says:

1. That on February 9, 2010, she was employed as the Auction Coordinator and Documentation Specialist for Grand Estates Auction Company.
2. That she was personally responsible for preparing the documents necessary for all aspects of the auction of The Balcony which took place in Aiken, South Carolina on February 9, 2010.
3. That on February 9, 2010, the undersigned did not attend the auction but was at the Grand Estates Auction Office in Charlotte, North Carolina.
4. That one of the last documents she prepared prior to the auction was a bid sheet for Stacy Kirk and the Auctioneer listing the names of the qualified bidders and the opening bids



made by each qualified bidder. If a bidder was not qualified, his name would not have been contained on the bid sheet.

5. That in the past, Grand Estates Auction Company, through the direction of Valaria Devine and Stacy Kirk, had created false documentation to support the illusion of the existence of bidders who were, in fact, fake bidders (also referred to as "shills").

6. That on the afternoon of February 9, 2010, following the auction, she was contacted by Valaria Devine by telephone who instructed her to tell anyone who asked about the Aiken Auction that she (Desiree Watson) was in receipt and possession of documents which showed that a \$2,000,000.00 opening bid existed.

7. That during the telephone conversation with Valaria Devine, Valaria told her how they had got the Oremuses to withdraw their winning bid and further stated that luckily, she (Valaria Devine) and Stacy were thinking quickly on their feet.

8. That following the auction, that afternoon Valaria Devine also instructed her to call Lori Schilkowski and instruct her to remove the names of all the contact persons and bidders associated with the Aiken Auction from the computer database of Grand Estates Auction Company.

9. That the undersigned can conceive of no legitimate reason for Valaria Devine to have wanted Lori to remove the information from the computer database.

FURTHER the Deponent sayeth not.

SIGNATURES ON THE FOLLOWING PAGE



Desiree M. Watson
Desiree M. Watson

SWORN to before me this
29th day of May, 2014
[Signature]
Notary Public of North Carolina
My Commission Expires: *July 20th, 2015*

T. AMADA ALVAREZ SANCHEZ
Notary Public
Mecklenburg County
North Carolina
My Commission Expires Jul 20, 2015

[Circular Stamp]

State of South Carolina)

County of Aiken)

Melissa J. Lackey-Oremus)
and James T. Oremus,)

Plaintiffs,)

vs.)

4 K&D Corporation d/b/a)
Grand Estates Auction)
Company, Grand Estates)
Advertising, LLC, Stacy)
Kirk, Scott Kirk, Valaria)
Devine, Karl Wesley)
Hirshhorn, Erin Francis)
Hirschhorn, individually,)
and as Trustees of the Karl)
Wesley Hirschhorn and Erin)
Francis Hirschhorn)
Revocable Trust dated May)
24, 1993,)

Defendants.)

4 K&D Corporation d/b/a)
Grand Estates Auction)
Company and Grand Estates)
Advertising, LLC,)

Third-Party Plaintiffs,)

vs.)

William A. Higgins,)

Third-Party Defendant.)

2010-CP-02-3055

Deposition

of

Nancy Cerra

September 3, 2013

Time: 11:09 a.m.

Location:

Braithwaite, Farmer,
Boni & Timmerman, 759
Richland Avenue West,
Aiken, South Carolina

Reporter:

Sandra J. Ayers

1 person selling a piece of property without a real
2 estate agent versus selling through an agent,
3 right? That was his understanding?

4 A Well, yeah. I mean, if -- if a -- if somebody is
5 selling a piece of property and they're not using
6 an agent, sometimes, if an agent brings them the --

7 Q Sure.

8 A -- the buyer, the seller will pay.

9 Q Right. I understand.

10 A But -- okay.

11 Q All right. So, while he didn't want you to
12 represent him at the sale, he wanted you to attend
13 the sale?

14 A Correct.

15 Q And how were you to be compensated for that?

16 A I wasn't -- I was really attending just as an
17 advisor -- as a friend.

18 Q Just as a friend?

19 A I was not -- I was not being compensated.

20 Q Uh-huh. All right. So go ahead and tell me the --
21 the day of the sale, did you go with them or meet
22 them there?

23 A I met them there.

24 Q And had you had anything to do with their
25 registration?

1 A Nothing.

2 Q What did you know about that? What did you know
3 about the requirements to be registered for them?

4 A I knew that -- I believe the other people who were
5 going to be bidding needed to put up \$50,000 in
6 order to be able to bid. And, if I --

7 Q Right.

8 A -- recall correctly, that was also on the Web site.

9 Q Did -- did you know anything at that time about the
10 conditions as to when that had to be done? Were
11 there any deadlines --

12 A Yes.

13 Q -- at the registration?

14 A I don't remember the number of hours before it had
15 to be done. As I recall -- I don't -- I -- I don't
16 remember it in terms of hours. As I recall, it had
17 to be in by 4 p.m. the day prior --

18 Q Okay.

19 A -- to the auction.

20 Q All right. And --

21 A Everyone had to be registered by 4 p.m. prior, I
22 believe is what I'm -- let me refresh my memory.
23 Yes. Four p.m.

24 Q Okay. You're looking at your notes?

25 A Correct.

1 Q But -- and I'll ask you about that in a little bit,
2 but you're certainly free to refer to that at any
3 time --

4 A Okay. Good.

5 Q -- if you wish. But I have a copy of that, too.

6 A Okay.

7 Q So -- in fact, we -- we probably -- let's go ahead,
8 so we don't have any misunderstanding -- let's mark
9 a copy of that for identification and make it a
10 deposition exhibit. Let's see now, is yours
11 written on two sides?

12 A No. Mine's written on --

13 Q All right..

14 A -- two individual pieces of --

15 Q That's good.

16 A -- paper.

17 Q I wasn't sure which way that was done.

18 MR. BRAITHWAITE: Off the record, Reece.

19 (Off the record briefly at 11:16
20 p.m.)

21 THE EXAMINATION BY MR. WILLIAMS CONTINUES.

22 Q Let me see now if I've got one that's the same as
23 yours. I'll show this to you --

24 A Okay.

25 Q -- if I can. Yours is written on two sides, right?

1 A Correct. No. Mine's written on one side.

2 Q Oh, all right.

3 A Uh-huh. Two different pieces of paper.

4 Q Oh. I -- I've got that here. See if that's the
5 same as yours.

6 A Okay.

7 Q I hope.

8 MR. BRAITHWAITE: (To the deponent) You see
9 them both?

10 THE DEPONENT: Yep. 2/12, yep.

11 A Right? Yes? Yes.

12 Q That's the same as yours?

13 A This -- this is the one I -- yep.

14 Q All right.

15 A This is a copy of my original.

16 MR. WILLIAMS: (To the court reporter) So
17 would you mark that for identification,
18 please, ma'am?

19 MR. BUCHANAN: Thank you.

20 THE COURT REPORTER: Yes.

21 MR. WILLIAMS: (To all counsel) I'm sure
22 y'all have this, but --

23 MR. BUCHANAN: Thank you, sir.

24 MR. WILLIAMS: -- there it is.

25 Defendants' Exhibit Number 1, Handwritten

1 statement.

2 Q All right. As I said, if you want to refer to
3 that, again, that's fine.

4 A Okay.

5 Q And we'll ask about it more in a minute. So about
6 what time did you get to the auction?

7 A Oh, my gosh, I don't know.

8 Q Can you give me a --

9 A I don't even remember what time the auction
10 started.

11 Q Okay. All right. Do you -- do you --

12 A I think I got there about a half an hour before it
13 started because --

14 Q Right.

15 A -- I wanted to make sure I wasn't going to be late
16 --

17 Q Right.

18 A -- but I don't recall what time it started.

19 Q And, when you got there, did you have any contact
20 with anybody from Grand Estates? Well, tell me,
21 what --

22 A I --

23 Q -- what'd you --

24 A I --

25 Q -- what did you do when you got there? Tell me

1 Number 1 to this deposition. Or, do you want
2 -- do you want to keep them in sequence? Do
3 you care about that?

4 MR. BRAITHWAITE: Why don't we just -- for the
5 --

6 MR. WILLIAMS: Just call it 1?

7 MR. BRAITHWAITE: Call it 1 for this
8 deposition.

9 MR. WILLIAMS: All right.

10 MR. BRIATHWAITE: That's fine.

11 MR. WILLIAMS: That's fine. Okay.

12 Q So, you -- excuse me.

13 A I'm sorry?

14 Q Were you going to say something? I'm sorry.

15 A No.

16 Q All right.

17 A I was clearing my throat.

18 Q So the successful bid was made by the folks who you
19 were involved with?

20 A Jim and Melissa Oremus.

21 Q Right. And so what happened next?

22 A After the auctioneer said that the property was
23 sold, then everybody in the room got up and started
24 milling around --

25 Q Uh-huh.

1 A -- and chatting with each other.

2 Q Right.

3 A And then, eventually, people left the room. People

4 walked out of the room --

5 Q Uh-huh.

6 A -- after -- after that.

7 Q All right. And -- and then what happened?

8 A Then everybody was -- a lot of people went to their

9 cars, I believe, because there was no point in them

10 staying since they had not won. And Jim and

11 Melissa and I walked out to the driveway and then I

12 walked -- apparently, paperwork was being prepared

13 by Grand Estates in one of the other rooms. It was

14 not in the same room. And we were going to be --

15 Jim and Melissa were going to get called back in to

16 do whatever the next step was --

17 Q Uh-huh.

18 A -- since they had the winning bid. And I -- I

19 started walking in the house, and I said -- I saw

20 Stacy. And I was going in the front door. She was

21 coming towards the front door, and I kind of met

22 her right there. And I said, "Isn't it amazing

23 that it sold for this price?" I mean, I was

24 flabbergasted --

25 Q Uh-huh.

1 A -- that it went for 1.875. And she said, "We have
2 a big problem."

3 And I said, "What's the problem?"

4 Q "She," being Stacy?

5 A Stacy said --

6 Q Uh-huh.

7 A -- to me -- and I said, "It's -- isn't it amazing
8 it sold for this price?" I mean, I was like -- I
9 was incredulous.

10 And she was like -- she looked very serious
11 and she looked at me and she said, "We have a big
12 problem."

13 And I said, "What's the problem?"

14 And she said, "Remember when I said there was
15 a bidder who didn't have his paperwork in?" Which
16 is what she had said just before the bidding
17 started. She said, "Well, he actually did."

18 And I said -- well, let me -- let me go back
19 because this is part of this. Just before the
20 auction started, Stacy came to the room and said,
21 "We're waiting for a fax to come through."

22 Q She came into the --

23 A -- into the auction bidding room.

24 Q And said --

25 A Where everybody was sitting.

1 Q Yeah. And said that to --

2 A -- said that to a number of people who were near
3 the door. I mean, there were some of us who were
4 in the room who were bidders or, you know, with
5 bidders, as --

6 Q So --

7 A -- I was.

8 Q -- it wasn't just to you she said that to?

9 A Oh, no.

10 Q All right.

11 A No. No. No. No. She --

12 Q Go ahead.

13 A -- said that at the door.

14 Q Sure.

15 A Because it -- you know, we were very close to the
16 time it was supposed to start --

17 Q Uh-huh.

18 A -- or a little past it, and I think everybody was
19 thinking, "Okay. When is this thing going to get
20 going?"

21 And so she came to the door and she said,
22 "We're waiting for a fax to come through. If it's
23 not here in a few minutes, we are going to start
24 without that bidder."

25 And I thought, at the time, Why are you

1 waiting for a fax to come through? Wasn't all the
2 paperwork supposed to be in by 4 p.m. the day
3 before?

4 Q Uh-huh.

5 A Yesterday, in fact? So, I mean, that was just the
6 thought that I had to myself.

7 And then Stacy came back a few minutes later
8 and said, "The fax has not come through. We're
9 going to start. I just told a bidder to leave,"
10 okay?

11 So now we get to afterwards and I meet her in
12 the front door of the house. And I said, "Isn't it
13 amazing that it sold for this price?"

14 And that's when she said, "We have a big
15 problem."

16 I said, "What's the problem?" Meanwhile, Jim
17 and Melissa are still out, you know, in the
18 driveway. But, I think, Melissa had gone to the
19 car and Jim was coming in, kind of like right
20 behind me. So he heard this conversation as he was
21 coming up. I said, "What's the problem?"

22 And she said, "Remember when I said there was
23 a bidder who didn't have his paperwork in? Well,
24 he actually did."

25 And I said to Stacy, "Why did you think he

1 didn't have his paperwork in?"

2 And she said, "Because someone in my office
3 said it wasn't there. Do you remember when I was
4 talking on the phone just before the bidding
5 started?"

6 And I nodded yes.

7 And she said, "I was talking to the office.
8 And then, when the bidding started, I turned my
9 phone off," she said. Then she said, "My office
10 was trying to reach me to tell me the paperwork was
11 there, but they couldn't because my phone was off.
12 And that bidder's opening bid was \$2 million, and
13 he was prepared to go to 3 million, so now he's
14 threatening to sue and the seller is threatening to
15 sue."

16 Well, at this point, Jim said, "Oh, my gosh.
17 Well, we'll just walk away. We'll back away. If
18 his opening bid was \$2 million, we wouldn't have
19 gone over that -- or, certainly not much over that.
20 And if we can help you out to not get sued, we'll
21 walk away and he can have it."

22 Then, at that point, she asked Jim and Melissa
23 to come in to sign a statement that had been
24 dictated by her attorney. She was literally on the
25 phone --

1 Q You -- you -- you would not be of the opinion that
2 they could not do that -- that Grand Estates could
3 not sell it after the auction?

4 A I guess I would have found it odd that they would
5 sell it to somebody a week or so later, after they
6 had a bidder on that day that bid 2 million.

7 Q All right. Well, can you -- can you tell me,
8 ma'am, definitively whether or not, in your
9 opinion, they should not have sold this property
10 later?

11 A I don't know how to answer that --

12 Q All right.

13 A -- because, again -- I -- I don't mean to be going
14 over plowed ground, but I thought the property was
15 sold because they had a bidder who bid \$2 million.

16 Q Yes.

17 A On the day of the auction. So my understanding was
18 that Freddie and Horner Davies found out about this
19 after that.

20 Q I don't doubt that a bit, if that's your view. I -
21 - I have no basis to -- to -- to dispute that. And
22 maybe the other people who were interested in
23 buying it found out about it later, too. So have
24 you been involved in auctions before?

25 A No.

1 Q This is your first and only one?

2 A Yes.

3 Q Uh-huh. So is it your understanding that an
4 auction company, such as this, is entitled to sell
5 real estate other than through an auction?

6 A Are they entitled to sell other than through an
7 auction?

8 Q Uh-huh.

9 A All I know about it is that this was supposed to be
10 an absolute auction, which would mean -- in my
11 limited understanding of auctions, would mean that
12 whatever the final price was during the auction,
13 that that is the number it would be sold for. I
14 don't know how auction companies work.

15 Q All right.

16 A I -- I -- I mean, I really don't.

17 Q So -- so you're -- it's not -- it's not your
18 testimony here today that Grand Estates was
19 prohibited from selling this property, as -- as
20 announced in this -- whatever this is called here.
21 E-mail or what?

22 A This -- this was on their Web site.

23 Q Web site?

24 A Yeah.

25 Q So you're not saying that Grand Estates was

2/9/10

Stacey told us before auction started we are waiting for a fax to come through. If it's not here in a few minutes we are going to start without that bidder.

(Wasn't all the paperwork supposed to be in yesterday by 4pm?)
Stacey came back a few minutes later and said the fax had not come through. We are going to start. I just told a bidder to leave.

Afterward when I said, "Isn't it amazing it sold for this price?" she said, "We have a big problem." N: "What's the problem?" S: "Remember when I said there was a bidder who didn't have his paperwork in? Well, he actively did." N: "How come why did u think he didn't hv his paperwork in?" S: Because someone in my office said it wasn't there. So you remember when I was talking on the phone just before the bidding started? I was talking to the office and then when the bidding started, I turned my phone off. My office was trying to reach me to tell me the paperwork was there, but they couldn't bcs my phone was off. And that bidder's opening bid was \$2mm and he was prepared to go up to \$3mm. So now he's threatening to sue and the seller is threatening to sue."

Jim - "We'll just back away. If his opening bid was \$2mm we wouldn't have gone over that or much over that. If we can help you out to not get sued, we'll walk away and he can have it."

Signed ~~para~~ statement dictated by Stacey's atty. Country comes in. Jack to Stacey - they went outside. Stacey comes back to room.

N: Not all over town by now that house was bought for \$1.875.

S: Surprised - that fast? N: Small town - everyone interested.

S: Well you were right about news traveling fast. Country just said agent I sent away called her and said "it's not happening."

N: Who is the agent? S: I don't know. N: Man or woman?

(Second time I asked)

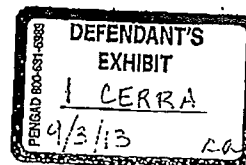
S: Man. Tall w/ dark hair. N: Can't you call your office & find out who it is? S: Can't do that right now. I hv to call the seller now.

Gave her my card & she gave me hers. I asked her to email me w/ what happens.

Got him signed another statement from Stacey's atty holding broker harmless.

Stacey told I & M she'd be in touch tomorrow.

I offered to take to Kerk to let him know he wasn't hv bid over \$2mm.



No one seemed really upset by all of this ^{other than Stacy} as they began wrapping up the food + taking down signs.

How could she let herself get caught in such a situation?

Only 10 bidders. 6 from out of town. 410 inquiries.

During auction - Stacy: oh, you've bought the barn + land. How about the house?

Also earlier, when bid was around \$1.2mm - c'mon, you're only at about 1/5th of the value!

Scumbag
Carol
Update?

State of South Carolina)

County of Aiken)

Melissa J. Lackey-Oremus)
and James T. Oremus,)

Plaintiffs,)

vs.)

4 K&D Corporation d/b/a)
Grand Estates Auction)
Company, Grand Estates)
Advertising, LLC, Stacy)
Kirk, Scott Kirk, Valaria)
Devine, Karl Wesley)
Hirshhorn, Erin Francis)
Hirschhorn, individually,)
and as Trustees of the Karl)
Wesley Hirschhorn and Erin)
Francis Hirschhorn)
Revocable Trust dated May)
24, 1993,)

Defendants.)

4 K&D Corporation d/b/a)
Grand Estates Auction)
Company, Grand Estates)
Advertising, LLC,)

Third-Party Plaintiffs,)

vs.)

William A. Higgins,)

Third-Party Defendant.)

2010-CP-02-3055

Deposition

of

Valaria DeVine

September 10, 2013

Time: 10:46 a.m.

Location: Callison

Tighe & Robinson,

LLC, 1812 Lincoln

Street, Second Floor,

Columbia, South

Carolina

Reporter:

Sandra J. Ayers

1 started after Best Rate Mortgage?

2 A Yes.

3 Q Okay. And when was that started?

4 A Nine -- wait a minute. Let me see. July of 1999.

5 Q All right. And besides yourself, were there any

6 other owners?

7 A Well, it's a corporation.

8 Q I understand. Who owned the -- the shares to Grand

9 Estates Auction Company?

10 A I hold all the voting shares.

11 Q Okay. Did anybody else have an ownership interest

12 in 1999 when you started Grand Estates Auction

13 Company?

14 A I don't know.

15 Q Okay. As far as Grand Estates Auction Company is

16 concerned, what is the relationship of Grand

17 Estates to 4K&D Corp.?

18 A Well, Grand Estates is 4K&D. It's 4K&D Corp.,

19 d/b/a --

20 Q -- d/b/a Grand --

21 A -- Grand Estates Auction Company.

22 Q That's what I was trying to find out yesterday.

23 And you heard --

24 A She doesn't know.

25 Q All right. So, did it start out as 4K&D?

1 your 401(k) .

2 A The individual?

3 Q Yes, ma'am. Is there an individual?

4 A No. It's a company.

5 Q Well, I know you told me about EverBank. Okay, but

6 is there an individual -- individual that you work

7 with?

8 A No. There's a company.

9 Q Okay. Who's the company? I may be mistaken about

10 EverBank. I think you indicated that's who you had

11 your . . .

12 A Wait, I'm trying to think -- ExpertPlan.

13 Q And where they out of?

14 A I don't know, sir. I mean it's on the Internet.

15 You know, ExpertPlan.com.

16 Q All right. Let me ask you from the standpoint of

17 your association with Grand Estates, how would you

18 describe your association with them at this time?

19 A I'm the CEO.

20 Q Okay. How -- how would you describe your duties

21 for Grand Estates?

22 A Well, my role is very limited today. I deal with

23 lawyers, accountants, future business planning,

24 benefit programs, and that's about it.

25 Q All right. And how about the day-to-day running of

1 the business of Grand Estates?

2 A No. I'm not involved in that at all.

3 Q Okay. For how long has that been the case?

4 A Since about 2007.

5 Q All right. So you weren't involved --

6 A 2008.

7 Q -- in the day-to-day running of the business in

8 2010?

9 A No, sir.

10 Q Okay.

11 A No. I was not.

12 Q And you weren't involved in the day-to-day running

13 of the business with respect to anything having to

14 do with the sale of the balcony?

15 A Oh, no. Not at all.

16 Q Not at all.

17 A Not at all.

18 Q All right. You were present for your daughter's

19 testimony yesterday, correct?

20 A Yes. I was.

21 Q And you heard her discuss several telephone calls

22 that you had with her before the auction took place

23 and after the auction took place; is that correct?

24 A After, yes. Before, I don't know.

25 Q Well, let me see if I can refresh your

1 recollection.

2 Do you recall having a conversation prior to
3 the start of the auction with your daughter or --
4 or with Bill Higgins about the auction?

5 A Bill Higgins definitely, yes.

6 Q Okay. Tell me about your conversation with Bill
7 Higgins.

8 A Bill Higgins called me up. He wanted to know about
9 registering a bidder as both an LLC and an
10 individual.

11 Q That had been Jane Page Thompson?

12 A Yes.

13 Q Okay. About what time -- how -- how much time
14 prior to the start of the auction did that phone
15 call take place?

16 A I have no idea.

17 Q Okay. All right. And you made a decision in terms
18 of whether she should be permitted to register in
19 that dual capacity?

20 A No, sir. I did not make the decision.

21 Q You didn't?

22 A No, sir.

23 Q You didn't tell Bill Higgins what to do?

24 A Not at that time.

25 Q Did you ever tell him what to do as far as that --

1 that question regarding Jane Page Thompson came up?

2 A No. I only relayed what the seller told me to tell

3 him.

4 Q Okay. And "the seller" being Mr. Karl Hirschhorn?

5 A That's correct.

6 Q All right. So you discussed this with him prior to

7 the auction?

8 A Yes.

9 Q Okay. And would that have been the morning of the

10 auction?

11 A I don't know what the time was, sir.

12 Q All right. So when Bill Higgins called you, you

13 then called the seller; is that your testimony?

14 A Yes, sir.

15 Q Okay. And you asked him what to do about it?

16 A That's correct.

17 Q Okay. And what did he tell you to tell Bill

18 Higgins?

19 A He wanted to know the names of the members of the

20 LLC.

21 Q All right. And did that get communicated --

22 A What?

23 Q -- to the seller? The names of the members of the

24 LLC.

25 A Yes.

1 Q Okay. So you went back to Bill Higgins, told him
2 to find out that information, correct?

3 A (Nods head up and down.)

4 Q And he then talked with Jane Page Thompson, too; is
5 that what he told you he did?

6 A I don't remember if Jane Page got on the phone and
7 gave -- told me or if Bill Higgins relayed it to
8 me. But the names were given to me.

9 Q All right. And those were communicated to Mr.
10 Hirschhorn?

11 A Correct.

12 Q All right. And one of those names of the members
13 of the LLC was Mr. Updyke, correct?

14 A I have no idea.

15 Q All right. You were here yesterday when I -- when
16 we talked about Stacy's note that was put into the
17 database. What do you call it? SLX or something
18 like that?

19 A I don't deal with that. I don't know.

20 Q You don't know. But you heard her talking about
21 the fact that there was a note there where the
22 question was raised as to whether Jane Page
23 Thompson and Courtney Conger were trying to collude
24 to push the price of the auction.

25 A I don't know anything about that.

1 Q Okay. So you never had any decision with your
2 daughter in that regard?

3 A No. Yesterday was the first I heard of that.

4 Q Okay. All right. But you heard your daughter
5 testify that she instructed Bill Higgins to call
6 you regarding that question; is that correct?

7 A That's correct.

8 Q All right. And you were the principal point of
9 communication on the day of the auction with Mr.
10 Hirschhorn, correct?

11 A That's correct.

12 Q All right. And how many conversations did you have
13 with Mr. Hirschhorn on the day of the auction?

14 A I have no recollection without looking at the phone
15 bill.

16 Q All right. Well, I have been given a portion of
17 the phone bill. But it doesn't start on the day of
18 the -- what you-all produced was several days after
19 the auction. You produced two pages of a bill from
20 Comporium and also Stacy's bill. Do you have your
21 telephone records from that time?

22 A No, sir.

23 Q Have you requested them?

24 A Which phone bills?

25 Q Your cell phone bills that you would've been --

1 what phone would you have been communicating with
2 Mr. Hirschhorn on?
3 A I was using both phones. My home phone and my cell
4 phone.
5 Q And you were in Florida at the time?
6 A Yes, sir.
7 Q All right. Okay. Did you ever ask Mr. Hirschhorn,
8 that day, whether he wanted to proceed with the
9 auction?
10 A Yes.
11 Q And he indicated that he did?
12 A Yes.
13 Q And how many bidders did you tell him you had at
14 that point?
15 A I -- I -- I didn't tell him about any bidders.
16 That's not my role.
17 Q Okay.
18 A I had nothing to do with that.
19 Q All right. Prior to the auction that day, you had
20 a telephone call to find out has -- I take it, it's
21 standard practice to ask the seller if he wants to
22 proceed on the day of the auction with the auction?
23 A I'm not involved in that. I didn't have -- I would
24 have no involvement in that whatsoever.
25 Q Well, you -- you made that phone call on that

1 particular day, didn't you?

2 A Which day?

3 Q The day of the auction to Mr. Hirschhorn to ask him

4 if we wanted to proceed.

5 A No.

6 Q Okay. So how did that telephone call --

7 A It wasn't a telephone call.

8 Q -- take place? Okay. What was it?

9 A Mr. Hirschhorn texted me, saying to go forward.

10 Q All right. And why did he text you?

11 A I don't know. I don't recall, you know, why.

12 Q How did he have your -- because that would've had

13 to have been a cell phone number, correct?

14 A Yes.

15 Q Okay. Why -- why would he be calling your cell

16 phone number, if you didn't have anything to do

17 with the auction?

18 A I don't know if they didn't have cell reception --

19 you know, I -- I can't guess. I don't know why.

20 But I -- I do know it was me that received the

21 text. I have no idea. I, you know -- I mean I

22 knew at the time. But I don't know now.

23 Q All right.

24 A Because I was not involved at all, you know, prior

25 to that day.

1 Q All right. And the telephone call that was made --
2 what -- what was the first telephone call that you
3 received after the auction? Who from, regarding --
4 anyone regarding the auction? Who was that from?
5 A I don't know.
6 Q Okay. Did you talk to anyone on the telephone that
7 day about the auction besides Mr. Hirschhorn or
8 your daughter?
9 A Yes.
10 Q Who?
11 A Bill Higgins.
12 Q Okay. All right. We've talked about the one
13 conversation with Bill Higgins concerning Jane Page
14 Thompson and her dual role or dual bidding status,
15 if you will, all right? You've told -- we talked
16 about that; is that correct?
17 A (Nods head up and down.)
18 Q Is that a yes?
19 A Yes.
20 Q All right. Any other conversations with Bill
21 Higgins that day?
22 A Yes.
23 Q All right. How many conversations did you have
24 with Bill Higgins that day?
25 A Two more for sure.

1 Q All right. Did they occur before or after the
2 auction?
3 A After.
4 Q All right. And what time did the auction start?
5 A I don't know.
6 Q What time was it scheduled to start?
7 A Two o'clock.
8 Q Okay. And who was the first person that contacted
9 you regarding the auction after the auction was
10 over?
11 A I don't know.
12 Q Okay. Approximately what time was the first phone
13 call that you received after the auction was over?
14 A I don't know.
15 Q You have no estimate?
16 A No.
17 Q Okay. Tell me, do you recall listening to your
18 daughter testify, yesterday, that she talked to you
19 about Jane Page Thompson and that Jane Page
20 Thompson had approached her after the auction,
21 asked her, "What happened?" At which point she
22 says, "Well, I was going to make a \$2 million bid
23 and there was someone else who would've gone to
24 \$2.3 million." You remember your daughter telling
25 us, yesterday under oath, that she discussed that

1 you may or may not have had with your daughter
2 about whatever Jane Page Thompson had said? Did
3 the conversation with you and Stacy end at that
4 point?

5 A No.

6 Q Okay. All right. Tell me about the balance of the
7 conversation, then. What happened next in the
8 conversation?

9 A Somebody came up and gave her paperwork.

10 Q While you were still on the phone with her?

11 A While I was still on the phone her.

12 Q Okay. And what was the paperwork?

13 A Paperwork from whoever this bidder was that she had
14 excluded.

15 Q Okay. All right. And was there conversation about
16 the paperwork?

17 A Yes. She didn't know what had happened and I
18 didn't know what had happened.

19 Q Tell me about the conversation about the paperwork
20 --

21 A I don't recall.

22 Q -- in -- in -- in specificity with --

23 A I can't. I -- I don't recall.

24 Q You don't?

25 A No. I do not recall at that time.

1 Q Did you tell your daughter that she needed -- that
2 that was big trouble and that she should've allowed
3 this gentleman to bid?
4 A If he was properly registered, yes.
5 Q Do you know whether he was properly registered?
6 A Not at that time.
7 Q Did you tell your daughter he was properly
8 registered?
9 A Well, no. I just said I didn't know if he was
10 properly registered.
11 Q Okay.
12 A But if --
13 Q Did she -- did she -- did she tell you he was
14 properly registered? Talking about Stacy.
15 A I don't recall. I don't recall.
16 Q Okay. Did you tell her to do anything with respect
17 to trying to nullify the outcome of the auction in
18 favor of the Oremuses?
19 A No.
20 Q After that -- after that conversation that you had
21 with your daughter.
22 A During that conversation?
23 Q Yes, ma'am.
24 A No.
25 Q Okay. Did you, at any time, tell your daughter to

1 approach Jim Oremus and ask him to withdraw his
2 bid?
3 A No.
4 Q So she did that on her own, is your testimony?
5 A No.
6 Q That's not your testimony?
7 A No.
8 Q Okay. So under whose direction did she do that?
9 A Do what?
10 Q Approach Jim Oremus and ask him to withdraw his
11 bid.
12 A It's the way you're wording the question. I have
13 to say no.
14 Q You don't know if she was operating under anyone
15 else's direction when she approached Jim Oremus and
16 said, "We have a big problem"? And asked him if he
17 would withdraw his bid.
18 A I asked her to do that.
19 Q You did. Okay.
20 A The way you just stated it. Not --
21 Q Okay.
22 A -- the way you stated it before.
23 Q Okay. And why did you ask her to do that?
24 A Not at that time.
25 Q But you did tell her, prior to the time, that she

1 approached Jim Oremus in that regard; is that
2 correct?
3 A You're saying "told." No.
4 Q Okay. So did you suggest it?
5 A No.
6 Q Did you pose it as a option for her?
7 A It's the way you're wording the question. So no.
8 Q Okay. Tell me specifically what conversation --
9 oh. Well, let me ask you this. Did you text her
10 anything to that effect?
11 A No.
12 Q Regarding this whole issue?
13 A No.
14 Q Okay. Did you have anything other than verbal
15 communication with your daughter this issue?
16 A No.
17 Q Was it all on your cell phone?
18 A Oh, I don't know. I had several phones going at
19 one time.
20 Q Who else were you talking to?
21 A I was talking that day to Bill Higgins, I was
22 speaking with our attorney, Richard Koch. I was
23 speaking to Stacy, I was speaking to Marc Morris, I
24 was speaking to Karl Hirschhorn.
25 Q All right. Let me stop you there. What were you

1 speaking to your attorney for -- that'd be Richard
2 Koch? Is that correct?
3 A Uh-huh.
4 Q And his name is spelled K-o-c-h?
5 A Uh-huh.
6 Q All right. When did you first speak to Richard
7 Koch that day?
8 A After the auction.
9 Q Okay. Was it before or after you spoke to Stacy?
10 A After.
11 Q I won't ask you about your specific communications
12 with your attorney. But I would like to know did
13 that conversation -- what communication, if any,
14 did you have with Stacy, if any, regarding a course
15 of action with respect to this auction, given the
16 fact that she had received this paperwork that you
17 have describe to me?
18 A I need you to break that question down. The
19 questions get so long with so many statements, sir.
20 I don't know where to answer and where not. Please
21 try again.
22 Q Trying to make them as clear for you as I can,
23 ma'am.
24 A Make it shorter for me, please.
25 Q Well, you have indicated that Stacy received

1 Q Okay. Did you ask her when it -- if there was any
2 indications of when that paperwork was sent?

3 A I would think so. Yes.

4 Q Okay. What did she tell you?

5 A She would have read to me what was on the top of
6 the paperwork, the time stamps.

7 Q Okay. And, to your recollection, what did the time
8 stamps say?

9 A To the best of my recollection, it was 2:08.

10 Q Okay. And tell me about your -- what -- your
11 conversation with your daughter from that point on
12 after she told you about the date stamp that was on
13 the paperwork.

14 A She told me that she had kept out a bidder because
15 she didn't have the registration paperwork.

16 Q Right.

17 A And then -- now she's got this paperwork in her
18 hand, and she's stating that she believes she may
19 have left out a properly registered bidder, that
20 this person -- you know, it appears now that they
21 may have had their paperwork in on time; she wasn't
22 sure. I -- I don't recall.

23 Q Okay. And after she told you that she may have
24 kept out a properly registered bidder, what did you
25 say to her?

1 A I don't know if that's when I called Rich Koch.

2 Q And I don't want to know about your conversation

3 with Rich Koch, okay?

4 A I understand.

5 Q Did you --

6 A Let me --

7 Q -- get off the phone with her?

8 A Let me think. Let me think for a minute.

9 Q Okay.

10 A Okay. I don't recall. Okay. Go ahead.

11 Q All right. Did you give any advice, suggestions,

12 or instructions to your daughter upon learning that

13 she may have kept out -- when she told you that she

14 may have kept out a proper bidder?

15 A Not at that time.

16 Q Okay. During the course of that particular

17 telephone conversation, did you give her any

18 suggestions or direction in that telephone

19 conversation?

20 A No. I just stated that we have a really big

21 problem. If this person was properly registered,

22 we have a really big problem.

23 Q Okay. And then what happened from your end?

24 A I called the attorney.

25 Q Okay. And then what did you do?

1 A I believe I called Stacy back, and Stacy told me
2 that she wasn't sure that this bidder really wanted
3 this property.
4 Q And tell me, did she tell you what led her to
5 conclude that?
6 A Yes.
7 Q Okay. What was that?
8 A She told me that this buyer was building another
9 house in Aiken at a certain large sum of money and
10 that they had not really intended on winning this
11 auction. And she wasn't sure how much they really
12 wanted this property.
13 Q All right. Let me stop you there. Did she tell
14 you that she had been told that by Jim Oremus?
15 A I don't recall.
16 Q Where -- she did not share with you the source of
17 her information --
18 A I don't recall.
19 Q -- in that regard?
20 A I don't recall. I don't remember.
21 Q Okay. All right. Did she tell you that she had
22 already talked to Jim Oremus since your -- since
23 your last conversation when you told her that if
24 she had turned away a properly registered bidder
25 that it was a really big problem?

1 Q Okay.

2 A Okay? Then I had another conversation with Stacy.

3 Q And tell me about that conversation.

4 A I asked Stacy if she thought he would be willing to
5 sign releases.

6 Q Had she told you that he was willing to not go
7 forward with the sale?

8 A No, sir. She -- she wasn't even thinking in that
9 direction. That -- we were concerned about the
10 fact that we had kept out a properly registered
11 bidder and that -- I said to Stacy, "This is a
12 really big problem if we've kept out a registered
13 bidder." I explained to her that the reason this
14 could be a really big problem is, is that bidder
15 could sue us because they would've had a right to
16 bid. We have no idea what this bidder wants to bid
17 -- whether he wants to bid a dollar or whether he
18 wants to bid 20 million. We don't have a clue.
19 All we know is, is that if it was the fact that he
20 was going to be willing to spend more money than
21 this bidder had spent, okay? -- then the seller
22 could sue us --

23 Q Uh-huh.

24 A -- for preventing this buyer. This was my
25 conversation with Stacy. Instead of us playing all

1 these guessing games where you guess, I'll just
2 tell you. The conversation was, "Stacy, we got a
3 problem because the seller could sue us if this guy
4 was willing to pay more; the buyer could sue us if
5 he was willing to pay more, so just go find out if
6 this -- since you believe that this buyer doesn't
7 really want this property" --

8 Q Did you tell her to do that?

9 A I said, "Go find out" --

10 Q Uh-huh.

11 A I'm telling you what I said.

12 Q Okay.

13 A I said, "Go find out if he would be willing to sign
14 releases."

15 Q Just a moment ago you said, "Go find out if he's
16 really interested in buying this property,"
17 correct?

18 A That -- that is correct. And if --

19 Q Is that what --

20 A -- he'd be willing --

21 Q -- you told your daughter?

22 A If he would be willing to sign releases. If he's
23 not interested in buying this property, see if he'd
24 be willing to sign releases?

25 Q Did you tell your daughter, "Go find out if he's

1 really interested in buying this property"?

2 A In this conversation?

3 Q Yes, ma'am.

4 A Or in the preceding conversation?

5 Q In any conversation.

6 A Go find out if he's really interested in buying
7 this property? I don't recall that that's exactly
8 what I said, but that sounds like something I would
9 maybe say.

10 Q Okay. I thought I heard you testify to that
11 effect; that's why I'm asking you the question.

12 A Well, you're putting a lot of words in my mouth,
13 and then you want me to agree to those statements.
14 And so, I'm having to sort out with what my real
15 recollections are versus what you want -- what
16 you're trying to get me to recollect. I'm sorry.
17 And I'm shaking very badly from my tremors. And
18 it's hard for me to focus, so it's easier for me to
19 just tell you instead of -- I'm sorry but playing
20 the guessing games.

21 Q Ma'am, I'm -- let me ask you this: As far as the
22 conversation that you had with your daughter, did
23 you ever tell her what to do in terms of this
24 situation that you had?

25 A No, sir.

1 Q Okay. Did you suggest to her what to do?

2 A I asked her. I asked her.

3 Q You asked her what?

4 A If the seller -- excuse me -- if the buyer was not

5 interested, would he be willing to sign releases?

6 Q Okay. Did your daughter tell you that he was not

7 interested -- that she had ascertained that he was

8 not interested in purchasing this property?

9 A Well, yes. That's why he was willing to sign the

10 releases.

11 Q Okay.

12 A He was glad to sign the releases.

13 Q Ma'am, you weren't there, correct?

14 A No. I was not there. I overheard her --

15 Q Okay.

16 A -- when she went to get the second release, I heard

17 what he said.

18 Q Oh, okay. So you overhead -- we'll come back --

19 A Yes.

20 Q -- to that because --

21 A Okay. So --

22 Q -- I really want to --

23 A -- yes. I did hear it.

24 Q Okay. And let's -- let me ask you about what steps

25 when -- when you told her if we -- if this guy was

1 A And then after -- and then, 2007, I didn't work
2 much. I was sick. And then, 2008, I worked. And
3 I haven't worked much since then. I mean, not
4 involved in the auctions -- not involved in the
5 actual auctions.

6 Q Let me ask you this: Would it shock you if persons
7 that are employed by Grand Estates Auction Company
8 or serve as subcontractors to Grand Estates Auction
9 Company, if asked, they would say that "Valaria
10 DeVine runs that place with an iron hand"?

11 A Would that shock me?

12 Q Yes, ma'am.

13 A Based on what they've been saying, nothing would
14 shock me.

15 Q Okay. All right. But, as I understand your
16 testimony today, are you -- are you claiming that
17 you're a CEO in name only?

18 A No, sir.

19 Q Okay.

20 A But I'm not involved in the auctions.

21 Q Well, that's the business, isn't it? You're in the
22 business of conducting auctions, aren't you? Is
23 there any other aspect of the -- the business of
24 Grand Estates --

25 A There's the --

1 Q -- Auction Company that I'm not aware of?

2 A Yes. There's the business end of the business.

3 I'm not involved in the auctions at all.

4 Q All right. So --

5 A Whatever they may say.

6 Q -- were you -- well, you were involved that day,

7 weren't you?

8 A Sir, only in the afternoon when these problems

9 arose.

10 Q Right. But you certainly were aware of the fact on

11 the day of this auction that for a bidder to serve

12 as someone's agent and actually make bids for

13 someone who is not present on their behalf that you

14 had to have an unexpired, recordable power of

15 attorney?

16 A No.

17 Q You weren't aware of that?

18 A No.

19 Q Do you agree that your paperwork requires that?

20 A No.

21 Q Oh, you don't?

22 A No.

23 Q Okay. Why don't you agree with that?

24 A Because it doesn't.

25 Q Okay. Did -- do -- do you agree with your daughter

1 Q Yes, ma'am. He worked for your company?

2 A Yes.

3 Q All right. And did he communicate that to you

4 personally?

5 A Yes. He did.

6 Q Okay. And you don't know if this was on the day of

7 the auction?

8 A It may have been the next day. No. I don't know

9 if it was the day of the auction or the next day.

10 Q Okay.

11 A But it was shortly thereafter.

12 Q Did you tell your daughter to tell Jim Oremus and

13 Melissa Oremus that she had turned away Mr.

14 Blazar's agent when, in fact, he was an authorized

15 proper bidder?

16 A No.

17 Q You did not tell your daughter to communicate that

18 to --

19 A No.

20 Q Okay. So she did that on her own; is that correct?

21 A That's correct.

22 Q All right. I want to go back to the phone calls

23 that you had because you were telling me about all

24 these different phones that you were -- how many

25 phones were you using that day?

1 about the pre-auction telephone conversation you
2 had with him regarding Jane Page Thompson and her
3 wanting to register in a dual capacity, correct?

4 A Yes.

5 Q All right. What other conversations did you have
6 with Bill Higgins that day?

7 A Bill Higgins called me -- let me think. I had a
8 conversation with Bill Higgins after the auction
9 about the bidding because prior to -- in the first
10 conversation when he wanted me to register -- allow
11 them to -- not me register -- but allow them to
12 register these two, and he was giving me the
13 reasons that this should be allowed, which I was
14 going to convey to Hirschhorn --

15 Q In the first conversation?

16 A Yes. Yes.

17 Q Okay. Uh-huh.

18 A Okay. -- is that Jane Page Thompson was going to
19 be bidding \$2 million, okay? In the second
20 conversation or --

21 Q He told you that before the auction?

22 A Yes. And she told me that. She also told me that.

23 Q When did she tell you that?

24 A When I was talking to her about the members of the
25 LLC.

1 to Mr. Hirschhorn her desire to be registered in
2 that dual capacity?
3 A Yes. I did.
4 Q And he would not allow it, correct?
5 A No.
6 Q Okay. What did he say?
7 A After he had the names of the people in the LLC --
8 Q Yes, ma'am.
9 A -- okay? He said he was okay with it.
10 Q All right. But you told Bill not to allow it,
11 correct?
12 A No.
13 Q Okay.
14 A I then called back Bill Higgins --
15 Q Yes, ma'am.
16 A -- and told him that Karl Hirschhorn had said it
17 would be okay.
18 Q Okay. All right. And so you told -- you left
19 instructions for him to allow it, correct?
20 A That's correct.
21 Q Okay. And did he allow it?
22 A No. By that time she had worked out something
23 else.
24 Q Jane Page Thompson had?
25 A Yes.

1 recollect of that conversation.

2 Q Okay. All right. Anything else?

3 A There's nothing else I recollect of that

4 conversation.

5 Q All right. Any other conversations with Bill

6 Higgins that day?

7 A Yes.

8 Q Okay.

9 A Bill Higgins called me after the first release had

10 been signed --

11 Q Okay.

12 A -- and asked if he had been released as both the

13 broker and the auctioneer. And I said, "I didn't

14 know, and I would call Stacy."

15 Q Okay. And did you do that?

16 A Yes. I called Stacy and I said, "Did you get --

17 did -- did -- did you put in there" -- because I

18 had dictated it, and so -- no, I --

19 Q Well --

20 A I said, "Did you put it in there about the broker

21 and the auctioneer?"

22 And she said, "No."

23 And I said, "Well, go rewrite it -- go write

24 another one." And she said, well, she thought they

25 had already left.

1 Q Okay. So what'd you tell Mr. Hirschhorn?

2 A I told him that we would ask him. I explained
3 about the problem, about the properly registered
4 bidder that we had not allowed in.

5 Q And you told Mr. Hirschhorn that he was a properly
6 registered --

7 A That there was --

8 Q -- bidder?

9 A That there was a possibility he was a properly
10 registered bidder.

11 Q Well, let me stop you. Are you sure you told Mr.
12 Karl Hirschhorn that there was a -- there was a
13 possibility that there was a properly registered
14 bidder? Or that there was a properly registered
15 bidder that you had not -- that Grand Estates had
16 not allowed to bid?

17 A I do not recall.

18 Q Okay.

19 A I don't know.

20 Q All right. So you did ask his permission
21 beforehand?

22 A Yes, sir.

23 Q And he told you, "You got it"?

24 A That is not what he said.

25 Q What did he say?

1 A He said, "If he was willing to sign them, fine."
2 Mr. Hirschhorn was fine with whatever. If he was
3 willing sign them -- he understood we had a problem
4 -- that Grand Estates had a problem.

5 Q Okay.

6 A He understood that, and he was fine with it. If
7 they signed it, he was fine. If they didn't sign
8 it, he was fine. He -- it was -- he understood my
9 predicament.

10 Q Well, let me ask you this: Did he ever express any
11 dismay or dissatisfaction over the fact that the
12 auction only produced 1.875 in terms of the final
13 bid?

14 A No.

15 Q Did he tell you that's why he had no problem with
16 the winning bidder withdrawing?

17 A No.

18 Q Okay. It was all to help you, Grand Estates
19 Auction Company?

20 A Yes. Because we had a problem.

21 Q Well, you had a problem, or you had a possible
22 problem?

23 A We had a possible problem if this was a properly
24 registered bidder.

25 Q Okay.

1 A We weren't positive at that point.

2 Q And did you discuss the \$92,000 that he'd already
3 given you, at that point?

4 A No. Not at all. Not at all.

5 Q He wasn't concerned that he'd spent \$92,000 on this
6 auction?

7 A No. Not at all. Was never brought up.

8 Q Okay. Did you ever speak to Mrs. Hirschhorn?

9 A No.

10 Q Did you over -- overhear conversation between Mr.
11 and Mrs. Hirschhorn?

12 A No.

13 Q Any other conversations with Bill Higgins that you
14 haven't told me about?

15 A Not that I recall at this time.

16 Q Was the language of the releases your own? That
17 you dictated to your daughter?

18 A Yes.

19 Q Okay.

20 A Given to me by my attorney.

21 Q Oh, I don't want . . .

22 A Well . . .

23 Q That's fine.

24 MR. WILLIAMS: Counselor, just for the record.

25 MR. BRAITHWAITE: Yes, ma'am? Oh, yes, sir?

1 State of South Carolina)
2 County of Aiken)
3 Melissa J. Lackey-Oremus) 2010-CP-02-3055
4 and James T. Oremus,)
5 Plaintiffs,)
6 vs.) Deposition
7 4 K&D Corporation d/b/a) of
8 Grand Estates Auction) William Higgins
9 Company, Grand Estates)
10 Advertising, LLC, Stacy)
11 Kirk, Scott Kirk, Valeria)
12 Devine, Karl Wesley)
13 Hirshhorn, Erin Francis)
14 Hirschhorn, individually,)
15 and as Trustees of the Karl)
16 Wesley Hirschhorn and Erin) September 25, 2013
17 Revocable Trust dated May) Time: 3:05 p.m.
18 24, 1993,) Location: Callison
19 Defendants.) Tighe & Robinson,
20 LLC, Callison Tighe &
21 Robinson, LLC,
22 Columbia, South
23 Carolina
24 Reporter:
25 Sandra J. Ayers
Third-Party Plaintiffs,
vs.
William A. Higgins,
Third-Party Defendant.

1 Q I'm looking at Number 9 --

2 A I am, yes.

3 Q -- and he's -- and you -- and this says that Stacy

4 told you, after the auction, that he was asked to

5 leave because he was not properly registered.

6 A That would also be correct.

7 Q All right. Okay.

8 Then it -- the auction lasted about 20

9 minutes, according to Number 10.

10 A That would be approximately right. Yes, sir.

11 Q Now, you say that Stacy made this -- looking at

12 Number 12 --

13 A Yes, sir.

14 Q -- that she made this remark to you?

15 A Yes, sir.

16 Q Did she say anything else to you --

17 A That was it.

18 Q -- than that? Now, what -- what was your

19 interpretation of that?

20 A My interpretation was that the final sale price of

21 a million 750 was below expectations of --

22 Q And --

23 A -- of --

24 Q -- and --

25 A -- of the people --

1 Q -- yeah..

2 A -- running the auction and -- and the seller,

3 probably.

4 Q All right. At -- at -- you -- you just mentioned a

5 figure: That's -- that's not exactly correct, is

6 it?

7 A No. I -- I said -- I said that -- that this number

8 that I hammered as the final sale price --

9 Q Uh-huh.

10 A -- was probably below expectations.

11 Q All right. It's a small point, but you said "a

12 million 750." Wouldn't it have been --

13 A I mean, I'm sorry. A million 875.

14 Q Okay.

15 A I'm sorry. I --

16 Q That's fine.

17 A -- it's -- I don't --

18 Q It's -- well --

19 A -- even know why I said that. I apologize.

20 Q I just -- just --

21 A I can't --

22 Q -- you --

23 A -- read today.

24 Q All right. Now, the -- you said that -- in your

25 Number 13 here, that you saw Stacy talking on a

1 excluded a -- a -- an authorized bidder?

2 A It's certainly possible.

3 Q Would -- wouldn't that have been distressing to you
4 to know?

5 A If that were the case? Yes, sir. It would --

6 Q Yes, sir.

7 A -- be.

8 Q It would.

9 A Yes, sir.

10 Q Okay.

11 A It would be.

12 Q I appreciate that.

13 So we're not sure -- you're not sure, then, at
14 this point whether she was distressed about the
15 outcome of the sale or having excluded a bidder or
16 maybe something else that happened at the auction?

17 A That would be correct.

18 Q Did you hear anybody talk to Stacy about a -- a
19 potential \$2 million or more bid might've been
20 made?

21 A Say that a -- one more time.

22 Q All right. Did you hear anybody talk to Stacy or
23 hear Stacy talk to you or tell anybody else that
24 there -- there was another possible bidder of \$2
25 million?

1 A I did.

2 Q Did you? Who -- who'd you hear that from?

3 A I heard her tell the Oremuses --

4 Q Uh-huh.

5 A -- after the auction that she had dismissed someone

6 who had had a \$2 million opening bid.

7 Q All right. Did you know anything about that?

8 A No, sir.

9 Q Had anybody at the auction said that to you?

10 A No, sir

11 Q You -- you didn't talk to any of the agents or you

12 weren't present when other agents might've talked

13 to Stacy about that?

14 A No, sir. Not about that.

15 Q Okay. So you -- then, in 15, you say that you

16 overheard Stacy talk with Mr. and Ms. Oremus about

17 a problem with the sale which could result in legal

18 action from the seller and also from a bidder who

19 had previously submitted a higher bid of \$2

20 million. But you didn't hear her say anything

21 about having excluded a bidder?

22 A Hold on one second. Okay.

23 Would you repeat the question?

24 Q Did you hear it -- and I'm referring to Number 15

25 where you say you overheard her talking with Mr.

1 and Ms. Oremus -- and if -- what you heard her say
2 was there was a problem with the sale which could
3 result in Grand Estates being subjected to legal
4 action from the seller -- right? -- and from a
5 bidder who had previously submitted a higher bid of
6 \$2 million?

7 A I heard her make that -- that statement, yes.

8 Q All right. Did you hear her say anything about
9 having excluded a bidder from the sale?

10 A That was part of that same conversation.

11 Q But -- all right. Well, see, you didn't say that
12 here. So tell me what you would add to this, as to
13 what she said at that time.

14 A I thought it said in here that she had excluded
15 him.

16 What I understood her to say was that the
17 bidder that had been dismissed --

18 Q Yes, sir.

19 A -- at the beginning before I conducted the auction,
20 it ended up that he had a \$2 million opening bid.

21 Q All right. That's what you heard?

22 A Yes, sir. That was --

23 Q So it -- you -- you did not hear that those were
24 separate issues? You didn't hear her say that
25 those were separate issues?

1 A I'm sorry. I don't understand what you mean.

2 Q All right. There was a bidder who was excluded.

3 A Correct.

4 Q And, if there was a concern about whether or not he

5 should have been excluded, that was one issue,

6 right?

7 A (Nods head up and down.)

8 Q All right. And then you say that -- that what you

9 heard was that he would have bid \$2 million?

10 A It was my understanding that there was a \$2 million

11 opening bid --

12 Q Okay.

13 A -- which was not in -- in my auction. But it was a

14 written bid --

15 Q Right.

16 A -- apparently, according to her --

17 Q Okay.

18 A -- by the same person that was dismissed.

19 Actually, the person that was dismissed was a

20 representative for the person who --

21 Q All right.

22 A -- had the bid.

23 Q All right. So you -- you overheard all of this.

24 What'd you do? Just walk up to the

25 conversation?

1 A No.

2 Q So you were included in the conversation?

3 A Yep.

4 Q Did --

5 A You want --

6 Q -- did Stacy ask you to go with her to speak with

7 Mr. and Ms. Oremus?

8 A No, sir. I was asked by someone to go find Stacy.

9 I think it was Val DeVine, but I cannot remember

10 whether it was Val asked me directly or whether she

11 asked someone else if she -- she was on the phone

12 with . . .

13 I was asked to go see if I could find Stacy --

14 Q Right.

15 A -- and one of the people, the bid assistants, said,

16 "I think I saw her go out the front door." That's

17 all they said.

18 Q Right.

19 A I went to the front door. I opened the front door,

20 and there was Stacy and the -- Mr. and Mrs. Oremus

21 --

22 Q Uh-huh.

23 A -- facing each other. And she continued the

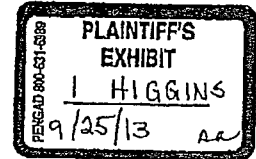
24 conversation, and what I said here is exactly what

25 I heard at that time.

1 Q All right. So the conversation was already in
2 progress when you walked up?
3 A That -- yes, sir. That's correct.
4 Q And so did they direct any remarks to you?
5 A No, sir.
6 Q So this is just what you overheard as --
7 A Yes, sir.
8 Q -- the conversation was in progress; so you can't
9 really say what she might've said, other than what
10 you heard at --
11 A I don't know --
12 Q -- this time?
13 A -- what else was said.
14 Q Okay. All right.
15 And you say you have no way of knowing the
16 truth or a falsity of the representations. What
17 representations?
18 A I had no way of knowing, personally, by my limited
19 involvement, whether there really was a \$2 million
20 opening bid or not --
21 Q Uh-huh.
22 A -- and whether anybody that was dismissed --
23 anybody was really or -- or not properly
24 registered. I had no knowledge of any of that.
25 Q All right. And then you say that Stacy handwrote a

BLAZER

EXHIBIT "D"
FINAL TERMS AND CONDITIONS OF SALE
 Aiken, South Carolina



GRAND ESTATES AUCTION COMPANY has a contract with THE SELLER, to offer to sell at auction to the highest bidder, 836 Whiskey Road, Aiken, South Carolina 29801.

A. PROPERTY

1) Seller will convey this property by General Warranty Deed free and clear of all liens and encumbrances except as specified in the Title Commitment and Warranty Deed. Any mortgages and/or liens will be paid off at closing.

2) This Property is selling subject to, and any CONTRACT IS NOT CONTINGENT upon, any state of facts an accurate survey or personal inspection of the Property may reveal, any existing rights-of-way, easements, encroachments, rights or claims of parties in possession, restrictive and protective covenants, flood zones, zoning or subdivision regulations, building ordinances, governmental agencies regulations, environmental conditions, hazardous materials, leases or tenancies, any mineral rights, and subject also to all title exceptions as set forth in the Title Commitments that is available for inspection.

3) PERSONAL ON-SITE INSPECTION OF THE PROPERTY IS RECOMMENDED AND BIDDERS ARE ADVISED TO INDEPENDENTLY VERIFY ALL INFORMATION THEY DEEM IMPORTANT. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE SALES CONTRACT, THIS PROPERTY IS BEING SOLD "AS IS, WHERE IS" AND "WITH ALL FAULTS" AND THE SELLER AND AUCTIONEER HAVE NOT MADE, DO NOT MAKE AND WILL NOT MAKE, AND HEREBY DISCLAIM, ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED OR STATUTORY, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO ITS VALUE, CONDITION, SQUARE FOOTAGE, SUITABILITY, MERCHANTABILITY, OPERABILITY, ZONING OR SUBDIVISION REGULATIONS, MINERAL RIGHTS, ENVIRONMENTAL CONDITION OR FITNESS FOR A PARTICULAR USE OR PURPOSE. NO GUARANTEES ARE GIVEN AS TO THE AVAILABILITY OF UTILITIES OR ACCESSES, OR ALLOWABLE OR PERMITTED USES ON THE PROPERTY.

B. PROPERTY INSPECTION

1) All information contained in the auction brochure and all promotional materials, including, but not limited to, photographs, directions, acreage, square footage, dimensions, zoning, maps in the brochure and other maps used for promotion, environmental conditions, taxes, etc., was provided by or on behalf of the Seller and the tax assessor's office, and is believed to be correct; however, neither the Seller nor the Auction Company makes any promise, representation, guarantee, or warranty as to the accuracy or completeness of such information. There is no obligation on the part of Seller or Auctioneer to update any information. Purchaser and Purchaser's broker shall be responsible for verifying all acreage and square footage amounts.

2) The Property has been surveyed for this auction. Seller will convey the Property in accordance with the legal description contained in the Seller's Deed. Purchaser should have their

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own surveyor verify the survey. Should purchaser desire a survey, it shall be at Purchaser's option and expense. Should the final survey show a greater or lesser number of acres than recited on the survey sales map, it will not affect the purchase and no adjustment will be made to the purchase price.

C. PROPERTY DISCLOSURES

See Exhibit B

D. BUYER'S PREMIUM

There will be a seven and a half percent (7.5%) Buyer's Premium charge added to the winning bid or bids to determine the total contract selling price for the Property.

E. BUYER'S OPENING BID INCENTIVE PROGRAM

A credit equal to THREE percent (3%) of the written opening bid amount offered by the purchaser, will be deducted from the total contract price of the property, provided purchaser has completed the Buyer's Opening Bid Incentive form and submitted to Grand Estates Auction Company as required and is not being represented by a broker.

F. BIDDER REGISTRATION AND TERMS OF SALE

1) Bidders must register and have received a Property Purchase Package and a bidder's number in order to bid on the Property. This number must be presented when a bidder is declared the high bidder. To register to bid, the bidder must present a certified check (made payable to the bidder), personal check with a bank letter of guarantee (made payable to Richard M. Koch, Attorney Trust Account, in the amount of \$50,000 at registration ("Bid Deposit").

2) Upon being declared the final successful confirmed bidder a minimum of TEN PERCENT (10%) of the Total Contract Price as your earnest money deposit is due on auction day. However, if you are a phone bidder, the balance of the 10% deposit must be wired by 12:00 pm, EST, Wednesday, February 10, 2010. The certified check, personal check with a bank letter of guarantee, or credit card authorization (with prior approval) will be required to be paid over to the escrow agent and the balance between the bid deposit and the ten percent (10%) earnest money deposit may be paid by personal or company check. The balance of the Purchase Price is due at closing. Closing will take place on or before March 11, 2010.

3) The bid/offer made by the bidder or bidders on auction day shall be binding.

4) The confirmed Bidder or Bidders for the Property must immediately execute and deliver a completed Auction Real Estate Sales Contract, together with all related Exhibits and these Terms and Conditions for such Property at the Auction. The fully executed Sales Contract (together with all related Addenda thereto) shall control all terms and conditions of the sale and constitute the entire agreement between Buyer and Seller. In the event of any conflict between the Terms and Conditions of Sale and the sales contract, the sales contract shall prevail. NO CHANGES BY PURCHASER TO THE TERMS OF THE SALES CONTRACT WILL BE PERMITTED. PURCHASER WILL BE REQUIRED TO ENTER INTO THE SALES CONTRACT "AS IS" ON AUCTION DATE. Any person bidding on behalf of another person or

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entity must have a valid, legally enforceable, unexpired, recordable Power of Attorney approved by Seller prior to the auction.

5) If for any reason the Buyer fails or refuses to deposit the required funds or to execute the Sales Contract immediately after being confirmed as the High bidder, the Seller reserves the right to declare the bidder's rights forfeited and may resell the property and retain the bid deposit as liquidated damages.

6) No purchase is contingent on the Buyer obtaining financing. This is a cash sale.

G. CLOSING COSTS

2010 Ad Valorem taxes shall be prorated at closing. The Property may be subject to county and fire district taxes, which shall be prorated at closing. The Seller will pay the fee for the preparation of the cost of preparing legal documents to transfer the Property and to release any liens or encumbrances on the Property to allow conveyance to the Purchaser in accordance with the sales contract. Purchaser shall pay for recording the Warranty Deed, the transfer taxes and/or deed stamps, Preliminary and Final Title Insurance and Preliminary title search. All other sale, closing or financing costs will be paid by the Purchaser. If Purchaser desires an Owner's Policy of Title Insurance or a survey, it shall be at Purchaser's option and expense and said Title Insurance must be obtained from Closing Agent, Smith, Massey, Brodie, Guynn & Mayes.

H. CLOSING

All closings will be scheduled on or before March 11, 2010, and all deposits and down payments shall be held in a non-interest bearing escrow account by the Escrow/Closing Agent pending completion of necessary closing procedures, after which the Buyer shall be granted possession of the property subject to any matters contained in the Title Commitment or Auction Real Estate Sales Contract.

I. ESCROW/CLOSING AGENCY

- 1) Closing will be at the offices of Smith, Massey, Brodie, Guynn & Mayes.
- 2) The proceeds due from the Buyer at closing shall be in U.S. cash, locally drawn bank certified or cashier's check, or confirmed wire transfer.
- 3) The "Closing Agent" who is Smith, Massey, Brodie, Guynn & Mayes, whose address is 210 Colony Parkway, Alken, South Carolina 29803, Telephone: (803) 643-4110, Fax: (803) 643-8140.
- 4) The "Registration Escrow Agent" who is Richard M. Koch, whose address is 3220 Prosperity Church Road, Suite #201, Charlotte, NC 28269, Telephone: (704) 503-5700, Fax: (704) 503-5707.

J. LICENSED BUYER BROKER PARTICIPATION

A THREE percent (3%) commission based on the Written Opening Bid price not to

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include buyer's premium for the Property will be paid to the qualified, licensed real estate Buyer's Broker whose prospect pays for and closes on the property in compliance with the Buyer's Broker Guidelines. An additional one percent (1%) commission will be paid on the difference between the Written Opening Bid Amount on the Buyer/Broker Registration Form and the final High Bid Price as stated in the Buyer's Broker Guidelines. The Broker must perform all requirements of the Buyer Broker Guidelines, as stated in the Buyer/Broker registration Form. The Broker and the prospective bidder must execute a Broker Registration Form provided by Auction Company under the appropriate Buyer Broker Guidelines no later than 4:00 pm (EST) on Monday, February 8, 2010, which form will become part of the Auction Real Estate Sales Contract. Failure to properly register or comply with the provisions of the Guidelines will disqualify the Broker from receiving any commissions.

K. DEFAULT

In the event the Purchaser fails to close and pay his/her balance when due, Seller reserves all rights allowed by law and the sales contract, including retaking the earnest money deposit as liquidated damages.

L. DISCLAIMER

1) Neither the Seller, its Attorneys, any Broker, nor the Auction Company shall be liable for any relief including damages, rescission, reformation, allowance or adjustments based on the failure of the property, including, but not limited to, amount of acreage, square footage, zoning, and environmental condition to conform to any specific standard or expectation, or any third party documents or information.

2) DISCLAIMER AS TO AUCTION COMPANY: Buyer shall look only to Seller as to all matters regarding this Contract and the Property, and GRAND ESTATES AUCTION COMPANY shall not be responsible or liable in any way if Seller fails or refuses to or cannot close title hereunder, or if the Property is affected in any way or is in any other way unsatisfactory to Buyer as Buyer may determine before or after closing.

M. AUCTIONEERS AGENCY DISCLOSURE

THE AUCTIONEER IS ACTING EXCLUSIVELY AS THE AGENT FOR SELLER IN THIS TRANSACTION AND IS TO BE PAID A FEE BY SELLER PURSUANT TO A SEPARATE WRITTEN AGREEMENT BETWEEN SELLER AND THE AUCTIONEER. THE AUCTIONEER IS NOT ACTING AS AGENT IN THIS TRANSACTION FOR THE BUYER. ANY THIRD PARTY BROKER IS NOT A SUBAGENT OF AUCTION COMPANY AND IS TO BE PAID BY THE SELLER.

N. MISCELLANEOUS

1) All decisions of the Auctioneer are final as to the methods of bidding, disputes among bidders, increments of bidding, and any other matters that may arise before, during, or after the auction.

1A) If in the case of a discrepancy between the printed terms and conditions of sale and the auction sales contract the auction sales contract shall prevail. Announcements made by the

Buyer's Initials WAB Seller's Initials _____

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auctioneer prior to auction regarding either shall prevail over both terms and conditions or sales contract.

2) Seller reserves the right to deny any person admittance to the Auction or expel anyone from the Auction who attempts to disrupt the Auction.

3) All announcements made Auction Day supersede any prior oral or printed statements. The Seller reserves the right to announce additional Terms and Conditions of the sale prior to or during the course of the auction.

4) The Seller reserves the right to withdraw the Property prior to the auction.

GRAND ESTATES AUCTION COMPANY IS SELLING AGENT ONLY AND MAKES NO REPRESENTATIONS CONCERNING THIS PROPERTY WHATSOEVER.


Bidder's Signature
MARK BLAZAR
Print Name

2/9/10
Date

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APPENDIX 000198

EXHIBIT "E"
BIDDER'S STATEMENT

Re: 836 Whiskey Rd
the "Property"

Aiken, SC
Name of Auction

February 9, 2010
Date of Auction

Aiken, SC
Auction Location

The undersigned represents and warrants that the undersigned is of legal age and has full legal capacity and authority to understand, execute and deliver this Bidder's Statement on behalf of the undersigned or the entity, if any, designated immediately below the signature line at the bottom of this Statement. As a condition of being permitted to bid at the Auction, the undersigned acknowledges and/or agrees as follows:

1. The undersigned has received and carefully reviewed and understood, prior to the execution hereof copies of each of the following items: (a) Final Terms and Conditions of Sale for Purchasing the Property at Auction; (b) Brochure describing the Auction; and (c) Property Purchase Package ("Bid Package") for Property, which includes, among other items, a copy of the real estate sale contract and its exhibits ("Agreement") for the Property.
2. The undersigned has the financial resources necessary to complete the timely acquisition of the Property, as and when required, pursuant to the Agreement, at the bid price offered by the undersigned, plus the required Buyer's Premium, if any.
3. The undersigned has independently inspected and reviewed the following conditions of the Property, including but not limited to: (a) the title of Seller; (b) the condition and state of repair and/or lack of repair of all improvements thereon and has had the opportunity to obtain testing and reports; (c) the existence and condition of any and/or all personal property at the Property; and (d) the nature, provisions and effect of all health, fire, environmental, building, zoning, subdivision and all other use and occupancy laws, ordinances and regulations applicable thereto.
4. The undersigned understands and agrees: (a) THAT, EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE SALES CONTRACT, THE PROPERTY WILL BE SOLD "WHERE IS" IN AN "AS IS" CONDITION WITH NO WARRANTY, EXPRESS OR IMPLIED, ABOUT SUCH CONDITION (SELLER AND BROKER EXPRESSLY DISCLAIM ANY WARRANTIES OF HABITABILITY, FITNESS FOR INTENDED USE OR OTHER IMPLIED WARRANTIES) AND WITH THE UNDERSIGNED ACCEPTING ALL DEFECTS, BOTH APPARENT AND LATENT, AT THE UNDERSIGNED'S OWN, ABSOLUTE AND EXCLUSIVE RISK; (b) that neither Seller nor Auctioneer will have any liability or obligation whatsoever, for the physical condition of the Property or for any inaccuracy in or omission from any of the written information and materials about the Property, including but not limited to, inaccuracies made in reports drafted by third parties, such as title reports, surveys and environmental reports or any changes concerning the Property between the date of the reports, surveys, written information and materials and the date hereof; (c) the Auctioneer or its agents, employees and affiliates are not permitted to bid at the Auction; (d) because of the pace of the Auction bidding, the Auctioneer is not able and therefore not obligated to recognize nor record each of the bidders at any bid level during open outcry except the high bidder; (e) the Auctioneer will use its reasonable efforts to register all of the bidders for the Auction but cannot represent or warrant that all Auction bidders will have been properly registered; and (f) the undersigned waives and releases Auctioneer from all claims; causes of action and any other proceedings alleging that Auctioneer failed to perform any of the matters described in Sections (d) and (e) above. The undersigned also understands and agrees that this auction will be video taped for legal purposes only.
5. In the event the undersigned is the high bidder at the Auction of the Property, and such bid is accepted by Auctioneer, the undersigned will: (a) tender the required earnest money to Auctioneer; and (b) execute the Agreement immediately after the appropriate round of bidding at the Auction in exactly the same form as such Agreement was in the Bid Package, or as may be modified only by any announcements made at the Auction by the Auctioneer from the podium prior to the commencement of bidding for the Property, and with the blanks filled in accordance with the terms of the transaction.
6. Non-refundable earnest money: If the contract fails to close as a result of Purchaser's default, Seller shall have the right to have Purchaser's Earnest Money Deposit forfeited and awarded to Seller as liquidated damages.

IN WITNESS WHEREOF, the undersigned has caused this Bidder's Statement to be executed this 9 day of FEBRUARY 2010.

Buyer's Initials: [Signature] Seller's Initials: _____
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IN THE COURT OF COMMON PLEAS, SECOND JUDICIAL CIRCUIT
AIKEN COUNTY
STATE OF SOUTH CAROLINA

MELISSA J. LACKEY-OREMUS and)
JAMES T. OREMUS,)

Plaintiffs,)

vs.)

CIVIL ACTION NO.

2010-CP-02-03055

4 K&D CORPORATION, d/b/a GRAND)
ESTATES AUCTION COMPANY, GRAND)
ESTATE ADVERTISING, LLC, STACY)
KIRK, SCOTT KIRK, VALERIA)
DEVINE, KARL WESLEY HIRSCHHORN)
AND ERIN FRANCIS HIRSCHHORN,)
INDIVIDUALLY AND AS TRUSTEES)
OF THE KARL WESLEY HIRSCHHORN)
AND ERIN FRANCIS HIRSCHHORN)
REVOCABLE TRUST DATES MAY 24,)
1993,)

Defendants.)

COPY

DEPOSITION OF KARL WESLEY HIRSCHHORN

October 7, 2013
1:49 p.m.

513 Forest Road
Sea Island, Georgia

Debbie Gilbert, Certified Court Reporter, B-515

Gilbert & Jones

Certified Court Reporters

P. O. Box 1894

Brunswick, Georgia 31521

912-264-1670

877-355-0329, gilbertandjones1@bellsouth.net

1 (Hirschhorn Exhibit 1 was marked for
2 identification.)

3 Q. (By Mr. Braithwaite) Let me show you
4 what's been marked Exhibit 1 to this and in
5 particular, let me find...

6 MR. TAYLOR: Rob, I don't suppose you have
7 an extra copy of that, do you?

8 MR. BRAITHWAITE: What's that?

9 MR. TAYLOR: Whatever it is that you're
10 having marked.

11 MR. BRAITHWAITE: I do.

12 MR. TAYLOR: Thank you.

13 MR. BRAITHWAITE: It's the initial
14 contract.

15 Q. (By Mr. Braithwaite) Here we go. All
16 right, sir, I'm going to try to draw your attention
17 to a particular page here, so the total expenses --

18 A. That's right.

19 Q. -- were \$92,987.00; right?

20 A. Okay.

21 Q. And I believe you signed that document?

22 A. Initialed that.

23 Q. And what did she tell you would happen
24 with respect to those expenses if you elected not to
25 go forward with the auction?

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1 Q. Do you remember somebody by the name of
2 Desiree Watson?

3 A. She sent me a lot of paperwork so I might
4 have had contact, telephone wise, "did you get this
5 document."

6 Q. When you say never, you're talking about
7 face to face?

8 A. Face to face, yeah.

9 Q. How about Val or Valeria Devine?

10 A. Never met her. Just talked to her on the
11 phone. The only person -- let me make this clear --
12 I ever met in person was Stacy.

13 Q. It's my understanding you were not present
14 for the actual auction itself?

15 A. I was not.

16 Q. You had Frankie Thomas?

17 A. Had a power of attorney.

18 Q. To do what?

19 A. I guess they requested -- I'm not sure
20 exactly because I think I had presigned everything.

21 Q. Yes, sir.

22 A. I guess just my representative. I'm not
23 sure. I forget.

24 Q. And did you sign a document authorizing
25 him to be your power of attorney?

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1 A. Yes, yep.

2 Q. And was that document witnessed and
3 notarized?

4 A. I believe so. To the best of my
5 knowledge.

6 Q. All right, and you mentioned that you
7 talked to Val Devine. When was the first time that
8 you spoke to her relative to the auction?

9 A. I believe -- the day of the auction.

10 Q. The day of auction?

11 A. The day of the auction after they
12 auctioned the place.

13 Q. Do you know what time the auction was
14 scheduled to be conducted?

15 A. Either one o'clock or two o'clock.

16 Q. Let me represent to you that the auction
17 was scheduled to start at two o'clock?

18 A. Okay.

19 Q. Can you give me an estimate of what time
20 you spoke with Valeria Devine?

21 A. 2:40, estimate.

22 Q. And had you heard from Stacy Kirk?

23 A. No.

24 Q. At any point?

25 A. Nope.

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0200

1 Q. Had you talked to her on the telephone
2 that day?

3 A. I don't recall. I don't think so.

4 Q. All right, sir.

5 A. Not up until that time.

6 Q. Had you talked with Frankie?

7 A. No.

8 Q. All right, sir.

9 A. I don't believe I did and --

10 Q. Do you recall having any telephone
11 conferences with Frankie on the day of the auction?

12 A. I know -- no, I know I didn't talk to
13 Frankie after the auction --

14 Q. Yes, sir.

15 A. -- for at least a week or ten days until
16 he brought a tractor down for me, and we never even
17 discussed it.

18 Q. All right. So as far as the telephone
19 call that you got, were you here at --

20 A. No, I was at the stables.

21 Q. You were at the stables?

22 A. Yep.

23 Q. And you got a call from Valeria Devine?

24 A. Correct, who I had never spoken to before.

25 Q. All right, tell me what that -- how that

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1 telephone conference or telephone call went?

2 A. Call to update me on the auction and I
3 can't exactly remember what she said, but the bottom
4 line, what did the house sell for. I believe it was
5 a million 850 -- I could be wrong -- a million eight
6 or a million 850, right in that --

7 Q. If I were to represent to you that it was
8 1.875 --

9 A. Okay.

10 Q. -- does that sound --

11 A. Sure, it does, okay, and I was in a little
12 bit of shock. And then Stacy was -- on a third party
13 call, Stacy was on the call as well. I'm not sure if
14 she was on the call immediately or did Valerie or Val
15 call her. I don't know.

16 Q. Let me go back to what you just said for a
17 minute.

18 A. Okay.

19 Q. You said that you were in shock. What
20 shocked you about --

21 A. Well, because I was under the impression,
22 I believe we had some prebids, and again I could be
23 wrong and my memory could be failing, but I thought
24 we were close to the two-million-dollar prebid or a
25 two million -- and I was -- based on talking to other

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1 people who experienced, usually get 20 percent more.

2 Q. Had you actually seen the documents?

3 A. No, no, sir, I didn't.

4 Q. So where did your -- what was the source
5 of your information?

6 A. They called me the night before to go over
7 the prebids.

8 Q. And that would have been who, Stacy?

9 A. Stacy.

10 Q. All right, sir.

11 A. Correct. I don't think it was Val. I
12 don't think I talked to Val at all. I didn't know
13 who she was.

14 Q. Is it your recollection that you were told
15 that there was a --

16 A. I believe, or close to it. All I know, I
17 did my math with the percent and I said, "Boy, if
18 that's the worst case scenario," that's the worst
19 case scenario, you know, that's when I could have
20 pulled the plug for \$50,000.00 and not sold it, but I
21 felt comfortable enough that I felt like we -- we had
22 no mortgage on the house. We wanted to move ahead
23 and let's do it.

24 Q. Let me ask you this: Did you and Erin
25 discuss when you got the phone call what the prebids

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0203

1 were?

2 A. Yeah, I believe we discussed it and called
3 her back even or she called us back to --

4 Q. I see. Let me ask you this: And I'm not
5 trying to start a fight. Who has the better memory
6 for numbers and things?

7 MRS. HIRSCHHORN: Me, or we would be
8 living in an apartment. I'm so conservative,
9 I'm like "We did, you did?" Not me.

10 THE WITNESS: I'm pretty good with
11 numbers, a million 850, a million eight.

12 Q. (By Mr. Braithwaite) I understand that.
13 What I'm really interested in, a moment ago you
14 testified that you thought it was two or very close
15 to it?

16 A. Yeah, if my memory serves me correct.

17 Q. That's still your recollection as you sit
18 here today?

19 A. I think so, yes.

20 Q. And tell me, obviously y'all decided to go
21 ahead and you called Stacy back?

22 A. Yeah, or she called us back in a few
23 minutes, yep, let's go.

24 Q. And after --

25 A. And again some of this was based on I

Gilbert & Jones

1 think we had three hundred people through the
2 house --

3 Q. Yes, sir.

4 A. -- if I'm correct, so I felt good that
5 there would be a lot -- you know...

6 Q. Do you know how many people bid?

7 A. I probably do, but I forgot, 20, 30.
8 Well, I don't know. I don't know exactly. I think
9 prebids there were four or five, if I remember right,
10 and actual people who registered to bid, 15 or 20.

11 Q. All right, sir. And tell me from the
12 standpoint of the phone call that you got I think you
13 said somewhere around 2:40?

14 A. Yeah.

15 Q. From Val, she was telling you what the
16 property sold for; is that correct?

17 A. Correct.

18 Q. You indicated you were shocked?

19 A. Yep.

20 Q. What's the next thing that happened?

21 A. The next thing she said, "There was
22 another bidder we didn't let in the auction. His
23 paperwork wasn't right or whatever, and it's a shame;
24 we probably" -- and Stacy --

25 Q. She said -- finish what you -- it's a

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1 shame what?

2 A. "It's -- I think the house would have
3 brought more. This person should have been allowed
4 in." As it turn out, paperwork was faxed to the
5 wrong place. I don't know -- I wasn't -- I was
6 listening but I wasn't listening. And then Stacy
7 made a comment, "The winning bidder, I'm not sure
8 they want the house. They don't seem real happy."
9 And I believe then Val said, "Well, go see if -- if
10 they want to get out." And she said to me, "It might
11 cost you some money." I said, "Well, let's find
12 out." Hung up, got a phone call back.

13 Q. From who?

14 A. From Stacy, I believe it was. I'm not
15 positive. I think it was Stacy but Val might have
16 been on the phone. They agreed to sign a release,
17 didn't go through anything. They were happy to be
18 out of it. Okay.

19 Q. That's what they told you, they were happy
20 to be out of it?

21 A. Happy to be out of it. Hang up, I get a
22 phone call back -- I don't know -- half hour, 20
23 minutes, that they signed the second release because
24 Grand Estates' attorneys recommended that my name and
25 Erin's name be on releasing us as well, and they

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**AUCTION SALES &
MARKETING PROPOSAL PRESENTED TO**

**Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn
Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501**

GRAND ESTATES AUCTION COMPANY®

**Stacy Kirk
President**

November 10, 2009

"This proposal includes information derived from the extensive efforts of the Grand Estates Auction Company. The following information shall not be disclosed or duplicated in whole or in part for any purpose other than "evaluation" by those persons directly related to the decision for the Event as described in the Proposal without the expressed written permission of Grand Estates Auction Company."

PRIVATE

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Civil Action No. 2010-CP-02-3055**



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APPENDIX 000210

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APPENDIX 000211

PROPOSAL

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APPENDIX 000212

836 Whiskey Road
Aiken, South Carolina 29501

PROPOSAL

SALE METHODOLOGY

The auction would be held on or before Tuesday, February 9th, 2010 on-site. The sale terms would be all cash, with a ten percent (10%) non-refundable down payment auction day and the balance due upon closing within thirty (30) days.

EVENT TIMING

The auction date is scheduled approximately Sixty (60) days from the execution of the Exclusive Real Estate/Auction Marketing Agreement. This provides sufficient time to implement our S.M.A.R.T program. The Strategic Marketing and Accelerated Real Estate Transaction is a highly specialized sales and marketing plan that utilizes the auction process to produce a sale in a short time frame for maximum market value.

The schedule is very important and so as not to experience any delays, sellers are requested to provide us with all necessary documents and/or information regarding the property. Time is of the essence. Receiving this in the timeliest manner enables us to prepare the marketing materials.

MARKETING PLAN

Grand Estates Auction Company® proposes an auction using our unique style of auctioning for your luxury property using our S.M.A.R.T. Program for the sale of your luxury home in Aiken, South Carolina.

Our program will incorporate the expertise of our corporate staff to insure that your luxury property is professionally promoted through public relations, special events, real estate office visits, newspapers, magazines, direct mailing, telemarketing, the internet, and a comprehensive showing period. The following will ensure maximum exposure and highlight the different phases of our marketing program that will be customized to promote the sale of your luxury property.

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MARKETING STRATEGY

To ensure maximum exposure for your luxury home we will use a combination of the following marketing elements:

PHOTOGRAPHY

We utilize only the services of some of the finest architectural photographers in America. Photography is a critical element to well-developed brochures, Internet sites and advertisements. The photography provides the introduction to prospective purchasers who will want to obtain more information on these properties based upon their first impression.

LUXURY BROCHURES

Your brochure is designed and developed by our staff to illustrate the fine and exciting features of your home. Its purpose is to entice and create desire for more information, along with an opportunity to own a "One of a kind, prestigious property". Based upon the media schedule requirement we would order between 8,000 and 60,000 full color brochures. These brochures are used for the direct mail campaign and for public relations.

PPPTM - PROPERTY PURCHASE PACKAGE™

Your property will have a customized Property Purchase Package™, a proprietary information packet exclusively provided by Grand Estates Auction Company®, to be offered to prospective bidders. A typical package is made up of: Auction overview, a description of the property, survey, maps, floor plans, area information, property inspection report, termite report, legal description, tax information, terms and conditions of the sale and instructions on how to participate in the auction. Bidders feel more confident in escalating their bids because they know what they are buying. The due diligence has been performed for them, however we welcome them to perform their own as well. We open the property to any prospective bidder's inspectors, surveyors, etc. so that they can verify the information provided to them. The more confident the bidders are about what they are buying the higher the bids.

The sale of your property takes place "where is, as is," therefore the PPP™ is a prerequisite to being allowed to bid. It states multiple times in the PPP™ that the sale is "where is, as is," and all bidders are required to sign that they are aware of this condition. This also means that there are no contingencies of the sale. The 10% binder money is non-refundable.

DIRECT MAIL

Through diligent effort and person to person screening we have developed a highly desirable mailing list that belongs exclusively to Grand Estates Auction Company®. This list has not been purchased nor can it be sold. We have captured and qualified prospects that have expressed a definitive interest in purchasing high-end luxury real estate through our auctions. We also buy lists that are specific to the profile of the buyer we have developed for your property.

NEWSPAPER & MAGAZINE ADVERTISING

Grand Estates Auction Company® will immediately begin advertising design and placements for the sale of your property. A proprietary media schedule has been developed to ensure that the media campaign will promote your luxury property in business newspapers, national and international magazines and publications, as well as local and area newspapers. This advertising will be placed in premium locations of these publications (as available).

The advertising will be well designed to create maximum interest and encourage potential prospects to request additional information. (See - Sample Advertisements)

Grand Estates Advertising, LLC will be used to develop and place all advertising ads. Grand Estates Advertising, LLC is a separate but related Company to Grand Estates Auction Company®.

INTERNET ADVERTISING AND PROMOTION

Your luxury property and its information will be featured on our website, www.GrandEstatesAuction.com. We will design elegant and informative pages to promote your property on our website as well as offer the opportunity to be one of our featured properties on our homepage.

Our web address is optimized with leading search engines such as Google, Yahoo, and MSN, resulting in first page organic keywords related to luxury real estate and auctions. We also utilize paid search advertisements with high placements through each search engine. In addition we have numerous strategic partnerships with real estate websites and blogs to promote the auction and invite potential prospects to order a brochure and a Property Purchase Package™.

SIGNS AND BANNERS

Property signs will be placed at strategic locations to draw attention to the property and auction. These signs will have a toll free number for prospects to call to request additional information. The signage also serves as directionals to the property.

PUBLIC RELATIONS

Grand Estates Auction Company® has an exclusive public relations agreement with Grand Estates Advertising, LLC. They oversee the public relations campaign for our auctions. Also through the efforts of Grand Estates Advertising, LLC, Grand Estates Auction Company® will produce an effective public relations campaign to generate enthusiasm and a level of excitement for the sale of your luxury property that can not be replicated with other sales methods. This coverage may include, but is not limited to, highly visible newspaper articles, pre-auction television coverage, radio coverage, special event coverage and Internet web broadcasts. Our top-notch public relation campaign can produce outstanding press releases, ensuring enhanced marketing.

TELEMARKETING

Every ad carries our toll-free number inviting prospects to call for a free color brochure. We talk to each inquiry for as long as possible, ascertaining as much pre-qualifying information as possible beyond name,

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address, phone number and source of lead. A brochure is mailed immediately. Follow-up calls are made to each and every prospect in which we try to develop a relationship that allows us to further qualify the prospect. A Property Purchase Package™ is offered with this call. A second qualifying follow-up call culls the list and extends personal invitations to the preview.

We are constantly monitoring the level of interest and providing you with weekly detailed printed reports on each individual.

The media schedule is reviewed weekly for cost per lead, lead quality and lead quantity.

PREVIEW

We strongly encourage prospective bidders to personally examine the property. The preview is key to creating intense excitement about the opportunity to purchase your property. Bid assistants man the property during the established preview period of typically three to six days. Our people are experienced working with prospective bidders conducting pre-sale inspections. Grand Estates' bid assistants concentrate on further developing rapport with the bidders during this preview period to help them feel as confident as possible with the upcoming auction.

All preview appointments are arranged through Grand Estates Auction Company®. If there are prospects that are unable to attend during the set preview schedule we welcome them to make an appointment to see the property at another time. We want to accommodate the prospective bidders in any way we can. We assist the prospects with travel arrangements, hotel accommodations, car rental or livery service, etc. We do not leave anything to chance.

BROKER PARTICIPATION

The Bid Assistants from Grand Estates Auction Company® will contact every top-notch real estate firm in the area. We also provide all of the agents with the appropriate documentation so they can register their clients and explain the commission structure advantage of submitting a high initial bid.

Inviting high end brokers to participate is an important element. We want them on our side, therefore we recommend that up to a 3% commission be paid to a broker who brings in a successful buyer who purchases and closes on the property. For a broker to properly represent a client they must submit a written opening bid 24 hours prior to the auction. The agent's clients can attend the auction to continue to raise their bid. We recommend paying 3% on the opening bid amount and only 1% on the difference between the original written bid and the final winning bid. This encourages the agent to obtain the highest opening bid possible from their buyer prior to the auction.

AUCTION DAY

The remainder of Grand Estates Auction Company® staff will have arrived one to two days prior to the auction. All bid assistants will have been on site for the duration of the preview.

The day of the auction the bid assistants will greet and meet with all prospective bidders as they arrive. They will escort them to the registration table if they have not yet registered. At the registration table they will sign in and present the required forms from the Property Purchase Package™.

All bidders must be properly registered in order to participate in any of the auction formats. Registration will only be allowed to those who have brought with them the required certified funds, personal check with Bank letter of guarantee, credit card with prior approval, or have pre-registered by sending to the trust account in advance the required funds. Registration Instructions and Participation Instructions are provided to prospective bidders in the Property Purchase Package™.

The bid assistant will then offer to answer any final questions and at this time try to secure opening bids before the sale starts. These bids will be brought to the auctioneer. The auctioneer will open the auction with these bids and any written bids that were received from real estate agents.

Upon the completion of the auction the high bidder will be escorted to the closing office where our closing agent will collect the full 10% down payment and commence with the signing of all necessary documents. The unsuccessful bidders will remain on site until all paperwork and contracts are signed. It is recommended that closing take place as soon as possible, no

more than 30 days. If buyer and seller choose they may make other arrangements.

AUCTION FORMATS

ON-SITE BIDDING

OPEN OUTCRY

This is the most common auction format, and can take place either on-site or at another location depending upon circumstances. A bidder will raise their hand, paddle, call out their bid or have a bid assistant place a bid for them. Upon the auctioneer recognizing the bid it is then confirmed with the bidder. The auctioneer then goes to the next price increment, again asking the audience for a bid. Our auctioneer is highly skilled in crowd psychology and will move at a pace that creates a comfort level with the bidders. We do not blow whistles, run through the audience yelling or want to create a circus atmosphere. Serious business is being conducted and serious money is being spent. It is our experience that theatrics and hysterics create distrust and buyers withdraw.

TELEPHONE BIDDING

Upon receipt of the paperwork and funds, the bidder will be assigned a bidder number. The bid assistant will contact the bidder to discuss the auction procedures, to answer questions, and discuss any concerns that the bidder may have. The bid assistant will remain available via telephone to the bidder throughout the auction. Any bids that the bidder wants to place will be relayed through the bid assistant to the auctioneer. Should a phone bidder be declared the high bidder, a purchase contract will be executed after verification by the accountant and immediately faxed to the buyer for initialing and execution. The balance of the 10% earnest money due shall be sent to the escrow agent within 24 hours of execution of the contract. All other procedures shall remain the same.

ABSENTEE BIDDING

The bidder will be required to sign a blank purchase contract and bidding authorization form. The bidding authorization form shall entitle Grand Estates Auction Company®, to place bids for the absentee bidder in

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previously specified increments up to an authorized dollar amount. These executed forms must be received in full before a bid can be received from the prospective bidder. If an absentee bidder is declared the winning bidder the balance of the 10% earnest money due shall be sent to the escrow agent within 24 hours of execution of the contract. All other procedures shall remain the same.

BUYER'S PREMIUM

A buyer's premium will be utilized and added to the highest offer to arrive at the total contract sale price for your property. The buyer's premium is an amount paid by the purchaser to the seller, in addition to the bid amount, and is used to offset the auction expenses, including the buyer broker. For this auction, we recommend a Seven and One Half Percent (7 ½%) buyer's premium. The buyer's premium proceeds are used as follows: The first FOUR AND ONE HALF PERCENT (4 ½%) goes to the Seller to help reimburse the seller for the marketing expenses. Next up to a THREE PERCENT (3%) commission is paid to any cooperating broker. In the event that there is no cooperating broker, the balance will be paid to the seller.

OPENING BID INCENTIVE

We also offer on all of our auctions a Buyer Opening Bid Incentive Program, which creates a built in protection to the seller. It allows the seller to receive and review bids prior to the auction day. These bids will be used as a ground floor to the actual bidding on auction day. The seller will also have the knowledge of what the community of bidders is thinking in relationship to the value of the property. The incentive for the bidder to bring forth a written opening bid prior to auction is a credit of a percentage of the written bid amount. (See opening bid incentive form enclosed).

COMMISSION

Grand Estates Auction Company® is to be paid a commission from the seller of TEN PERCENT (10%) on the total contract price for the property payable at the time of closing. Marketing and sales expenses to market and promote the property are payable upon execution of the Auction Marketing Agreement.

SUMMARY

Grand Estates Auction Company® has the resources and capability to work with you to develop the auction strategy that is suited to marketing your luxury property. Our firm has developed a multitude of strategies and techniques based upon years of auction and marketing experience to devise the best program for marketing your property. We will be more than happy to discuss your goals and objectives under this proposal or a combination of scenarios in order to achieve your success.

The final ingredient for a successful auction, and one that Grand Estates Auction Company® alone can offer, is that the sale of your property will be conducted by some of the most experienced sales and marketing people in the business. On behalf of the entire staff of Grand Estates Auction Company®, we would like to thank you for the opportunity of presenting this proposal.

*Property Purchase Package™ and PPPTM are trademarks of Grand Estates Auction Company® and may not be used by any other organization for any purpose without written consent from Grand Estates Auction Company®.

**MEDIA, MARKETING &
PROMOTIONAL SCHEDULE**

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APPENDIX 000222

GRAND ESTATES ADVERTISING, LLC

Outlined below are the media selections designated in a joint selection process between Grand Estates Auction Company® and Grand Estates Advertising, LLC for your auction marketing campaign. These selections are based upon the Seller's goals and objectives for this auction, to take place on February 9, 2010.

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

MAGAZINE	DATE	SIZE	QUANTITY	PRICE
FORBES MAGAZINE				
BIWEEKLY BUSINESS MAGAZINE	Jan 4 - 17	4-COLOR 1/4 PAGE	1X	\$4,026.00
NEW YORK TIMES MAGAZINE				
WEEKLY LIFESTYLE MAGAZINE	Jan 10 - 16	4-COLOR 1/4 PAGE	1X	\$5,943.80
HOMES AND LAND OF AUGUSTA				
MONTHLY REAL ESTATE MAGAZINE	January Issue	4-COLOR FULL PAGE + COVER	1X	\$1,351.25
THE REAL ESTATE BOOK OF AIKEN & NORTH AUGUSTA				
MONTHLY REAL ESTATE MAGAZINE	January Issue	4-COLOR FULL PAGE + COVER	1X	\$912.00
THE AIKEN HORSE				
MONTHLY HORSE PUBLICATION	Jan 1 - Feb 28	4-COLOR FULL PAGE	1X	\$896.00
THE CHRONICLE OF THE HORSE				
WEEKLY HORSE CHRONICLE (REAL ESTATE SPECIAL)	Jan 8 - 15	4-COLOR 1/2 PAGE	1X	\$838.44
WEEKLY HORSE CHRONICLE	Jan 15 - 22	4-COLOR 1/2 PAGE	1X	\$838.44
WEEKLY HORSE CHRONICLE	Jan 22 - 29	4-COLOR 1/2 PAGE	1X	\$838.44
SIDELINES MAGAZINE				
MONTHLY HORSE PUBLICATION	January Issue	4-COLOR 1/2 PAGE	1X	\$1,140.00
EQUINE MONTHLY MAGAZINES				
SOUTHEAST EQUINE	Jan 1 - 30	4-COLOR 1/2 PAGE	1X	\$800.00
HORSIN AROUND	Jan 1 - 30	4-COLOR 1/2 PAGE	1X	\$800.00

Seller's Initials *KW* Buyer's Initials *EF*
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NEWSPAPER	RUN DATES				
WALL STREET JOURNAL- NATIONAL EDITION					
REAL ESTATE CLASSIFIED DISPLAY	Jan 8	BW 2 COL X 4 1/2"	1X	\$5,230.78	
REAL ESTATE CLASSIFIED DISPLAY	Jan 15	BW 2 COL X 4 1/2"	1X	\$5,230.78	
NEW YORK TIMES					
ESCAPES	Jan 8	BW 2 COL X 5.25"	1X	\$2,694.23	
SUNDAY BUSINESS	Jan 17	BW 2 COL X 5.25"	1X	\$2,694.23	
WASHINGTON POST					
REAL ESTATE CLASSIFIED DISPLAY AD	Jan 9	BW 2 COL X 3 1/2"	1X	\$1,233.95	
REAL ESTATE CLASSIFIED DISPLAY AD	Jan 10	BW 2 COL X 3 1/2"	1X	\$1,233.95	
ATLANTA JOURNAL-CONSTITUTION					
SUNDAY BUSINESS DISPLAY AD	Jan 17	BW 1/4 PAGE	1X	\$2,447.20	
SUNDAY BUSINESS DISPLAY AD	Jan 24	BW 1/4 PAGE	1X	\$2,447.20	
CHARLOTTE OBSERVER					
SUNDAY DISPLAY AD (MAIN NEWS)	Jan 17	BW 2 COL X 3"	1X	\$873.58	
SUNDAY DISPLAY AD (MAIN NEWS)	Jan 24	BW 2 COL X 3"	1X	\$873.58	
MIDDLEBURG, VA NEWSPAPERS					
LEESBURG TODAY & ASHBURN TODAY	Jan 8	BW 1/8 PAGE (5" x 2.75")	1X	\$532.80	
MIDDLEBURG LIFE	Jan 11	BW 1/4 PAGE (5" x 5.75")	1X	\$471.60	
LEESBURG TODAY & ASHBURN TODAY	Jan 15	BW 1/8 PAGE (5" x 2.75")	1X	\$532.80	

Seller's Initials: *KV* Buyer's Initials: *h*

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NEWSPAPERS (PENDING)		DATES	SIZE	AC	COST
OCALA STAR BANNER					
DISPLAY AD (SATURDAY REAL ESTATE)	Jan 9	BW 1/8 PAGE	1X		\$788.89
DISPLAY AD (SATURDAY REAL ESTATE)	Jan 23	BW 1/8 PAGE	1X		\$788.89
AIKEN STANDARD					
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 9	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 16	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 23	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 30	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Feb 6	4-COLOR FULL PAGE			\$300.00
REALTOR.COM					
SKYSCRAPER AD	Jan 1 - Feb 1	160 X 600 PIXELS			\$2,300.00
PRODUCTION COSTS					\$2,800.00
TOTAL MEDIA					\$52,457.82

 Seller's Initials KL Seller's Initials BL

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Proposed Marketing Expenses

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29601

Brochures:	
6-Panel Color @ 100lb, 10,000 text gloss	\$5,675.00
Brochure Production Costs:	
Camera ready artwork, layout, design, typesetting, mechanical preparation, color separations, & film	\$2,000.00
Brochure Postage & Handling:	
Folding, sealing, labeling & mailing	\$4,840.00
Brochure Mailing Lists:	
Selectively Targeted: In-house list for all buyers in VA, NC; SC; GA and FL; All Buyers that have expressed interest in Equestrian Properties; Local Area MLS & High-End Realtors specific to Equestrian Properties; Aiken Trainers; and Masters of Fox Hounds Association of America Officers & Directors.	
Appraisal:	
	Seller to provide
Internet Site Development: Includes site development for our site plus links to our sponsors	
	\$850.00
Telemarketing & Call Follow Up:	
	\$890.00
Public Relations:	
	\$3,500.00
Photography:	
	Interior & Exterior \$2900
	Stock \$375.00
	\$3,275.00
Video:	
	\$500.00
Signage: Quantity: 2 - 4' X 6' Signs, plus 10 - 24" X 30" Auction Directionals & 1 - Banner	
	\$2,575.00
Property Purchase Package:	
Includes approximately 5 chapters, previewing contracts, data regarding property, maps, Title commitment zoning, tax info, etc. (see example)	
	\$1,125.00
Total Proposed Marketing Expenses:	
	\$25,030.00

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PROPOSED PROMOTIONAL EXPENSES

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

The following Auction personnel list consist of independent contractors and employees who will be involved in your auction.

AUCTION STAFF	RATE	NO.	TOTAL
Auctioneer	\$3,500.00	1	\$3,500.00
Auction Coordinator	\$3,600.00	1	\$3,600.00
Bid Assistants	\$1,100.00	1	\$1,100.00
Registrar and Closing Agent	\$1,400.00	1	\$1,400.00

AUCTION SITE STAFF

			Amount of days	
Site Director	\$300.00 per day	1	6	\$1,800.00
Site Assistant	\$250.00 per day	2	6	\$3,000.00
Auction Day Expenses: Shipping of materials, Security, Food and Rentals for Auction Day				\$1,100.00

Rates include hotel, travel & meals.

TOTAL PROPOSED PROMOTIONAL EXPENSES **\$15,500.00**

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SUMMARY OF AUCTION EXPENSES

MEDIA EXPENSES: **\$52,457.82**

MARKETING EXPENSES: **\$25,030.00**

PROMOTIONAL EXPENSES: **\$15,500.00**

TOTAL EXPENSES: **\$92,987.82**

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Seller's Checklist

Grand Estates Auction Company will make the arrangements for all or any of the items listed below. The items below will need to be charged directly to Seller unless the items are included in the proposed contract between Grand Estates Auction Company and Seller or the Sales Contract between Seller and Buyer. Otherwise, the items will be at Sellers expense.

The following is a list of items that need to be received by our office no later than 35 days prior to auction, so that our staff can start putting together your PROPERTY PURCHASE PACKAGE for prospective bidders, the Preliminary Title Report must be ordered 5 days after signing your contract, (Grand Estates Auction Company will order the title report) this sometimes takes a little longer to receive. Please forward these items to the attention of:

Desiree Watson
Grand Estates Auction Company
9115-F Old Statesville Road
Charlotte, NC 28269

1. **PRELIMINARY TITLE INSURANCE COMMITMENT (THIS MUST BE ORDERED 5 DAYS AFTER YOU HAVE SIGNED THE CONTRACT):** A representative of Grand Estates will order this for you. Call us if you have any questions about this.
2. **A CURRENT SURVEY:** including not only the boundary lines, but also all buildings, improvements, fences, pools, driveways, easements, etc. Tell your surveyor that you will be getting an updated title insurance policy with this survey and that your buyer will be using it to obtain title, mortgage and deed.
3. **ATTORNEY:** We will need the name, address and telephone number along with the fax number of a real estate attorney who you will want to use to handle any of your legal work and closing details for you. It is the responsibility of the Seller for the expense of your attorney's review to our Purchase & Sale Agreement, any legal and documentation prep fees including the survey. The closing will take place with a third party title company or a third party attorney. This is specified on the Sales Contract between buyer and seller.
4. **HOME INSPECTION REPORT:** You will want to find the most thorough and reputable home inspection company you can. If there is any kind of problem, known or unknown by you, you will want it disclosed in this report to the buyer. It doesn't mean that you will necessarily have to repair it, however, you will want to disclose it. In many states if a buyer can prove that a seller should have known of a defect and failed to disclose it, the seller can be held responsible. Talk to your attorney about any particular liability laws in your state. Tell him this is an "AS IS, WHERE IS" sales contract, and see what he has to say about your state. This is also the Sellers expense.

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5. **SWIMMING POOL INSPECTION:** If applicable
6. **SEPTIC TANK & WELL WATER INSPECTION:** If applicable
7. **APPRAISAL:** If applicable
8. **OIL HEATING:** Are tanks in the house? Where buried? What size? How old?
9. **ENVIRONMENTAL INSPECTION:** If applicable.
10. **TERMITE INSPECTION REPORT:** Get a clear report for all wood destroying insects if you can, if not we will want to disclose any damage.
11. **FLOORPLANS OR ARCHITECT'S DRAWINGS.**
12. **ELEVATION CERTIFICATE:** if your property is a waterfront property.
13. **FLOOD INSURANCE:** requirements if your property is in a flood zone.
14. **CERTIFICATE OF OCCUPANCY:** if your property is new construction.
15. **PRIVATE CLUB'S GOLF, EQUESTRIAN FACILITIES, MARINA'S, ETC:** joining fees, and literature.
16. **RESIDENTIAL PROPERTY DISCLOSURE STATEMENT:** We will provide this to you if you don't have it.
17. **LEAD PAINT DISCLOSURE:** Only if your home is built before 1977.
18. **RADON GAS INSPECTION:** Only if applicable in your state.
19. **ASBESTOS DISCLOSURE:** Only if you live in an older home that has asbestos.
20. **ZONING OF PROPERTY:** Can property be subdivided?
21. **MOST RECENT TAX BILL:** Any reassessment papers, if a recent reassessment was done.
22. **MORTGAGE INFORMATION:** Updated information on all outstanding mortgages including Lender's names, current balances, account #'s.
23. **HOMEOWNER'S ASSOCIATION BYLAWS, SUBDIVISION RESTRICTIONS & DEED RESTRICTIONS:** If HOA, how much are the monthly dues.
24. **FURNITURE AND OR FURNISHINGS:** If you are including any we need an itemized list clearly detailing each item.
25. **FURNITURE THAT IS NOT GOING TO BE INCLUDED:** We need an itemized list clearly detailing each item.

****ADDITIONAL ITEMS NEEDED**

- I. **MARKETING MATERIALS, BROCHURES, LITERATURE, PHOTOGRAPHY AND NEGATIVES:** Anything that you may have that will help us put together a better description of your property.

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PROPOSED TERMS AND CONDITIONS

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APPENDIX 000231

**PROPOSED AUCTION TERMS AND CONDITIONS
FOR**

**Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn
Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501**

AUCTIONEER

Auctioneer reserves the right to announce any additional terms and conditions before or during the auction.

All decisions of the Auctioneer shall be final, including but not limited to decisions on matters of increments of bidding, disputes among bidders, and any other matters that may arise during the Auction.

SELLER

The Seller has the right to add to or withdraw from the sale any property prior to the auction.

The property will be sold "AS IS, WHERE IS". NO WARRANTIES, either statutory or otherwise, expressed or implied as to the fitness, the functionality, habitability, workmanship, expressed or implied is offered.

AUCTION COMPANY

The Auction Company has relied upon the Seller for all information in regards to the property. It is believed that this information is true and correct.

The Auction Company has relied upon the seller for information published in all advertising.

Grand Estates Auction Company® is the selling Agent only and makes no representation concerning the property.

ATTORNEY

Title will be conveyed by a warranty deed subject to the matters set forth.

Closing shall take place in the county in which the property is located by a recognized pre-approved Title Company or attorney.

Closing shall be held within 30 days of contract signing or sooner.

Closing costs shall be paid by the buyer including the County transfer tax of \$_____ per thousand of purchase price.

All monies will be held in a non-interest bearing escrow account under the control of Richard M. Koch, Attorney at Law, Charlotte, NC, as escrow agent, pending the closing and in accordance with the terms of the Real Estate Sales Agreement. No disbursement shall be made from this account until the closing.

PURCHASER

Purchaser has agreed that purchaser has inspected the property and is not relying on any warranty or representation of Seller or Seller's agent or any member of auction company contracted or subcontracted employees. Purchaser agrees to buy property "AS IS, WHERE IS".

Purchaser agrees to sign Sales Agreement and pay a 10% earnest money deposit, with \$50,000.00 being in certified funds, personal check with a bank letter of guarantee, credit card with prior approval, or any other form that seller finds acceptable immediately after being declared the winning bidder. The balance of the earnest money may be paid in personal check. Buyer agrees that the earnest money is non-refundable should Buyer fail to close.

REGISTRATION

All bidders must be registered to bid at the auction and present a certified check, personal check with a bank letter of guarantee, credit card with prior approval, or any other form that seller finds acceptable in the amount of \$50,000.00 in order to register and obtain a bid number. The check is to be made payable to the bidder.

**AUCTION MARKETING
CONTRACTS**

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APPENDIX 000234

EXCLUSIVE REAL ESTATE/AUCTION MARKETING AGREEMENT

1. In consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the undersigned, Karl Wesley Hirschhorn and Erin Francis Hirschhorn, As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993, hereinafter referred to as "Seller(s)," hereby represents to be the owner(s) of real estate located at 836 Whiskey Road, Aiken, South Carolina 29501. Seller(s) hereby appoints "4 K&D Corporation d/b/a. GRAND ESTATES AUCTION COMPANY," a North Carolina Corporation; located at 9115-F Old Statesville Road Charlotte, NC 28269, phone # 704-529-0026, the sole and exclusive agent for Seller(s), hereinafter referred to as "GEA," through South Carolina Real Estate Broker Scott Kirk, License No. 75461. "GEA" has the exclusive right to sell said Property by public or private sale, from the date this Agreement is executed and up to the auction and including One Hundred Eighty (180) days after the auction.
2. PROPERTY DESCRIPTION(S): 836 Whiskey Road, Aiken, South Carolina 29501. Legal description of said property will requested through title search upon execution of Exclusive Real Estate/Auction Marketing Agreement. The title search will be known as "Exhibit A" in contract between GEA, Seller(s) and Buyer(s). The legal description from title search will provide the complete description of property that is the subject of this Agreement known as the "Property."
3. Seller(s) warrants the truth of all statements made by Seller(s) contained herein to the best of Seller(s)' knowledge and belief, and further warrants that Seller(s) has the right to convey title to said Property and that there are no pending claims or suits affecting Property; that there is no litigation involving the Property; that the Seller(s) is current on all mortgage obligations effecting the Property; that there are no known dangerous conditions on the Property; that there is no hazardous waste on the Property, that there are no violations of any kind regarding building or zoning, including but not limited to FEMA; and that there are no structural defects of workmanship.
4. TYPE OF AUCTION: The auction sale will be held on Tuesday, February 9, 2010, or such earlier date as may be agreed upon by Seller(s) and GEA. "GEA" will offer the Property located at 836 Whiskey Road, Aiken, South Carolina 29501 at ABSOLUTE AUCTION with no minimums or reserves. The Seller(s) has the right, in its sole discretion, to add or withdraw all or any portion of the property, prior to commencement of the bidding. "Commencement of the bidding" as used herein shall mean the commencement of the bidding on the day of the auction, when the auctioneer opens the auction and solicits verbal bids. Solicitation and receipt of any opening bid prior to the actual commencement of the bidding by the auctioneer, including without limitation any bid that qualifies for an incentive under the Buyer Opening Bid Incentive Program shall not trigger a commencement of the bidding as used herein. If the property is withdrawn, a withdrawal fee shall be due and

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payable on auction day that will be credited to the stated commission at closing. Seller(s) acknowledges that upon the commencement of the bidding, the Property will be sold to the highest bidder(s) regardless of the bid price, and Seller(s) understands and acknowledges that he/she relinquishes any right to place any minimum or reserve on the bidding with respect to the Property.

5. AUCTION COMPANY DISCLAIMER: Seller(s) acknowledges that "GEA" has made no representations or promises as to the price that may be bid at the auction. (See Disclaimer Addendum)

(a) "GEA" HAS NO OPINION AS TO THE VALUE OF THE PROPERTY.

(b) The following disclaimer shall be included in and become a part of the Purchase & Sale Agreement: DISCLAIMER AS TO AUCTION COMPANY: Buyer shall look only to Seller(s) as to all matters regarding this Contract and the Property, and GRAND ESTATES AUCTION COMPANY shall not be responsible or liable in any way if Seller(s) fails or refuses to or cannot close title hereunder, or if the Property is affected in any way or is in any other way unsatisfactory to Buyer as Buyer may determine before or after closing.

6. DUTIES OF GRAND ESTATES AUCTION COMPANY: "GEA" will do or perform the following as the case may be:

- (a) Prior to the auction sale, "GEA" shall prepare and distribute advertising and sales literature in a manner reasonably calculated to advise persons who might be interested in the Property and in the sale thereof.
- (b) Prepare a full-color, descriptive sales brochure with photographs of the Property for sale.
- (c) Provide and direct all auction personnel reasonably necessary for the purpose of promoting and conducting the auction.
- (d) Perform the marketing and auction of the Property in a manner consistent with the Auction Sales & Marketing Proposal presented to Seller(s) dated November 10, 2009.

7. CONVEYANCE OF THE PROPERTY: The SELLER(S) acknowledges and understands that the SELLER(S) ability to transfer to a buyer a good, clear, marketable and

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insurable title is one of the primary inducements of "GEA" to undertake the sale of the property and expend its time, resources and efforts toward receiving a commission from one or more successful sales. In consideration thereof, the SELLER(S), at or before closing, undertakes and agrees to perform or permit the following with respect to the Property, in whole or in part, as the case may be:

- (a) The SELLER(S) shall be in a position and will convey a good, clear, marketable and insurable title to each of the buyers.
- (b) The SELLER(S) shall effect all conveyances by general warranty deed.
- (c) SELLER(S) covenants and warrants that there are no liens or encumbrances against the property except those as may be shown on the title insurance commitment to be provided as a part of the Seller's Checklist.
- (d) The buyers at auction may pay the purchase price for the property in cash.
- (e) "GEA" shall not be responsible for any closing or recording costs or any brokerage commissions.

8. SELLER(S) AFFIDAVIT: Seller(s) agrees to refer to "GEA" any material inquiries received while this Agreement is in effect, including but not limited to all requests for property information, any potential or prospective bidders or buyers, auction information, terms and conditions, offers to purchase, or media requests for interviews.

Seller(s) shall give GEA, prospective bidders, buyer, photographer, and etc. reasonable access to the Property before, during, and after the sale of the Property until the closing.

Seller(s) shall perform no act which could hinder the actions of the auction company in the promotion, marketing or sale of the property, including but not limited to the disclosure to any person or entity terms or price or value of the Property.

Failure to perform according to these paragraphs shall be considered a breach of contract upon Seller(s) and the penalty for such breach shall be construed as a withdrawal including the withdrawal fee (to be credited to the stated commission at closing) and all of its terms and conditions of such as stated in section 12.

9. COMMISSIONS: For its services in preparing for and/or conducting the Auction Sale, Seller(s) shall pay "GEA" a commission equal to Ten percent (10%) of the gross sales price

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paid by the Buyer at Closing on the Property. Both Seller(s) and "GEA" agree that all deposits and purchase funds shall be paid to the Escrow for its proper disbursement. "GEA'S" commission shall be due and payable by the Seller(s) from the first proceeds of each sale on the date and at the time when the Property, in whole or in part, is conveyed to one or more buyers, and those commissions shall be deducted from the purchase price or prices. Seller(s) will instruct the ESCROW AGENT to pay commissions to "GEA" according to this Agreement. No funds shall be disbursed to any party without commissions being paid to "GEA" (See Escrow Instructions attached hereto.) If Buyer defaults in closing a Sales Contract, and the escrow is disbursed, "GEA" shall be entitled to Fifty percent (50%) of the deposit paid by the Buyer.

(a) During the Exclusive Listing Period "GEA" is entitled to the full commission if Seller(s) sells, leases, trades, transfers or otherwise disposes of all or any part of the Property, regardless of whether the buyer is secured by "GEA", Broker, Seller(s) or any other person. If within 180 days after the expiration date of the Exclusive Listing Period Seller(s) transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom Seller(s), Broker, or any other person communicated regarding the Property prior to the expiration date of the Exclusive Listing Period "GEA" shall be entitled to its full commission.

(b) Seller(s) also agrees to pay "GEA" its full stated commission if the closing of a Sales Agreement is prevented by existing liens, judgements, or suits pending against the Property or if Seller(s) is unwilling to close same after having agreed in writing to such a sale.

(c) After the deduction of all commissions due "GEA" hereunder, the balance of the purchase price may be utilized to satisfy and discharge all outstanding liens on the Property, in whole or in part, in order to enable a conveyance under the terms required of the Seller(s) hereunder. If, however, the net purchase price is insufficient to pay all of the outstanding liens and encumbrances on the Property, then the Seller(s) shall forthwith make available all funds necessary to obtain discharges of said encumbrances and to permit the conveyance(s).

10. BUYER'S PREMIUM: Seller(s) understands that a Seven and One Half Percent (7 1/2%) Buyer's Premium will be automatically added to the winning bid of the Buyer(s) purchasing the Property at the auction sale. This fee will be explained in the auction terms

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and conditions distributed to all bidders and will be automatically added to the winning bid. This Buyer's Premium, together with the high bid price, will determine the Gross Sales Price. In the event a Buyer Broker is due a commission under the guidelines of "GEA" Broker Participation Program (up to a three percent (3%) of the bid price), the Buyer Broker fee will be paid from this Seven and One Half Percent (7 1/2%) Buyer's Premium. The remaining Buyer's Premium will be paid to the Seller(s) as part of the total sales price.

11. **ADVERTISING AND AUCTION SALES CAMPAIGN FEES:** In addition to said commission, Seller(s) shall pay to "GEA" for promotion and expense of conducting the auction sale the sum of Ninety-Two Thousand Nine Hundred Eighty-Seven and 82/100 Dollars (\$92,987.82), due in three (3) installments, one third (1/3) at execution of this agreement, 1/3 at the time Seller(s) approves and signs off on print Advertising, and the final 1/3 thirty (30) days prior to auction.

(a) All costs outlined in the auction sales campaign proposal are best estimates as of the time the proposal was prepared. In the event that the actual costs of the advertising and auction expenses exceed the original estimates, "GEA" agrees not to pass the additional expenses on to the Seller(s). Likewise, in the event that costs come in lower than projected, "GEA" will not pass along any refunds to the Seller(s). Should the auction not be held on the Property, Seller(s) shall be responsible for all expenses related to auction day site.

(b) Seller(s) agrees to permit "GEA" to take photographs and/or videotapes of auction(s) and related events, and Seller(s) also agrees to grant "GEA" the right to utilize these materials for promotional purposes. These materials will remain the Property of GRAND ESTATES AUCTION COMPANY. Seller(s) name and likeness shall not be utilized in such materials without the prior written approval of Seller(s).

12. **WITHDRAWAL:** Seller(s) agrees that if Seller(s) withdraws Property or any portion of the Property from the date of this Agreement for any reason, Seller(s) will pay "GEA" a withdrawal fee of Fifty Thousand and no/100 Dollars (\$50,000.00) for the Property withdrawn plus any unreimbursed expenses incurred by "GEA" within three (3) days of written withdrawal notice unless withdrawal occurs within ten (10) days of auction date in which case the withdrawal fee is due with notice of withdrawal.

If either of the following two Buyers, MR & MRS J. POLK or GREEN BOUNDARY CORP make an offer prior to January 1st, 2010 that is acceptable to Seller(s), the Exclusive Listing with GEA would be terminated, no

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Withdrawal fee would be due, but instead a \$10,000.00 termination of contract would be paid by Seller(s) to GEA, and GEA would refund all marketing and promotional expenses from proposal except those incurred.

In the event Property sells prior to the Auction, the withdrawal fee will be waived and only the unreimbursed expenses and stated commission will be due. Should Property sell after withdrawal within the confines of paragraph 9A the full commission shall become immediately due and payable at closing and the withdrawal fee shall apply towards the commission due.

Seller(s) agrees to pay the withdrawal fee if the conducting of a sale is prevented by lawsuits, suits pending, liens, or judgments against the Property, unless such lawsuits, suits pending, liens, or judgments against the Property were caused by the conduct of GEA.

In the event that "GEA" is obliged to incur any expenses (including attorneys' fees, court costs, or other out-of-pocket monies) to collect any monies, including but not limited to commissions, auction campaign costs or withdrawal fees, due to Grand Estates Auction Company, Seller(s) agrees that the cost of collection will be added to these monies due and will be paid by the Seller(s).

13. **LICENSING AND APPROVALS:** Seller(s) agrees to obtain written approval of any governing bodies including but not limited to any applicable HOA, and or government bodies with jurisdiction over sale of Property.

14. **BINDING EFFECT:** This Agreement will be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and this Agreement constitutes the entire contract between parties. There are no oral representations or understandings other than the terms set forth herein. Any changes to be effective shall be in writing and signed by both parties.

15. **ASSIGNMENT AND THIRD PARTIES:** Neither party may assign, transfer, or delegate any right, obligation, or interest in this Agreement without prior, written consent of the other. This Agreement shall not create any rights in, nor be deemed to have been executed for the benefit of, any third party, except as expressly provided.

16. **INSURANCE AND RISK OF LOSS:** Seller(s) shall at all times prior to closing have, and maintain in effect, adequate insurance of the type and amount needed to insure Seller(s) and GEA, including GEA's agents, assigns, attorneys, brokers, contractors, directors, employees, members, officers, representatives, and successors in interest for any claim that might arise for casualty, damage, death, destruction, injury, or loss of any kind, to either person or property, during the inspection, preparation, preview, marketing, auction, or sale of the Property, as a result of any accident, act, act of God, death, error, fire, hazard,

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negligence, omission, theft, or vandalism, and Seller(s) shall solely pay the cost for this insurance. The risk of loss pertaining to the Property shall remain exclusively on Seller(s) until closing. Once Seller(s) has conveyed good title and possession to the buyer, the risk of loss shall immediately pass to the buyer.

17. **HOLD HARMLESS AND INDEMNIFICATION:** A Party at fault shall hold a Party not at fault harmless from, and indemnify the Party not at fault against, any action, arbitration, award, claim, cost, damage, deficiency, demand, expense, indemnity, injury, judgment, liability, loss, obligation, and suit of every kind, including reasonable attorneys' fees and costs of defense, asserted by any person, real or artificial, or by any entity of government, that the Party not at fault incurs as a result of any act, error, omission, or wrongdoing attributable to the Party at fault or that Party's agents, assigns, attorneys, brokers, contractors, directors, employees, invitees, licensees, members, officers, shareholders, representatives, or successors in interest, and which arises out of this Agreement, the transaction contemplated, or the related dealings of the Parties, except otherwise expressly provided herein.

18. **LEGAL ACTION AND ARBITRATION:** Any action, claim, controversy, counterclaim, dispute, or proceeding arising out of this Agreement or its breach, enforcement, interpretation, termination, validity, or the transaction contemplated, or any related dealings between the Parties (collectively "arbitration matter"), whether controlled by federal or state law, and whether an issue of law or equity, including the scope and applicability of this agreement to arbitrate, shall be determined and resolved exclusively by final and binding arbitration, with no appeal permitted, except as provided by applicable law for judicial review or enforcement of arbitration decisions. The arbitration shall be administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties waive the right to any legal action and trial by jury.

The costs of arbitration, including the fees and expenses of the arbitrators, but not including the Parties' attorneys' fees, shall initially be paid equally by the Parties. The prevailing Party shall be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys' fees. The filing, proceedings, decisions, result, rulings, and award from any arbitration shall be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person, and the Parties shall jointly move the court entering judgment on the arbitration award to so order.

Any arbitration matter must be commenced within one (1) year from the date when the cause of arbitration accrues or it will be forever barred. The right of arbitration shall accrue, and the one (1) year limitation period shall begin to run, on the date the breach, damage, or injury is sustained and not when the resulting damage or harm is discovered. A

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memorandum referencing this contract and its terms may be filed at the sole discretion of GEA in the county the property is located in.

19. CHOICE OF LAW, JURISDICTION, AND VENUE: This Agreement, the Auction Escrow Instructions, and all issues and matters related to either shall be exclusively construed and governed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws principles. The exclusive jurisdiction and venue for any controversy, claim, or arbitration between the Parties shall be in the County of Mecklenburg in the State of North Carolina.

Parties only option of litigation will be to submit to binding arbitration. If arbitration is held to be an inappropriate remedy by any Court of Law, then any action at law shall be held only in the Superior Court of Mecklenburg County, North Carolina.

20. CONSTRUCTION: Article headings are for reference only and not intended to expand or restrict the scope or substance of the terms of this Agreement. Any reference to an Article includes all relevant sections and paragraphs within that Article. Wherever used, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine, or neuter, as the context requires.

This Agreement contains the final, complete, and exclusive agreement of the Parties and there are no oral or written agreements, inducements, promises, representations, or warranties, other than those expressly set forth herein. Any previous agreement, negotiation, or understanding between the Parties regarding the subject herein has been merged into this Agreement and shall not survive its execution. A deletion, modification, revision, supplement, or waiver of any term of this Agreement shall be effective only if made in writing and executed by the Parties with the same formality as this Agreement, unless otherwise provided herein.

No waiver by either Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach, and no waiver of any right shall be construed as a waiver of any other right. A Party shall not be required to give the other any notice to enforce strict adherence to the terms of this Agreement.

The terms of this Agreement shall be severable and, if any term is held illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected or impaired and, in lieu of the term held illegal, invalid, or unenforceable, there shall be added, to become part of this Agreement, a term as similar in effect as the illegal, invalid, or unenforceable term, as is possible, legal, valid, and enforceable.

The Parties have mutually participated in the negotiation and drafting of this Agreement and no legal inference, presumption, principle, or rule of draftsmanship or

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construction shall be used in favor of, or against, any of them. This Agreement may be signed in multiple counterparts and each shall be an original, with all counterparts constituting a single instrument. A facsimile signature shall be considered as valid as an original signature.

21. MISCELLANEOUS: Seller(s) acknowledges that every question Seller(s) had regarding this Agreement and its subject has been answered by GEA to Seller(s) satisfaction. Each Party has had the opportunity to seek the advice of legal counsel of its choosing, and each has either done so or has voluntarily decided to forgo such advice, with full understanding of the risk involved in such course.

GEA and the Broker shall conduct all brokerage activities in regard to this Agreement without respect to race, color, religion, sex, national origin, handicap or familial status of any party or prospective party to the Agreement.

22. TIME OF THE ESSENCE: Time is of the essence of this Agreement.

23. FORCE MAJEURE: A Party shall not be liable to the other for any failure or delay in performance arising out of an unforeseeable cause or contingency beyond that Party's reasonable control and without that Party's fault, negligence, or wrongdoing, and such failure or delay shall not constitute a material breach of this Agreement, provided the Party claiming *force majeure* gives the other notice at the earliest reasonable date and uses commercially reasonable efforts to cure the *force majeure* event. In such case, there shall be an equitable adjustment to the time for performance of this Agreement and the Parties shall take account of and resolve any issues that arise including, but not limited to, unanticipated and additional expenses.

24. SURVIVAL: The following Articles shall survive any termination of this Agreement and remain in full force and effect: *Auction Company Disclaimer, Seller's Warranties and Conveyance of the Property, Commissions, Hold Harmless and Indemnification, Legal Action and Arbitration, Binding Effect, Choice of Law, Jurisdiction, and Venue, Construction, Miscellaneous, Survival, "Auction Escrow Instructions"*.

25. COMPANY APPROVAL: This Agreement is subject to the final approval of an officer of Grand Estates Auction Company.

26. COUNSEL: Seller(s) and GEA agree to cooperate to draft a proposed sales contract to be utilized at the auction, and the proposed sales contract shall be subject to review and approval by the Seller(s)' South Carolina counsel.

EXECUTED as of the 12 day of Nov 2009.

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I HAVE READ AND ACCEPTED THE TERMS OF THIS AGREEMENT.
ACCEPTED:

Name of Corporation _____ Print Name _____
BY: _____
Seller's Signature-Officer of Corporation _____ Date _____
Home No.: _____ Fax No.: _____
Work No.: _____ Tax Id: _____
Seller's Mailing Address: _____

Witness to signature of officer or secretary _____ Date _____ Print Name _____

BY: Karl Hirschhorn 11/12/09
Seller's Signature Personally _____ Date _____
Karl Hirschhorn _____
Print Name _____ Social Security No. _____
Home No.: 912 319 2007 Fax No.: KHIRSCHHORN@GMAIL.COM
Work No.: 808 206 3511
Seller's Mailing Address: P.O. Box 30910 Sea Island GA 31561

BY: Erin Hirschhorn 11/12/09
Seller's Signature Personally _____ Date _____
Erin Hirschhorn _____
Print Name _____ Social Security No. _____
Home No.: 912 319 2007 Fax No.: _____
Work No.: 808 206 0698
Seller's Mailing Address: P.O. Box 30910 Sea Island, GA 31561

BY: Scott Kirk 11/30/09
South Carolina Real Estate Broker's Signature _____ Date _____
Scott Kirk 75467
Print Name _____ License # _____
ACCEPTED BY: Scott Kirk 11/30/09
Office _____ Date _____

GRAND ESTATES AUCTION COMPANY®, A NORTH CAROLINA CORPORATION

Seller's Initials KH Seller's Initials EH
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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants 000564

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DISCLAIMER ADDENDUM

THE SELLER(S) ACKNOWLEDGE(S) THAT NEITHER GRAND ESTATES AUCTION COMPANY, A NORTH CAROLINA CORPORATION, HEREINAFTER "GEA," NOR ANY OF ITS STOCKHOLDERS, OFFICERS, AGENTS OR REPRESENTATIVES, HAVE GUARANTEED OR PROMISED THAT THE AUCTION SALE SHALL BRING ANY PARTICULAR PRICE FOR THE PROPERTY AND THAT SELLER(S) SETTING A MINIMUM OR RESERVE SHALL NOT BE CONSTRUED AS A GUARANTEE OR WARRANTY OF ANY PRICE. SELLER(S) REPRESENT(S) AND WARRANTS THAT THE AUCTION COMPANY DOES NOT DO REAL ESTATE APPRAISALS AND HAS, IN FACT, STATED TO SELLER(S) THAT THEY HAVE NO OPINION AS TO THE VALUE OF THE PROPERTY OR OF THE PRICE IT WILL BRING AT THE AUCTION SALE. ALSO, THIS AGREEMENT REPRESENTS ALL AGREEMENTS BETWEEN "GEA" AND SELLER(S), UNLESS AGREED UPON IN WRITING AND SIGNED BY ALL PARTIES. BY SIGNING MY NAME BELOW, "WE ACKNOWLEDGE THAT "WE HAVE READ AND UNDERSTAND THE ABOVE DISCLAIMER.

Name of Corporation

Print Name

BY: _____

Seller's Signature-Officer of Corporation

Date

Witness to signature of officer or secretary

Date

Print Name

BY: _____

Seller's Signature Personally

11/12/09

Date

Print Name

BY: _____

Seller's Signature Personally

11/12/09

Date

Print Name

Seller's Initials *KV*

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Seller's Initials *EF*

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Grand Estates Defendants_000685

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0242

AUCTION ESCROW INSTRUCTIONS

1. All earnest monies/down payment shall be received by an escrow agent or title company mutually agreed upon by both parties and deposited in a special, non-interest bearing escrow account at a FDIC approved bank.
2. Upon verification of "Good Funds" in this account, the proceeds thereof will be disbursed at settlement, along with the recording of the deeds as follows:

"GEA" WILL BE PAID ACCORDING TO THE FOLLOWING SCHEDULE:

For its services in preparing for and conducting the Auction Sale, Seller(s) shall pay "GEA" a commission equal to Ten percent (10%) of the gross sales price paid by the Buyer at Closing. Both Seller(s) and "GEA" agree that all deposits and purchase funds shall be paid to the Escrow Agent for its proper disbursement. If Buyer defaults in closing a Sales Contract, "GEA" shall be entitled to Fifty percent (50%) of the deposit paid by the Buyer.

Seller(s) understands that a Seven and one-half Percent (7 1/2%) Buyer's Premium will be automatically added to the successful bid of the Buyer(s) purchasing the property at the auction sale. This fee will be explained in the auction rules distributed to all bidders and will be automatically added to the winning bid. This Buyer's Premium, together with the high bid price, will determine the Gross Sales Price. In the event a Buyer-Broker is due a commission under the guidelines of "GEA" Broker Participation Program (Maximum Three Percent (3%) of the bid price), the Buyer broker fee will be paid from this Seven and one-half Percent (7 1/2%). The remaining Buyer's Premium will be paid to the Seller(s) as part of the total sales price.

3. Escrow Agent will disburse all funds (to Seller(s) & "GEA") at the same time.
4. Escrow Agent will supply "GEA" with a copy of the Closing Statement for each disbursed transaction.
5. Please remit all payments to: **GRAND ESTATES AUCTION COMPANY**
9115 F OLD STATESVILLE ROAD, CHARLOTTE, NC 28269, (704) 529-0026

THE ABOVE ESCROW INSTRUCTIONS ARE HEREBY AGREED UPON BY THE FOLLOWING PARTIES FOR THIS TRANSACTION:

Name of Corporation		Print Name	
BY: _____		Date	
Seller's Signature-Officer of Corporation		_____	
Witness to signature of officer or secretary		Date	Print Name
BY: <u>[Signature]</u>		11/12/09	Karl Hirschhorn
Seller's Signature Personally		Date	Print Name
BY: <u>Erin Hirschhorn</u>		11/12/09	Erin Hirschhorn
Seller's Signature Personally		Date	Print Name
BY: <u>[Signature]</u> 75467		11/30/09	Scott Kirk
South Carolina Real Estate Broker's Signature License #		Date	Print Name
GRAND ESTATES AUCTION COMPANY®, A NORTH CAROLINA CORPORATION			
BY: <u>[Signature]</u>		11/30/09	DATE
SCOTT KIRK, AS ITS PRESIDENT		12-209	DATE
ESCROW AGENT			

Seller's Initials KK
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Seller's Initials CONFIDENTIAL

Oramus v. 4 K&B Corp, et al
Grand Estates Defendants_000666

AUCTION ESCROW INSTRUCTIONS

1. All earnest monies/down payment shall be received by an escrow agent or title company mutually agreed upon by both parties and deposited in a special, non-interest bearing escrow account at a FDIC approved bank.
2. Upon verification of "Good Funds" in this account, the proceeds thereof will be disbursed at settlement, along with the recording of the deeds as follows:

"GEA" WILL BE PAID ACCORDING TO THE FOLLOWING SCHEDULE:

For its services in preparing for and conducting the Auction Sale, Seller(s) shall pay "GEA" a commission equal to Ten percent (10%) of the gross sales price paid by the Buyer at Closing. Both Seller(s) and "GEA" agree that all deposits and purchase funds shall be paid to the Escrow Agent for its proper disbursement. If Buyer defaults in closing a Sales Contract, "GEA" shall be entitled to Fifty percent (50%) of the deposit paid by the Buyer.

Seller(s) understands that a Seven and one-half Percent (7 1/2%) Buyer's Premium will be automatically added to the successful bid of the Buyer(s) purchasing the property at the auction sale. This fee will be explained in the auction rules distributed to all bidders and will be automatically added to the winning bid. This Buyer's Premium, together with the high bid price, will determine the Gross Sales Price. In the event a Buyer Broker is due a commission under the guidelines of "GEA" Broker Participation Program (Maximum Three Percent (3%) of the bid price), the Buyer broker fee will be paid from this Seven and one-half Percent (7 1/2%). The remaining Buyer's Premium will be paid to the Seller(s) as part of the total sales price.

3. Escrow Agent will disburse all funds (to Seller(s) & "GEA") at the same time.
4. Escrow Agent will supply "GEA" with a copy of the Closing Statement for each disbursed transaction.
5. Please remit all payments to: **GRAND ESTATES AUCTION COMPANY**
9113-F OLD STATESVILLE ROAD, CHARLOTTE, NC 28269, (704) 529-0026

THE ABOVE ESCROW INSTRUCTIONS ARE HEREBY AGREED UPON BY THE FOLLOWING PARTIES FOR THIS TRANSACTION:

Name of Corporation _____		Print Name _____	
BY: _____ Seller's Signature-Officer of Corporation		Date _____	
Witness to signature of officer or secretary _____		Date _____	Print Name _____
BY: <u>[Signature]</u> _____ Seller's Signature Personally		Date <u>11/12/09</u>	Print Name <u>Karl Hirschhorn</u>
BY: <u>Erin Hirschhorn</u> _____ Seller's Signature Personally		Date <u>11/12/09</u>	Print Name <u>Erin Hirschhorn</u>
BY: <u>[Signature]</u> <u>75467</u> _____ South Carolina Real Estate Broker's Signature License #		Date <u>11/30/09</u>	Print Name <u>Scott Kirk</u>
GRAND ESTATES AUCTION COMPANY®, A NORTH CAROLINA CORPORATION			
BY: <u>[Signature]</u> _____ <u>STACY KIRK, AS ITS: PRESIDENT</u>		DATE <u>11/30/09</u>	
_____ ESCROW AGENT		_____ DATE	

Seller's Initials KK
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Seller's Initials B7
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Grand Estates Defendants_000667

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BUYER BROKER REGISTRATION FORM
BUYER BROKER GUIDELINES

Broker Information

Broker _____
License No. _____ Tax Id / SS No. _____
Company _____
Address _____
City _____ State _____ Zip _____
Telephone _____ Fax _____

Client Information

Client _____
Print Name _____
Address _____
City _____ State _____ Zip _____

OPENING BID AMOUNT

Please refer to the Broker Participation Guidelines below for clarification and instruction.

\$ _____ 836 Whiskey Road, Aiken, South Carolina 29501
(not including the 7 1/2 % Buyer's Premium)

1. All prospects must be registered with Grand Estates Auction Company® with the Buyer Broker Registration Form provided. This form must be received by GRAND ESTATES AUCTION COMPANY® no later than by 4 p.m., Monday, February 8, 2010. FORMS SENT DIRECTLY TO THE SELLER WILL NOT BE HONORED.
2. For a Broker to properly represent a client they must:
 - A. Be a Licensed Real Estate Buyer's Broker in the state in which the property is located who will abide by the National Association of Realtors® Code of Ethics whose registered prospect pays for and settles in full according to the Buyer Broker guidelines set forth, for the above property to be sold at the auction on Tuesday, February 9, 2010 in Aiken, South Carolina.
 - B. Submit this form including the opening bid amount filled in 24 hours prior to the auction. The commission that is paid to the agent is on a sliding scale. For the agent that represents the winning bidder, a commission of three percent (3%) of the written opening bid price not to include the buyer's premium is paid. If their client attends the auction and continues to bid the agent is also compensated an additional one percent (1%) for the difference between the initial written opening bid and the final winning bid.
 - C. If no opening bid is written on the Broker Participation Form then one percent (1 %) of the high bid price of the property purchased by that broker's client will be paid to that broker as a commission/referral.
 - D. The broker commission/referral will not exceed three percent (3%) of the high bid price of the property purchased by that broker's client.
3. In order to be entitled to any commission/referral, the broker must:
 - A. Broker or Agent must sign in and inspect the property with the Client during a scheduled Open House or by private appointment with a Grand Estates Auction Company® representative.
 - B. Broker must also attend and register with the client at the auction and encourage bidding.
4. Commission will be paid only upon final closing and when the property has been settled in full.
5. No commission will be paid on any non-arms length transaction to any Broker or Agent participating in the purchase of the property or by any member of the Agent's immediate family. An Affidavit may be required that the Broker is

Bidder Initials _____ Broker Initials _____
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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000668

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serving only as a Broker and not as a Principal or member or shareholder or any other form of participation or related to the buyer.

6. No Broker will be recognized for a Client who has had previous contact with the Seller, their representatives, Auctioneer or Grand Estates Auction Company®.
7. Buyer and Broker must complete the following documentation IN FULL:
 - A) Buyer Broker Registration Form

THIS FORM MUST BE RECEIVED NO LATER THAN 4:00 P.M., Monday, February 8, 2010.

Send to the following address: Grand Estates Auction Company
Attn: Client Relations
9115-F Old Statesville Road
Charlotte, NC 28269

Or fax to: (704) 598-7911

8. In the event that you are not the successful high bidder, your certified funds will be returned to you.
9. A complete registration file on all buyer broker registrations will be maintained. For further information or questions, feel free to call Grand Estates Auction Company® Information Office at (704) 529-0026 or (800) 552-8120.
- A) The Broker and the Principal Bidder, by placing their signatures below, certify that they have inspected the premises of the subject property during a scheduled open house or by appointment.
- B) The Broker and the Principal Bidder hereby attest that the Broker is serving only as an Agent for the Buyer and not as a Principal involved in the purchase of the property.
- C) The Bidder hereby acknowledges that GRAND ESTATES AUCTION COMPANY® represents the Seller in this transaction.
- D) Commission shall be paid to Broker representing Principal Bidder only if he/she has met all of these requirements. No referral fee will be paid to a referring broker, even if the referring broker's client purchases a property.
- E) Broker agrees to abide by the Buyer's Broker Guidelines outlined herein to qualify for registration.
- F) CLIENT ACKNOWLEDGES THAT BROKER IS WORKING ON BEHALF OF CLIENT AS A BUYER'S BROKER.
- G) BROKER ACKNOWLEDGES THAT HE/SHE IS NOT A SUBAGENT OF GRAND ESTATES AUCTION COMPANY® AND REPRESENTS THE CLIENT AS A BUYER'S BROKER.
10. Client/Bidder must fully and properly register for the auction in order for this bid and/or broker registration to be valid.
11. This bid is only valid once the auction commences and the auctioneer accepts the bid.

Purchaser acknowledges that he/she agrees to abide by the terms and conditions of sale and agrees to open the bidding at the commencement of the auction for the property or parcel, by gavel at the amount stated above. I authorize the bid assistant to enter this bid during the auction at the request of the auctioneer.

The undersigned hereby certifies and agrees to the herein terms and conditions of registration.

Client/Bidder's Signature

Date

Broker's Signature

Date

Bidder Initials _____ Broker Initials _____
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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000669

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BUYER OPENING BID REGISTRATION FORM

Bidder's Name: _____ Bid #: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone #: _____ Evening phone #: _____

Fax #: _____

GUIDELINES FOR PARTICIPATION

1. Three Percent (3%) of the opening bid amount written in the blank provided below will be deducted from the total contract price, should you be the successful purchaser of the property for which you have provided an opening bid.
2. If you specify no opening bid amount, you will not receive any credit.
3. In order to participate, this form must be received by Grand Estates Auction Company® no later than 4:00 p.m., Monday, February 8, 2010.
4. All opening bids must be submitted in U.S. funds in total dollar amounts. The property will be bid by the dollar.
5. Bidder is required to bring a copy of the executed form with him/her on sale day.
6. Bidder must fully and properly register for the auction.
7. This bid is only valid once the auction commences and the auctioneer accepts the bid.
8. Bidder may increase their bid during auction, but the Three Percent (3%) credit will only be issued on the written opening bid amount on this form.

OPENING BID AMOUNT.

\$ _____ 836 Whiskey Road, Aiken, South Carolina 29501
(not including the 7 1/2 % Buyer's Premium)

Purchaser acknowledges that he/she agrees to abide by the terms and conditions of sale and agrees to open the bidding at the commencement of the auction for the property or parcel, by gavel at the amount stated above. I authorize the bid assistant to enter this bid during the auction at the request of the auctioneer.

Please submit form to Grand Estates Auction Company®, 9115-F Old Statesville Rd, Charlotte, NC 28269, or fax to (704) 598-7911. For further information or assistance, please call (800) 552-8120.

Bidder's Signature

Date

Please note: This form does not allow for Broker Participation. If you have a Broker this form will be void, no credits or commissions shall be provided to winning bidder.

SAMPLE MEDIA & NEWSPAPER ADS

GRAND ESTATES AUCTION COMPANY®

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000671

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AIKEN, SC AUCTION

Auction Coordinator Check List

Property: 836 Whiskey Road
Aiken, SC 29501

Auction Date:
2/9/2010
Absolute

Letters to Seller:

- ☒ Receive Contract
- ☒ SCAN AUCTION CONTRACT AND PLACE IN SALES LOGS
- ☒ Congratulations Letter
- ☒ Order Title & Sample Warranty Deed
- ☒ Send Seller Checklist Letter & Seller's Disclosure
- ☒ Received Auction Info Sheets
- ☒ Auction Process Letter
- ☒ Clean Up Letter
- ☒ Review Schedule
- ☒ Send Inquiries thus far Letter

Media/Signage:

- ☒ Door Walk thru talk w/Marketing Consultant obtain To Do List for seller
- ☒ Talk w/Marketing Consultant to obtain sign locations
- ☒ Obtain layout for signage from Sarah
- ☒ APPROVAL OF LAYOUT FROM INHOUSE
- ☒ Research local sign companies and obtain fax numbers for quote request
- ☒ FAX & EMAIL LAYOUTS TO SIGN COMPANY
- ☒ Obtain estimates for signage from local sign company
- ☒ Order signage from local sign company
- ☒ Signs Installed
- ☒ Banner
- ☒ Order metal directional signage from DeeSign
- ☒ Ship sign frames from warehouse to house

Contracts:

- ☒ Send auctioneer contract to licensed auctioneer
- ☒ Receive signed contract from licensed auctioneer
- ☒ SEND CONTRACT TO VIDEOGRAPHER
- ☒ Obtain estimates & book local videographer
- ☒ Email contract and maps to Videographer
- ☒ Receive signed contract from videographer
- ☒ SEND CONTRACT TO SECURITY OFFICER
- ☒ Obtain estimates & book local security officer
- ☒ Receive signed contract from security officer
- ☒ SEND FINAL CONTRACT & BROCHURE TO SECURITY SERVICE
- ☒ SEND ITEMS NEED TO RENTAL COMPANY
- ☒ Obtain estimates for rental equipment arrangements (if necessary)
- ☒ Sign and return contract with Rental Company

Travel Arrangements:

- ☒ Make rental car reservations
- ☒ Make hotel reservations
- ☒ Noncommercial Charter Flight?
- ☒ Make commercial flight reservations

Completed

Received

12-1-09

12-2-2009

12-18-2009

12/18/2009

12/21/2009

12/23/2009

1/11/2010

N/A

Complete

N/A

12/18/09

12/23/2009

12/23/2009

12/23/2009

12/23/2009

Complete

12/23/09

Complete

12/23/2009

12/21/2009

12-7-10

N/A

N/A

1-13-2010

1-12-2010

1-13-2010

1-13-2010

1-19-2010

1-19-2010

2-3-10

2-3-10

1-18-2010

1-18-2010

Complete

Complete

N/A

Complete

N/A

N/A

Master Auction Prep Check List

Oremus v. 4 K&D Corp, et al
Grand Estates Defective 12:00 AM

Auction Coordinator Check List

Property:

Auction Date:

- ☒ Get Quote for Day Flight (if auction is on East Coast)
- ☒ Return signed contract for flight reservations

Staff Information:

- ☒ Arrange for a meeting with the seller, Val & Bid Assistants for the day before the auction
- ☒ Get directions from airport to hotel, hotel to house, etc.
- ☒ Gather information for phone list
- ☒ Prepare Auction Day Flyer
- ☒ Review Auction Day Procedures
- ☒ Get directions to closest Federal Express location
- ☒ Distribute phone list & Auction Day Procedures to staff

N/A
N/A
2-3-2010
2-3-2010
2-3-2010
2-1-2010
N/A
N/A
2-3-2010

Karl Wesley Hirschhorn + Erin Francis Hirschhorn
As Trustees of the Karl Wesley Hirschhorn and
Erin Francis Hirschhorn Revocable Trust ↓

↓ (H) 912-319-2007

(W) 808-206-3511

khirschhorn@gmail.com

Rear pad entry #4190

Withdrawal fee \$50,000
7 1/2 % Buyer's Premium
GEA - 10% Commission
Scott Kirk - Broker of Record
\$50,000 Registration
OPP - \$1125

Signage - 2575 - (2) 4x6 (10) directionals + Banner.

Video \$500

Master Auction Prep Check List

Oramus v. 4 K&D Corp, et al
Grand Estates Defend 1/20/09 11:52 AM

Auction Coordinator Check List

Property: Aiken, SC

Auction Date: 2-9-10

Page 2

☒ Auction Day Announcements		<u>2-8-10</u>
☒ Prepare PPP		<u>Complete</u>
☒ Prepare Contract for PPP		<u>1-16-10</u>
☒ Send PPP for Review - Inhouse		<u>1-7-10</u>
☒ Approval of PPP - Inhouse		<u>1-13-10</u>
☒ Send PPP for Approval to Seller - <u>1/14/10</u>	<u>Waiting on property Description and floor plans from Seller to approve</u>	<u>1-14-2010</u>
☒ Approval by Seller		<u>1-15-2010</u>
☒ Prepare Final Contract		<u>2-3-2010</u>
☒ Place Final Contract on Disk		<u>N/A</u>
☒ PLACE FINAL CONTRACT IN SALES LOGICS		<u>2-3-2010</u>
☒ Pack Trunks		<u>2-1-2010</u>
☒ Send Trunks		<u>2-1-2010</u>
☒ Sign Final Contract		<u>2-3-2010</u>
☒ PLACE ALL DOCUMENTS IN SALES LOGICS		<u>Complete</u>
☒ Add Appointment Document		<u>NEVER</u>
☒ Convert Document		<u>N/A</u>
☒ Low Ups:		<u>2-8-10</u>
☒ Order Food		<u>2-3-2010</u>
☒ Follow up with seller, making sure they have all necessary info		<u>2-8-10</u>
☒ Follow up with videographer, making sure they have all necessary info		<u>N/A</u>
☒ Follow up with auctioneer, making sure they have all necessary info		<u>N/A</u>
☒ Follow up with broker, making sure they have all necessary info		<u>2-8-10</u>
☒ Follow up with rental company, making sure they have all necessary info		<u>2-3-2010</u>
☒ Follow up with security, making sure they have all necessary info		
After Auction:		
☒ Pay Security		
☒ Pay Videographer		
☒ Follow up with Rental Co. making sure rentals have been removed		
☒ Follow up with Sign Co. making sure signs are removed		
☒ Follow up with Videographer making sure we receive video		
☒ Closing Letter		<u>N/A</u>
☒ Fax Signed Contract to Title Company		<u>N/A</u>
☒ Fax Signed Contract to Escrow Attorney		<u>N/A</u>
☒ Schedule a closing date		<u>N/A</u>
☒ Closing Date		<u>N/A</u>

BRIEF CASE CONTAINING THE FOLLOWING FOLDERS

Trail
Trail
Trail

COMPLETE

OTHER ITEMS

Oremus v. 4 KED Corp, et al
Grand Estates Defendant 000674
1/10/2008 11:52 AM

Master Auction Prep Check List

0251

Auction Date:[illegible]

~~[REDACTED]~~

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

~~Answers from Frank D. Hingley.~~

[illegible]

PLEASE SEND ALL OVERNIGHT MAIL
TO PHYSICAL ADDRESS

KARL AND ERIN HIRSCHHORN
513 FOREST ROAD
SEA ISLAND GA 31561

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000576

0253

APPENDIX 000256

AUCTION INFORMATION

Marketing Consultant Stacy M. Kirk

Seller Name Karl & Erin Hirschhorn

Absolute Auction: Tuesday, Feb 9th, 2010 2pm

"The Balcony"
836 Whiskey Road
Aiken, SC 29501

Sea Island Home Phone: 912-319-2007

Karl's Cell 808-206-3511

Erin's Cell 808-206-0698

Email: KHirschhorn@gmail.com

Property was vacated in November and family has moved to Sea Island

Property Manager:

Barn Manager:

PREVIEW INFORMATION

Preview Dates	Time	Employee (s)
Friday, Feb 5 th	11am-3pm	Jared, Marc, Sandye
Saturday, Feb 6 th	11am-3pm	"
Sunday, Feb 7 th	1pm-4pm	"
Monday, Feb. 8 th	11am-3pm	"
Tuesday, Feb 9 th	11am- 1:30pm	"
AUCTION, Feb 9 th	2pm	Jared, Marc, Sandye, Stacy
Auctioneer		Bill or Stacy, not sure yet

REALTOR INFORMATION

Revised 7/28/06

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000677

1

0254

Property currently listed? Yes () No () Current listing Price?_____

Expires:_____ # of showings?_____

of offers?_____What were they?_____

Previous Listing price?_____ How long has it been listed?_____

Is a Listing Broker Involved?_____ Co. Name_____

Broker Name_____Buy Out/Commission %_____

Phone #_____Fax#_____

Address_____

Buyer Broker Percentage Paid?_____How and How Much ?_____

MORTGAGE INFORMATION

Mortgages 1st_____None_____

HOMEOWNERS ASSOCIATION INFORMATION

() Home Owners Assoc. Monthly Dues \$_____

Notes:_____

Spedal Assessments for Equestrian Parks: Monthly Dues \$_____

Covenants & Restrictions due to Historic Nature of the property?

PROPERTY GENERAL INFO

Residential Community Name_____

Revised 7/28/06

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000678

2

0255

Property is completely Fenced and has two access Gates, one front, and one rear.

Rear pad entry# 4190

Historic Equestrian Property
"The Balcony" on the National Registry of Historic Places.
Aiken Winter Colony
Historic District 1

Year Built: 1929 Parcel #121-13-13-002 Aiken County

Year renovated _____ C.O. _____

County Taxes: \$13,632.26 Tax Value: \$2,771,910.00

City Taxes: + \$77777

Total Taxes \$

Tax Advantages, farm/agricultural?

No appraisal available

EXTERIOR PROPERTY INFO

The Property is on a main road, Whiskey Road.
There is a high (Stucco or Brick?) wall that surrounds the property and the home is not visible from the road. If facing the property:

To the LEFT is an old world dining club called _____ in a historic home.
To the RIGHT is a small side street called _____
BEHIND the property is an alley called _____. This alley is a clay road, good for the horses and leads to many of the equestrian amenities, the racetrack, polo fields, etc.

EXTERIOR SURFACE

All Brick Home
Slate Roof, Newly repaired / replaced???

Gutters (Type): _____

Revised 7/28/06

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000879

3

0256

Original Windows?

6 Panel Doors throughout, Solid Wood

Detached Garage, # of Bays? Elevated height for special trailers?

Gravel Driveway

Brick or Stucco Wall Surrounds the entire Property
Additional Split rail fences for the horse paddocks

Multiple Patios, Decks and Balconies, Have Karl explain reason the name is "The Balcony"

POOL AREA

Gunite Swimming Pool _____ Depth () Heated () Swim up bar

Age: _____ Size: _____

Water features: _____

Type of Pool () Pebble Tech () Tile () Vinyl () Gunite
Warranty: _____

Brick Perimeter around the pool and then grass surrounding pool. When the pool is not being used for swimming, there are water sprays that give it the appearance of a decorative fountain.

No pool house or hot tub

EQUESTRIAN AMMENITIES

BARN & STABLES:

20 Stall Barn, all stalls are rubber matted all aisles have rubber mats

Multiple tack rooms, feed room, tool room, hay loft

grooms quarters with HVAC, laundry room, full bath, kitchenette

2 gas hot water heaters

3 Stall Garage for Cars or Equipment, Bay Height??? Good for tractors, etc???

1 Sand Riding Arena

1 Paddock or 2???

Revised 7/28/06

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000680

4

0257

GUEST HOUSE

new heat and ac
new electric service to the home
3 Bedrooms & 2 Baths
Living Area, Dining Area, and Kitchen

SPECIAL FEATURES ON GROUNDS

() Sprinkler system _____ Zones: _____
Type: _____

Hard court Tennis courts

Vegetable Garden next to Tennis Court

Additional Structures _____

FOUNDATION

Basement on Slab

GENERAL INTERIOR INFORMATION

Main House is 3 levels with 5 Bedrooms, 8 Full Baths & 2 Half Baths
Guest House is 3 Bedrooms & 2 Full Baths

Main Home is approximately 11,000 Square feet of Heated & Cooled Space
We don't want to promote this, it becomes overwhelming for people, especially if this
is to be a second home.

10 Woodburning Fireplaces, Formal Living Room, Library, Dining Room, His Office,
Master Bedroom, 3 Girls Rooms, + 2 Additional in Guest
With Gas Starters in the following rooms:

ROOMS ON EACH LEVEL:

Basement:

Wine Cellar
Large Storage Areas

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0258

Ground Floor/First Floor:

Massive Gallery Style Front Foyer

His & Her Powder Rooms

Family Room

Formal Patio and Garden

Dining Room

Formal Living Room

Sweeping Staircase

His Office with Ensuite Full Bath

Butler's Kitchen & Wet Bar, Family Kitchen, Pantry, Dry Goods Storage Room

Breakfast Room

Laundry Room with Utility Closet

Powder Room for Kitchen & Utility Rooms

Home Gym with Full Bath

Her Office

Second Floor:

From Sweeping Staircase, 2nd Master Suite or Two Children's Bedroom with Jack and Jill Style Bath in between and sitting room, and dressing area.

Child's/Guest Bedroom with Ensuite Full bath

Child's/Guest Bedroom with Ensuite Full bath

Guest Bedroom with detached Full bath

Master Bedroom with Sitting Room, Full Bath, & Dressing Area with Wall of Closets

What was previously the Servants Wing: Flex space of 4 small Bedrooms or Kid's playroom, Craft room, TV room, etc. Includes full bath and a kitchenette so could be ideal in-law suite.

Third Floor:

Storage Attic

HVAC INFO - AIR

Air Conditioning () Central Electric () Central Gas

Zones _____ Units _____ Maker _____

Tonnage _____ Age _____ Location _____

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Warranty_____

Average Monthly Cost?_____

HVAC INFO - HEATING

() Electric () Heat Pump () Fuel Oil () Natural Gas

() Other_____

Zones_____Units_____Maker_____

Tonnage_____Age_____Location_____

Warranty:_____

Heated Floors () What areas?_____

Water Heating () Electric () Gas () Solar () Other_____

Gallons_____Location_____

Quick Recovery _____Continuous Hot Water_____

Average Monthly Cost?_____

WATER

() City Water Average Monthly Cost?_____Hooked Up?_____

() Copy of H2O bill

() Well Depth?_____ () Dug () Drilled Location:_____

() Water Filtration System () Water Softener System

Type_____

Notes:_____

SEWAGE SYSTEM

() City () Septic Size: _____

Location: _____

Average Monthly Cost? _____

GENERATORS

Capacity: _____ Wattage _____

Location: _____

Whole House/limited portion _____

ALARM SYSTEM

() Alarm System () Activated

Alarm Company name _____ Phone # _____

Security Code _____ Pass Code _____

Average Monthly Cost? _____

Special Features: _____

MISC. INFORMATION

() Central Vac () Intercom () Home Audio System () Inside Sprinklers

() Fiber Optic Lines/T-Lines () Extra Phone Lines Phone #'s _____

() Lite touch lighting () CAT 5 Wiring () Surround Sound

() Smart Home System

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HOME FEATURES

ENTRANCE FOYER

Double Entrance
Red Clay Tile Floor
Transoms surround Front door with a second door

Hardwood Floors with a pale honey finish
2 coat closets adjoining each powder room

Enter the ladies' powder room and the floor to ceiling mirror gives you a full view of yourself so that you may make any last minute adjustments to your gown before meeting your hosts.

Double Arches with fluted woodwork and dental molding
lead down a long gallery style hall to the formal rooms.

From the Pool Side of the home a Second Formal Entry to the home has a sweeping Staircase that follows a curved wall where a large tapestry hangs. Light filters from above through an old world glass skylight.

POWDER ROOM

At the front entry of the home there are two powder rooms, a his and hers.

Pedestal Sinks, Silk drapes, large coat closets

2 KITCHENS, Side by Side

Staff Kitchen and Family Kitchen

Appliances stay

Fully Functional and completely up to date. The period elements have been well restored.

Staff Kitchen:
Marble Countertops, wonderful for rolling out pastry
Wood countertops
Glass front cabinetry
Under the counter lighting

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Metal Box with Shelves, Warming Box?
GE Monogram Ice Maker
2 Miele Dishwashers
Sink with Disposal
Silver Safe In Staff Kitchen

Family Kitchen:

Caumartin Italian Stove with 2 Gas burners, and radiant heat surfaces allowing to heat an additional 10 pots & pans (depending upon size of pot or pan)
Dacor Refridgerator
Butcher Block

Breakfast room with Dutch Cupboard & Glass front cabinets

Bar:

Refrigerator & Freezer
Built In Corkscrew bottle opener
Icemaker

DINING ROOM

10ft. ceilings with heavy Crown & Dental Molding
Hardwood floors
Two sets of French Doors that lead to large terrace that could be used for outdoor dining.
Dining Room surrounded by glass, with a view of the gardens on one side and the fountain on the other.
Sconces line the room
Extensive Wall Paneling
Domed Alcoves flank the woodburning fireplace, wonderful for showcasing collectibles or fine china.

LIVING ROOM

Hardwood Floors, 10ft. Ceiling, Heavy Crown Molding, Paneling/Wainscoting
Woodburning Fireplace, Built-in bookcases, French Doors, Tall Windows with Window Seats

FAMILY ROOM / LIBRARY

10 ft. ceilings, Wall of built-in bookshelves, French doors leading to terrace, windows overlook the pool and paddocks, Hardwood floors, Pecky Cypress Paneled Walls, Window Seats, Wood Burning Fireplace

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MASTER SUITE

Master Suite with Foyer Entrance to the suite, 10 ft. ceilings. From Master Foyer there is access to the Balcony. Window seats built into the windows with views of the gardens below. Paneling below the chair-rail. Wood burning fireplace, Wall of Cabinetry as modern as the desired amenities of today with automatic lights, organizational systems for ties, belts, scarves, built in mirror. For her is a walk-in closet with glass front cabinets to keep fine shoes and handbags dust free, built in ironing board. Sitting room, wonderful place to relax, read, watch tv.

MASTER BATH

Attaches via the Master sitting room

Marble Shower with Steamist & body washers , his & her Pedestal Sinks, Large walk-in Linen Closet with built in drawers.

GUEST BEDROOM, a 2nd MASTER SUITE, or 2 CHILDREN'S BEDROOMS

Located on the 2nd level but on the opposite end of the Primary Master
This Guest bedroom suite or second Master suite has extensive offerings, access to the balcony, a dressing room, a sitting room, and what could either be two bedrooms, with a Jack and Jill Bath centrally located, or a bedroom with an additional living space. Each of the rooms has a fireplace.

The sitting room or what could be a wonderful study for a child overlooks the paddocks and the barn.

The Bathroom has two separate water closets, what could be his and hers, or divided between two children, and two separate rooms for bathing by soaking tub or in the marble shower. The finish work is completely modern.

3rd BEDROOM with DETACHED BATH

This versatile space may be desired to be used as a home gym, or Nursery as it's proximity is close to the Master Suite. This Bedroom does have a private Full Bath but is not Ensuite.

The Private Bath has an extra deep Bathtub, wonderful for soaking soar muscles after a full day of horseback riding. This Bathroom could also servie the Master Suite.

4th BEDROOM

On the second Floor, A young lady's Pink bedroom with private bath. Hardwood Floors, Wood burning Fireplace, 2 large closets, Bath Includes new white subway tile, Pedastal sink, Tub/ Shower combination.

5th BEDROOM

This Pale Green Bedroom is wonderful space for a young person with a secret closet and an additional large clothes closet. Hardwood Floors, Fireplace and A Private Bath with Linen Closet.

SERVANTS WING/ A MODERN FAMILY's FLEX SPACE or MOTHER IN-LAW's SUITE

On the 2nd floor with access from the rear staircase and side entrance of the home, is a wing of rooms that are very versatile, they could be used as an ideal space for children and teenagers or quarters for live in help or in-laws.

The Servants wing with four bedrooms, kitchenette and newly renovated full bath was being used by the children of the house as their own domain outfitting the rooms as a craft room, a TV room, a music room and as guest rooms for their overnight slumber parties

The Kitchenette includes plenty of cabinetry, a sink, refrigerator, and a small stove with 4 burners and an oven.

Notes: _____

OTHER INFORMATION ON PROPERTY/QUESTIONS

School System? _____

Public/Private? _____ () see attached list

What kind of property to left? _____

To the right? _____

What kind of property in front? _____

In the back? _____

What are other amenities in the surrounding area? _____

IS THERE ANYTHING THAT WOULD PROHIBIT CLOSING IN 30 DAYS? Such as acceptance of HOA, Community Associations, Club Members or any other restrictions on the community or home that we need to know.

CLUB INFORMATION

() Country Club Membership Name of club_____

How far away?_____ Joining Fee?_____ Annual Dues?_____

() Golf Course Private or Public ?

Name of Course/Courses_____

Membership Included?_____

Available?_____

Equity Membership?_____

Notes:_____

Any special attractions close by we need to add into brochures?_____

What local publications would be good to advertise in?_____

Client thinks we need to advertise in?_____

Information to be put into ads & brochure (sound bites)_____

Is auction inside or outside?_____

Location?_____

Where will people park for preview?_____

Where will people park for auction day?_____

Do we need tents?_____How many chairs do we need?_____

Does preview person(s) need to stay in hotel?_____

List of places staff could possibly stay:

Name & Phone #:

1. _____Wilcox hotel for Prospective Buyers_____

How close is property to nearest commercial airport?_____

Name:_____

Airport for private planes?_____

DIRECTIONS TO PROPERTY FOR BROCHURE

SIGN LOCATIONS

Banner for front wall of property

Double sided 4x6 sign for near front gates of property

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What's Included?

- () Furniture included () No Furniture Included Furniture Value _____
() Curtains Included () No Curtains Included
() Light fixtures () Chandeliers

OTHER INFORMATION ON PROPERTY/QUESTIONS

School System? _____
Public/Private? _____ () see attached list

What kind of properties are in the area: To the left is ~~The Green Boundary Dinner and Social Club~~. Across the Street is the ~~Fermatta Swim & Tennis Club~~. Behind the Property are lots of Equestrian Ammenities. A polo field, an eventing ring, a racetrack, ~~Hitchcock Woods 2000 acres of Equestrian Trails and other historic and significant homes.~~

We will have auction in formal Living room and use dining room chairs. Registration will be in Karl's office. Rent 8 wooden folding chairs and one podium.

List of places staff could possibly stay:
Name & Phone #:

1. Wilcox hotel for Prospective Buyers

How close is property to nearest commercial airport? There is the Aiken Municipal Airport for private aircraft, commercially the best airport is Augusta, or Columbia, SC.

DIRECTIONS TO PROPERTY FOR BROCHURE

I-20 East Towards Augusta, Take exit 18 towards Aiken, Merge onto South Carolina 19/Edgefield Highway. Continue to follow South Carolina Hwy 19 South. Turn Left at Augusta Aiken Road/Richland Ave. W. Take 3rd Right onto Chesterfield St. S, Slight Left at Whiskey Road. Property is on the left at 836 Whiskey Road.

SIGN LOCATIONS

Banner for front wall of property
4x6 sign for near front gates of property

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EXERCISE ROOM

On the Main level of the home are 2 bedrooms that the current owner used as a home gym with full bath with shower. These rooms are located near the back entrance of the home, near the utility rooms and kitchen.

LAUNDRY ROOM

On the Main level near the back entrance

3 Porcelain Sinks
Miele Washer & Dryer
Kenmore Washer & Dryer
Utility Closet

OFFICE

On the Main Level

Hardwood Floors, Fireplace, Full Bath, Windows overlooking the pool

WINE CELLAR

In the basement, Secured behind a locking door, remains cool without temperature control

Repairs to Interior of House

1. Office Bathroom, paint ceiling, replace grasscloth wallcovering, replace or repaint toilet seat
2. Clean all toilet bowls in the house, from water sitting too long, the bowls become discolored.

What's Included?

☐ Furniture included ☐ No Furniture included Furniture Value _____

☐ Curtains included ☐ No Curtains included

☐ Light fixtures ☐ Chandeliers

Do we need exclusion list? ☐ Yes ☐ No

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GRAND ESTATES

AUCTION COMPANY

704-528-0026 (office)
704-598-7911 (fax)

Property Address
838 Whiskey Road, Aiken, South Carolina 29801

House Phone Numbers
803-642-4427

Seller(s)
Karl & Erin Hirschhorn
home 912-319-2007
cell 808-206-3511 - Erin Cell: 808-206-0698

Rental Company
All Occasion Party Rentals
803-564-5543

Video
Coleman O'Donnell
708-384-1810

Security
Aiken Police Department
803-642-7620
Contact: Beverly

Hotel
Fairfield Inn & Suites Aiken
185 Colony Parkway, Aiken, SC 29803
Telephone: 803-648-7808
Fax: 803-649-8515
Stacy, Jared, Marc, Sandye, Becky, Bill
Flight
n/a

Rental Car
N/A

Staff Numbers

Desiree
704-200-8900 Cell

Lori
704-975-8842 Cell

Susan 970-376-3233
Val 704-226-2478

Christie
704-493-4108 Cell

Mark Biller
704-996-3120 Cell

Nate
480-323-5697
480-282-4470
Scott K
704-807-3058 Cell

Preview Staff
Marc Morris
404-759-9977 Cell

Stacy Kirk
704-968-0555 Cell

Jared
404-597-7786 Cell

Sandye 970-378-0944
Auctioneer
Bill Higgins
704-458-4545 Cell

Broker of Record
Bill Higgins
704-458-4545 Cell

#4190

Rear Pad ENTRY CODE

Oremus v. 4 K&D Corp, et al
Grand Estates Def 0000000000 PM

Directions to 9115 Old Statesville Rd, Charlotte, NC 28269-7625

YAHOO!

Total Time: 6 hours 13 mins, Total Distance: 309.38 mi

	Distance
A 1. Start at 9115 OLD STATESVILLE RD, CHARLOTTE going toward REAMES RD	go 2.73 mi
2. Continue on SUNSET RD(US-21 S)	go 0.7 mi
3. Turn L to take ramp onto I-77 S toward US-21 S/ CHARLOTTE	go 88.23 mi
4. Take exit #18/COLUMBIA (I-20 W)/AUGUSTA onto SC-277 S	go 1.72 mi
5. Take the AUGUSTA/CHARLESTON (I-26) exit onto I-20 W	go 60.73 mi
6. Take exit #22/AIKEN toward AIKEN/U.S.C. AIKEN	go 0.34 mi
7. Turn L on COLUMBIA HWY N(US-1)	go 6.33 mi
8. Continue to follow US-1	go 1.89 mi
9. Turn L on CHESTERFIELD ST S(SC-19 S)	go 0.37 mi
10. Bear L to follow SC-19 S	go 1.45 mi
11. Turn L on COLONY PKY SE	go 489 ft
B 12. Arrive at 185 COLONY PKY, AIKEN, on the L	

Time: 2 hours 37 mins, Distance: 154.59 mi

B 1. Start at 185 COLONY PKY, AIKEN going toward WHISKEY RD	go 489 ft
2. Turn R on WHISKEY RD(SC-19)	go 0.61 mi
C 3. Arrive at 836 WHISKEY RD, AIKEN, on the R	

Time: 2 mins, Distance: 0.7 mi

C 1. Start at 836 WHISKEY RD, AIKEN going toward BERRIE RD SW	go 0.85 mi
2. Continue on CHESTERFIELD ST S(SC-19)	go 0.18 mi
3. Turn R on PARK AVE SE	go 0.1 mi
4. Turn L on YORK ST SE	go 0.15 mi
5. Bear L on YORK ST NE(US-1)	go 1.84 mi
6. Continue to follow US-1	go 6.16 mi

http://maps.yahoo.com/print?mvt=m&ioride=us&tp=1&str=&fcst=&lat=34.44065... - 2/3/2010

Oremus v. 4 K&D Corp, et al

Grand Estates Defendants 060696

7. Bear  to take ramp onto I-20 E toward COLUMBIA	go 50.94 mi
8. Take exit #73B/CHARLOTTE (I-77 N) onto SC-277 N	go 2.27 mi
9. Take the CHARLOTTE  exit onto I-77 N	go 88.11 mi
10. Take exit #16A/SUNSET RD EAST onto SUNSET RD (US-21)	go 0.75 mi
11. Continue on OLD STATESVILLE RD (NC-115 N)	go 2.74 mi
 12. Arrive at 9115 OLD STATESVILLE RD, CHARLOTTE, on the 	

Time: 2 hours 34 mins, Distance: 154.1 mi
 Total Time: 5 hours 13 mins, Total Distance: 309.38 mi

Aiken, SC

Preview Staff - Gared Marc,
Sandy, Stacy

Scott & Auction Day
Bill

3.70 / Thousand
Deed Stamps

Aiken, SC

Preview Staff - Gared name,
Sandy, Stacy

Scott / Auction Day
Bill

3.70 / Thousand

Deed stamps

AIKEN, SC AUCTION 02-09-10	
Leadsource	
Atlanta Journal Constitution Count	2
Auction Count	1
Brochure Count	2
Charlotte Observer Count	3
Chronicle of the Horse Count	4
E-mail - General Count	6
Equine Monthly Magazine Count	1
Forbes Magazine Count	9
Grand Estates Salesperson Count	12
INTERNET (per prospect) Count	7
Networking Count	3
New York Times Magazine Count	1
New York Times Newspaper Count	13
Other (Magazine) Count	2
Other (Newspaper) Count	8
Real Estate Professional Count	2
Realtor.com Count	1
Sidelines Magazine Count	3
Sign Count	43
The Aiken Standard Count	3
TREB - Aiken/N Augusta Count	7
Unknown Count	6
Vokemail Count	28
Wall Street Journal Count	26
Washington Post Count	2
Web Site Count	9
Word of Mouth Count	15
Grand Count	219

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GRAND ESTATES AUCTION COMPANY

January 14, 2010

Karl and Erin Hirschhorn
513 Forest Road
Sea Island, Georgia 31561

Dear Mr. & Mrs. Hirschhorn:

Enclosed herewith you will find a copy of your proposed Property Purchase Package for 836 Whiskey Road, Aiken, South Carolina 29801. Please review it as soon as possible.

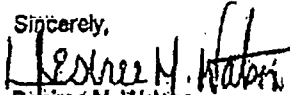
Please keep in mind that color pages and the Table of Contents will be added once it is approved by you. I will also insert the Termite Inspection Report, Revised Floor Plans and Property Description once I receive these items.

Once you have had an opportunity to review the Package, checking for accuracy, please indicate your approval of the same by signing in the space provided below and faxing this letter back to my attention at (704) 598-7911. Any changes you wish to make please handwrite them thereon and fax said changed pages as well.

As soon as I receive a faxed approval from you, I will send your Property Purchase Package to the printer.

If you have any questions, please advise.

Sincerely,


Desiree M. Watson
Auction Coordinator

ACCEPTED AND APPROVED:

Enclosure

BY: _____
Karl Hirschhorn

BY: _____
Erin Hirschhorn

HEADQUARTERS: 9115-F Old Statesville Rd Charlotte, NC 28269 PH: 704/529.0026 FAX: 704/598.7911
ATLANTA OFFICE: Three Piedmont Center Suite 122 Atlanta, GA 30305 PH: 404/846.5191 FAX: 404/846.5192
VAIL OFFICE: P.O. Box 1258 Edwards, CO 81632 PH: 970/926.2338 FAX: 970/926.3059

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0279

GRAND ESTATES

AUCTION COMPANY

January 14, 2010

Karl and Erin Hirschhorn
513 Forest Road
Sea Island, Georgia 31551

Dear Mr. & Mrs. Hirschhorn:

Enclosed herewith you will find a copy of your proposed Property Purchase Package for 836
Whiskey Road, Aiken, South Carolina 29801. Please review it as soon as possible.

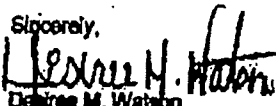
Please keep in mind that color pages and the Table of Contents will be added once it is approved
by you. I will also insert the Termite Inspection Report, Revised Floor Plans and Property
Description once I receive these items.

Once you have had an opportunity to review the Package, checking for accuracy, please
indicate your approval of the same by signing in the space provided below and faxing this
letter back to my attention at (704) 588-7911. Any changes you wish to make please
handwrite them thereon and fax said changed pages as well.

As soon as I receive a faxed approval from you, I will send your Property Purchase Package to
the printer.

If you have any questions, please advise.

Sincerely,


Desiree M. Watson
Auction Coordinator

Enclosure

ACCEPTED AND APPROVED:

BY: 
Karl Hirschhorn

BY: 
Erin Hirschhorn

HEADQUARTERS: 9115-F Old Statesville Rd Charlotte, NC 28269 PH: 704/529.0026 FAX: 704/598.7911
ATLANTA OFFICE: Three Piedmont Center Suite 122 Atlanta, GA 30305 PH: 404/846.5191 FAX: 404/846.5192
VAIL OFFICE: P.O. Box 1258 Edwards, CO 81632 PH: 970/926.2338 FAX: 970/926.3059

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Grand Estates Defendants_000702

0280

GRAND ESTATES AUCTION COMPANY

December 2, 2009

Karl Wesley Hitschhorn and Erin Francis Hirschhorn Revocable Trust
Attention: Karl & Erin Hirschhorn, Trustees
513 Forest Road
Sea Island, Georgia 31561

Dear Karl and Erin:

Congratulations on making a great decision! When you chose to auction with Grand Estates Auction Company, you chose to auction with the premiere Auction Company in America. We are committed to excellence in every way.

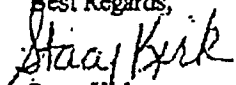
Your property will be marketed with high quality designed brochures distributed widely to a targeted market. 836 Whiskey Road, will be displayed in some of the world's leading newspapers. Signs along major routes will direct prospects to the property where tours will be given preview week by our very experienced on-site staff.

We are as committed to a successful sale as you are, and we intend to honor that commitment by obtaining as high of a market value for your property as we can ascertain.

Our media and design department will start working on your ads. We will forward those to you for proofing, when you receive them please sign and return back to us as quickly as possible as we are on deadline.

Please feel free to call if you have any questions.

Best Regards,


Stacy Kirk
President

HEADQUARTERS: 9115-F Old Statesville Rd Charlotte, NC 28269 PH: 704/529.0026 FAX: 704/598.7911
ATLANTA OFFICE: Three Piedmont Center Suite 122 Atlanta, GA 30305 PH: 404/846.5191 FAX: 404/846.5192
VAIL OFFICE: P.O. Box 1258 Edwards, CO 81632 PH: 970/926.2338 FAX: 970/926.3059

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Grand Estates Defendants_000703

0281

From: Val DeVine <val@grandestatesauction.com>
Sent: Tuesday, February 09, 2010 2:13 PM
To: Stacy Kirk
Cc: Bill Higgins
Subject: Fw:

----- Original Message -----

From: Karl Hirschhorn
To: Stacy Kirk ; val@grandestatesauction.com
Sent: Tuesday, February 09, 2010 2:09 PM
Subject: Fwd:

please go ahead with absolute auction

----- Forwarded message -----

From: Karl Hirschhorn <khirschhorn@gmail.com>
Date: Tue, Feb 9, 2010 at 2:08 PM
Subject: Fwd:
To: val@grandestatesauction.com, Stacy Kirk <Stacy@grandestatesauction.com>

pease go ahead

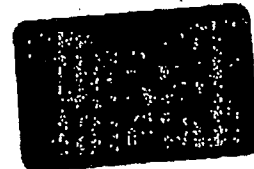
----- Forwarded message -----

From: Karl Hirschhorn <khirschhorn@gmail.com>
Date: Tue, Feb 9, 2010 at 1:53 PM
Subject:
To: Stacy Kirk <Stacy@grandestatesauction.com>, val@grandestates.com

move ahead

--
Karl Hirschhorn
912-434-4760 Stables
912-319-2007 Home
808-206-3511 Cell

--
Karl Hirschhorn
912-434-4760 Stables



Oremus v. 4K&D Corp., et al
Grand Estates Defendants_002229

912-319-2007 Home
808-206-3511 Cell

--
Karl Hirschhorn
912-434-4760 Stables
912-319-2007 Home
808-206-3511 Cell

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.435 / Virus Database: 271.1.1/2676 - Release Date: 02/08/10 19:35:00

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
2010-CP-02-03055

MELISSA J. LACKEY-OREMUS
and JAMES T. OREMUS,

Plaintiffs,

v.

4 K&D CORPORATION, d/b/a
GRAND ESTATES AUCTION COMPANY,
GRAND ESTATES ADVERTISING,
LLC, STACY KIRK, SCOTT KIRK,
VALERIA DEVINE, KARL WESLEY
HIRSCHHORN and ERIN FRANCIS
HIRSCHHORN, Individually and
as Trustees of The Karl
Wesley Hirschhorn and Eric
Francis Hirschhorn Revocable
Trust Dates May 24, 1993,

Defendants,

v.

WILLIAM A. HIGGINS,

Third-Party Defendant.



COPY

DEPOSITION
OF
STEVEN M. JEDAEL

Taken at:
Charles G. Monnett, III & Associates
6842 Morrison Boulevard, Suite 100
Charlotte, North Carolina

On Friday, October 11, 2013

REPORTER: CHRISTINE A. TAYLOR, RPR
Notary Public

LOWRANCE REPORTING SERVICE, INC.

Charlotte, North Carolina 28277

704.543.7995 - 888.292.4528

Transcribe@LowranceReporting.com

www.LowranceReporting.com

A P P E A R I N G

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212 Newberry Street, N.W.
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* * * * *

I N D E X

EXAMINATION BY MR. BRAITHWAITE

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E X H I B I T S

(No exhibits were identified.)

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1 Pursuant to Notice in the aforementioned matter
2 and in accordance with the South Carolina Rules of Civil
3 Procedure, this deposition of STEVEN M. JEDAEL was taken
4 by plaintiffs beginning at 2:30 p.m. on October 11, 2013
5 before CHRISTINE A. TAYLOR, Registered Professional
6 Reporter and Notary Public.

7 STEVEN M. JEDAEL, called as a witness and upon
8 first being duly affirmed, testified as follows:

9 EXAMINATION BY MR. BRAITHWAITE

10 Q. Mr. Jedaël, would you state your full name for the
11 record, please?

12 A. My name is Steven Montgomery Jedaël.

13 Q. All right, sir. And what is your address, please?

14 A. It is 3423 Fincher Boulevard, Charlotte, North
15 Carolina 28269.

16 Q. 28269?

17 A. Correct.

18 Q. And what is your date of birth, please?

19 A. May 10, 1978.

20 Q. All right, sir. And let me ask you, are you employed
21 at the present time?

22 A. I am.

23 Q. Where are you employed?

24 A. I'm employed at Lender Performance Group as a business
25 analyst.

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- 1 Q. All right, sir. And just tell us what that job
2 entails, if you would, please?
- 3 A. It's a banking software company and I help clients use
4 our software essentially.
- 5 Q. And how long have you been employed in that capacity?
- 6 A. A little bit less than a year.
- 7 Q. All right, sir. And would you tell us about your
8 educational background, please?
- 9 A. I have a bachelor's degree double majoring in
10 religious studies and anthropology and I'm currently
11 studying a master's degree in religious studies.
- 12 Q. All right. Any particular focus?
- 13 A. Ancient Israel, Judaism.
- 14 Q. And let me ask you this, were you ever employed by
15 Grand Estates Auction Company?
- 16 A. Yes, I was.
- 17 Q. All right. And how were you employed?
- 18 A. I was their marketing director for about five years.
- 19 Q. Can you tell us the time period that you were the
20 marketing director for Grand Estates?
- 21 A. From September 2004 to the beginning of July 2009.
- 22 Q. All right, sir. And let me ask you when you left
23 Grand Estates Auction Company, what was the
24 circumstances under your leaving?
- 25 A. I wanted to pursue my degree, my current degrees, and

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1 it wasn't going to be an option under the company, so
2 it was time for a change and a move.

3 Q. All right, sir. And tell me from the standpoint of
4 your employment with Grand Estates, do you know
5 Valeria Devine and Stacy Kirk?

6 A. Yes, I do, very well.

7 Q. All right, sir. And how closely would you work with
8 them during your employment at Grand Estates?

9 A. I would talk with them on a daily basis.

10 Q. All right, sir. Let me ask you during the time that
11 you worked with them -- well, at least upon your
12 leaving, did you leave under any unfavorable
13 circumstances or any problems between you and Grand
14 Estates or anybody working there?

15 A. No. They had explained that they wouldn't be able to
16 support my decision to pursue the degree and still
17 work for the company. So I decided to leave and that
18 was just that.

19 Q. But you understood --

20 A. I understood their policy.

21 Q. All right, sir. And let me ask you, have you attended
22 auctions that were conducted by Grand Estates in the
23 five years that you worked for them?

24 A. Occasionally, yes, I did.

25 Q. All right, sir. And let me ask you what was the --

1 can you describe the methodology that Grand Estates
2 would use insofar as marketing to a prospective
3 seller? What would they tell them -- what would Grand
4 Estates tell a prospective seller that they could do
5 for them?

6 A. Well, up until around 2007, we were doing both reserve
7 and absolute auctions.

8 Q. What do you mean by reserve auctions?

9 A. A reserve auction is when there is a minimum bid that
10 must be met in order for the property to sell. An
11 absolute auction is where the property sells no matter
12 what the bid is.

13 Q. To the highest bidder?

14 A. To the highest bidder.

15 Q. And there's no reserve placed on it?

16 A. There's no reserve placed on it.

17 Q. All right. And let me ask you, is that a risky
18 proposition for a seller to sell at an absolute
19 auction?

20 A. It definitely can be.

21 Q. Yes, sir.

22 A. The process with Grand Estates -- because the only
23 auctions that we got sort of enough participants were
24 absolute auctions after that 2007 point. So that was
25 the push to make all auctions absolute auctions. And

1 the policy was to tell the seller that, you know,
2 mechanisms are in place so we're not going to give the
3 property away.
4 Q. All right. And do you know what those mechanisms were
5 that were in place?
6 A. Yes. They were the use of shills within the auction.
7 Q. And what is a shill?
8 A. A shill is essentially a fake bidder.
9 Q. Okay.
10 A. They are not intended to purchase the property based
11 on their bids.
12 Q. Well, let me ask you, this use of shills, was this --
13 who directed or instituted or instigated the use of
14 shills at an auction that Grand Estates conducted?
15 A. It would be the major sales people, Valeria Devine,
16 Stacy Kirk, anyone who was, you know, half of that
17 particular auction.
18 Q. All right, sir. And let me ask you, during the time
19 that you worked at Grand Estates Auction Company, how
20 would you describe Valeria Devine's role?
21 A. She was -- I mean, she's the CEO of the company.
22 That's a known fact.
23 Q. Was she active?
24 A. Absolutely. All -- in fact, all decisions as to
25 whether an auction moved forward or not or whether we

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1 took a deal was pretty much based on Val's decision.
2 It had to meet her approval.

3 Q. I see. And how about Stacy, what was her involvement?

4 A. Right along with Ms. Devine, she was, you know, in
5 charge of auctions. She was one of the lead
6 salespeople. She's the president of the company and
7 she -- I mean as far as all the major decisions on how
8 to move forward with a particular auction, she was
9 right there with Val.

10 Q. I see. And was that the way things were up until the
11 time you left the company?

12 A. Yes, they were.

13 Q. All right, sir. And tell me -- let's talk about these
14 fake bidders. How would you know of the instigation
15 or direction of the use of skills by these lead
16 salespeople, Valeria Devine and Stacy Kirk.

17 A. There are a couple of instances. Usually, they're
18 after the fact, but I was present at one auction and a
19 salesperson of ours, Susan Bird, was bidding on the
20 phone and I knew that because I recognized her voice
21 over the phone while she was making a bid.

22 Q. Well, how did you know that Stacy or Val had anything
23 to do with that?

24 A. That was common -- they're in charge of all the
25 auctions. They know exactly what's going on in all

1 the auctions. There's no reason for Susan Bird to be
2 participating in the auction making bids without Val
3 and Stacy's knowledge.

4 Q. Did you ever hear Val or Stacy or both talking about
5 their use of shills at a particular auction?

6 A. Yes. It served as a safety mechanism, like I said
7 before, to not give the property away.

8 Q. Let's talk about this safety mechanism, if you will.
9 Explain that.

10 A. Well, absolute auctions are, of course, very risky.
11 So you want to tell the seller that essentially, just
12 as a reserve auction, a shill may be used to bid up to
13 a certain price. This is the exact same way we're
14 going to use it in an absolute auction and then once
15 it gets to a satisfactory level, then the shill will,
16 you know, cease bidding, or that's supposedly how it's
17 supposed to work.

18 Q. You described a shill as a fake bidder?

19 A. Correct.

20 Q. Is that fake bidder present at an auction?

21 A. Sometimes they are and sometimes they are over the
22 phone.

23 Q. All right, sir. And so I'm still trying to understand
24 what their function is. What do they do? How do they
25 serve as this safety mechanism?

- 1 A. They serve as a sort of impetus to drive bids higher
2 than they normally would be to encourage a counterbid.
3 That's their essential function within an auction.
4 Q. All right, sir. And what if there are no counterbids?
5 A. Then the property would quote/unquote be sold to that
6 bidder, but in actuality, you know, the seller would
7 be just out of their marketing fees and the seller
8 would just keep the property.
9 Q. The fake bidder, would the fake bidder ever be the
10 highest bidder at an auction?
11 A. Yes, absolutely. That would occur.
12 Q. Okay. If that's a fake bidder, does that fake bidder
13 purchase the property?
14 A. No, they do not. Essentially, the whole transaction
15 is ignored for the most part, like the auction never
16 happened.
17 Q. I see. So what is the net result to the seller?
18 A. The seller, they're able to keep their property and
19 they're just out any marketing fees that they -- you
20 know, was charged to them to advertise that property.
21 Q. I see. You mentioned Susan Bird --
22 A. Uh-huh.
23 Q. -- calling in once. Where was that auction?
24 A. I think it was at a Florida auction.
25 Q. Okay. And was she present or did she call in?

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1 A. She called in. She was based in Colorado. So I'm
2 assuming that's where she called from.

3 Q. And did Grand Estates have a hub or something like
4 that out in Colorado?

5 A. Well, we had -- they have a satellite office.

6 Q. A satellite office?

7 A. Right, in Colorado, Vail to be exact.

8 Q. And Susan Bird, was she employed by Grand Estates?

9 A. She, I guess, can best be defined as an independent
10 contractor or salesperson. I think she had her own
11 real estate business that she worked from, but she was
12 involved in numerous Colorado auctions.

13 Q. You mentioned this use of shills as a safety
14 mechanism. Who would serve as a shill or fake
15 bidders?

16 A. It could be other salespeople, it could be friends, it
17 could be friends and family of the Kirk or Devine
18 family.

19 Q. All right, sir. And did you ever hear any particular
20 conversations between Valeria Devine and/or Stacy Kirk
21 with any Grand Estates Auction's employees or
22 personnel regarding serving as a shill?

23 A. Yes. This one experience, we had hired a marketing
24 assistant, someone to assist me. Her name was Dana
25 Lucas. And Val and Stacy asked her to fly down to one

1 of the auctions and be --
2 Q. Where was that auction?
3 A. I think it was in Florida, I'm not sure, but I think
4 it was a Florida auction. But they asked her to go to
5 that specific auction and participate as a shill for
6 that auction.
7 Q. Did you overhear this conversation?
8 A. I overheard this conversation.
9 Q. This girl worked just for you?
10 A. Correct.
11 Q. She worked under you?
12 A. Correct.
13 Q. As the marketing director?
14 A. Correct.
15 Q. Did she do that?
16 A. No. She sent in her letter of resignation that day.
17 I vividly remember that.
18 Q. Do you know whether she was upset over the fact that
19 she was asked to serve as a shill?
20 A. She was extremely upset and that was the reason why
21 she left that day.
22 Q. All right. And she resigned?
23 A. Correct.
24 Q. All right, sir. Let me ask you from the standpoint of
25 your experience and what you have observed with

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1 'respect to Grand Estates' methodology in terms of
2 selling real estate by auction, have your experience
3 and observations -- have they impacted you in any way
4 insofar as your faith and confidence in the auction
5 method of selling real estate?

6 A. Yes. I would not recommend the auction process to
7 anyone. I don't anymore. Real estate auction
8 process, there's too many ways for, you know, a buyer
9 to be taken advantage of.

10 Q. Have you reached that conclusion on any other basis
11 other than your experience and observations at Grand
12 Estates Auction Company?

13 A. No. This is strictly based on my experience with
14 them.

15 Q. All right, sir. Let me ask you, you said this Florida
16 auction that Susan Bird was on the phone, did she
17 actually bid?

18 A. She actually bid. And there was one point where she
19 was asked if she wanted to place another bid and she
20 said "no," and that was the reason for other people to
21 continue bidding.

22 Q. Why did she say no at that point?

23 A. Because the satisfactory sale price had been met.

24 Q. Had been reached?

25 A. Had been reached.

1 Q. I understand now. Did you recognize her voice on the
2 telephone?

3 A. I did.

4 Q. Was there any question in your mind that that was
5 Susan Bird?

6 A. No question at all.

7 MR. BRAITHWAITE: Okay. I think that's
8 all the questions I have. Thank you very much,
9 Mr. Jedael.

10 MR. WILLIAMS: This is Reece. I have
11 no questions.

12 (Whereupon, the foregoing deposition
13 was concluded at 2:45 p.m. Signature was
14 waived.)

15 * * * * *

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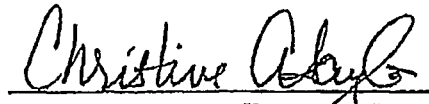
STATE OF NORTH CAROLINA
COUNTY OF UNION

CERTIFICATE OF REPORTER

I, CHRISTINE A. TAYLOR, RPR, Notary Public do hereby certify that STEVEN M. JEDAEL was duly sworn by me prior to the taking of the foregoing deposition, that said deposition was taken and transcribed under my supervision and direction; that the parties were present as stated; and that I am not of counsel for or in the employment of any of the parties to this action, nor am I financially or otherwise interested in the outcome of this action.

I do further certify that the foregoing 14 pages constitute a true and accurate transcript of the testimony, and that the witness waived signature to the testimony.

This the 18th day of October, 2013.


CHRISTINE A. TAYLOR, RPR
Notary Public, #19960530077

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State of South Carolina)

County of Aiken)

Melissa J. Lackey-Oremus)
and James T. Oremus,)

Plaintiffs,)

vs.)

4K&D Corporation d/b/a)
Grand Estates Auction)
Company, Grand Estates)
Advertising, LLC, Stacy)
Kirk, Scott Kirk, Valaria)
Devine, Karl Wesley)
Hirshhorn, Erin Francis)
Hirschhorn, individually,)
and as Trustees of the Karl)
Wesley Hirschhorn and Erin)
Francis Hirschhorn)
Revocable Trust dated May)
24, 1993,)

Defendants.)

4K&D Corporation d/b/a)
Grand Estates Auction)
Company, Grand Estates)
Advertising, LLC,)

Third-Party Plaintiffs,)

vs.)

William A. Higgins,)

Third-Party Defendant.)

2010-CP-02-3055

Deposition

of

Stacy Marie Kirk

September 9, 2013

Time: 11:04 a.m.

Location: Callison

Tighe & Robinson,

LLC, 1812 Lincoln

Street, Second Floor,

Columbia, South

Carolina

Reporter:

Sandra J. Ayers

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Also present: Valaria DeVine
Scott Kirk

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1 Corporation?

2 A I do not know how it is structured. I believe it's
3 a holding company.

4 Q All right. So to answer my question, would that
5 be: "No. You don't know of anyone who has the
6 identities of anyone who has an ownership interest
7 in 4K&D"?

8 A That is correct.

9 Q Okay. Do you have an ownership interest in any
10 business?

11 A No.

12 Q All right. So your testimony here today -- it's my
13 understanding that you are currently the president

14 --

15 A That is correct.

16 Q -- of Grand Estates Auction Company?

17 A Yes.

18 Q How about 4K&D?

19 A I do not have any ownership of that --

20 Q Right.

21 A -- entity.

22 Q I understand. Well, you don't have any ownership
23 interest in -- in Grand Estates Auction Company
24 either; is that right?

25 A That's correct.

1 Q Okay. Well, my question is: Do you -- do you
2 serve as an officer or director in 4K&D?

3 A I do not.

4 Q Okay.

5 A Not that I am aware.

6 Q Do you know who does?

7 A I believe my mother is somehow involved in that
8 entity, and my father was involved with it at one
9 time.

10 Q Do you know if your father currently has an
11 ownership interest in Grand Estates Auction Company
12 or 4K&D?

13 A I -- well, that's a double -- can you repeat it,
14 please?

15 Q Sure. Do you know if your father has an ownership
16 interest in Grand Estates Auction Company and/or
17 4K&D Corporation?

18 A I know that he has no involvement with Grand
19 Estates Auction Company. --

20 Q Uh-huh.

21 A -- nor any ownership. His ownership -- or,
22 management of 4K&D, I do not know what -- what the
23 status is.

24 Q Okay. Do you know if your brother has any
25 ownership interest in either of those entities?

1 You just have one brother, right?

2 A I have --

3 Q Scott?

4 A -- two brothers.

5 Q Oh, okay. I'm talking about Scott.

6 A Correct.

7 Q Uh-huh.

8 A And the question is -- repeat it.

9 Q Do you know whether Scott has any ownership

10 interest --

11 A I do not know.

12 Q -- in either of those entities --

13 A I do not know.

14 Q -- Grand Estates Auction Company or 4K&D?

15 A I do not know.

16 Q Okay. Let's see if we can agree -- let me finish

17 my question and then you can answer, because I

18 don't want us talking over each other, because I'm

19 just as guilty of that as anybody, and I just want

20 to make sure that the court reporter doesn't have a

21 tough time, okay?

22 A (Nods head up and down.)

23 Q I appreciate it. All right. So you are currently

24 president of Grand Estates Auction Company. How

25 long have you held that position?

1 A I mean, 2006.

2 Q Uh-huh. To the present time?

3 A Correct.

4 Q All right. And who did you succeed in that role?

5 A Val DeVine.

6 Q Okay. And describe for me, if you would, your
7 duties as president of Grand Estates Auction
8 Company.

9 A I manage some employees, I participate in sales,
10 and I'm involved in general forecasting.

11 Q All right. And tell me, have you ever participated
12 in a board meeting of Grand Estates Auction Company
13 or 4K&D Corporation?

14 A I have participated in board meetings with Grand
15 Estates.

16 Q And when was the last time?

17 A Winter of 2000 -- let's see. I think 2011.

18 Q Okay. And tell me, who was in attendance at that
19 meeting?

20 A Scott, Val, and myself.

21 Q All right. And what role did Scott play at that
22 meeting?

23 A We had collectively gathered because we needed to
24 determine who was going to be in the Charlotte
25 office.

1 Q Okay.

2 A Scott was leaving for Columbia, South Carolina. I

3 was living in Greensboro, and Val was in Florida.

4 Q Okay.

5 A So we gathered to determine who would be in the

6 Charlotte office.

7 Q And does Scott live in Columbia today?

8 A No.

9 Q He lives in Charlotte today?

10 A Correct.

11 Q When did he move to Charlotte?

12 A He returned to Charlotte in August of 2013.

13 Q Okay. Would there be minutes taken of the last

14 board meeting that you held in the winter of 2011?

15 A I do not know.

16 Q But you were president at the time, correct?

17 A Correct.

18 Q Did you have a secretary?

19 A I don't know.

20 Q Did you have a treasurer?

21 A I don't know.

22 Q Okay. Did you have a CEO?

23 A Yes.

24 Q And who's that?

25 A That's Val DeVine.

1 Report."

2 Q All right. Let me hand you what has previously
3 been marked as Plaintiffs' Exhibit Number 22.

4 MR. BRAITHWAITE: And I apologize, George.
5 Can you look on that with her?

6 Q I think we've got three Business Corporation North
7 Carolina Annual Reports, 2008 through 2010. And
8 they list you as president; is that correct?

9 A Okay.

10 Q Of 4K&D Corporation?

11 A Yes.

12 Q And they list your mother as vice president and
13 Scott as treasurer, correct?

14 A Okay.

15 Q And do you know -- these were provided to us by
16 your counsel. Do you know if that is the current
17 status of 4K&D Corporation, with respect to those
18 principal officer positions?

19 A I do not know.

20 Q Okay. Let me just ask you about 4K&D Corporation.
21 Do you consider yourself to be an employee of 4K&D?

22 A I consider myself to be an employee of Grand
23 Estates Auction Company.

24 Q Okay.

25 A I believe that 4K&D holds Grand Estates Auction

1 Company.

2 Q Okay.

3 MR. BRAITHWAITE: (To the court reporter) Go

4 ahead and mark those. I'm sorry.

5 THE COURT REPORTER: That's okay.

6 Plaintiffs' Exhibit Number 23, 4K&D Corp

7 tax returns for the year 2009.

8 Plaintiffs' Exhibit Number 24, 4K&D Corp

9 tax returns for the year 2010.

10 Plaintiffs' Exhibit Number 25, 4K&D Corp

11 tax returns for the year 2011.

12 Q All right. Let me show you what has been marked as

13 Exhibits -- Plaintiffs' Exhibits 23 through 25, and

14 ask you to look through those, please.

15 A Okay.

16 Q All right. First of all, you'll see that those

17 were filed by an accountant?

18 A Yes.

19 Q Who is that accountant?

20 A Moyer, Smith, and Roller.

21 Q Okay. Are you familiar with them?

22 A Yes.

23 Q All right. And do you work with them, as far as in

24 your capacity as president of --

25 A I do not.

1 Q You do not?

2 A Our company works with them.

3 Q Okay. Who -- when you say "your company," who are
4 you referring to?

5 A Laura, our -- Laura Brown, our controller.

6 Q Let me -- okay. When you say "your company," are
7 you referring to Grand Estates Auction Company?

8 A That is correct.

9 Q Okay. All right. So, in the future, if you say
10 "our company," I can assume that you're referring
11 to Grand Estates; is that correct?

12 A That is correct.

13 Q All right. I just want to make sure that we're
14 understanding each other. With respect to the
15 income to 4K&D, would you know whether the income
16 reported there is -- is income to Grand Estates
17 Auction Company?

18 A I have no idea.

19 Q Okay. All right. Who would have an idea?

20 A Val DeVine.

21 Q Okay. All right. And do you believe that where it
22 -- on the line for "Compensation of Officers," that
23 you would be one of those officers being
24 compensated in those tax returns from 2009 through
25 2011 by 4K&D?

1 A I have no idea.

2 Q All right. Do you get a W-2 every year?

3 A Yes. I do.

4 Q And who issues the W-2? 4K&D or Grand Estates
5 Auction Company?

6 A I would have to look at my tax returns.

7 Q Okay. You don't recall?

8 A I do not recall.

9 Q Okay. Now, let me ask you -- I have been provided
10 some tax returns that you have filed. And it
11 appears that in 2010 you filed jointly with your
12 husband; is that correct?

13 A That is correct.

14 Q All right. But, prior to that time --

15 A -- I was not married.

16 Q -- you were filing as a single person, correct?

17 A That is correct.

18 Q All right. And I'm looking at your adjusted gross
19 income, according to these tax returns. And just
20 tell me if this sounds correct: In 2007, it
21 appears that you had gross income of 332,000 -- I
22 beg your pardon. 2007, 327,000, in round numbers.
23 2008, 424,000. And in 2009, 327,000. Does that
24 sound correct?

25 A I don't know.

1 to -- and "you," I'm referring to Grand Estates --
2 do a greater percentage of auctions with a reserve?
3 A Ask the question again, please.
4 Q Sure. Would it be a fair statement that, in years
5 past, Grand Estates conducted more reserve --
6 auctions with a reserve, okay, than you have done,
7 say, in the last five years?
8 A Yes. That would be a fair statement.
9 Q Okay. When do you suppose that transition took
10 place?
11 A When the real estate market vastly changed in,
12 probably, 2008.
13 Q All right. Tell me what the theory is behind an
14 absolute auction.
15 A An absolute auction, the definition is that the
16 property will sell, regardless of price.
17 Q All right. So there's no reserve; is that correct?
18 A That is correct.
19 Q And it is going to be sold to whoever is the
20 highest bidder; is that correct?
21 A That is correct.
22 Q All right. How many absolute auctions has Grand
23 Estates conducted in which the property has not
24 been sold to the individual who presented the
25 highest bid at the auction?

1 A The only one I can think of is Aiken, South
2 Carolina. If I think about this some more, I might
3 be able to come up with others.

4 Q Well, it would be an unusual occurrence, wouldn't
5 it?

6 A Very unusual.

7 Q All right. And, in fact, it doesn't stand out in
8 your mind that you have more -- you have had this
9 happen more than the one time?

10 A It does not stand out in my mind, no. Because it
11 never happens.

12 Q Okay. Did it happen --

13 A I can think of --

14 Q -- in New York?

15 A I'm sorry. We cut each other off. I was about to
16 say I can think of one instance in Savannah,
17 Georgia --

18 Q Uh-huh.

19 A -- where the seller was a builder and delayed
20 construction of the property. And the buyer -- the
21 real estate market changed and the buyer won the
22 property at absolute option and was reluctant to
23 close because the market changed.

24 Q All right. And so --

25 A I don't recall what happened, though. I -- and I

1 explaining to them the auction process, how the
2 program works, what Grand Estates will provide for
3 them in the way of marketing and advertising, how
4 the auction is conducted on auction day. They
5 would provide me details of their home.

6 Q Okay.

7 A Then, if there was mutual interest, then we would
8 prepare a proposal, present that to them.

9 Q And does that proposal look like this?

10 A Yes.

11 Q Plaintiffs' Exhibit 26?

12 A Yes.

13 Q Okay. All right. And do you explain to them that
14 they would pay you a fee of 60 -- of -- of 10
15 percent of the sale price?

16 A Yes. We do explain that to them, and it --

17 Q Okay.

18 A -- is in writing on that proposal, which, then --
19 the proposal, then, becomes a contract.

20 Q Right. And I see in this proposal, there's a
21 "Summary of Auction Expenses"; is that correct?

22 A Yes.

23 Q And there's "Media Expenses," in this case, in
24 excess of \$52,000.

25 A Okay.

1 Q Uh-huh.

2 A -- from the auction prior to the commencement of

3 the auction, the seller would pay a withdrawal fee

4 of \$50,000.

5 Q Okay. So these expenses that are -- are contained

6 in here -- this \$92,000 -- obviously, he wouldn't

7 be getting any of that back; is that correct?

8 A That is correct.

9 Q All right. And he'd also pay you-all an -- an

10 additional \$50,000?

11 A That's correct.

12 Q All right. Okay. This property ultimately sold

13 for \$2.5 million; is that correct?

14 A I believe that's the number.

15 Q Okay. And would your fee be 10 percent of that?

16 A I believe so, but I'd be more comfortable checking.

17 Q Okay.

18 A Let me start at the beginning. I can go to "Escrow

19 Instructions."

20 Yes.

21 Q All right. And let me ask you this --

22 MR. BRAITHWAITE: (To the court reporter) Let

23 me get -- I think that's already been marked,

24 actually. (To the deponent) Let me just see

25 if I can find that document. I'm taking

1 something out of my anticipated order here.

2 Bear with me for a second.

3 Q Well, let me just ask you: I -- I'm looking at --
4 and I'll let you look at it and we'll come back to
5 it later on -- but I'm looking at the real estate
6 contract between the Hirschhorns and Horner Davis.
7 And I see that there is, what is listed on here, as
8 a high bid price, of 2,325,581.40, plus a 7.5
9 percent buyer's premium of \$174,000 and some
10 change. Would your fee be derived from the 2.5
11 million number?

12 A Yes.

13 Q Is that correct?

14 A (Nods head up and down.)

15 Q All right. All right. And, in coming up with
16 these numbers of 2.325 and 174,000, would you agree
17 with me that the way that was arrived was by Horner
18 Davis making an offer of 2.5 million, from which
19 you backed out the 7.5 percent?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q To come up with the buyer's premium?

24 A That -- that's exactly what was done here.

25 Q Okay.

1 outcry bids.

2 Q All right. So does the auctioneer announce the
3 opening bids that we see on Plaintiffs' Exhibit 14?

4 A Yes.

5 Q Okay. And let me ask you: Do you recall going and
6 making announcement at the beginning that there was
7 a bidder who did not have his paperwork in order
8 and you were going to go ahead and start without
9 him?

10 A I don't remember.

11 Q You don't remember making that statement?

12 A No.

13 Q Okay. Do you deny making that statement?

14 A No.

15 Q Okay.

16 A Because that was truthful that we were seeking
17 paperwork from Marc Blazar.

18 Q Okay. And tell me what happened during the course
19 of the bidding. Let -- let me throw something else
20 out there.

21 Did you tell Marc Wolcott he had to leave?

22 A Randy Wolcott?

23 Q Yes. I'm sorry. Thank you.

24 Randy Wolcott that he had to leave?

25 A Yes. I did.

1 Q Okay. And what did he say when you told him he had
2 to leave?

3 A He was very angry.

4 Q What did he say?

5 A Specifically, the words he used, I can't remember.

6 Q Okay. Did he threaten you in any way?

7 A No.

8 Q Okay.

9 A But he was very angry.

10 Q Okay. And why did you tell him he had to leave?

11 A Because we could not locate his client -- his
12 bidder --

13 Q Uh-huh.

14 A -- Marc Blazar's terms and conditions and bidder's
15 statement.

16 Q Okay. And these were things that you would have to
17 have?

18 A In order for a person to participate, yes.

19 Q All right. And, now, that individual who is
20 serving as agent, he's the one doing the actual
21 bidding for Marc Blazar, correct?

22 A Correct.

23 Q Would've been -- would've been, had he -- had you
24 had the paperwork for Randy -- Randy Wolcott
25 would've been doing that for Marc Blazar?

1 Q Okay. Nothing in particular for today?

2 A I mean, I'm familiar with most of the paperwork, I
3 believe.

4 Q Okay. All right. And so tell me what happened
5 during the bidding process after it -- after you
6 had, I guess, ejected Randy Wolcott and started the
7 bidding, how did it go?

8 A The auctioneer announced the written opening bids
9 and opened the bidding to the room and received
10 subsequent bids, with the last and final bid being
11 from the Oremuses, which was the winning bid.

12 Q All right. And that was for \$1,875,000; is that
13 correct?

14 A Yes.

15 Plaintiffs' Exhibit Number 6, "Buyer
16 Broker Registration Form Buyer Broker
17 Guidelines."

18 Q All right. Let me show you what's been marked as
19 Plaintiffs' Exhibit 6.

20 A Okay.

21 Q Do you recognize that?

22 A Yes.

23 Q Okay. And when did Grand Estates receive that?

24 A According to the fax time line, it was received by
25 Grand Estates on February 8th at 3:26 p.m.

1 Q Okay.

2 A Wait, wait, wait. Hold on. No. I've got my math

3 wrong. That's 5:26 p.m., I believe. It's 1726

4 military time, so subtract 12; that's 5:26,

5 correct?

6 Q Okay. But this -- this looks like it was first

7 faxed out on January the 25th; is that correct?

8 A Yes.

9 Q All right. And that's coming from Blazing

10 Enterprises?

11 A Yes.

12 Q And do you know Blazing Enterprises to be Marc

13 Blazar?

14 A Yes. I believe that it is.

15 Q Okay.

16 A So what happened, it appears, is that on February

17 25th, Marc Blazar faxed it to --

18 Q On January 25th?

19 A I mean -- excuse me -- January 25th --

20 Q Uh-huh.

21 A -- Marc Blazar faxed it. And then what happened is

22 the Charlotte office faxed it to Aiken at 5:26 on

23 the 8th.

24 Q All right. So that would've been the day before

25 the auction --

1 A Yes.

2 Q -- is that correct?

3 A Yes.

4 Plaintiffs' Exhibit Number 7, Wire
5 transfer acknowledgement sheet.

6 Q All right. And let me show you what's been marked
7 as Plaintiffs' 7.

8 A Okay.

9 Q All right. And do you recognize that as being an
10 indication that Marc Blazar had paid money into
11 Grand Estates' lawyer's trust account?

12 A Yes.

13 Q Okay. And what's the -- what's the date stamp on
14 that fax?

15 A It was faxed on February 9th from Blazing
16 Enterprises at 12:53.

17 Q All right. So that would've been faxed to Aiken;
18 is that right?

19 A I don't know where this was faxed to.

20 Q Okay.

21 A I just know where it came from.

22 Q All right. But it -- when was it sent out from
23 Blazing Enterprises?

24 A On February 9th at 12:53.

25 Q All right. And there's another fax on there from

1 Q All right. And let me just ask you, because at
2 that point, it was -- it was at 1.875, correct?
3 A Uh-huh.
4 Q Had this transaction gone through, you would've
5 taken your fee off of that amount plus the 7.5
6 percent buyer's premium, correct?
7 A Correct.
8 Q All right. And, given that the sale was not made
9 to the -- the Oremuses and it sold later to the
10 Horners, it sold, essentially, for -- in round
11 numbers, another \$500,000, correct --
12 A Correct.
13 Q -- including the buyer's premium that you took your
14 fee from?
15 A Correct.
16 Q So would it be fair to say that y'all made another
17 \$50,000 on the transaction?
18 A Yes.
19 Q Okay. When it sold, you said, "Great"; that was
20 your reaction when it hammered down. Did you tell
21 Bill Higgins that the owner was going to be pissed?
22 A I saw that in his deposition. I don't remember
23 saying that.
24 Q Do you deny saying it?
25 A I wouldn't deny it.

1 A They wanted to take some time, and they went
2 outside to talk.

3 Q Okay. All right. So they went outside to talk.
4 All right. Did you see Jim Oremus smoking a
5 cigarette?

6 A I believe so. I mean, I -- I --

7 Q All right.

8 A -- I think -- I think that he smokes and that was
9 the purpose of him going outside.

10 Q Okay. And did you hear them say, "We want to go
11 outside to talk," or did you hear them say, "I want
12 to go outside to smoke a cigarette"?

13 A I don't remember.

14 Q All right. And what did you do at that point when
15 they went outside?

16 A I went to get the purchase contracts, and I went
17 outside --

18 Q Uh-huh.

19 A -- to another section of the house --

20 Q Uh-huh.

21 A -- side yard. They were in the front yard.

22 Q Right.

23 A And I called our CEO to tell her the results of the
24 auction.

25 Q Your mother?

1 A Yes.

2 Q Okay. And what happened during that conversation?

3 How did that go?

4 A She said, "Okay. I will call the seller and let

5 him know," and that was -- that was that part of

6 the conversation.

7 Q That was the extent of it?

8 A Well, then we were interrupted.

9 Q Who was interrupted?

10 A I was interrupted when I was on the phone with Val

11 --

12 Q Okay.

13 A -- by Jane Page Thompness -- Thompson --

14 Q Okay.

15 A -- Jane Page Thompson.

16 Q All right. Tell me about what happened then.

17 A She wanted to know what happened.

18 Q Well, she was there --

19 A I --

20 Q -- wasn't she?

21 A Yes.

22 Q Okay.

23 A And I told her, and she said, "Okay." And then she

24 left.

25 Q So you --

1 a telephone call into the Charlotte office. The
2 receptionist takes down the information and then
3 distribute its -- distributes it to an appropriate
4 salesperson.

5 Q Okay. And this -- in this instance, that would've
6 been Jared?

7 A Yes.

8 Q And this prospect was Jane Page Thompson, right?

9 A Correct.

10 Q And she said that she was a broker and had shown
11 the property; is that right?

12 A I believe that's what it reads.

13 Q Okay. And she said, "During the registration, she
14 asked if she could transfer the contract." Who'd
15 she want to transfer it to?

16 A I don't know.

17 Q Okay. "I told her and Bill Higgins 'no' but call
18 Val. She told Val that she would bid for herself
19 and then for the LLC. The LLC was made up of Randy
20 Updyke and others"; is that right?

21 A Okay.

22 Q Now, Randy Updyke was represented by Courtney
23 Conger; is that correct?

24 A Yes.

25 Q Okay. So he -- he already had an agent, didn't he?

1 Q Okay. Tell me what you can agree with. I mean,
2 what -- well, let's -- let's go to this -- well,
3 first of all, let -- let me show you some documents
4 that I received from Richard Koch.

5 A Okay.

6 Plaintiffs' Exhibit Number 9, Fax cover
7 sheet, including a letter to Robin A.
8 Braithwaite and Robert L. Buchanan from
9 Richard M. Koch.

10 Q Now, he'd be your lawyer, right?

11 A At the time --

12 Q At the time?

13 A -- yes.

14 Plaintiffs' Exhibit Number 10, Fax cover
15 sheet, including "Final Terms and
16 Conditions of Sale."

17 Q Okay. And let me show you -- let's see what we've
18 got this marked as -- Plaintiffs' Exhibit 10.

19 A That's not -- oh. Okay.

20 Q Do you recognize that?

21 A Yes.

22 Q And what are those documents?

23 A These are the terms and conditions of the sale.

24 Q Okay.

25 A And the bidder statement.

1 Q Okay. First of all, are they initialed by someone?

2 A Yes.

3 Q Okay. Who are the initialed by?

4 A Marc Blazar.

5 Q All right. Are they supposed to be initialed by

6 the seller?

7 A No. Not unless this individual becomes the winning

8 bidder.

9 Q Okay. All right. Now I'll take it. And this got

10 sent out from Blazing Enterprises at 1403, correct?

11 A Yes.

12 Q All right. And this would've been paperwork that

13 would've had to have been submitted, correct?

14 A To participate, yes.

15 Q To participate. And this shows coming out of

16 Blazing Enterprises at 1403, doesn't it?

17 A Yes. It does.

18 Q That's 2:03, correct?

19 A Yes.

20 Q All right. And it shows 2:16 -- 1416 is the time

21 that it got sent down.

22 A Uh-huh.

23 Q Would you agree that the auction was already over

24 at that point?

25 A No. I would not.

1 Q What time did the auction conclude?

2 A I don't know.

3 Q Would you agree that the auction did not last 15

4 minutes?

5 A I would not.

6 Q Okay. How long do you think it lasted?

7 A I don't know.

8 Q Okay. No idea?

9 A No. Due to my 15 years of historical experience, I

10 can guess how long it lasted.

11 Q How long do you think it lasted?

12 A They typically last about 25 to 35 minutes.

13 Q Okay.

14 A Including the announcements.

15 Q All right. So you would disagree with anybody who

16 said that this did not last longer than 15/20

17 minutes?

18 A I would disagree with that statement.

19 Q Okay. And that's just based upon your history?

20 A That's --

21 Q Your -- your historical experience?

22 A -- exclusively based upon my historical experience.

23 Q Okay. And if we had the tape, we'd be able to look

24 at that, right?

25 A Yes. Yes.

1 Q All right. So you would agree that at the time
2 that the auction started, he did not have his
3 paperwork in, did he?

4 A I --

5 Q Marc Blazar?

6 A According to what we had in our possession in
7 Aiken, South Carolina, we did not have his
8 paperwork.

9 Q You would agree that at 2:03, he sent his paperwork
10 from Florida by fax to Charlotte; is that correct?

11 A That is correct.

12 Q Okay. And is it your contention that this made him
13 a valid bidder?

14 A Yes. That makes him a valid bidder.

15 Q Why?

16 A Because he complied with the terms and conditions
17 of the sale and had met all of the criteria.

18 Q He doesn't have to do that before the auction
19 starts?

20 A He does need to do that prior to the auction
21 starting.

22 Q Okay. And so your contention is that that happened
23 before the auction started?

24 A He told us repeatedly that he had sent it in. He
25 had wire transferred. He also went through great

1 lengths to get his opening bid form in on time.

2 Q Well, do you have any other copies of this document
3 right here that is marked as Plaintiffs' Exhibit
4 Number 10?

5 A We do not.

6 Q Okay. So to your knowledge, he never sent anything
7 in prior to 2:03, did he?

8 A That is correct. That is the disagreement between
9 Marc Blazar, Randy Wolcott, and Grand Estates.

10 Q Have they ever produced something demonstrating
11 that they sent something in before 2:03?

12 A We have not requested it.

13 Q You -- in three years that this lawsuit's been
14 going on, you haven't requested that?

15 A I haven't spoken to Marc Blazar or Randy Wolcott.
16 No.

17 Plaintiffs' Exhibit Number 5, "Exhibit
18 "D" Final Terms and Conditions of Sale."

19 Q Okay. All right. And let me ask you this: Let me
20 hand you what's been marked as Plaintiffs' Exhibit
21 Number 5. Do you recognize that document? That's
22 essential -- essentially the same thing --

23 A Is it the same as all of them?

24 Q Yes, ma'am. The final terms and conditions.
25 Exhibit D.

1 A Okay. Then --

2 Q All right. But that -- that's not filled out by

3 anybody, but it's just in bigger letters, and it's

4 a better copy than what we're looking at --

5 A Oh, yes.

6 Q -- here.

7 A It's a replication of that.

8 Q Okay.

9 A I would agree.

10 Q All right. And Plaintiffs' Exhibit Number 5 which

11 contains the same information as Number 10,

12 correct?

13 A Do I need to look at these, side by side, to -- I

14 mean, I believe --

15 Q Sure.

16 A -- that they're -- I believe that they're exactly

17 the same, but I haven't looked at them side by

18 side.

19 Q All right. Let me show you that one, and let me

20 show you that one. Take a look at --

21 A Okay. I believe that these are exactly the same.

22 Q All right. Now then, if I may.

23 A Yes. These are both --

24 Q Take a look --

25 A -- final terms --

1 Q Take a look at the bottom of Page Number 3 of 6.

2 A Okay.

3 Q Okay. Now, check -- go ahead and compare that with
4 Plaintiffs' Exhibit 10. All right? And that's
5 captioned, "Licensed Broker -- Licensed Buyer
6 Broker Participation," correct?

7 A Yes.

8 Q All right. And flip the page if you would. All
9 right. If you would . . .

10 MR. BRAITHWAITE: Let's see what this -- let's
11 go off the record for just a minute, please.

12 (Off the record from 1:54 p.m. until
13 1:55 p.m.)

14 THE EXAMINATION BY MR. BRAITHWAITE CONTINUES.

15 Q Let me show you -- I -- I was getting you to look
16 at the wrong page, and I apologize. But looking at
17 Page 2 of these documents -- 2 of 6 -- and you've
18 indicated those are initialed by Marc Blazar; is
19 that right?

20 A Yes.

21 Q Read what it says after "any person."

22 A "Any person bidding on behalf of another person or
23 entity must have valid, legally enforceable,
24 unexpired, recordable Power of Attorney approved by
25 the Seller prior to the auction."

1 Q Did you have that?

2 A It is not necessary.

3 Q Oh. And why is it not necessary?

4 A Because if Randy Wolcott had Marc Blazar on the

5 telephone during the auction and we verified the

6 bid with Marc Blazar, then we would have a bona

7 fide offer to purchase and then we would execute

8 the contracts immediately with Randy -- with Marc

9 Blazar.

10 Q Well, let me ask you this, ma'am: That's not what

11 it says here. That Marc Blazar agreed to the terms

12 of this; is that correct? He agreed to these terms

13 by initialing on these documents, that we've

14 already looked at, that he would abide by these

15 terms?

16 A Uh-huh.

17 Q Is that right?

18 A Correct.

19 Q And, in fact, he did not have a valid recordable

20 power of attorney filed with you, did he?

21 A I don't know.

22 Plaintiffs' Exhibit Number 13, "Specific

23 Power of Attorney."

24 Q Okay. Well, let me ask you to take a look at

25 Plaintiffs' Exhibit 13.

1 A Okay.

2 Q And do you see where it says "Power of Attorney"?

3 That's a form that you provide for the execution by

4 the bidder of, you know -- to appoint his agent,

5 correct?

6 A Yes.

7 Q All right. And you see there that it was sent at

8 what time from Blazing Enterprises?

9 A At 2:07.

10 Q Okay. And that's on the day of the auction,

11 correct?

12 A Correct.

13 Q All right. And it's not notarized or witnessed

14 anywhere, is it?

15 A No. But it's --

16 Q Okay.

17 A -- not a problem.

18 Q All right. It's not a problem because you're

19 saying that this is another indication of where you

20 don't have to play by the rules?

21 A No.

22 MR. TAYLOR: Object to the form of the

23 question.

24 Q That is a rule that you've told Mr. Blazar about,

25 isn't it?

1 MR. TAYLOR: (To the deponent) You have to --

2 THE DEPONENT: (To Mr. Taylor) How do you
3 want --

4 MR. TAYLOR: You have to --

5 THE DEPONENT: -- me to handle this?

6 MR. TAYLOR: You -- you have to answer his
7 question.

8 A Okay. Repeat the question, please.

9 Plaintiffs' Exhibit Number 12, "Auction
10 Registration Form," including "Final
11 Terms and Conditions of Sale."

12 Q That is a rule here -- a requirement -- that you've
13 told Mr. Blazar and he's initialed as far as --

14 A He is agreeing to those terms and conditions --

15 Q Yes, ma'am.

16 A -- correct.

17 Q -- final terms and conditions of sale.

18 A Okay.

19 Q All right. So you're saying that this is something
20 that -- you can relieve him of this obligation, is
21 what you're telling me?

22 A There are other ways to participate. There's other
23 information that the bidders were provided in that
24 property purchase package.

25 Q And you have information that says that he does not

1 have to comply with this particular requirement?

2 A That's what -- what is in the package of due
3 diligence that was provided to all the prospective
4 buyers, correct.

5 Q Okay. And what does it say?

6 A It states that a -- a phone bidding -- phone
7 bidding can take place.

8 Q Okay.

9 A And we witness the verbal bid given on the
10 telephone by three different parties and then that
11 prospective buyer -- or what would be the winning
12 bidder at the time would then be required to
13 execute the contract.

14 Q Well, let's go back to these phone-bidding
15 procedures, because I asked you before and I showed
16 you some phone-bidding procedures and you indicated
17 that nobody was participating by virtue of phone-
18 bidding procedures. Didn't you tell me that?

19 A Yes. I told you exactly that.

20 Q Okay.

21 A But that -- had we had all of the paperwork prior
22 to the auction beginning, Randy Wolcott and Marc
23 Blazar would have been able to implement that type
24 of participation. You asked me if there was any
25 phone bidders at this specific auction. There were

1 not.

2 MR. BRAITHWAITE: (To the court reporter) All
3 right. You got a stapler?

4 A That doesn't mean that there weren't --

5 MR. BRAITHWAITE: (To the court reporter)
6 That's right. It's marked.

7 A -- possibly going to be that type --

8 Plaintiffs' Exhibit Number 3, "Phone-
9 Bidding Procedures."

10 Q Let me take you --

11 A -- of participation.

12 Q -- to Plaintiffs' Exhibit Number 3.

13 A Yes?

14 Q And that is the phone-bidding requirements on
15 there; is that correct?

16 A Yes.

17 Q All right. And you've indicated previously that
18 you had nobody that was participating by this set
19 of particular rules, correct?

20 A That is correct.

21 Q All right.

22 A Randy Wolcott nor Marc Blazar were participants in
23 this auction.

24 Q Okay. All right. But there are things that are
25 prerequisites to be a phone bidder, correct?

1 A Yes.

2 Q All right. And Mr. Blazar had not complied with
3 those prerequisites, had he?

4 A He had not complied with the general compliance
5 measures to participate in the auction, as far as
6 we knew, in Aiken, South Carolina.

7 Q Yes, ma'am. My -- I said -- what -- my question
8 was very specific. He did not qualify as a phone
9 bidder; is that correct?

10 A I cannot say yes to that question nor no. I don't
11 know what his intentions were.

12 Q All right. But in order to have done that it --
13 the step one, you have to submit a certified check
14 no later than 2 p.m. on February the 8th of 2010,
15 correct?

16 A Incorrect.

17 Q Okay.

18 A You can wire transfer.

19 Q All right.

20 A That's what the first page is that you're looking
21 at.

22 Q Well, I understand but as far as that -- it has to
23 be received no later than 2 p.m. on February the
24 8th, correct? The wire transfer?

25 A It must be received prior to us starting the

1 auction. We must have funds in hand prior to
2 allowing a bidder to participate in the auction.

3 Q Okay. Well, tell me where it says that he doesn't
4 have to have it there by 2 p.m. on February the 8th
5 on these instructions that are sent to prospective
6 bidders.

7 A It doesn't say that.

8 Q Okay.

9 A We have to have funds in hand prior to the auction
10 beginning in order to allow a bidder to
11 participate.

12 Q Okay. And let me ask you something: But that's,
13 again, you are relieving somebody of an obligation
14 that you have imposed upon them to comply with the
15 phone-bidding requirements; is that right?

16 A That would be correct.

17 Q Okay.

18 A The terms and conditions are put into place for the
19 benefit of the seller.

20 Q Okay. Does the -- do -- do you tell the
21 prospective bidders that for any one or more
22 particular competitors that they might have that
23 you can waive any of these requirements that were
24 imposed upon them? Do you tell other bidders that?

25 MR. TAYLOR: Object to the form.

1 Q You can answer the question.

2 THE DEPONENT: (To Mr. Taylor) What does that
3 mean?

4 MR. TAYLOR: You still have to answer his
5 question. I'm just -- I'm objecting to the
6 way he's --

7 THE DEPONENT: Oh.

8 MR. TAYLOR: -- phrased the question and --

9 THE DEPONENT: Okay.

10 MR. TAYLOR: -- the form of the question.

11 THE DEPONENT: Okay.

12 Q Do you tell other prospective bidders that you have
13 the authority to waive any of these requirements
14 that you have told them are requirements for them
15 to bid or to be a phone bidder --

16 A No. We do not --

17 Q -- at your discretion?

18 A No. We do not.

19 Q Okay. I want to make sure that I understand why
20 you believe that Marc Blazar was a qualified
21 bidder. Is it because of the fact that by 2:03 he
22 sent this? Is that your basis for saying that?

23 A No.

24 Q Okay. What's your basis for saying that?

25 A The real estate agent that represented Marc Blazar,

1 Randy Wolcott --

2 Q Right.

3 A -- told us repeatedly that he had submitted all of
4 the paperwork. We were only in receipt of some of
5 the paperwork. We were in receipt of funds which
6 we had verified with Richard Koch that we had the
7 money. And we were receipt of the opening bid
8 statement. We were not yet in receipt of the terms
9 and conditions or the bidders statement. Without
10 --

11 Q And you weren't in -- in possession of the power of
12 attorney either, were you?

13 A It was not necessary to have that, because Marc
14 Blazar could have been on the telephone with Randy
15 Wolcott and then we could have confirmed the bid.

16 Q Why did he send it at 2:09 if -- if it wasn't
17 required?

18 A Marc Blazar -- excuse me. Randy Wolcott was
19 telling us repeatedly that he had sent in the
20 paperwork prior to the physical start of auction.

21 Q But you didn't have any documentation to that
22 effect, did you?

23 A No. We did not.

24 Q And you don't have that today, do you?

25 A No. We do not.

1 Q Okay. So you're taking his word for it? Is that -
2 - is that what I'm understanding?

3 A We are giving him the benefit of the doubt.

4 Q Ah. Okay. All right. Again, can you tell me why,
5 or do you know why, Marc Blazar sent this document
6 in -- I beg your pardon -- at 2:07 where he
7 attempted to comply with a power of attorney?

8 A Because he wanted to participate in the auction.

9 Q Uh-huh. Okay. He at least was under the
10 impression that he had to do that, wasn't he? That
11 he had to send this in?

12 A Yes. We continued to ask him, "Send in your
13 paperwork and we can allow you to participate."

14 Q Okay. All right. So let me make sure that I
15 understand one more time and I'm --

16 A Okay.

17 Q Because this is a -- I'm trying to understand the
18 basis by which you claim that Marc Blazar was a
19 qualified bidder in this auction. And I believe
20 that I understood you to say that you believe it --
21 that he -- him to have been one because you want to
22 give him the benefit of the doubt that he had
23 previously sent this paperwork in, correct?

24 MR. TAYLOR: Object to the form.

25 Q You can answer it.

1 A Okay. I'm sorry. What -- this always throws me
2 off. Can you repeat the question? I apologize.

3 Q Certainly. It's my understanding that your basis
4 for the opinion that Marc Blazar was a qualified
5 bidder was because you gave him the benefit of the
6 doubt when Randy Wolcott told you that they had
7 sent the paperwork in previously?

8 A I think what you're trying to --

9 Q Ma'am --

10 A -- ask me to confirm, I cannot confirm with you.
11 That he --

12 Q I want to know the basis for your opinion. I'm not
13 looking for the facts right now. I just want to
14 know if the basis for your opinion is your -- as
15 you testified previously, giving Marc -- Marc
16 Blazar and/or Randy Wolcott the benefit of the
17 doubt when they said that they had turned in this
18 paperwork previously?

19 MR. TAYLOR: Object to the form.

20 Q Go ahead and answer.

21 A I was, yes, giving them the benefit of the doubt.

22 Q And is there any other basis for your finding or
23 determining that this gentleman was a qualified
24 bidder?

25 A He had wire transferred \$50,000. It seemed to me

1 he was very serious about the participation.

2 Q But that -- wiring the money in and of itself
3 doesn't make you a qualified bidder, does it?

4 A That's correct. But if that is usually the lynch
5 pin that, sort of, qualifies the real buyers from
6 the "I'm just playing a game."

7 Q I understand that, but what I'm saying is: The
8 only basis that you have is because he'd sent the
9 \$50,000 and because he'd told you that he'd sent
10 this other paperwork in, correct?

11 A That's correct.

12 Q All right. That's fair enough.

13 A Well, let me make sure I'm -- I don't want to say
14 something I'm not -- I'm -- I'm not agreeing with.
15 Can I have a moment just to think?

16 Okay. I -- I think I'm okay to go on.

17 Q All right. Now --

18 MR. TAYLOR: Rob, are we at a good break -- a
19 point that we could take a break?

20 MR. BRAITHWAITE: Yeah.

21 (Off the record from 2:09 p.m. until
22 2:41 p.m.)

23 THE EXAMINATION BY MR. BRAITHWAITE CONTINUES.

24 MR. BRAITHWAITE: Let the record reflect that
25 we took a break for lunch and we are resuming

1 the deposition of Stacy Kirk.

2 Plaintiffs' Exhibit Number 11, Cover
3 sheet, including "Buyer Broker
4 Registration Form Buyer Broker
5 Guidelines."

6 Q Ms. Kirk, let me ask you to take a look at what's
7 been marked as Plaintiffs' Exhibit 11 and see if
8 you recognize that.

9 A Okay.

10 Q And what is that?

11 A This is -- it's the Buyer Broker Registration Form.

12 Q Uh-huh.

13 A And it's the instructions about where to return his
14 wire transfer to, should he not be the winning
15 bidder.

16 Q And that was sent out when from Blazar Enterprises?
17 Do you see a --

18 A It was sent on January 25th.

19 Q All right. And does it appear that that got sent
20 to Aiken on the morning of a -- the February 9th?

21 A Yes.

22 Q All right. And what time did that get sent?

23 A Twelve forty-two.

24 Q Okay. Now, you've indicated that -- you believe
25 that it was Marc Morris who told you something

1 about additional paperwork having come in from Marc
2 Blazar?

3 A I don't know who it was that came outside to give
4 me that paperwork. It -- I don't remember.

5 Q Who -- who was manning the fax machine?

6 A There was no one manning the fax machine.

7 Q No one manning it. Okay. All right. But either
8 Marc Blazar or who?

9 A Marc Morris, I think is what you meant to say.

10 Q I mean Marc Morris or perhaps Becky Yonker?

11 A Yes. For some reason, it's in my memory that it
12 was one of those two persons.

13 Q All right. So what -- they came and said, "We've
14 got some paperwork." Is that correct?

15 A Yes.

16 Q Did you go look at it?

17 A They brought it to me.

18 Q Okay. And what was it that you received? Was it
19 this, that we've already looked at, that was
20 previously marked as Plaintiffs' Exhibit 10?

21 A Yes.

22 Q All right. And how about the other form that we've
23 already looked at that is Plaintiffs' Exhibit
24 Number 13? Did they bring that to you, also?

25 A I don't remember.

1 Q Okay. All right. Did you ever get a call from
2 Brad Boni, another lawyer in Aiken?

3 A I don't remember.

4 Plaintiffs' Exhibit Number 18, Fax cover
5 sheet, including statements of release
6 from James and Melissa Oremus.

7 Q Okay. Let me hand you what's been marked as
8 Plaintiffs' Exhibit Number 18.

9 A Okay.

10 Q Have you ever seen that document?

11 A I think -- oh, okay. Now I see the difference.

12 Okay. Yes. Have I ever seen this document? Yes.

13 Q Yes, ma'am. Okay. And do you understand that Brad
14 Boni was a lawyer calling on behalf of Jim Oremus,
15 wanting copies of those releases?

16 A Yes.

17 Q Okay. And what's the date on that?

18 A February 15th.

19 Q Okay. So we're talking some six days after the
20 auction itself; is that right?

21 A Yes.

22 Q All right. So did -- again, did Brad Boni ever
23 call you or, to your knowledge, call anyone at
24 Grand Estates between the time of the auction and
25 that being sent to him? And that -- by "that," I

1 mean Plaintiffs' 18.

2 A Can we call a break for a moment? Is that okay?

3 And I will come back to your question.

4 Q Sure. But you do know that it's not to discuss

5 this, okay?

6 A Okay.

7 Q All right.

8 A All right. Let me -- I don't . . .

9 Q I mean if --

10 A I would not deny this paperwork, but this is the

11 first time I've seen this since February 15th,

12 2010.

13 Q Okay. But you -- do you -- I guess the question

14 that I would have is: Were you aware of the fact

15 that a lawyer, on behalf of the Oremuses, had

16 contacted Grand Estates?

17 A A lawyer, yes.

18 Q All right. And that --

19 A A lawyer definitely contacted us on the behalf of

20 the Oremuses.

21 Q Okay. And that would have been Brad Boni, to your

22 knowledge? You don't know?

23 A I don't know.

24 Q Okay. All right. And Becky Yonker would have sent

25 that out -- that document out that -- that we see

1 there?

2 A Yes.

3 Q To Brad Boni on that date, the February the 16th?

4 A Fifteenth. Yes.

5 Q Fifteenth. Okay. All right.

6 A Yes.

7 Q All right. Now, after the auction was over with,

8 what did you do? After Mr. Oremus had agreed to

9 withdraw his bid, the auction's over, correct?

10 A Yes.

11 Q Okay. So, what did you do after that?

12 A We returned to Charlotte.

13 Q Okay. And did you engage in further efforts to

14 sell the property?

15 A Oh, yes.

16 Q Okay. Did you ever call Mr. Oremus and ask him--

17 A No.

18 Q -- to participate? Why is that?

19 A Because he expressed that he had no interest in the

20 property.

21 Q No interest in the property.

22 A Correct.

23 Q At any price?

24 A At any price.

25 Q Okay.

1 A With his opening bid, I believe he had a -- yes.
2 He came in second.
3 Q All right. And he -- what was his last bid?
4 A According to this document, 1.850 million.
5 Q And he never bid again, did he?
6 A Not that I recall.
7 Q Okay. Did you go back to him and ask him what he'd
8 be willing to do beyond 1.850 million?
9 A I don't remember.
10 Q All right. So you met Horner Davis; is that right?
11 Horner and Freddie.
12 A Yes.
13 Q Specifically, it was Freddie that you met first,
14 right?
15 A Yes.
16 Q Okay. Where did you meet her?
17 A I met her through the hunt that was taking place --
18 the fox hunt.
19 Q Okay. And they did not participate in the auction,
20 correct?
21 A That is correct.
22 Plaintiffs' Exhibit Number 21, "Preview
23 Form"; "Prospect Form."
24 Q Let me show you what's been marked as Plaintiffs'
25 Exhibit Number 21. And the first document -- the

1 first page of that document is a preview form; is
2 that correct?

3 A Yes.

4 Q And it indicates they were -- they did -- they were
5 not interested and that they were not
6 participating, correct?

7 A That's right.

8 Q So they didn't send in any of the qualifying
9 paperwork or the \$50,000 or anything like that?

10 A That's correct.

11 Q Okay. And they were not at the auction, correct?

12 A That's correct.

13 Q All right. And the next page indicates a phone
14 call; is that right? a call-in?

15 A That is?

16 Q Well, you tell me.

17 A I can't say what this indicates.

18 Q Well, it indicates that on February the 11th of
19 2010, they had communicated some interest in buying
20 the property; is that right?

21 A I don't know.

22 Q What does that say?

23 A Becky Yonker filled this out. I can tell by the
24 handwriting.

25 Q Right.

1 A And it says -- it says that, "Wasn't able to bid.
2 Interested in the results. May want to put in an
3 offer. Previewed Friday."

4 Q Okay. And that's a dated February the 11th,
5 correct?

6 A Correct.

7 Q All right. And they ultimately struck a deal
8 whereby they paid a total of 2.5 million for the
9 property, correct?

10 A Correct.

11 Q All right. As you sit here today, are you aware of
12 anyone else besides Horner and Freddie Davis
13 offering -- making a specific offer to purchase The
14 Balcony after the date of the auction?

15 A I don't remember.

16 Q I have a question. And I'm looking here at what's
17 been marked as Plaintiffs' 27. I'm going to read
18 this to you. And this is like a note in this -- is
19 this part of this SLX database?

20 A Yes.

21 Q All right. And it's on Randolph Updyke.

22 A Okay.

23 Q And it says, "His agent is Courtney Conger. Jane
24 Page stated that he tried to purchase the home
25 multiple times." Is this your writing, by the way?

1 A Yes. I'm aware of that.

2 Q Okay. Do you know why she would say that?

3 A No. I don't.

4 Plaintiffs' Exhibit Number 19, Sprint

5 call details for (704) 698-0555.

6 Q Okay. Let me show you what's been marked as

7 Plaintiffs' Exhibit Number 19 and ask you to look

8 at that.

9 A Yes.

10 Q Now, those are two pages of telephone records that

11 were provided to me. Now, one of those pages

12 appears that it may be your cell phone numbers; is

13 that correct?

14 A It is my cell phone.

15 Q Okay. And -- may I see it?

16 A Yes.

17 Q Will you agree with me that this indicates that

18 this comes from the call detail section, and it's

19 continued, for this account number, which is your

20 account number, correct?

21 A Yes.

22 Q -- for a billing period of February 7th through

23 March 6th?

24 A Yes.

25 Q Correct? And what I'm looking at here are phone

1 calls beginning at 8:54 on February 13th down
2 through 12:39 on February the 15th.

3 A Okay.

4 Q Do you know why we were provided with that
5 particular -- those particular phone records during
6 that period of time?

7 A Yes.

8 Q Why?

9 A Because this reflects the incoming calls --

10 Q Uh-huh.

11 A -- from (803) 644-4460.

12 Q Who is that?

13 A And the time and date. And then it shows the
14 transactions of phone calls back and forth between
15 me and that law firm.

16 Q Oh, is that 644-4460?

17 A Yes.

18 Q Now, that's Brad Boni's law firm, isn't it?

19 A I don't know.

20 Q Okay.

21 A And then 4467 and 4468.

22 Q Right. Okay. Fair enough. And so you did have
23 conversations or somebody did?

24 A Yes.

25 Q Okay. So you -- this shows that you did talk to

1 somebody, right? Because --

2 A Yes.

3 Q -- this would be your cell phone, right?

4 A On -- that person was calling me on the behalf of

5 the Oremuses.

6 Q Okay. Fair enough. Okay. All right. Did you

7 obtain these records? Did you go hunting -- hunt

8 them down? Who hunted down these records for your

9 --

10 A I don't remember.

11 Q Okay. You would necessarily have taken this from

12 your whole bill, right? I mean, this is just one

13 page from the bill; is that correct?

14 A Correct.

15 Q So you would have this whole bill from February 7th

16 through March 6th; is that right?

17 A I don't know where that is now, so, no. That's not

18 right.

19 Q You don't --

20 A I mean, not any more.

21 Q -- know where it is now. Okay.

22 A I'm sure we can get it if anyone wants it.

23 Q Okay. Well, who is Comporium?

24 A That is the company that provides us voice-over IP

25 service instead of a land-line --

"THE BALCONY"
836 WHISKEY ROAD
AIKEN, SOUTH CAROLINA 29801
TUESDAY, FEBRUARY 9, 2010

PREVIEW SCHEDULE:

Friday	February 5, 2010	11 AM - 3 PM
Saturday	February 6, 2010	11 AM - 3 PM
Sunday	February 7, 2010	1 PM - 4 PM
Monday	February 8, 2010	11 AM - 3 PM
Tuesday	February 9, 2010	11 AM - 1:30 PM

REGISTRATION:

Tuesday	February 9, 2010	12 PM - 1:30 PM

*You may also register to bid anytime during the Preview.

AUCTION:

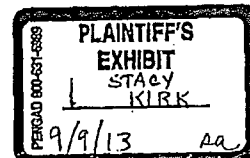
Tuesday	February 9, 2010	Promptly at 2:00 PM

DIRECTIONS TO THE PROPERTY:

FROM INTERSTATE 20: Take Exit #18, State Road 19/Edgefield Highway and head south for 5.5 miles. Turn left at Augusta Aiken Road/Richland Avenue West and continue for .2 miles. Then take the 3rd right onto Chesterfield Street South and continue for .3 miles. Next, veer left at Whiskey Road, continue for .8 miles and the property will be on the left.

PROPERTY PURCHASE PACKAGE™

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000950

"THE BALCONY"
S36 WHISKEY ROAD
AIKEN, SOUTH CAROLINA 29801
TUESDAY, FEBRUARY 9, 2010
2:00 PM (EST)

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GRAND ESTATES AUCTION COMPANY®

Introduction

**ON TUESDAY, FEBRUARY 9, 2010 YOU WILL HAVE THE
OPPORTUNITY TO PURCHASE THIS HOME AT YOUR PRICE.
COME PREPARED TO BID AND BUY!**

In our experience we have found that the auction terminology is confusing to the general public. The following questions are most likely asked:

Why an Auction?

The seller has determined that the most cost effective method of selling this home on a timely basis is to offer it for sale at auction. The auction allows the seller to avoid the costs and length of time associated with a conventional marketing program. Therefore, the Auction will be your only opportunity to purchase this home at your own price.

What is a property sold subject to the Seller's confirmation?

Properties that are sold subject to the Seller's confirmation are offered with the Seller reserving the right to reject a top bid for any or all of the properties. If the brochure does not reflect "Absolute" on the property, then it will be sold subject to the Seller's confirmation. However, Seller's spend a great deal of time and money on an auction. They are definitely motivated to sell!

What is an "Absolute" Auction?

Properties offered at Absolute Auction will be sold to the highest bidder, regardless of price; with no minimum and no reserves.

What Title evidence will the buyer receive?

The seller will provide a Preliminary Title Commitment on the property purchased and closed in accordance with the terms and conditions of the Auction Real Estate Sales Contract.

Can I use the services of a Real Estate Broker to assist me?

Grand Estates Auction Company® welcomes broker participation. All you have to do is have your broker contact us and we will fax the Broker Registration Form.

What does it mean to buy the property "As is, Where is"?

Buyers purchase the property with no guarantees in regards to the condition of the property. Buyers shall rely entirely on their own information, judgment, and their inspection of the property. We invite you and your experts (i.e. contractors, engineers, inspectors, surveyors, land planners etc.) to inspect the property by appointment as many times as you would like (during our viewing times and dates). We want to provide you with ample access to help you assess the available property. Please contact our Auction Information Office at (704) 529-0026 or (800) 552-8120 to make arrangements.

What is a 7.5% Buyer's Premium?

We utilize a 7.5% Buyer's Premium. Simply stated if the bid were \$100,000 (example only), the total contract price would be \$107,500.00. If you are unsure of this concept, realize if you only want to purchase the property at \$100,000 – bid \$93,023.26. The total contract price would read \$100,000.

Additional information:

1. On-site Licensed Real Estate staff will handle execution of contracts.
2. Potential Bidders can look and inspect the property by appointment only if unable to attend the preview dates scheduled in the brochures.
3. The winning bidder signs the Auction Real Estate Contract and endorses a cashier's check in the amount of \$50,000 the day of the auction. Additional funds required (the required 10% deposit) may be paid by personal check.
4. Please have your cashier's check made out to deposit to your own name. This will make it easier to re-deposit should you not be the winning bidder.
5. All buyers' are required to review all the documents in the Property Purchase Package™.
6. All announcements made auction day take precedence over any written or advertised materials; however, the Auction Real Estate Contract as executed shall be controlling.
7. Grand Estates Auction Company® and the seller wish you the best of luck in the bidding process.

DISCLAIMER & AGENCY DISCLOSURE

Grand Estates Auction Company® and all other licensees employed by or associated with the Broker or Auctioneer represent the Seller in the sale of this property. Any Third Party Broker is not a subagent of Grand Estates Auction Company®.

This Property Purchase Package™ is solely intended to provide interested parties with preliminary information only and is not a solicitation of offers and does not constitute an offer to sell. The delivery of this material to any person shall not create any agency relationship between such person and Broker or Auctioneer. The information included herein is believed to be correct, but it is not guaranteed. No investigation or review has been made as to its accuracy; some information furnished is from outside sources deemed to be reliable, but is not certified as accurate by the Seller, Broker or Auctioneer, or any of their affiliates. All information contained herein is subject to corrections, errors and omissions. All offers must be based on the offerers own investigation of any property offered herein and not on any representation made by the Seller, Broker, Auctioneer or other party. Neither Seller nor Broker nor Auctioneer make any representation or warranty, express or implied, with respect to the property identified herein, and the property is being sold in an "AS-IS, WHERE-IS, WITH ALL FAULTS" condition except as specifically stated in the Purchase and Sale Agreement.

All prospective purchasers are specifically advised to refrain from reliance on the information provided herein as a basis for making a bid on the property. Prospective purchasers are further encouraged to conduct a personal inspection of the property which they contemplate purchasing. Persons desiring to inspect or examine the property should be aware of the on-site inspection dates and times stated herein or may contact a Grand Estates Auction Company® representative at (800) 552-8120 for any information. Please do not contact the Seller directly.

The recipient of this Property Purchase Package™ and their agents acknowledge and agree that the examination of the information included in this Property Purchase Package™ is being conducted solely for the purpose of evaluating in good faith their interest in submitting a bona fide bid for the purchase of the property. The recipient further agrees that all information about the property which is not public record and was obtained through the Broker or the Auctioneer, the managing agent or the Seller is for the purpose of evaluating their interest in the purchase of the property and will be held confidential and will not be disclosed to any other party except those assisting or working with or for the recipient in connection with evaluating the property.

AUCTION OVERVIEW

ON TUESDAY, FEBRUARY 9, 2010 YOU WILL HAVE THE
OPPORTUNITY TO PURCHASE THIS HOME AT YOUR PRICE.
COME PREPARED TO BID AND BUY!

WHY AN AUCTION?

The seller has determined that the most cost effective method of selling this home on a timely basis is to offer it for sale at auction. The auction allows the seller to avoid the costs and length of time associated with a conventional marketing program. Therefore, the Auction will be your only opportunity to purchase this home at your own price.

METHOD: On Tuesday, February 9 at 2 PM this property shall be auctioned ABSOLUTE – HIGH BIDDER WINS! Provisions can be made for those who would like to bid offsite. Please contact our office about Phone Bidding details;

PROPERTY LOCATION & DIRECTIONS:

836 WHISKEY ROAD, AIKEN, SOUTH CAROLINA 29501

From Interstate 20:

Take Exit #18, State Road 19/Edgefield Highway and head south for 5.5 miles. Turn left at Augusta Aiken Road/Richland Avenue West and continue for .2 miles. Then take the 3rd right onto Chesterfield Street South and continue for .3 miles. Next, veer left at Whiskey Road, continue for .8 miles and the property will be on the left.

VIEWING:

DAYS	DATES	TIMES
Friday	February 5, 2010	11 AM – 3 PM
Saturday	February 6, 2010	11 AM – 3 PM
Sunday	February 7, 2010	1 PM – 4 PM
Monday	February 8, 2010	11 AM – 3 PM
Tuesday	February 9, 2010	11 AM – 1:30 PM

REGISTRATION:

Tuesday February 9, 2010 12 PM – 1:30 PM
You may also register to bid at any time during the Preview Schedule.

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000956

AUCTION:

Tuesday

February 9, 2010

Promptly at 2:00 PM

We invite you and your experts (i.e. contractors, engineers, inspectors, surveyors, land planners etc.) to inspect the property by appointment as many times as you would like (during our viewing times and dates). We want to provide you with ample access to help you assess the available property. Please contact our Auction Information Office at (704) 529-0026 or (800) 552-8120 to make arrangements.

AUCTION REGISTRATION:

A \$50,000 cashier's check (made payable to the bidder) or a personal check along with a bank letter of guarantee, made payable to Richard M Koch Attorney Trust Account, or certified funds, will be required to register to bid on the property. Auction registration begins at 12 PM, Tuesday, February 9, 2010, with the auction beginning promptly at 2:00 PM at the home.

TERMS:

A ten-percent (10%) down payment will be due immediately after being declared the buyer. The registration fee is applied against the ten-percent down payment. The balance is due in cash at closing within 30 days. A 7.5% buyer's premium will be added to the high bid.

BROKER PARTICIPATION:

See Section 5

We, ~~John~~^{James} & Melissa Oremus hereby agree
to release seller from all obligations
of selling us property located at
836 Whiskey Road, Aiken, SC
that sold to us at Absolute Auction
on February 9th, 2010. We forfeit
all right & claim to the property.
We also hereby release Grand Estates
Auction Co. from all claim rights
for any actions performed.

Melissa Lackey Oremus 2/9/2010

John Oremus 2-9-2010
William C. Higgins 2/9/10



Oremus v. 4K&D Corp., et al
Grand Estates Defendants_002033

11, James + Melissa Oremus release

Grand Estates Auction, The Auctioneer +
The real estate broker for any claim
for damages monetary or otherwise
~~for the release~~ regarding the auction
Sale of 836 Whiskey Road, Aiken, SC

John D. [Signature]

2-9-10

Melissa Lahey Oremus 2/9/10

Witness Nancy Cerra

Witness William G. Higgins

Karl Smith

2/10/10

~~Removal of [Signature]~~

Eric H. [Signature]

2-10-10

Oremus v. 4K&D Corp., et al
Grand Estates Defendants_002036

EXHIBIT "D"
FINAL TERMS AND CONDITIONS OF SALE
Aiken, South Carolina



GRAND ESTATES AUCTION COMPANY has a contract with THE SELLER, to offer to sell at auction to the highest bidder, 836 Whiskey Road, Aiken, South Carolina 29801.

A. PROPERTY

1) Seller will convey this property by General Warranty Deed free and clear of all liens and encumbrances except as specified in the Title Commitment and Warranty Deed. Any mortgages and/or liens will be paid off at closing.

2) This Property is selling subject to, and any CONTRACT IS NOT CONTINGENT upon, any state of facts an accurate survey or personal inspection of the Property may reveal, any existing rights-of-way, easements, encroachments, rights or claims of parties in possession, restrictive and protective covenants, flood zones, zoning or subdivision regulations, building ordinances, governmental agencies regulations, environmental conditions, hazardous materials, leases or tenancies, any mineral rights, and subject also to all title exceptions as set forth in the Title Commitments that is available for inspection.

3) PERSONAL ON-SITE INSPECTION OF THE PROPERTY IS RECOMMENDED AND BIDDERS ARE ADVISED TO INDEPENDENTLY VERIFY ALL INFORMATION THEY DEEM IMPORTANT. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE SALES CONTRACT, THIS PROPERTY IS BEING SOLD "AS-IS, WHERE IS" AND "WITH ALL FAULTS" AND THE SELLER AND AUCTIONEER HAVE NOT MADE, DO NOT MAKE AND WILL NOT MAKE, AND HEREBY DISCLAIM, ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED OR STATUTORY, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO ITS VALUE, CONDITION, SQUARE FOOTAGE, SUITABILITY, MERCHANTABILITY, OPERABILITY, ZONING OR SUBDIVISION REGULATIONS, MINERAL RIGHTS, ENVIRONMENTAL CONDITION OR FITNESS FOR A PARTICULAR USE OR PURPOSE. NO GUARANTEES ARE GIVEN AS TO THE AVAILABILITY OF UTILITIES OR ACCESSES, OR ALLOWABLE OR PERMITTED USES ON THE PROPERTY.

B. PROPERTY INSPECTION

1) All information contained in the auction brochure and all promotional materials, including, but not limited to, photographs, directions, acreage, square footage, dimensions, zoning, maps in the brochure and other maps used for promotion, environmental conditions, taxes, etc., was provided by or on behalf of the Seller and the tax assessor's office, and is believed to be correct; however, neither the Seller nor the Auction Company makes any promise, representation, guarantee, or warranty as to the accuracy or completeness of such information. There is no obligation on the part of Seller or Auctioneer to update any information. Purchaser and Purchaser's broker shall be responsible for verifying all acreage and square footage amounts.

2) The Property has been surveyed for this auction. Seller will convey the Property in accordance with the legal description contained in the Seller's Deed. Purchaser should have their

Buyer's initials _____ Seller's initials _____
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own surveyor verify the survey. Should purchaser desire a survey, it shall be at Purchaser's option and expense. Should the final survey show a greater or lesser number of acres than recited on the survey sales map, it will not affect the purchase and no adjustment will be made to the purchase price.

C. PROPERTY DISCLOSURES

See Exhibit B

D. BUYER'S PREMIUM

There will be a seven and a half percent (7.5%) Buyer's Premium charge added to the winning bid or bids to determine the total contract selling price for the Property.

E. BUYER'S OPENING BID INCENTIVE PROGRAM

A credit equal to THREE percent (3%) of the written opening bid amount offered by the purchaser, will be deducted from the total contract price of the property, provided purchaser has completed the Buyer's Opening Bid Incentive form and submitted to Grand Estates Auction Company as required and is not being represented by a broker.

F. BIDDER REGISTRATION AND TERMS OF SALE

- 1) Bidders must register and have received a Property Purchase Package and a bidder's number in order to bid on the Property. This number must be presented when a bidder is declared the high bidder. To register to bid, the bidder must present a certified check (made payable to the bidder), personal check with a bank letter of guarantee (made payable to Richard M. Koch, Attorney Trust Account, in the amount of \$50,000 at registration ("Bid Deposit").
- 2) Upon being declared the final successful confirmed bidder a minimum of TEN PERCENT (10%) of the Total Contract Price as your earnest money deposit is due on auction day. However, if you are a phone bidder, the balance of the 10% deposit must be wired by 12:00 pm, EST, Wednesday, February 10, 2010. The certified check, personal check with a bank letter of guarantee, or credit card authorization (with prior approval) will be required to be paid over to the escrow agent and the balance between the bid deposit and the ten percent (10%) earnest money deposit may be paid by personal or company check. The balance of the Purchase Price is due at closing. Closing will take place on or before March 11, 2010.
- 3) The bid/offer made by the bidder or bidders on auction day shall be binding.
- 4) The confirmed Bidder or Bidders for the Property must immediately execute and deliver a completed Auction Real Estate Sales Contract, together with all related Exhibits and these Terms and Conditions for such Property at the Auction. The fully executed Sales Contract (together with all related Addenda thereto) shall control all terms and conditions of the sale and constitute the entire agreement between Buyer and Seller. In the event of any conflict between the Terms and Conditions of Sale and the sales contract, the sales contract shall prevail. NO CHANGES BY PURCHASER TO THE TERMS OF THE SALES CONTRACT WILL BE PERMITTED. PURCHASER WILL BE REQUIRED TO ENTER INTO THE SALES CONTRACT "AS IS" ON AUCTION DATE. Any person bidding on behalf of another person or

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entity must have a valid, legally enforceable, unexpired, recordable Power of Attorney approved by Seller prior to the auction.

5) If for any reason the Buyer fails or refuses to deposit the required funds or to execute the Sales Contract immediately after being confirmed as the High bidder, the Seller reserves the right to declare the bidder's rights forfeited and may resell the property and retain the bid deposit as liquidated damages.

6) No purchase is contingent on the Buyer obtaining financing. This is a cash sale.

G. CLOSING COSTS

2010 Ad Valorem taxes shall be prorated at closing. The Property may be subject to county and fire district taxes, which shall be prorated at closing. The Seller will pay the fee for the preparation of the cost of preparing legal documents to transfer the Property and to release any liens or encumbrances on the Property to allow conveyance to the Purchaser in accordance with the sales contract. Purchaser shall pay for recording the Warranty Deed, the transfer taxes and/or deed stamps, Preliminary and Final Title Insurance and Preliminary title search. All other sale, closing or financing costs will be paid by the Purchaser. If Purchaser desires an Owner's Policy of Title Insurance or a survey, it shall be at Purchaser's option and expense and said Title Insurance must be obtained from Closing Agent, Smith, Massey, Brodie, Gynn & Mayes.

H. CLOSING

All closings will be scheduled on or before March 11, 2010, and all deposits and down payments shall be held in a non-interest bearing escrow account by the Escrow/Closing Agent pending completion of necessary closing procedures, after which the Buyer shall be granted possession of the property subject to any matters contained in the Title Commitment or Auction Real Estate Sales Contract.

I. ESCROW/CLOSING AGENCY

- 1) Closing will be at the offices of Smith, Massey, Brodie, Gynn & Mayes.
- 2) The proceeds due from the Buyer at closing shall be in U.S. cash, locally drawn bank certified or cashier's check, or confirmed wire transfer.
- 3) The "Closing Agent" who is Smith, Massey, Brodie, Gynn & Mayes, whose address is 210 Colony Parkway, Aiken, South Carolina 29803, Telephone: (803) 643-4110, Fax: (803) 643-8140.
- 4) The "Registration Escrow Agent" who is Richard M. Koch, whose address is 3220 Prosperity Church Road, Suite #201, Charlotte, NC 28269, Telephone: (704) 503-5700, Fax: (704) 503-5707.

J. LICENSED BUYER BROKER PARTICIPATION

A THREE percent (3%) commission based on the Written Opening Bid price not to

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include buyer's premium for the Property will be paid to the qualified, licensed real estate Buyer's Broker whose prospect pays for and closes on the property in compliance with the Buyer's Broker Guidelines. An additional one percent (1%) commission will be paid on the difference between the Written Opening Bid Amount on the Buyer/Broker Registration Form and the final High Bid Price as stated in the Buyer's Broker Guidelines. The Broker must perform all requirements of the Buyer Broker Guidelines, as stated in the Buyer/Broker registration Form. The Broker and the prospective bidder must execute a Broker Registration Form provided by Auction Company under the appropriate Buyer Broker Guidelines no later than 4:00 pm (EST) on Monday, February 8, 2010, which form will become part of the Auction Real Estate Sales Contract. Failure to properly register or comply with the provisions of the Guidelines will disqualify the Broker from receiving any commissions.

K. DEFAULT

In the event the Purchaser fails to close and pay his/her balance when due, Seller reserves all rights allowed by law and the sales contract, including retaining the earnest money deposit as liquidated damages.

L. DISCLAIMER

1) Neither the Seller, its Attorneys, any Broker, nor the Auction Company shall be liable for any relief including damages, rescission, reformation, allowance or adjustments based on the failure of the property, including, but not limited to, amount of acreage, square footage, zoning, and environmental condition to conform to any specific standard or expectation, or any third party documents or information.

2) DISCLAIMER AS TO AUCTION COMPANY: Buyer shall look only to Seller as to all matters regarding this Contract and the Property, and GRAND ESTATES AUCTION COMPANY shall not be responsible or liable in any way if Seller fails or refuses to or cannot close title hereunder, or if the Property is affected in any way or is in any other way unsatisfactory to Buyer as Buyer may determine before or after closing.

M. AUCTIONEERS AGENCY DISCLOSURE

THE AUCTIONEER IS ACTING EXCLUSIVELY AS THE AGENT FOR SELLER IN THIS TRANSACTION AND IS TO BE PAID A FEE BY SELLER PURSUANT TO A SEPARATE WRITTEN AGREEMENT BETWEEN SELLER AND THE AUCTIONEER. THE AUCTIONEER IS NOT ACTING AS AGENT IN THIS TRANSACTION FOR THE BUYER. ANY THIRD PARTY BROKER IS NOT A SUBAGENT OF AUCTION COMPANY AND IS TO BE PAID BY THE SELLER.

N. MISCELLANEOUS

1) All decisions of the Auctioneer are final as to the methods of bidding, disputes among bidders, increments of bidding, and any other matters that may arise before, during, or after the auction.

1A) If in the case of a discrepancy between the printed terms and conditions of sale and the auction sales contract the auction sales contract shall prevail. Announcements made by the

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EXHIBIT "F"
BIDDER'S STATEMENT

Re: 836 Whiskey Rd
the "Property"

Aiken, SC
Name of Auction

February 9, 2010
Date of Auction

Aiken, SC
Auction Location

The undersigned represents and warrants that the undersigned is of legal age and has full legal capacity and authority to understand, execute and deliver this Bidder's Statement on behalf of the undersigned or the entity, if any, designated immediately below the signature line at the bottom of this Statement. As a condition of being permitted to bid at the Auction, the undersigned acknowledges and/or agrees as follows:

1. The undersigned has received and carefully reviewed and understood, prior to the execution hereof copies of each of the following items: (a) Final Terms and Conditions of Sale for Purchasing the Property at Auction; (b) Brochure describing the Auction; and (c) Property Purchase Package ("Bid Package") for Property, which includes, among other items, a copy of the real estate sale contract and its exhibits ("Agreement") for the Property.
2. The undersigned has the financial resources necessary to complete the timely acquisition of the Property, as and when required, pursuant to the Agreement, at the bid price offered by the undersigned, plus the required Buyer's Premium, if any.
3. The undersigned has independently inspected and reviewed the following conditions of the Property, including but not limited to: (a) the title of Seller; (b) the condition and state of repair and/or lack of repair of all improvements thereon and has had the opportunity to obtain testing and reports; (c) the existence and condition of any and/or all personal property at the Property; and (d) the nature, provisions and effect of all health, fire, environmental, building, zoning, subdivision and all other use and occupancy laws, ordinances and regulations applicable thereto.
4. The undersigned understands and agrees: (a) THAT, EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE SALES CONTRACT, THE PROPERTY WILL BE SOLD "WHERE IS" IN AN "AS IS" CONDITION WITH NO WARRANTY, EXPRESS OR IMPLIED, ABOUT SUCH CONDITION (SELLER AND BROKER EXPRESSLY DISCLAIM ANY WARRANTIES OF HABITABILITY, FITNESS FOR INTENDED USE OR OTHER IMPLIED WARRANTIES) AND WITH THE UNDERSIGNED ACCEPTING ALL DEFECTS, BOTH APPARENT AND LATENT, AT THE UNDERSIGNED'S OWN, ABSOLUTE AND EXCLUSIVE RISK; (b) that neither Seller nor Auctioneer will have any liability or obligation whatsoever, for the physical condition of the Property or for any inaccuracy in or omission from any of the written information and materials about the Property, including but not limited to, inaccuracies made in reports drafted by third parties, such as title reports, surveys and environmental reports or any changes concerning the Property between the date of the reports, surveys, written information and materials and the date hereof; (c) the Auctioneer or its agents, employees and affiliates are not permitted to bid at the Auction; (d) because of the pace of the Auction bidding, the Auctioneer is not able and therefore not obligated to recognize nor record each of the bidders at any bid level during open outcry except the high bidder; (e) the Auctioneer will use its reasonable efforts to register all of the bidders for the Auction but cannot represent or warrant that all Auction bidders will have been properly registered; and (f) the undersigned waives and releases Auctioneer from all claims, causes of action and any other proceedings alleging that Auctioneer failed to perform any of the matters described in Sections (d) and (e) above. The undersigned also understands and agrees that this auction will be video taped for legal purposes only.
5. In the event the undersigned is the high bidder at the Auction of the Property, and such bid is accepted by Auctioneer, the undersigned will: (a) tender the required earnest money to Auctioneer; and (b) execute the Agreement immediately after the appropriate round of bidding at the Auction in exactly the same form as such Agreement was in the Bid Package, or as may be modified only by any announcements made at the Auction by the Auctioneer from the podium prior to the commencement of bidding for the Property, and with the blanks filled in accordance with the terms of the transaction.
6. Non-refundable earnest money: If the contract fails to close as a result of Purchaser's default, Seller shall have the right to have Purchaser's Earnest Money Deposit forfeited and awarded to Seller as liquidated damages.

IN WITNESS WHEREOF, the undersigned has caused this Bidder's Statement to be executed this _____ day of _____ 2010.

Buyer's initials _____ Seller's initials _____
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BUYER BROKER REGISTRATION FORM
BUYER BROKER GUIDELINES

Broker Information

Broker Randy Wolcott
License No. 42029 Tax Id/SS No. [REDACTED]
Company Carolina Peak Estate Company
Address 333 Park Ave
City Aiken State SC Zip 29801
Telephone 803 648-8660 Fax 803 648-8611

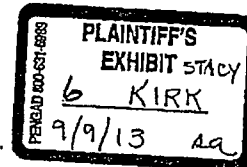
Client Information

Client BLAZAR
Print Name MARC + MARIANNE BLAZAR
Address 6743 NEWPORT LAKE CIRCLE
City BOLA RATCH State FL Zip 33496

OPENING BID AMOUNT

Please refer to the Broker Participation Guidelines below for clarification and instruction.

\$ 750,000 836 Whiskey Road
(not including the 7 1/4 % Buyer's Premium)



1. All prospects must be registered with Grand Estates Auction Company® with the Buyer Broker Registration Form provided. This form must be received by GRAND ESTATES AUCTION COMPANY® no later than by 4 p.m., Monday, February 8, 2010. FORMS SENT DIRECTLY TO THE SELLER WILL NOT BE HONORED.
2. For a Broker to properly represent a client they must:
 - A. Be a Licensed Real Estate Buyer's Broker in the state in which the property is located who will abide by the National Association of Realtors® Code of Ethics whose registered prospect pays for and settles in full according to the Buyer Broker guidelines set forth, for the above property to be sold at the auction on Tuesday, February 9, 2010 in Aiken, South Carolina.
 - B. Submit this form including the opening bid amount filled in 24 hours prior to the auction. The commission that is paid to the agent is on a sliding scale. For the agent that represents the winning bidder, a commission of three percent (3%) of the written opening bid price not to include the buyer's premium is paid. If their client attends the auction and continues to bid the agent is also compensated an additional one percent (1%) for the difference between the initial written opening bid and the final winning bid.
 - C. If no opening bid is written on the Broker Participation Form then one percent (1 %) of the high bid price of the property purchased by that broker's client will be paid to that broker as a commission/referral.
 - D. The broker commission/referral will not exceed three percent (3%) of the high bid price of the property purchased by that broker's client.
3. In order to be entitled to any commission/referral, the broker must:
 - A. Broker or Agent must sign in and inspect the property with the Client during a scheduled Open House or by private appointment with a Grand Estates Auction Company® representative.
 - B. Broker must also attend and register with the client at the auction and encourage bidding.
4. Commission will be paid only upon final closing and when the property has been settled in full.
5. No commission will be paid on any non-arm's length transaction to any Broker or Agent participating in the purchase of the property or by any member of the Agent's immediate family. An Affidavit may be required that the Broker is

Bidder Initials [Signature] Broker Initials [Signature]
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serving only as a Broker and not as a Principal or member or shareholder or any other form of participation or related to the buyer.

6. No Broker will be recognized for a Client who has had previous contact with the Seller, their representatives, Auctioneer or Grand Estates Auction Company®.
7. Buyer and Broker must complete the following documentation IN FULL:
 - A) Buyer Broker Registration Form

THIS FORM MUST BE RECEIVED NO LATER THAN 4:00 P.M., Monday, February 8, 2010.

Send to the following address: Grand Estates Auction Company,
Attn: Client Relations
9115-F Old Statesville Road
Charlotte, NC 28269

Or fax to: (704) 598-7911

8. In the event that you are not the successful high bidder, your certified funds will be returned to you.
9. A complete registration file on all buyer broker registrations will be maintained. For further information or questions, feel free to call Grand Estates Auction Company® Information Office at (704) 529-0026 or (800) 552-8120.
- A) The Broker and the Principal Bidder, by placing their signatures below, certify that they have inspected the premises of the subject property during a scheduled open house or by appointment.
- B) The Broker and the Principal Bidder hereby attest that the Broker is serving only as an Agent for the Buyer and not as a Principal involved in the purchase of the property.
- C) The Bidder hereby acknowledges that GRAND ESTATES AUCTION COMPANY® represents the Seller in this transaction.
- D) Commission shall be paid to Broker representing Principal Bidder only if he/she has met all of these requirements. No referral fee will be paid to a referring broker, even if the referring broker's client purchases a property.
- E) Broker agrees to abide by the Buyer's Broker Guidelines outlined herein to qualify for registration.
- F) CLIENT ACKNOWLEDGES THAT BROKER IS WORKING ON BEHALF OF CLIENT AS A BUYER'S BROKER.
- G) BROKER ACKNOWLEDGES THAT HE/SHE IS NOT A SUBAGENT OF GRAND ESTATES AUCTION COMPANY® AND REPRESENTS THE CLIENT AS A BUYER'S BROKER.
10. Client/Bidder must fully and properly register for the auction in order for this bid and/or broker registration to be valid.
11. This bid is only valid once the auction commences and the auctioneer accepts the bid.

Purchaser acknowledges that he/she agrees to abide by the terms and conditions of sale and agrees to open the bidding at the commencement of the auction for the property or parcel, by gavel at the amount stated above. I authorize the bid assistant to enter this bid during the auction at the request of the auctioneer.

The undersigned hereby certifies and agrees to the herein terms and conditions of registration.

Client/Bidder's Signature

Date

Broker's Signature

Date

Bidder Initials _____ Broker Initials _____
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Fax Cover Sheet

RICHARD M. KOCH
Attorney at Law
3220-201 Prosperity Church Road
Charlotte, North Carolina 28269
Telephone (704) 503-5700
Fax (704) 503-5707
Email Address: kochlaw@CTC.net

To: Braithwaite Farmer Boni &
Timmerman

From: Richard M. Koch

Phone: 803-649-4144

Attention: Pam

Fax: 803-649-4696

Date: November 29, 2010

Re: Oremus/Grand Estates Auction

CC:

☐ Urgent ☐ For Review

☐ Please Comment ☐ Please Reply

Total pages, including cover: 7

● Comments:

Attached is the document referred to in our letter dated November 23, 2010

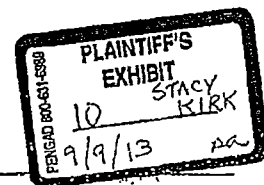


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FINAL TERMS AND CONDITIONS OF SALE
 Aiken, South Carolina

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2) This Property is selling subject to, and any CONTRACT IS NOT CONTINGENT upon, any state of facts an accurate survey or personal inspection of the Property may reveal, any existing rights-of-way, easements, encroachments, rights or claims of parties in possession, restrictive and protective covenants, flood zones, zoning or subdivision regulations, building ordinances, governmental agencies regulations, environmental conditions, hazardous materials, leases or tenancies, any mineral rights, and subject also to all title exceptions as set forth in the Title Commitments that is available for inspection.

3) PERSONAL ON-SITE INSPECTION OF THE PROPERTY IS RECOMMENDED AND BIDDERS ARE ADVISED TO INDEPENDENTLY VERIFY ALL INFORMATION THEY DEEM IMPORTANT. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE SALES CONTRACT, THIS PROPERTY IS BEING SOLD "AS IS, WHERE IS" AND "WITH ALL FAULTS" AND THE SELLER AND AUCTIONER HAVE NOT MADE, DO NOT MAKE AND WILL NOT MAKE, AND HEREBY DISCLAIM, ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED OR STATUTORY, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO ITS VALUE, CONDITION, SQUARE FOOTAGE, SUITABILITY, MERCHANTABILITY, OPERABILITY, ZONING OR SUBDIVISION REGULATIONS, MINERAL RIGHTS, ENVIRONMENTAL CONDITION OR FITNESS FOR A PARTICULAR USE OR PURPOSE. NO GUARANTEES ARE GIVEN AS TO THE AVAILABILITY OF UTILITIES OR ACCESSES, OR ALLOWABLE OR PERMITTED USES ON THE PROPERTY.

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2) The Property has been surveyed for this auction. Seller will convey the Property in accordance with the legal description contained in the Seller's Deed. Purchaser should have their

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 Buyer's Initials _____
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GRANDESTATEAUCTION
BLAZING ENTERPRISES

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own surveyor verify the survey. Should purchaser desire a survey, it shall be at Purchaser's option and expense. Should the final survey show a greater or lesser number of acres than recited on the survey sales map, it will not affect the purchase and no adjustment will be made to the purchase price.

C. PROPERTY DISCLOSURES

See Exhibit B

D. BUYER'S PREMIUM

There will be a seven and a half percent (7.5%) Buyer's Premium charge added to the winning bid or bids to determine the total contract selling price for the Property.

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02/09/2010 14:03 5519889130

GRANDESTATESAUCTION

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entity must have a valid, legally enforceable, unexpired, recordable Power of Attorney approved by Seller prior to the auction.

5) If for any reason the Buyer fails or refuses to deposit the required funds or to execute the Sales Contract immediately after being confirmed as the High bidder, the Seller reserves the right to declare the bidder's rights forfeited and may resell the property and retain the bid deposit as liquidated damages.

6) No purchase is contingent on the Buyer obtaining financing. This is a cash sale.

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2010 Ad Valorem taxes shall be prorated at closing. The Property may be subject to county and fire district taxes, which shall be prorated at closing. The Seller will pay the fee for the preparation of the cost of preparing legal documents to transfer the Property and to release any liens or encumbrances on the Property to allow conveyance to the Purchaser in accordance with the sales contract. Purchaser shall pay for recording the Warranty Deed, the transfer taxes and/or deed stamps, Preliminary and Final Title Insurance and Preliminary title search. All other sale, closing or financing costs will be paid by the Purchaser. If Purchaser desires an Owner's Policy of Title Insurance or a survey, it shall be at Purchaser's option and expense and said Title Insurance must be obtained from Closing Agent, Smith, Massey, Brodie, Gwynn & Mayes.

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All closings will be scheduled on or before March 11, 2010, and all deposits and down payments shall be held in a non-interest bearing escrow account by the Escrow/Closing Agent pending completion of necessary closing procedures, after which the Buyer shall be granted possession of the property subject to any matters contained in the Title Commitment or Auction Real Estate Sales Contract.

I. ESCROW/CLOSING AGENCY

1) Closing will be at the offices of Smith, Massey, Brodie, Gwynn & Mayes.

2) The proceeds due from the Buyer at closing shall be in U.S. cash, locally drawn bank certified or cashier's check, or confirmed wire transfer.

3) The "Closing Agent" who is Smith, Massey, Brodie, Gwynn & Mayes, whose address is 210 Colony Parkway, Aiken, South Carolina 29803, Telephone: (803) 643-4110, Fax: (803) 643-8140.

4) The "Registration Escrow Agent" who is Richard M. Koch, whose address is 3220 Prosperity Church Road, Suite #201, Charlotte, NC 28269, Telephone: (704) 503-5700, Fax: (704) 503-5707.

J. LICENSED BUYER BROKER PARTICIPATION

A. THREE percent (3%) commission based on the Written Opening Bid price not to

Buyer's Initials: UW Seller's Initials: _____ 3 of 6
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include buyer's premium for the Property will be paid to the qualified, licensed real estate Buyer's Broker whose prospect pays for and closes on the property in compliance with the Buyer's Broker Guidelines. An additional one percent (1%) commission will be paid on the difference between the Written Opening Bid Amount on the Buyer/Broker Registration Form and the final High Bid Price as stated in the Buyer's Broker Guidelines. The Broker must perform all requirements of the Buyer Broker Guidelines, as stated in the Buyer/Broker registration Form. The Broker and the prospective bidder must execute a Broker Registration Form provided by Auction Company under the appropriate Buyer Broker Guidelines no later than 4:00 pm (EST) on Monday, February 8, 2010, which form will become part of the Auction Real Estate Sales Contract. Failure to properly register or comply with the provisions of the Guidelines will disqualify the Broker from receiving any commissions.

K. DEFAULT

In the event the Purchaser fails to close and pay his/her balance when due, Seller reserves all rights allowed by law and the sales contract, including retaining the earnest money deposit as liquidated damages.

L. DISCLAIMER

1) Neither the Seller, its Attorneys, any Broker, nor the Auction Company shall be liable for any relief including damages, rescission, reformation, allowance or adjustments based on the failure of the property, including, but not limited to, amount of acreage, square footage, zoning, and environmental condition to conform to any specific standard or expectation, or any third party documents or information.

2) DISCLAIMER AS TO AUCTION COMPANY: Buyer shall look only to Seller as to all matters regarding this Contract and the Property, and GRAND ESTATES AUCTION COMPANY shall not be responsible or liable in any way if Seller fails or refuses to or cannot close title hereunder, or if the Property is affected in any way or is in any other way unsatisfactory to Buyer as Buyer may determine before or after closing.

M. AUCTIONEERS AGENCY DISCLOSURE

THE AUCTIONEER IS ACTING EXCLUSIVELY AS THE AGENT FOR SELLER IN THIS TRANSACTION AND IS TO BE PAID A FEE BY SELLER PURSUANT TO A SEPARATE WRITTEN AGREEMENT BETWEEN SELLER AND THE AUCTIONEER. THE AUCTIONEER IS NOT ACTING AS AGENT IN THIS TRANSACTION FOR THE BUYER. ANY THIRD PARTY BROKER IS NOT A SUBAGENT OF AUCTION COMPANY AND IS TO BE PAID BY THE SELLER.

N. MISCELLANEOUS

1) All decisions of the Auctioneer are final as to the methods of bidding, disputes among bidders, increments of bidding, and any other matters that may arise before, during, or after the auction.

1A) If in the case of a discrepancy between the printed terms and conditions of sale and the auction sales contract the auction sales contract shall prevail. Announcements made by the

Buyer's Initials Seller's Initials 4 of 6
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Nov. 29, 2010 2:39PM

02/09/2010 14:15 7045907911

02/09/2010 14:03 9619009138

GRANDESTATESAUCTION
BLAZING ENTERPRISES

No. 5418 P. 6/7

PAGE 05

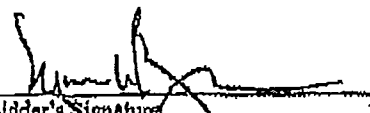
auctioneer prior to auction regarding either shall prevail over both terms and conditions or sales contract.

2) Seller reserves the right to deny any person admittance to the Auction or expel anyone from the Auction who attempts to disrupt the Auction.

3) All announcements made Auction Day supersede any prior oral or printed statements. The Seller reserves the right to announce additional Terms and Conditions of the sale prior to or during the course of the auction.

4) The Seller reserves the right to withdraw the Property prior to the auction.

GRAND ESTATES AUCTION COMPANY IS SELLING AGENT ONLY AND MAKES NO REPRESENTATIONS CONCERNING THIS PROPERTY WHATSOEVER.


Bidder's Signature
MARK KAZAR
Print Name

2/9/10
Date

Buyer's Initials _____ Seller's Initials _____
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5 of 6

0378

APPENDIX 000381

02/09/2010 14:16 7045987911
02/09/2010 14:09 8619089138

GRANDESTATESAUCTION
BLAZING ENTERPRISES

PAGE 06
PAGE 06/06

EXHIBIT "E"
BIDDER'S STATEMENT

Re: 836 Whiskey Rd
the "Property"

Aiken, SC
Name of Auction

February 9, 2010
Date of Auction

Aiken, SC
Auction Location

The undersigned represents and warrants that the undersigned is of legal age and has full legal capacity and authority to understand, execute and deliver this Bidder's Statement on behalf of the undersigned or the entity, if any, designated immediately below the signature line at the bottom of this Statement. As a condition of being permitted to bid at the Auction, the undersigned acknowledges and/or agrees as follows:

1. The undersigned has received and carefully reviewed and understood, prior to the execution hereof copies of each of the following items: (a) Final Terms and Conditions of Sale for Purchasing the Property at Auction; (b) Brochure describing the Auction; and (c) Property Purchase Package ("Bid Package") for Property, which includes, among other items, a copy of the real estate sale contract and its exhibits ("Agreement") for the Property.
2. The undersigned has the financial resources necessary to complete the timely acquisition of the Property, as and when required, pursuant to the Agreement, at the bid price offered by the undersigned, plus the required Buyer's Premium, if any.
3. The undersigned has independently inspected and reviewed the following conditions of the Property, including but not limited to: (a) the title of Seller; (b) the condition and state of repair and/or lack of repair of all improvements thereon and has had the opportunity to obtain testing and reports; (c) the existence and condition of any and/or all personal property at the Property; and (d) the nature, provisions and effect of all health, fire, environmental, building, zoning, subdivision and all other use and occupancy laws, ordinances and regulations applicable thereto.
4. The undersigned understands and agrees: (a) THAT, EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE SALES CONTRACT, THE PROPERTY WILL BE SOLD "WHERE IS" IN AN "AS IS" CONDITION WITH NO WARRANTY, EXPRESS OR IMPLIED, ABOUT SUCH CONDITION (SELLER AND BROKER EXPRESSLY DISCLAIMING ANY WARRANTIES OF HABITABILITY, FITNESS FOR INTENDED USE OR OTHER IMPLIED WARRANTIES) AND WITH THE UNDERSIGNED ACCEPTING ALL DEFECTS, BOTH APPARENT AND LATENT, AT THE UNDERSIGNED'S OWN, ABSOLUTE AND EXCLUSIVE RISK; (b) that neither Seller nor Auctioneer will have any liability or obligation whatsoever, for the physical condition of the Property or for any inaccuracy in or omission from any of the written information and materials about the Property, including but not limited to, inaccuracies made in reports drafted by third parties, such as title reports, surveys and environmental reports or any changes concerning the Property between the date of the reports, surveys, written information and materials and the date hereof; (c) the Auctioneer or its agents, employees and affiliates are not permitted to bid at the Auction; (d) because of the pace of the Auction bidding, the Auctioneer is not able and therefore not obligated to recognize nor record each of the bidders at any bid level during open outcry except the high bidder; (e) the Auctioneer will use its reasonable efforts to register all of the bidders for the Auction but cannot represent or warrant that all Auction bidders will have been properly registered; and (f) the undersigned waives and releases Auctioneer from all claims, causes of action and any other proceedings alleging that Auctioneer failed to perform any of the matters described in Sections (d) and (e) above. The undersigned also understands and agrees that this auction will be video taped for legal purposes only.
5. In the event the undersigned is the high bidder at the Auction of the Property, and such bid is accepted by Auctioneer, the undersigned will: (a) tender the required earnest money to Auctioneer; and (b) execute the Agreement immediately after the appropriate round of bidding at the Auction in exactly the same form as such Agreement was in the Bid Package, or as may be modified only by any announcements made at the Auction by the Auctioneer from the podium prior to the commencement of bidding for the Property, and with the blanks filled in accordance with the terms of the transaction.
6. Non-refundable earnest money: If the contract fails to close as a result of Purchaser's default, Seller shall have the right to have Purchaser's Earnest Money Deposit forfeited and awarded to Seller as liquidated damages.

IN WITNESS WHEREOF, the undersigned has caused this Bidder's Statement to be executed this 9 day of February, 2010,

Buyer's Initials: [Signature] Seller's Initials: [Signature]
© Grant Estate Auction Company 1999-2010

SPECIFIC POWER OF ATTORNEY

KNOW ALL THESE MEN BY THESE PRESENTS, that (name) MARC FLAZAR
 (social security number) 031-34-3410, whose address
 is 6743 NEWPORT LAKE CIRCLE BOCA RATON FL. 33496
 has made, constituted, and appointed and by these presents does hereby make, constitute, and appoint

RANDY WOLCOTT
 Name

 Social Security Number

 Address

AIKEN, SC.
 City State Zip

the true and lawful attorney for her/him and in her/him name, place and stead, on her/him behalf as
 pertains to:

Purchasing and/or bidding on certain real property located at 836 WHISKEY RD
AIKEN, SC.

and offered for sale and/or auction by Grand Estates Auction Company®.

GIVING AND GRANTING unto said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and with the same force and effect, and to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

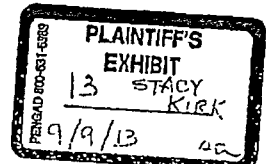
IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 20____.

[Signature]
 PURCHASER'S NAME

STATE OF _____
)
 COUNTY OF _____ } ss.

The foregoing instrument was acknowledged and executed before me this _____ day of _____, 20____, by PURCHASER'S NAME MARC FLAZAR

 Notary's Name (SEAL)



Commission Expires

CONFIDENTIAL

Oremus v. 4 K&D Corp, et al
 Grand Estates Defendants_001842

0380

APPENDIX 000383

GRAND ESTATES
AUCTION COMPANY

Oremus

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Brad Boni	Becky Yonker
COMPANY:	DATE:
	February 15, 2010
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
803-644-4469	3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:
Contract	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

For your review as per Stacy Kirk's request.

Thank you,

Becky Yonker
Client Relations
Grand Estates Auction Company
P (704) 529-0026
F (704) 598-7911

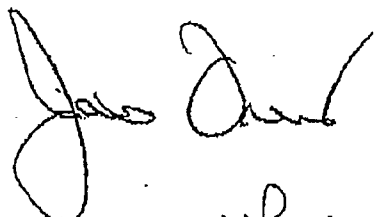


9115-F Old Statesville Road • Charlotte, NC 28269 • 704/529-0026 • Fax 704/598-7911
www.GrandEstatesAuction.com

0381

APPENDIX 000384

I, James & Melissa Oremus release
Grand Estates Auction, The Auctioneer &
The real estate broker for any claim
for damages monetary or otherwise
~~for the release~~ regarding the auction
sale of 836 Whiskey Road, Aiken, SC.

 2-9-10
Melissa Lahey Oremus 2/9/10

Witness Nancy Cera
Witness William A. Higgins

~~James Oremus~~

We, ^{James} ~~John~~ & Melissa Oremus hereby agree
to release Seller from all obligations
of selling us property located at
836 Whiskey Road, Aiken, SC
that sold to us at Absolute Auction
on February 9th, 2010. We forfeit
all right & claim to the property.
We also hereby release Grand Estates
Auction Co. from all claim rights
for any actions performed:

Melissa Lahey Oremus 2/9/2010

John Oremus 2-9-2010
William C. Higgins 2/9/10



Customer Account Number Bill Period Bill Date
Stacy Kirk 559660854 Feb 07-Mar 06 Mar 10, 2010

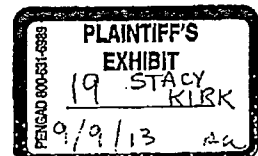
A6 of 16

Call details

(704) 968-0555 (Continued)

Date	Time	Phone Number	Call Destination	Rate Type	Minutes Used	Total Charges
241	02/13	08:54 AM	404-277-1778 Incoming	NW/PU	37	
242	02/13	09:30 AM	404-277-1778 ATLANTA,GA	NW/PU	2	
243	02/13	09:58 AM	336-558-1004 GREENSBORO,NC	NW/PU	2	
244	02/13	10:00 AM	704-607-3058 CHARLOTTE,NC	NW/PU	2	
245	02/13	10:03 AM	803-522-0865 AIKEN,SC	NW/PU	2	
246	02/13	10:05 AM	540-687-0033 MIDDLEBURG,VA	NW/PU	5	
247	02/13	10:11 AM	704-577-4223 CHARLOTTE,NC	NW/PU	1	
248	02/13	10:13 AM	704-577-4223 Incoming	NW/CW/PU	2	
249	02/13	10:15 AM	803-984-4294 Incoming	NW/PU	2	
250	02/13	10:16 AM	803-522-0865 Incoming	NW/CW/PU	3	
251	02/13	10:19 AM	540-687-0033 MIDDLEBURG,VA	NW/PU	2	
252	02/13	10:31 AM	803-984-4294 ROCK HILL,SC	NW/PU	2	
253	02/13	10:35 AM	336-558-1004 GREENSBORO,NC	NW/PU	2	
254	02/13	10:49 AM	770-883-7744 ATLANTA,GA	NW/PU	3	
255	02/13	10:52 AM	404-702-4489 ATLANTA,GA	NW/PU	7	
256	02/13	10:59 AM	336-558-1004 GREENSBORO,NC	NW/PU	1	
257	02/13	11:04 AM	704-577-4223 CHARLOTTE,NC	NW/PU	4	
258	02/13	11:21 AM	704-577-4223 CHARLOTTE,NC	NW/PU	1	
259	02/13	11:55 AM	803-646-1382 Incoming	NW/PU	3	
260	02/13	12:21 PM	336-558-1004 GREENSBORO,NC	NW/PU	3	
261	02/13	12:56 PM	540-687-0033 Incoming	NW/PU	2	
262	02/13	02:50 PM	803-522-0865 Incoming	NW/PU	1	
263	02/13	02:51 PM	540-687-0033 MIDDLEBURG,VA	NW/PU	1	
264	02/13	02:52 PM	803-522-0865 AIKEN,SC	NW/PU	3	
265	02/13	02:55 PM	540-687-0033 MIDDLEBURG,VA	NW/PU	3	
266	02/13	03:07 PM	803-648-2216 Incoming	NW/PU	12	
267	02/13	03:53 PM	803-648-2216 Incoming	NW/PU	2	
268	02/14	11:48 AM	803-648-5025 AIKEN,SC	NW/PU	2	
269	02/14	05:43 PM	256-328-2032 GADSDEN,AL	NW/PU	2	
270	02/15	09:16 AM	843-697-0208 CHARLESTON,SC	PU	9	
271	02/15	09:30 AM	803-646-1382 AIKEN,SC	PU	1	
272	02/15	09:32 AM	307-746-2304 NEWCASTLE, WV	PU	7	
273	02/15	09:39 AM	704-529-0026 CHARLOTTE,NC	PU	2	
274	02/15	09:44 AM	404-597-7786 Incoming	PU	9	
275	02/15	09:53 AM	808-206-3511 HONOLULU,HI	PU	6	
276	02/15	10:43 AM	803-640-4591 NO AUGUSTA,SC	PU	20	
277	02/15	12:13 PM	803-648-5025 AIKEN,SC	PU	2	
278	02/15	12:15 PM	704-529-0026 CHARLOTTE,NC	PU	3	
279	02/15	12:18 PM	843-697-0208 CHARLESTON,SC	PU	1	
★280	02/15	12:19 PM	803-644-4460 AIKEN,SC	PU	1 ★	
281	02/15	12:22 PM	803-641-8199 AIKEN,SC	PU	4	
282	02/15	12:23 PM	704-529-0026 Incoming	CW/PU	5	
283	02/15	12:28 PM	704-529-0026 CHARLOTTE,NC	PU	2	
284	02/15	12:30 PM	704-503-5700 CHARLOTTE,NC	PU	1	
285	02/15	12:32 PM	706-836-3789 AUGUSTA,GA	PU	2	
286	02/15	12:34 PM	502-617-2307 LOUISVILLE,KY	PU	2	
287	02/15	12:37 PM	803-215-9966 NO AUGUSTA,SC	PU	2	
288	02/15	12:39 PM	704-226-2476 MONROE,NC	PU	4	

NW - Night and Weekends PU - Plan/Promotional Usage CW - Cell Walling



Oremus v. 4K&D Corp., et al
Grand Estates Defendants_002353

Account Name
GRAND ESTATES AUCTION COMPANY

Account Number
1101-8800

Date of Invoice
Mar 10, 2010

Detail of Comporium Long Distance Charges

800-552-8120

No.	Date	Time	Place Called	Number Called	Rate Code	Mln	Calling Plan	Amount
* 959.	Feb 11	10:25am	Fm AIKEN	SC 803-644-1721	SDC	.9		.04
* 960.	Feb 11	11:54am	Fm VAIL	CO 970-376-3233	SDC	40.2		1.81
* 961.	Feb 11	12:17pm	Fm WPALMBEACH	FL 561-793-7806	SDC	1.2		.05
* 962.	Feb 11	1:52pm	Fm VAIL	CO 970-376-3233	SDC	1.7		.08
* 963.	Feb 11	1:54pm	Fm VAIL	CO 970-376-3233	SDC	3.1		.14
* 964.	Feb 11	1:59pm	Fm SALISBURY	MD 410-742-9036	SDC	.9		.04
* 965.	Feb 11	1:59pm	Fm VAIL	CO 970-376-3233	SDC	5.9		.27
* 966.	Feb 11	2:57pm	Fm CAMDEN	SC 803-420-3656	SDC	5.9		.27
* 967.	Feb 11	3:59pm	Fm AIKEN	SC 803-641-0718	SDC	5.3		.24
* 968.	Feb 11	4:07pm	Fm AIKEN	SC 803-641-0718	SDC	1.2		.05
* 969.	Feb 11	4:14pm	Fm SNDG SNDG	CA 619-272-8832	SDC	.9		.04
* 970.	Feb 11	4:18pm	Fm AIKEN	SC 803-641-0718	SDC	2.2		.10
* 971.	Feb 12	9:29am	Fm NEWCASTLE	WY 307-746-2304	SDC	1.2		.05
* 972.	Feb 12	9:43am	Fm AIKEN	SC 803-645-4105	SDC	4.1		.18
* 973.	Feb 12	10:23am	Fm AIKEN	SC 803-644-4467	SDC	.8		.04
* 974.	Feb 12	10:59am	Fm AIKEN	SC 803-645-4105	SDC	.5		.02
* 975.	Feb 12	11:00am	Fm AIKEN	SC 803-648-2011	SDC	1.7		.08
* 976.	Feb 12	12:23pm	Fm PHOENIX	AZ 602-675-2353	SDC	1.9		.09
* 977.	Feb 12	12:34pm	Fm VALENTINE	NE 402-376-1721	SDC	.6		.03
* 978.	Feb 12	12:38pm	Fm VALENTINE	NE 402-376-1721	SDC	.1		.01
* 979.	Feb 12	2:34pm	Fm LOCAL CALL	704-552-6565	SDC	.8		.04
* 980.	Feb 12	4:03pm	Fm MIDDLEBURG	VA 540-687-0033	SDC	1.1		.05
* 981.	Feb 12	4:31pm	Fm VAIL	CO 970-376-3233	SDC	.9		.04
* 982.	Feb 12	4:44pm	Fm MIDDLEBURG	VA 540-687-0033	SDC	1.3		.06
* 983.	Feb 12	5:14pm	Fm CANOGAPARK	CA 818-227-4829	SDC	1.7		.08
* 984.	Feb 13	2:00pm	Fm AIKEN	SC 803-641-0718	SDC	1.1		.05
* 985.	Feb 13	9:23pm	Fm DERRY	NH 603-653-2993	SDC	13.1		.59
* 986.	Feb 15	10:53am	Fm RICHARDSON	TX 972-729-0000	SDC	2.3		.10
* 987.	Feb 15	11:58am	Fm NEW YORK	NY 212-918-0000	SDC	1.5		.07
* 988.	Feb 15	12:23pm	Fm AIKEN	SC 803-644-4468	SDC	4.9		.22
* 989.	Feb 15	12:37pm	Fm DAVIDSON	NC 704-987-9700	SDC	1.1		.05
* 990.	Feb 15	4:12pm	Fm AIKEN	SC 803-641-0718	SDC	2.1		.09
* 991.	Feb 15	4:18pm	Fm FORT MYERS	FL 239-768-3314	SDC	1.7		.08
* 992.	Feb 15	4:50pm	Fm VAIL	CO 970-376-3233	SDC	1.7		.08
* 993.	Feb 15	5:20pm	Fm AIKEN	SC 803-641-0718	SDC	1.3		.06
* 994.	Feb 15	6:23pm	Fm CANOGAPARK	CA 818-227-4829	SDC	1.1		.05
* 995.	Feb 15	6:43pm	Fm AIKEN	SC 803-641-0718	SDC	1.1		.05
* 996.	Feb 15	9:09pm	Fm GRANDPRARI	TX 469-855-3216	SDC	.4		.02
* 997.	Feb 16	8:47am	Fm SAVANNAH	GA 912-238-2040	SDC	.8		.04
* 998.	Feb 16	9:01am	Fm SAVANNAH	GA 912-238-2040	SDC	.4		.02
* 999.	Feb 16	9:02am	Fm SAVANNAH	GA 912-238-2040	SDC	1.9		.09
* 1000.	Feb 16	10:08am	Fm AUGUSTA	GA 706-722-7600	SDC	.9		.04
* 1001.	Feb 16	10:42am	Fm LOCAL CALL	704-552-6565	SDC	1.9		.09
* 1002.	Feb 16	11:03am	Fm WPALMBEACH	FL 561-537-4880	SDC	4.0		.18
* 1003.	Feb 16	11:47am	Fm ATLANTA NW	GA 770-926-3795	SDC	.9		.04
* 1004.	Feb 16	12:59pm	Fm LAS VEGAS	NV 702-492-6895	SDC	.2		.01

Oremus v. 4K&D Corp., et al
Grand Estates Defendants_002354

Comporium Customer Service 1-877-803-2200

CD-479 (42)
10-28-08

Business Corporation North Carolina Annual Report

This report may be filed online at the Secretary of State website: www.sos.nc.com

Name of Bus. Corporation: 4 K&D CORPORATION

Fiscal Year Ending: 12 31 08

State of Incorporation: NC

Month / Day / Year

Secretary of State ID Number: 0281357

☐ I hereby certify that the information requested below (required by NCGS 55-10-22) has not changed since the most recently filed annual report and is therefore complete.

Nature of Business: REAL ESTATE INVESTMENTS, AUCTIONS

Registered Agent: RICHARD M KOCH

Registered Office Mailing Address: 3220-201 PROSPERITY CHURCH RD

County: MECKLENBURG

City: CHARLOTTE

State: NC Zip Code: 28269

Registered Office Street Address: 3220-201 PROSPERITY CHURCH RD

County: MECKLENBURG

City: CHARLOTTE

State: NC Zip Code: 28269

Signature of New Registered Agent:

(Signature constitutes consent to the appointment)

Principal Office Telephone Number: 704-529-1233

Principal Office Mailing Address: 9115-F OLD STATESVILLE RD

City: CHARLOTTE

State: NC Zip Code: 28269

Principal Office Street Address: 9115-F OLD STATESVILLE RD

City: CHARLOTTE

State: NC Zip Code: 28269

Name, Title, and Business Address of Principal Officers:

Name: VALARIA DEVINE

Title: VICE PRESIDENT

Address: 24 AMBLESIDE PL

City: EDWARDS CO 81632

State:

Zip:

Name: STACY KIRK

Title: PRESIDENT

Address: 9115-F OLD STATESVILLE RD

City: CHARLOTTE

State: NC

Zip: 28269

Name: SCOTT KIRK

Title: TREASURER

Address: 9115-F OLD STATESVILLE RD

City: CHARLOTTE NC 28269

State:

Zip:

Certification of annual report (Must be completed by all Business Corporations).

Signature (Form must be signed by an officer of corporation)

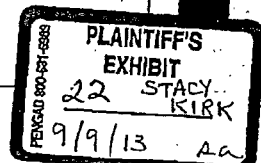
Date

Type or Print Name

Title

CONFIDENTIAL

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000467



0386

APPENDIX 000389

CD-479 (42) Business Corporation North Carolina Annual Report

10-28-08

This report may be filed online at the Secretary of State website: www.sosnc.com

Name of Bus. Corporation: 4 K&D CORPORATION

Fiscal Year Ending: 12 31 09

State of Incorporation: NC

Month / Day / Year

Secretary of State ID Number: 0281357

☐ I hereby certify that the information requested below (required by NCGS 55-16-22) has not changed since the most recently filed annual report and is therefore complete.

Nature of Business: REAL ESTATE INVESTMENTS, AUCTIONS

Registered Agent: RICHARD M KOCH

Registered Office Mailing Address: 3220-201 PROSPERITY CHURCH RD

County: MECKLENBURG

City: CHARLOTTE

State: NC Zip Code: 28269

Registered Office Street Address: 3220-201 PROSPERITY CHURCH RD

County: MECKLENBURG

City: CHARLOTTE

State: NC Zip Code: 28269

Signature of New Registered Agent:

(Signature constitutes consent to the appointment)

Principal Office Telephone Number: 704-529-1233

Principal Office Mailing Address: 9115-F OLD STATESVILLE RD

City: CHARLOTTE

State: NC Zip Code: 28269

Principal Office Street Address: 9115-F OLD STATESVILLE RD

City: CHARLOTTE

State: NC Zip Code: 28269

Name, Title, and Business Address of Principal Officers:

Name: VALARIA DEVINE

Title: VICE PRESIDENT

Address: 346 EIGHT AVE S. UNIT 6

City: NAPLES

State: FL

Zip: 34102

Name: STACY KIRK

Title: PRESIDENT

Address: 2885 MORNINGTON DR

City: ATLANTA

State: GA

Zip: 30327

Name: SCOTT KIRK

Title: TREASURER

Address: 2885 MORNINGTON DR

City: ATLANTA

State: GA

Zip: 30327

Certification of annual report (Must be completed by all Business Corporations).

Signature (Form must be signed by an officer of corporation)

Date

Type or Print Name

Title

CONFIDENTIAL

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000373

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APPENDIX 000390

CD-479 (42)
11-22-10

Business Corporation North Carolina Annual Report

This report may be filed online at the Secretary of State website: www.sosnc.com

Name of Bus. Corporation 4 K&D CORPORATION

Fiscal Year Ending: 12 31 10

State of Incorporation: NC

Month / Day / Year

Secretary of State ID Number: 0281357

☐ I hereby certify that an annual report completed in its entirety has been submitted and the information requested below (required by NCGS 55-10-22) has not changed and is therefore complete.

Nature of Business: REAL ESTATE INVESTMENTS, AUCTIONS

Registered Agent: RICHARD M KOCH

Registered Office Mailing Address: 3220-201 PROSPERITY CHURCH RD

County: MECKLENBURG

City: CHARLOTTE

State: NC Zip Code: 28269

Registered Office Street Address: 3220-201 PROSPERITY CHURCH RD

County: MECKLENBURG

City: CHARLOTTE

State: NC Zip Code: 28269

Signature of New Registered Agent:

(Signature constitutes consent to the appointment)

Principal Office Telephone Number: 704-529-1233

Principal Office Mailing Address: 2359 PERIMETER POINTE PARKWAY, STE 270

City: CHARLOTTE

State: NC Zip Code: 28208

Principal Office Street Address: 2359 PERIMETER POINTE PARKWAY, STE 270

City: CHARLOTTE

State: NC Zip Code: 28208

Name, Title, and Business Address of Principal Officers:

Name: VALARIA DEVINE	Title: VICE PRESIDENT
Address: 346 EIGHT AVE S. UNIT 6	
City: NAPLES	State: FL Zip: 34102

Name: STACY KIRK	Title: PRESIDENT
Address: 2885 MORNINGTON DR	
City: ATLANTA	State: GA Zip: 30327

Name: SCOTT KIRK	Title: TREASURER
Address: 6350 GAYWIND DR	
City: CHARLOTTE	State: NC Zip: 28226

Certification of annual report (Must be completed by all Business Corporations).

Signature (Form must be signed by an officer of corporation)
SCOTT KIRK

Type or Print Name

Date
SECRETARY

CONFIDENTIAL

Title
Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000270

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1120		U.S. Corporation Income Tax Return				OMB No 1545-0023	
Department of the Treasury Internal Revenue Service		For calendar year 2009 or tax year beginning ending				2009	
Check if: 1a Consolidated return (attach Form 990) ☐ 1b Life insurance company return (attach Form 990-LIC) ☐ 2 Personal holding company (attach Form 990-PHC) ☐ 3 Personal service corporation (see instructions) ☐ 4 Schedule M-3 attached ☐		Use IRS label. Otherwise, print or type. Name 4K & D Corp Address GRAND ESTATES AUCTION CO. 9115-F OLD STATESVILLE RD CHARLOTTE NC 28269		Employer identification number 56-1732538		Date incorporated 01/11/1991	
E Check if: (1) Initial return (2) Final return (3) Name change (4) Address change		Total assets (see instructions) \$ 667,194					
1a Gross receipts or sales 4,036,854		b Less returns and allowances		c Bal		1c 4,036,854	
2 Cost of goods sold (Schedule A, line 8)		3 Gross profit. Subtract line 2 from line 1c		4 Dividends (Schedule C, line 19)		5 Interest 15	
6 Gross rents		7 Gross royalties		8 Capital gain net income (attach Schedule D (Form 1120))		9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	
10 Other income (see instructions—attach schedule)		11 Total income. Add lines 3 through 10		12 Compensation of officers (Schedule E, line 4)		13 Salaries and wages (less employment credits)	
14 Repairs and maintenance		15 Bad debts		16 Rents		17 Taxes and licenses	
18 Interest		19 Charitable contributions See Stmt 1		20 Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)		21 Depletion	
22 Advertising		23 Pension, profit-sharing, etc., plans		24 Employee benefit programs		25 Domestic production activities deduction (attach Form 1042-S)	
26 Other deductions (attach schedule)		27 Total deductions. Add lines 12 through 26		28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		29 Less: a Net operating loss deduction (see instructions)	
b Special deductions (Schedule C, line 20)		29a		29b		29c	
30 Taxable income. Subtract line 29c from line 28 (see instructions)		31 Total tax (Schedule J, line 10)		32a 2008 overpayment credited to 2009		32b 2009 estimated tax payments	
32c 2009 refund applied for on Form 4466		32d		32e		32f	
32g		32h		33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☒		34 Amount owed. If line 32h is smaller than the total of lines 31 and 33, enter amount owed	
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid		36 Enter amount from line 35 you want: Credited to 2010 estimated tax		Refunded		37	
Sign Here		Signature of officer		Date		Title	
Paid preparer's Use Only		Preparer's signature Wesley E. Smith CPA		Date 02/19/10		Check if self-employed ☐	
Firm's name (for you only self-employed), address, and ZIP code		Moyer, Smith & Roller, P.A., CPA's		Preparer's SSN or PTIN P00051706		EIN 56-1679377	
7229 Albemarle Road, Suite A		Charlotte, NC 28227		Phone no. 704-566-0222			

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

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Oremus v. 4 K&D Corp, et al (2009)
Grand Estates Defendants_000318

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APPENDIX 000392

Form 1120 (2009) 4K & D Corp

56-1732538

Page 2

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	1,615,979
6	Total. Add lines 1 through 5	6	1,615,979
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	1,615,979

9a Check all methods used for valuing closing inventory:

- (i) ☐ Cost
 (ii) ☐ Lower of cost or market
 (iii) ☐ Other (Specify method used and attach explanation.)

b Check if there was a write-down of subnormal goods

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing

inventory computed under LIFO

9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation?

Yes ☐ No ☒

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation

Yes ☐ No ☒**Schedule C Dividends and Special Deductions (see instructions)**

	(a) Dividends received	(b) %	(c) Special deductions. (a) X (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic and foreign corporations	See instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs	80	
8	Dividends from wholly owned foreign subsidiaries	100	
9	Total. Add lines 1 through 8. See instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958	100	
11	Dividends from affiliated group members	100	
12	Dividends from certain FSCs	100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)		
15	Foreign dividend gross-up		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities		
19	Total dividends. Add lines 1 through 17. Enter here and on page 1, line 4		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b		

Schedule E Compensation of Officers (see instructions for page 1, line 12)

Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are \$500,000 or more.

1	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
				(d) Common	(e) Preferred	
	VALARIA DEVINE		100.000%	100.000%	%	655,553
	SCOTT KIRK		100.000%	%	%	178,617
	STACY KIRK		100.000%	%	%	332,469
			%	%	%	
			%	%	%	
2	Total compensation of officers					1,166,639
3	Compensation of officers claimed on Schedule A and elsewhere on return					
4	Subtract line 3 from line 2. Enter the result here and on page 1, line 12					1,166,639

Form 1120 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000319

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APPENDIX 000393

Form 1120 (2009) 4K & D Corp

56-1732538

Page 3

Schedule J Tax Computation (see instructions)

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120))	☒	2	10,678
2	Income tax. Check if a qualified personal service corporation (see instructions)	☐	3	
3	Alternative minimum tax (attach Form 4626)		4	10,678
4	Add lines 2 and 3			
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834, line 29	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d		
e	Bond credits from Form 8912	5e		
6	Total credits. Add lines 5a through 5e	6	0	
7	Subtract line 6 from line 4	7	10,678	
8	Personal holding company tax (attach Schedule PH (Form 1120))	8		
9	Other taxes. Check if from: ☐ Form 4255 ☐ Form 8611 ☐ Form 8697 ☐ Form 8658 ☐ Form 6902 ☐ Other (attach schedule)	9		
10	Total tax. Add lines 7 through 9. Enter here and on page 1, line 31	10	10,678	

Schedule K Other Information (see instructions)

1	Check accounting method: a ☒ Cash b ☐ Accrual c ☐ Other (specify) ▶	Yes	No
2	See the instructions and enter the:		
a	Business activity code no. ▶ 525990		
b	Business activity ▶ Real Estate Sales		
c	Product or service ▶ Auctions		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		X
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part I of Schedule G (Form 1120) (attach Schedule G)		X
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part II of Schedule G (Form 1120) (attach Schedule G)	X	
5	At the end of the tax year, did the corporation:	Yes	No
a	Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on Form 854, Affiliations Schedule? For rules of constructive ownership, see instructions If "Yes," complete (i) through (iv).		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

Form 1120 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000320

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APPENDIX 000394

Form 1120 (2009) 4K & D Corp

56-1732538

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Schedule M-1 Continued

- b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. ☒ X
- If "Yes," complete (i) through (iv).

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

- 6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) ☒ X
- If "Yes," file Form 5452, Corporate Report of Nondividend Distributions.
- If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary.
- 7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of the corporation's stock entitled to vote or (b) the total value of all classes of the corporation's stock? ☒ X
- For rules of attribution, see section 318. If "Yes," enter:
- (i) Percentage owned ▶ and (ii) Owner's country ▶
- (c) The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached ▶
- 8 Check this box if the corporation issued publicly offered debt instruments with original issue discount ☐
- If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.
- 9 Enter the amount of tax-exempt interest received or accrued during the tax year \$ 0
- 10 Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶
- 11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ☐
- If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.
- 12 Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 28a.) \$
- 13 Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than \$250,000? ☒ X
- If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 5. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. \$

Form 1120 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000321

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APPENDIX 000395

Form 1120 (2009) 4K & D Corp

56-1732538

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Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		381,996		534,642
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (att. sch.) Stmt 4		48,194		105,594
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach sch.)				
10a	Buildings and other depreciable assets	388,279		413,514	
b	Less accumulated depreciation	343,507	44,772	386,556	26,958
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach sch.)				
15	Total assets		474,962		667,194
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (att. sch.) Stmt 5		388,476		333,880
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule) Stmt 6				199,104
22	Capital stock: a Preferred stock				
	b Common stock	1,500	1,500	1,500	1,500
23	Additional paid-in capital				
24	Related earnings—Appropriated (att. sch.)				
25	Retained earnings—Unappropriated		84,986		132,710
26	Adjustments to SH equity (att. sch.)				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		474,962		667,194

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are \$10 million or more—see instructions

1	Net income (loss) per books	47,724	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax per books	746		Tax-exempt interest \$	
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Depreciation \$		a	Depreciation \$	
b	Charitable contributions \$	6,254	b	Charitable contributions \$	
c	Travel and entertainment \$	7,961			
	Stmt 7	25			
6	Add lines 1 through 5	62,710	9	Add lines 7 and 8	
			10	Income (page 1, line 28)—line 6 less line 9	62,710

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1	Balance at beginning of year	84,986	5	Distributions: a Cash	
2	Net income (loss) per books	47,724		b Stock	
3	Other increases (itemize):			c Property	
			6	Other decreases (itemize):	
4	Add lines 1, 2, and 3	132,710	7	Add lines 5 and 6	
			8	Balance at end of year (line 4 less line 7)	132,710

Form 1120 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000322

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APPENDIX 000396

**SCHEDULE O
(Form 1120)**(Rev. December 2009)
Department of the Treasury
Internal Revenue Service**Consent Plan and Apportionment Schedule
for a Controlled Group**▶ Attach to Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, or 1120-RIC.
▶ See separate instructions.

OMB No. 1545-0123

Name

4K & D Corp

Employer identification number

56-1732538

Part I Apportionment Plan Information**1** Type of controlled group:

- a ☐ Parent-subsidiary group
- b ☒ Brother-sister group
- c ☐ Combined group
- d ☐ Life insurance companies only

2 This corporation has been a member of this group:

- a ☒ For the entire year.
- b ☐ From _____, until _____.

3 This corporation consents and represents to:

- a ☐ Adopt an apportionment plan. All the other members of this group are adopting an apportionment plan effective for the current tax year which ends on _____, and for all succeeding tax years.
- b ☐ Amend the current apportionment plan. All the other members of this group are currently amending a previously adopted plan, which was in effect for the tax year ending _____, and for all succeeding tax years.
- c ☐ Terminate the current apportionment plan and not adopt a new plan. All the other members of this group are not adopting an apportionment plan.
- d ☐ Terminate the current apportionment plan and adopt a new plan. All the other members of this group are adopting an apportionment plan effective for the current tax year which ends on _____, and for all succeeding tax years.

4 If you checked box 3c or 3d above, check the applicable box below to indicate if the termination of the current apportionment plan was:

- a ☐ Voluntary
- b ☐ Involuntary

5 If you did not check a box on line 3 above, check the applicable box below concerning the status of the group's apportionment plan (see instructions).

- a ☐ No apportionment plan is in effect and none is being adopted.
- b ☐ An apportionment plan is already in effect. It was adopted for the tax year ending _____, and for all succeeding tax years.

6 If all the members of this group are adopting a plan or amending the current plan for a tax year after the due date (including extensions) of the tax return for this corporation, is there at least one year remaining on the statute of limitations from the date this corporation filed its amended return for such tax year for assessing any resulting deficiency? See instructions.

- a ☐ Yes.
- (i) ☐ The statute of limitations for this year will expire on _____.
- (ii) ☐ On _____, this corporation entered into an agreement with the Internal Revenue Service to extend the statute of limitations for purposes of assessment until _____.
- b ☐ No. The members may not adopt or amend an apportionment plan.

7 Required information and elections under section 1561. Check the applicable box(es) (see instructions).

- a ☐ The corporation will determine its tax liability by applying the maximum tax rate under section 11 to the entire amount of its taxable income.
- b ☐ The corporation and the other members of the group elect the FIFO method (rather than defaulting to the proportionate method) for allocating the group's section 11(b)(1) additional tax.
- c ☐ The corporation has a short tax year that does not include December 31.

For Privacy Act and Paperwork Reduction Act Notice,
see instructions for Form 1120.

Schedule O (Form 1120) (Rev. 12-2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000323

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Schedule O (Form 1120) (Rev. 12-2009) **4K & D Corp****56-1732538**Page **2****Part II Taxable Income Apportionment (See instructions)**

Caution: Each total in Part II, column (g) for each component member must agree with Form 1120, page 1, line 30 or the comparable line of such member's tax return.

(a) Group member's name and employer identification number	(b) Tax year end (Yr-Mo)	Taxable Income Amount Allocated to Each Bracket				(g) Total (add columns (c) through (f))
		(c) 15%	(d) 25%	(e) 34%	(f) 35%	
1 <u>4K & D Corp</u> <u>GRAND ESTATES AUCTION CO.</u>	<u>56-1732538</u> <u>2009-12</u>	<u>50,000</u>	<u>12,710</u>			<u>62,710</u>
2 <u>G&A, INC.</u>	<u>88-0508096</u> <u>2010-03</u>					
3 _____						
4 _____						
5 _____						
6 _____						
7 _____						
8 _____						
9 _____						
10 _____						
Total		50,000	12,710			62,710

Oreanus v. 4 K&D Corp, et al
Grand Estates Defendants, 000324

Schedule O (Form 1120) (Rev. 12-2009)

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Schedule O (Form 1120) (Rev. 12-2009) 4K & D Corp

56-1732538

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Part III Income Tax Apportionment (See instructions)

(a) Group member's name	Income Tax Apportionment						
	(b) 15%	(c) 25%	(d) 34%	(e) 35%	(f) 5%	(g) 3%	(h) Total income tax (combine lines (b) through (g))
1 4K & D Corp GRAND ESTATES AUCTION CO.	7,500	3,178	0	0	0	0	10,678
2 GEA, INC.	0	0	0	0	0	0	
3 - - - - -							
4 - - - - -							
5 - - - - -							
6 - - - - -							
7 - - - - -							
8 - - - - -							
9 - - - - -							
10 - - - - -							
Total	7,500	3,178	0	0	0	0	10,678

Grand Estates Defendants_000325
Oremus v. 4 K&D Corp, et al

Schedule O (Form 1120) (Rev. 12-2009)

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APPENDIX 000399

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Schedule O (Form 1120) (Rev. 12-2008) 4K & D Corp

56-1732538

Page 4

Part IV Other Apportionments (See instructions)

(a) Group member's name	Other Apportionments				
	(b) Accumulated earnings credit	(c) AMT exemption amount	(d) Phaseout of AMT exemption amount	(e) Penalty for failure to pay estimated tax	(f) Other
1 <u>4K & D Corp (80) -</u> <u>GRAND ESTATES AUCTION CO.</u>	125,000			19	
2 <u>GEA, INC.</u>	125,000	40,000			
3 _____					
4 _____					
5 _____					
6 _____					
7 _____					
8 _____					
9 _____					
10 _____					
Total	250,000	40,000		19	

Schedule O (Form 1120) (Rev. 12-2008)

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000326

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DAA

APPENDIX 000400

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SCHEDULE G
(Form 1120)Department of the Treasury
Internal Revenue Service**Information on Certain Persons Owning the**
Corporation's Voting Stock

▶ Attach to Form 1120.

▶ See Instructions on page 2.

OMB No. 1545-0123

2009

Name

Employer identification number (EIN)

4K & D Corp**56-1732538****Part I****Certain Entities Owning the Corporation's Voting Stock.** (Form 1120, Schedule K, Question 4a).

Complete columns (i) through (v) below for any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Entity	(f) Employer Identification Number (if any)	(k) Type of Entity	(h) Country of Organization	(v) Percentage Owned in Voting Stock

Part II**Certain Individuals and Estates Owning the Corporation's Voting Stock.** (Form 1120, Schedule K, Question 4b). Complete columns (i) through (iv) below for any individual or estate that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Individual or Estate	(j) Identifying Number (if any)	(k) Country of Ownership (see instructions)	(iv) Percentage Owned in Voting Stock
VALARIA A DEVINE		USA	100.000

For Paperwork Reduction Act Notice,
see the Instructions for Form 1120.

Schedule G (Form 1120) 2009

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000327

0398

APPENDIX 000401

Form **2220**

Underpayment of Estimated Tax by Corporations

OMB No. 1545-0142

2009Department of the Treasury
Internal Revenue Service▶ See separate instructions.
▶ Attach to the corporation's tax return.

Name

4K & D Corp

Employer identification number

56-1732538

Note: Generally, the corporation is not required to file Form 2220 (see Part II below for exceptions) because the IRS will figure any penalty owed and bill the corporation. However, the corporation may still use Form 2220 to figure the penalty. If so, enter the amount from page 2, line 38 on the estimated tax penalty line of the corporation's income tax return, but do not attach Form 2220.

Part I Required Annual Payment

1	Total tax (see instructions)	1	10,678
2a	Personal holding company tax (Schedule PH (Form 1120), line 26) included on line 1	2a	
b	Look-back interest included on line 1 under section 460(b)(2) for completed long-term contracts or section 167(g) for depreciation under the income forecast method	2b	
c	Credit for federal tax paid on fuels (see instructions)	2c	
d	Total. Add lines 2a through 2c	2d	
3	Subtract line 2d from line 1. If the result is less than \$500, do not complete or file this form. The corporation does not owe the penalty	3	10,678
4	Enter the tax shown on the corporation's 2008 income tax return (see instructions). Caution: If the tax is zero or the tax year was for less than 12 months, skip this line and enter the amount from line 3 on line 5	4	746
5	Required annual payment. Enter the smaller of line 3 or line 4. If the corporation is required to skip line 4, enter the amount from line 3	5	746

Part II Reasons for Filing—Check the boxes below that apply. If any boxes are checked, the corporation must file Form 2220 even if it does not owe a penalty (see instructions).

- 6 ☐ The corporation is using the adjusted seasonal installment method.
 7 ☐ The corporation is using the annualized income installment method.
 8 ☐ The corporation is a "large corporation" figuring its first required installment based on the prior year's tax.

Part III Figuring the Underpayment

	(a)	(b)	(c)	(d)	
9	Installment due dates. Enter in column (a) through (d) the 15th day of the 4th (Form 980-PF filers: Use 5th month), 6th, 9th, and 12th months of the corporation's tax year	04/15/09	06/15/09	09/15/09	12/15/09
10	Required installments. If the box on line 6 and/or line 7 above is checked, enter the amounts from Schedule A, line 38. If the box on line 8 (but not 6 or 7) is checked, see instructions for the amounts to enter. If none of these boxes are checked, enter 25% of line 5 above in each column	187	186	187	186
11	Estimated tax paid or credited for each period (see instructions). For column (a) only, enter the amount from line 11 on line 15. Complete lines 12 through 18 of one column before going to the next column.				
12	Enter amount, if any, from line 18 of the preceding column				
13	Add lines 11 and 12				
14	Add amounts on lines 10 and 17 of the preceding column		187	373	560
15	Subtract line 14 from line 13. If zero or less, enter -0-	0	0	0	0
16	If the amount on line 15 is zero, subtract line 13 from line 14. Otherwise, enter -0-		187	373	
17	Underpayment. If line 15 is less than or equal to line 10, subtract line 15 from line 10. Then go to line 12 of the next column. Otherwise, go to line 18	187	186	187	186
18	Overpayment. If line 10 is less than line 15, subtract line 10 from line 15. Then go to line 12 of the next column				

Go to Part IV on page 2 to figure the penalty. Do not go to Part IV if there are no entries on line 17—no penalty is owed.

For Paperwork Reduction Act Notice, see separate instructions.

Form 2220 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000328

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APPENDIX 000402

Form 2220 (2009) 4K & D Corp

56-1732538

Page 2

Part IV Figuring the Penalty

	(a)	(b)	(c)	(d)
19 Enter the date of payment or the 15th day of the 3rd month after the close of the tax year, whichever is earlier (see instructions). (Form 990-PF and Form 990-T filers: Use 5th month instead of 3rd month.)	19	See Worksheet		
20 Number of days from due date of installment on line 9 to the date shown on line 19	20			
21 Number of days on line 20 after 4/15/2009 and before 7/1/2009	21			
22 Underpayment on line 17 x $\frac{\text{Number of days on line 21}}{365} \times 4\%$	22	\$	\$	\$
23 Number of days on line 20 after 6/30/2009 & before 10/1/2009	23			
24 Underpayment on line 17 x $\frac{\text{Number of days on line 23}}{365} \times 4\%$	24	\$	\$	\$
25 Number of days on line 20 after 9/30/2009 and before 1/1/2010	25			
26 Underpayment on line 17 x $\frac{\text{Number of days on line 25}}{365} \times 4\%$	26	\$	\$	\$
27 Number of days on line 20 after 12/31/2009 & before 4/1/2010	27			
28 Underpayment on line 17 x $\frac{\text{Number of days on line 27}}{365} \times 4\%$	28	\$	\$	\$
29 Number of days on line 20 after 3/31/2010 and before 7/1/2010	29			
30 Underpayment on line 17 x $\frac{\text{Number of days on line 29}}{365} \times 4\%$	30	\$	\$	\$
31 Number of days on line 20 after 6/30/2010 and before 10/1/2010	31			
32 Underpayment on line 17 x $\frac{\text{Number of days on line 31}}{365} \times 4\%$	32	\$	\$	\$
33 Number of days on line 20 after 9/30/2010 and before 1/1/2011	33			
34 Underpayment on line 17 x $\frac{\text{Number of days on line 33}}{365} \times 4\%$	34	\$	\$	\$
35 Number of days on line 20 after 12/31/2010 & before 2/15/2011	35			
36 Underpayment on line 17 x $\frac{\text{Number of days on line 35}}{365} \times 4\%$	36	\$	\$	\$
37 Add lines 22, 24, 26, 28, 30, 32, 34, and 36	37	\$	\$	\$
38 Penalty. Add columns (a) through (d) of line 37. Enter the total here and on Form 1120, line 33; or the comparable line for other income tax returns	38	\$		1.9

*Use the penalty interest rate for each calendar quarter, which the IRS will determine during the first month in the preceding quarter. These rates are published quarterly in an IRS News Release and in a revenue ruling in the Internal Revenue Bulletin. To obtain this information on the Internet, access the IRS website at www.irs.gov. You can also call 1-800-829-4933 to get interest rate information.

Form 2220 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000329

0400

APPENDIX 000403

Form 2220	Underpayment of Estimated Tax by Corporations Worksheet	2009
For calendar year 2009 or tax year beginning _____, ending _____		

Name 4K & D Corp	Employer Identification Number 56-1732538

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Due date of estimated payment	04/15/09	06/15/09	09/15/09	12/15/09
Amount of underpayment	187	186	187	186
Withholding				
	1st Pymt	2nd Pymt	3rd Pymt	4th Pymt
Date of payment				
Amount of payment				

Qtr	From	To	Underpayment	Days	Rate	Penalty
1	4/15/09	3/15/10	187	334	4.00	7
2	6/15/09	3/15/10	186	273	4.00	6
3	9/15/09	3/15/10	187	181	4.00	4
4	12/15/09	3/15/10	186	90	4.00	2
Total Penalty						19
						=====

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000330

0401

Form **4562**Department of the Treasury
Internal Revenue Service

(89)

Depreciation and Amortization
(Including Information on Listed Property)

▶ See separate instructions.

▶ Attach to your tax return.

OMB No. 1545-0172

2009Attachment
Sequence No. 67

Name(s) shown on return

4K & D Corp

Identifying number

56-1732538

Business or activity to which this form relates

Regular Depreciation**Part I Election To Expense Certain Property Under Section 179**

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	250,000
2	Total cost of section 179 property placed in service (see instructions)	2	25,234
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	800,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	.0
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	250,000

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
	See Statement 8	25,234	25,234

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	25,234
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	25,234
10	Carryover of disallowed deduction from line 13 of your 2008 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	87,944
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	25,234
13	Carryover of disallowed deduction to 2010. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See Instr.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2009	17	952
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B—Assets Placed in Service During 2009 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			27.5 yrs.	MM	S/L	
			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2009 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	16,862
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions	22	43,041
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (200

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000331

Part IV Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed?		☒ Yes ☐ No		24b If "Yes," is the evidence written?		☒ Yes ☐ No	
(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)						25	
26 Property used more than 50% in a qualified business use:							
PORSCHE	04/01/07	100.00%	87,821	87,821	5.0	200DBY	16,862
		%					
27 Property used 50% or less in a qualified business use:							
		%				SL	
		%				SL	
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28	16,862
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1						29	

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

30 Total business/investment miles driven during the year (do not include commuting miles)	(a) Vehicle 1	(b) Vehicle 2	(c) Vehicle 3	(d) Vehicle 4	(e) Vehicle 5	(f) Vehicle 6
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year. Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes	No	Yes	No	Yes	No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		X
39 Do you treat all use of vehicles by employees as personal use?		X
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		X
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		X

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part V Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2009 tax year (see instructions):					
43 Amortization of costs that began before your 2009 tax year					43
44 Total. Add amounts in column (f). See the instructions for where to report					44

Form 4562 (2009)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000332

0403

APPENDIX 000406

NOL and Contribution Carryover Worksheet - Regular Tax		2009
Form 1120	For calendar year 2009 or tax year beginning _____, ending _____	
Name 4K & D Corp		Employer Identification Number 56-1732538

Preceding Taxable Year	Adj. To NOL Inc/(Loss) After Adj.	Prior Year		Current Year	Next Year
		NOL Utilized (Income Offset)	Carryovers	Income Offset By NOL Carryback/ Carryover NOL Utilized	Carryover
15th 12/31/94					
14th 12/31/95	-3,447	3,447			
13th 12/31/96	-15	15			
12th 12/31/97	-705	705			
11th 12/31/98	-900	900			
10th 12/31/99					
9th 12/31/00					
8th 12/31/01	3,275	-3,275			
7th 12/31/02	-95,926	95,926			
6th 12/31/03	101,761	-95,926			
5th 12/31/04	12,719				
4th 12/31/05	3,041				
3rd 12/31/06	59,865				
2nd 12/31/07	24,025				
1st 12/31/08	4,976				
NOL Carryover Available To Current Year			0		
Current Year	0 62,710				0
NOL Carryover Available To Next Year					0

Charitable Contributions		Prior Year		Current Year		Next Year
Preceding Tax Year	Excess Contributions	Utilized Or Reclassified to NOL	Carryover	Reclassified to NOL (Reg. Sec. 1.170A-11(c)(2))	Carryovers Utilized	Carryover
5th 12/31/04						
4th 12/31/05						
3rd 12/31/06						
2nd 12/31/07						
1st 12/31/08						
Charitable Contribution Carryover To Current Year			0			
Current Year	6,254					6,254
Charitable Contribution Carryover Available To Next Year			CONFIDENTIAL	Oremus v. 4 K&D Corp, et al Grand Estates Defendants_000333		6,254

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Form 4562	Section 179 Consent Statement Worksheet	2009

Name and address of corporation making election

4K & D Corp
 9115-F OLD STATESVILLE RD
 CHARLOTTE NC 28269

Employer Identification Number

56-1732538

Name, address, EIN, and tax year of each member	Members' Consent Statement		Section 179 allocation	Manner in which Section 179 allocated
	Signature	Date		
4K & D Corp GRAND ESTATES AUCTION CO. 9115-F OLD STATESVILLE RD CHARLOTTE NC 28269 56-1732538 12/31/09			25,234	ACTUAL EXPENSE
GEA, INC. 9115-F OLD STATESVILLE ROAD CHARLOTTE NC 28269 88-0508096 03/31/10			224,766	REMAINING BALANCE
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Grand Estates Defendants_000334

APPENDIX 000408

P1000 4K & D Corp
56-1732538
FYE: 12/31/2009

Federal Statements

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Statement 1 - Form 1120, Page 1, Line 19 - Charitable Contributions

Description	Amount
Contributions	\$ 13,222
Total Contributions Available	13,222
Less Contributions Disallowed	6,254
Less QCC Contributions Disall	0
Total Deduction Allowed	\$ 6,968

Statement 2 - Form 1120, Page 1, Line 26 - Other Deductions

Description	Amount
Insurance	\$ 15,277
Legal & Accounting	27,990
Legal & Accounting	154
Office Supplies	2,917
Office Supplies	12,316
Bank Charges	2,030
Bank Charges	138
Filing Fees	7,517
Mailing Lists	200
Comp. Service	38,756
Telephone	19,336
Telephone	888
Utilities	7,529
Auto Expense	11,776
Credit Card Charges	389
Misc Expenses	60
Other Exp	47,012
Lease	17,796
Professional Associations	10,350
50% of Meals & Entertainment	7,962
Total	\$ 230,393

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Grand Estates Defendants_000335

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P1000 4K & D Corp
56-1732538
FYE: 12/31/2009

Federal Statements

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Statement 3 - Form 1120, Page 2, Schedule A, Line 5 - Other Costs

<u>Description</u>	<u>Amount</u>
Outside Sales Comm	\$ 493,682
Adv-Customer	496,018
Adv-Institutional	732
Adv-Institutional	98,655
Adv-Internet	23,045
Adv-Internet	17,516
Billboards & Signs	28,550
Auctioneer	13,500
Auction Expenses	6,804
Appraisals	700
Postage & Express Mail	32,059
Postage & Exp. Mail	42,361
Photography & Video	26,773
Ad Layout	8,810
Printing	1,281
Printing	88,277
Outside Services	18,163
Outside services	61,825
Travel	44,357
Travel	112,871
Total	\$ 1,615,979

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000336

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Federal Statements

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Statement 4 - Form 1120, Page 5, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
Escrow Account	\$ 50	\$ 50
Employee advances	18,100	500
Deposit-Rent	2,651	2,651
Deposits held by 4K&D	27,393	102,393
Total	\$ 48,194	\$ 105,594

Statement 5 - Form 1120, Page 5, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
401K Payable	\$ 57,480	\$
Ga W/H	2,218	-412
NC SUTA Payable	-226	264
FUTA Payable	48	49
Customer Mktg Deposits	300,540	330,187
401K W/H Payable	369	3,791
NC W/H Tax Payable	620	
GA SUTA Payable	59	1
FL SUTA Payable	-25	
Deposits-GE Adv	27,393	
Total	\$ 388,476	\$ 333,880

Statement 6 - Form 1120, Page 5, Schedule L, Line 21 - Other Liabilities

Description	Beginning of Year	End of Year
Deposit-GE ADV	\$	\$ 102,393
Defined Benefit Plan Paybl		96,711
Total	\$ 0	\$ 199,104

Statement 7 - Form 1120, Page 5, Schedule M-1, Line 5 - Expenses on Books Not on Return

Description	Amount
ROUNDING	\$ 2
Fines and Penalties	23
Total	\$ 25

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Oremus v. 4 K&D Corp, et al 4-7
Grand Estates Defendants_000337

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P1000 4K & D Corp
56-1732538
FYE: 12/31/2009

Federal Statements

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Regular Depreciation

Statement 8 - Form 4562, Part I, Line 6 - Section 179 Property Acquired This Year

Description of Property	Cost	Expense
FURNITURE	\$ 724	\$ 724
CLOCK	21,825	21,825
3 MONITORS	994	994
COMPUTER HWD	1,333	1,333
COMPUTER HWD	358	358
Total	\$ 25,234	\$ 25,234

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000338

8

0409

Form 1120		U.S. Corporation Income Tax Return		OMB No. 1545-0123	
Department of the Treasury Internal Revenue Service		For calendar year 2010 or tax year beginning _____, ending _____		2010	
A Check if:		Name, number, street, and room or suite no., city or town, state, and ZIP code (If a P.O. box, see instructions.)		B Employer identification number	
1a Consolidated return (attach Form 953) ☐		4K & D Corp		56-1732538	
b Life/estate consolidated return ☐		GRAND ESTATES AUCTION CO.		C Date incorporated	
2 Personal holding co. (attach Sch. PH) ☐		2359 PERIMETER POINTE PARKWAY, STE		01/11/1991	
3 Personal service corp. (see instructions) ☐		CHARLOTTE NC 28208		D Total assets (see instructions)	
4 Schedule M-3 attached ☐		E Check if: (1) Initial return (2) Final return (3) Name change (4) Address change		\$ 239,596	
1a Gross receipts or sales		3,353,112		b Less returns and allowances	
2 Cost of goods sold (Schedule A, line 8)				c Bal	
3 Gross profit. Subtract line 2 from line 1a				1c 3,353,112	
4 Dividends (Schedule C, line 19)				2 1,758,176	
5 Interest				3 1,594,936	
6 Gross rents				4	
7 Gross royalties				5 3	
8 Capital gain net income (attach Schedule D (Form 1120))				6	
9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)				7	
10 Other income (see instructions - attach schedule)				8	
11 Total income. Add lines 3 through 10				9	
12 Compensation of officers (Schedule E, line 4)				10	
13 Salaries and wages (less employment credits)				11 1,594,939	
14 Repairs and maintenance				12 1,021,720	
15 Bad debts				13 180,134	
16 Rents				14 6,839	
17 Taxes and licenses				15	
18 Interest				16 50,929	
19 Charitable contributions		See Stmt 1		17 83,821	
20 Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)				18	
21 Depletion				19 0	
22 Advertising				20 18,948	
23 Pension, profit-sharing, etc., plans				21	
24 Employee benefit programs				22	
25 Domestic production activities deduction (attach Form 8903)				23 47,596	
26 Other deductions (attach schedule)		See Stmt 2		24 147,437	
27 Total deductions. Add lines 12 through 26				25	
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11				26 291,169	
29 Less: a Net operating loss deduction (see instructions)		29a		27 1,848,593	
b Special deductions (Schedule C, line 20)		29b		28 -253,654	
30 Taxable income. Subtract line 29a from line 28 (see instructions)				29c	
31 Total tax (Schedule J, line 10)				30 -253,654	
32a 2009 overpayment credited to 2010		32a		31 0	
b 2010 estimated tax payments		32b			
c 2010 refund applied for on Form 4456		32c			
d Tax deposited with Form 7004		32d			
e Credits: (1) Form 2439 (2) Form 4136		32e			
f Refundable credits from Form 3800, line 19c, and Form 8827, line 8c		32f			
33 Estimated tax penalty (see instructions). Check if Form 2220 is attached		32g		32h	
34 Amount owed. If line 32h is smaller than the total of lines 31 and 33, enter amount owed				33	
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid				34	
36 Enter amount from line 35 you want credited to 2011 estimated tax		Refunded		35	
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, this return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No			
Sign Here		Secretary			
Signature of officer Scott Kirk		Date		Title	
Print/Type preparer's name		Preparer's signature		Date	
Wesley E. Smith		Wesley E. Smith, CPA		09/12/11	
Firm's name		Firm's EIN		Check ☐ if self-employed PTIN	
Moyer, Smith & Roller, P.A., CPA's		56-1679377		P00051706	
Firm's address		Phone no.			
7229 Albemarle Road, Suite A		Oremus v. 4K & D Corp, et al			
Charlotte, NC CONFIDENTIAL 28227		Grand Estates Defendants 000217			

7004December 2008
Department of the Treasury
Internal Revenue Service**Application for Automatic Extension of Time To File Certain
Business Income Tax, Information, and Other Returns**

▶ File a separate application for each return.

▶ See separate instructions.

OMB No. 1545-0233

**Type or
Print**File by the due
date for the
return for which
an extension is
requested. See
instructions.

Name

**AK & D Corp
GRAND ESTATES AUCTION CO.**

Identifying number

56-1732538

Number, street, and room or suite no. (if P.O. box, see instructions.)

2359 PERIMETER POINTE PARKWAY, STE

City, town, state, and ZIP code (if a foreign address, enter city, province or state, and country (follow the country's practice for entering postal code)).

CHARLOTTE NC 28208

Note. See instructions before completing this form.

Part I Automatic 5-Month Extension Complete if Filing Form 1065, 1041, or 8804**a** Enter the form code for the return that this application is for (see below)

Application For:	Form Code	Application Is For:	Form Code
Form 1065	09	Form 1041 (estate)	04
Form 8804	10	Form 1041 (trust)	05

Part II Automatic 6-Month Extension Complete if Filing Other Forms**b** Enter the form code for the return that this application is for (see below)

Application For:	Form Code	Application Is For:	Form Code
Form 706-GS(D)	01	Form 1120-PC	21
Form 706-GS(T)	02	Form 1120-POL	22
Form 1041-N	06	Form 1120-REI	23
Form 1041-DET	07	Form 1120-RIC	24
Form 1042	08	Form 1120-S	25
Form 1065-S	10	Form 1120-SF	26
Form 1066	11	Form 3520-A	27
Form 1120	12	Form 8612	28
Form 1120-C	14	Form 8613	29
Form 1120-E	15	Form 8725	30
Form 1120-FSC	16	Form 8831	32
Form 1120-H	17	Form 8876	33
Form 1120-L	18	Form 8924	35
Form 1120-ND	19	Form 8928	36
Form 1120-ND (section 4951 taxes)	20		

If the organization is a foreign corporation that does not have an office or place of business in the United States, check here ☐If the organization is a corporation and is the common parent of a group that intends to file a consolidated return, check here ☐

If checked, attach a schedule, listing the name, address, and Employer Identification Number (EIN) for each member covered by this application.

Part III All Filers Must Complete This PartIf the organization is a corporation or partnership that qualifies under Regulations section 1.6081-5, check here ☐The application is for calendar year 20 **10**, or tax year beginning and ending

Short tax year. If this tax year is less than 12 months, check the reason:

☐ Initial return ☐ Final return ☐ Change in accounting period ☐ Consolidated return to be filed

tentative total tax

6 0

total payments and credits (see instructions)

7 0

balance due. Subtract line 7 from line 6. Generally, you must deposit this amount using the Electronic Federal Tax Payment System (EFTPS), a Federal Tax Deposit (FTD) Coupon, or Electronic Funds Withdrawal (EFW) (see instructions for exceptions)

8 0

Privacy Act and Paperwork Reduction Act Notice, see separate instructions

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Form 1120 (2010) 4K & D Corp

56-1732538

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Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	1,758,176
6	Total. Add lines 1 through 5	6	1,758,176
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	1,758,176

9a Check all methods used for valuing closing inventory:

- (i) ☐ Cost
 (ii) ☐ Lower of cost or market
 (iii) ☐ Other (Specify method used and attach explanation.)

b Check if there was a writedown of subnormal goods

c Check if the LIFO inventory method was adopted (this tax year for any goods (if checked, attach Form 970))

d If the LIFO inventory method was used for this tax year, enter percentage (or amount) of closing

9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation?

☐ Yes ☒ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes,"

attach explanation

☐ Yes ☒ No**Schedule C** Dividends and Special Deductions (see instructions)

	(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic and foreign corporations	see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs	80	
8	Dividends from wholly owned foreign subsidiaries	100	
9	Total. Add lines 1 through 8. See instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958	100	
11	Dividends from affiliated group members	100	
12	Dividends from certain FSCs	100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)		
15	Foreign dividend gross-up		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities		
19	Total dividends. Add lines 1 through 17. Enter here and on page 1, line 4		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b		

Schedule E Compensation of Officers (see instructions for page 1, line 12)

Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
			(d) Common	(e) Preferred	
1 VALARIA DEVINE		100.000%	100.000%	%	301,960
SCOTT KIRK		100.000%	%	%	303,086
STACY KIRK REICH		100.000%	%	%	416,674
		%	%	%	
		%	%	%	
2 Total compensation of officers					1,021,720
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on page 1, line 12					1,021,720

Form 1120 (2010)

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Form 1120 (2010) 4K & D Corp

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Schedule M Tax Computation (see instructions)

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120))	☒	2	0
2	Income tax. Check if a qualified personal service corporation (see instructions)	☐	3	
3	Alternative minimum tax (attach Form 4626)		4	0
4	Add lines 2 and 3			
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834, line 29	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d		
e	Bond credits from Form 8912	5e		
6	Total credits. Add lines 5a through 5e	6		
7	Subtract line 6 from line 4	7		
8	Personal holding company tax (attach Schedule PH (Form 1120))	8		
9	Other taxes. Check if from: ☐ Form 4255 ☐ Form 8611 ☐ Form 8897 ☐ Form 8866 ☐ Form 8902 ☐ Other (attach schedule)	9		
10	Total tax. Add lines 7 through 9. Enter here and on page 1, line 31	10		0

Schedule K Other Information (see instructions)

1	Check accounting method: a ☒ Cash b ☐ Accrual c ☐ Other (specify) ▶	Yes	No
2	See the instructions and enter the:		
a	Business activity code no. ▶ 525990		
b	Business activity ▶ Real Estate Sales		
c	Product or service ▶ Auctions		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		X
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part I of Schedule G (Form 1120) (attach Schedule G)		X
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part II of Schedule G (Form 1120) (attach Schedule G)	X	
5	At the end of the tax year, did the corporation:		
a	Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on Form 851, Affiliations Schedule? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv).		X

(i) Name of Corporation	(ii) Employer Identification Number (d/ba)	(iii) Country of Incorporation	(iv) Percentage Owned by Voting Stock

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Form 1120 (2010) 4K & D Corp

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Schedule K-1 Continued

- b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv).

Yes	No
	X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

- 6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file Form 5452, Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary. X
- 7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of the corporation's stock entitled to vote or (b) the total value of all classes of the corporation's stock? For rules of attribution, see section 318. If "Yes," enter: X
- (i) Percentage owned ▶ and (ii) Owner's country ▶
- (c) The corporation may have to file Form 6472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 6472 attached ▶
- 8 Check this box if the corporation issued publicly offered debt instruments with original issue discount. If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments. ☐
- 9 Enter the amount of tax-exempt interest received or accrued during the tax year \$ 0
- 10 Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶
- 11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ☐
If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.
- 12 Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) \$
- 13 Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than \$250,000? X
If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 5. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. \$
- 14 Is the corporation required to file Schedule UTP (Form 1120), Uncertain Tax Position Statement (see instructions)? X
If "Yes," complete and attach Schedule UTP.

Form 1120 (2010)

D/A

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Form 1120 (2010) 4K & D Corp

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Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
	Assets	(a)	(b)	(c)	(d)
1	Cash		534,642		93,107
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (att. sch.) Stmt 4		105,594		55,044
7	Loans to shareholders				70,582
8	Mortgage and real estate loans				
9	Other investments (attach sch.)				
10a	Buildings and other depreciable assets	413,514		426,368	
b	Less accumulated depreciation	386,556	26,958	405,505	20,863
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach sch.)				
15	Total assets		667,194		239,596
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (att. sch.) Stmt 5		333,880		196,631
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule) Stmt 6		199,104		172,393
22	Capital stock: a Preferred stock				
	b Common stock	1,500	1,500	1,500	1,500
23	Additional paid-in capital				
24	Retained earnings—Appropriated (att. sch.)				
25	Retained earnings—Unappropriated		132,710		-130,928
26	Adjustments to SE equity (att. sch.)				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		667,194		239,596

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are \$10 million or more - see instructions

1	Net income (loss) per books	-263,629	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax per books			Tax-exempt interest \$	
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Depreciation \$		a	Depreciation \$	
b	Charitable contributions \$		b	Charitable contributions \$	
c	Travel and entertainment \$	9,974			
	Stmt 7	9,975	9	Add lines 7 and 8	
6	Add lines 1 through 5	-253,654	10	Income (page 1, line 28)—line 6 less line 9	-253,654

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1	Balance at beginning of year	132,710	5	Distributions: a Cash	
2	Net income (loss) per books	-263,629		b Stock	
3	Other increases (itemize):			c Property	
			6	Other decreases (itemize): Stmt 8	9
			7	Add lines 5 and 6	9
4	Add lines 1, 2, and 3	-130,919	8	Balance at end of year (line 4 less line 7)	-130,928

Form 1120 (2010)

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Grand Estates Defendants_000222

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SCHEDULE O
(Form 1120)Department of the Treasury
Internal Revenue ServiceConsent Plan and Apportionment Schedule
for a Controlled Group▶ Attach to Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, or 1120-RIC.
▶ See separate instructions.

OMB No. 1545-0023

2010

Name

4K & D Corp

Employer identification number

56-1732538

Part I Apportionment Plan Information**1 Type of controlled group:**

- a ☐ Parent-subsidiary group
 b ☒ Brother-sister group
 c ☐ Combined group
 d ☐ Life insurance companies only

2 This corporation has been a member of this group:

- a ☒ For the entire year.
 b ☐ From _____, until _____.

3 This corporation consents and represents to:

- a ☐ Adopt an apportionment plan. All the other members of this group are adopting an apportionment plan effective for the current tax year which ends on _____, and for all succeeding tax years.
 b ☐ Amend the current apportionment plan. All the other members of this group are currently amending a previously adopted plan, which was in effect for the tax year ending _____, and for all succeeding tax years.
 c ☐ Terminate the current apportionment plan and not adopt a new plan. All the other members of this group are not adopting an apportionment plan.
 d ☐ Terminate the current apportionment plan and adopt a new plan. All the other members of this group are adopting an apportionment plan effective for the current tax year which ends on _____, and for all succeeding tax years.

4 If you checked box 3c or 3d above, check the applicable box below to indicate if the termination of the current apportionment plan was:

- a ☐ Elected by the component members of the group.
 b ☐ Required for the component members of the group.

5 If you did not check a box on line 3 above, check the applicable box below concerning the status of the group's apportionment plan (see instructions).

- a ☐ No apportionment plan is in effect and none is being adopted.
 b ☐ An apportionment plan is already in effect. It was adopted for the tax year ending _____, and for all succeeding tax years.

6 If all the members of this group are adopting a plan or amending the current plan for a tax year after the due date (including extensions) of the tax return for this corporation, is there at least one year remaining on the statute of limitations from the date this corporation filed its amended return for such tax year for assessing any resulting deficiency? See instructions.

- a ☐ Yes.
 (i) ☐ The statute of limitations for this year will expire on _____.
 (ii) ☐ On _____, this corporation entered into an agreement with the Internal Revenue Service to extend the statute of limitations for purposes of assessment until _____.
 b ☐ No. The members may not adopt or amend an apportionment plan.

7 Required information and elections for component members. Check the applicable box(es) (see instructions).

- a ☐ The corporation will determine its tax liability by applying the maximum tax rate imposed by section 11 to the entire amount of its taxable income.
 b ☐ The corporation and the other members of the group elect the FIFO method (rather than defaulting to the proportionate method) for allocating the additional taxes for the group imposed by section 11(b)(1).
 c ☐ The corporation has a short tax year that does not include December 31.

For Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1120.

Schedule O (Form 1120) (2010)

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Schedule O (Form 1120) (2010)

4K & D Corp

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Part II Taxable Income Apportionment (See instructions)

Caution: Each total in Part II, column (g) for each component member must agree with Form 1120, page 1, line 30 or the comparable line of such member's tax return.

(a) Group member's name and employer identification number	(b) Tax year end (Yr-Mo)	Taxable Income Amount Allocated to Each Bracket					(g) Total (add columns (c) through (f))
		(c) 15%	(d) 25%	(e) 34%	(f) 35%		
1 <u>4K & D Corp</u> GRAND ESTATES AUCTION CO.	56-1732538 2010-12						
2 <u>GEA, INC.</u>	88-0508096 2011-03						
3 -----							
4 -----							
5 -----							
6 -----							
7 -----							
8 -----							
9 -----							
10 -----							
Total							

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Schedule O (Form 1120) (2010)

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Schedule O (Form 1120) (2010)

4K & D Corp

56-1732538

Part III Income Tax Apportionment (See instructions)

Page 3

(a) Group member's name	Income Tax Apportionment						
	(b) 15%	(c) 25%	(d) 34%	(e) 35%	(f) 5%	(g) 3%	(h) Total income tax (combine lines (b) through (g))
1 4K & D Corp GRAND ESTATES AUCTION CO.	0	0	0	0	0	0	0
2 GEA, INC.	0	0	0	0	0	0	0
3 -----							
4 -----							
5 -----							
6 -----							
7 -----							
8 -----							
9 -----							
10 -----							
Total	0	0	0	0	0	0	0

Grand Estates Defendants, 000225
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Schedule O (Form 1120) (2010)

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Schedule C (Form 1120) (2010)

4K & D Corp

56-1732538

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Part IV Other Apportionments (See instructions)

(a) Group member's name	Other Apportionments				
	(b) Accumulated earnings credit	(c) AMT exemption amount	(d) Phaseout of AMT exemption amount	(e) Penalty for failure to pay estimated tax	(f) Other
1 4K & D Corp (80) GRAND ESTATES AUCTION CO.	125,000				
2 GEA, INC.	125,000				
3					
4					
5					
6					
7					
8					
9					
10					
Total	250,000				

Schedule C (Form 1120) (2010)

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_0004226

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APPENDIX 000422

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SCHEDULE G
(Form 1120)Department of the Treasury
Internal Revenue Service

Name

Information on Certain Persons Owning the
Corporation's Voting Stock

▶ Attach to Form 1120.

▶ See instructions on page 2.

OMB No. 1545-0123

2010**4K & D Corp**

Employer identification number (EIN)

56-1732538**Part I** Certain Entities Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4a). Complete columns (i) through (v) below for any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Percentage Owned in Voting Stock

Part II Certain Individuals and Estates Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4b). Complete columns (i) through (iv) below for any individual or estate that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Individual or Estate	(ii) Identifying Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Percentage Owned in Voting Stock
VALARIA A DEVINE		USA	100.000

For Paperwork Reduction Act Notice,
see the instructions for Form 1120.

Schedule G (Form 1120) 2010

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APPENDIX 000423

Form **4562**Department of the Treasury
Internal Revenue Service

(99)

Depreciation and Amortization
(Including Information on Listed Property)

OMB No. 1545-0172

2010Attachment
Sequence No. 67

▶ See separate instructions.

▶ Attach to your tax return.

Name(s) shown on return

4K & D Corp

Identifying number

56-1732538

Business or activity to which this form relates

Regular Depreciation

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	500,000
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	2,000,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2009 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2011. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part IV.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	6,934
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	550

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2010	17	603
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶		

Section B—Assets Placed In Service During 2010 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property		3,727	5.0	HY	200DB	744
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed In Service During 2010 Tax Year Using the Alternative Depreciation System

20a Class life				S/L	
b 12-year			12 yrs.	S/L	
c 40-year			40 yrs.	MM	S/L

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	10,117
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions	22	18,948
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (2010)

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APPENDIX 000424

Part V Listed Property (Include automobiles, certain other vehicles, certain computers, and property used for entertainment, recreation, or amusement.)
Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed?		☒ Yes ☐ No		24b If "Yes," is the evidence written?		☒ Yes ☐ No		
(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions) 25								
26 Property used more than 50% in a qualified business use:								
PORSCHE	04/01/07	100.00%	87,821	87,821	5.0	200DBHY	10,117	
27 Property used 50% or less in a qualified business use:								
		%				S/L-		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1								28 10,117
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1								29

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1	(b) Vehicle 2	(c) Vehicle 3	(d) Vehicle 4	(e) Vehicle 5	(f) Vehicle 6
30 Total business/investment miles driven during the year (do not include commuting miles)						
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year. Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes No	Yes No	Yes No	Yes No	Yes No	Yes No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners	X
39 Do you treat all use of vehicles by employees as personal use?	X
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?	X
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)	X

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2010 tax year (see instructions):					
43 Amortization of costs that began before your 2010 tax year 43					
44 Total. Add amounts in column (f). See the instructions for where to report 44					

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Oremus v. 4 K&D Corp, et al (en) 4562 (2010)
Grand Estates Defendants_000229

Charitable Contribution Carryover Worksheet		2010
Form 1120	For calendar year 2010 or tax year beginning _____ ending _____	
Name 4K & D Corp		Employer Identification Number 56-1732538

Regular Tax Calculations						
		Prior Year		Current Year		Next Year
Preceding Tax Year	Excess Contributions	Utilized Or Reclassified to NOL	Carryover	Reclassified to NOL Reg. Sec. 1.170A-11(c)(2)	Carryovers Utilized	Carryover
5th 12/31/05						
4th 12/31/06						
3rd 12/31/07						
2nd 12/31/08						
1st 12/31/09	6,254		6,254			6,254
Charitable Contribution Carryover To Current Year - Regular			6,254			
Current Year	0					0
Charitable Contribution Carryover Available To Next Year						6,254

Alternative Minimum Tax Calculations						
		Prior Year		Current Year		Next Year
Preceding Tax Year	Excess Contributions	Utilized Or Reclassified to NOL	Carryover	Reclassified to NOL Reg. Sec. 1.170A-11(c)(2)	Carryovers Utilized	Carryover
5th 12/31/05						
4th 12/31/06						
3rd 12/31/07						
2nd 12/31/08						
1st 12/31/09						
AMT Charitable Contribution Carryover To Current Year			0			
Current Year	0					0
AMT Charitable Contribution Carryover Available To Next Year						0

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000230

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Net Operating Loss Carryover Worksheet - Regular Tax	
Form 1120	2010
For calendar year 2010 or tax year beginning , ending	

Name 4K & D Corp	Employer Identification Number 56-1732538

Preceding Taxable Year	Adj. To NOL Inc/(Loss) After Adj.	Prior Year		Current Year	Next Year
		NOL Utilized (Income Offset)	Carryovers	Income Offset By NOL Carryback/ Carryover NOL Utilized	Carryover
16th 12/31/95	-3,447	3,447			
14th 12/31/96	-15	15			
13th 12/31/97	-705	705			
12th 12/31/98	-900	900			
11th 12/31/99					
10th 12/31/00					
9th 12/31/01	3,275	-3,275			
8th 12/31/02	-95,926	95,926			
7th 12/31/03	101,761	-95,926			
6th 12/31/04	12,719				
5th 12/31/05	3,041				
4th 12/31/06	59,865				
3rd 12/31/07	24,025				
2nd 12/31/08	4,976			4,976	
1st 12/31/09	62,710			62,710	
NOL Carryover Available To Current Year		0			
Current Year	-253,654			67,686	185,968
NOL Carryover Available To Next Year					185,968

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000231

P1000 4K & D Corp
56-1732538
FYE: 12/31/2010

Federal Statements

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Statement 1 - Form 1120, Page 1, Line 19 - Charitable Contributions

Description	Amount
Carryover From Prior Years	\$ 6,254
Total Contributions Available	6,254
Less Contributions Disallowed	6,254
Less QOC Contributions Disall	0
Total Deduction Allowed	\$ 0

Statement 2 - Form 1120, Page 1, Line 26 - Other Deductions

Description	Amount
Insurance	\$ 20,557
Insurance	490
Legal & Accounting	83,209
Legal & Accounting	516
Office Supplies	322
Office Supplies	16,057
Bank Charges	2,685
Bank Charges	328
Filing Fees	6,895
Mailing Lists	2,228
Computer Service & Cons	29,506
Comp. Service	40,319
Telephone	22,633
Telephone	1,654
Utilities	7,207
Internet Expense	450
Suscriptions	1,325
Professional Assoc.	300
Credit Card Svc. Chgs.	376
Other Exp	25,469
Lease	18,668
50% of Meals & Entertainment	9,975
Total	\$ 291,169

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000232¹⁻²

0425

P1000 4K & D Corp
56-1732538
FYE: 12/31/2010

Federal Statements

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Statement 3 - Form 1120, Page 2, Schedule A, Line 5 - Other Costs

<u>Description</u>	<u>Amount</u>
Comm. Draw-Jared Foerst	\$ 23,269
Outside Sales Comm	478,897
Adv-Customer	625,375
Adv-Institutional	320
Adv-Institutional	97,304
Adv-Internet	7,675
Billboards & Signs	30,205
Auctioneer	18,500
Auction Expenses	9,573
Postage & Express Mail	32,881
Postage & Exp. Mail	44,680
Photography & Video	36,662
Ad Layout	749
Printing	1,400
Printing	80,142
Outside Services	14,212
Outside services	98,904
Travel	24,170
Travel	130,448
Air charter	2,810
Total	\$ <u>1,758,176</u>

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000233 3

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P1000 4K & D Corp
56-1732538
FYE: 12/31/2010

Federal Statements

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Statement 4 - Form 1120, Page 5, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
Escrow Account	\$ 50	\$
Employee advances	500	
Deposit-Rent	2,651	
Deposits held by 4K&D	102,393	52,393
Deposits		2,651
Total	\$ 105,594	\$ 55,044

Statement 5 - Form 1120, Page 5, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
Ga W/H	\$ -412	\$ 4,228
NC SUTA Payable	264	1
FUTA Payable	49	
Customer Mktg Deposits	330,187	139,904
401K W/H Payable	3,791	5,500
GA SUTA Payable	1	
Deposits-GE Adv		
Federal W/H Payable		36,222
FICA Payable		5,402
NC W/H Tax Payable		5,333
FL SUTA Payable		41
Total	\$ 333,880	\$ 196,631

Statement 6 - Form 1120, Page 5, Schedule L, Line 21 - Other Liabilities

Description	Beginning of Year	End of Year
Deposit-GE ADV	\$ 102,393	\$ 52,393
Defined Benefit Plan Pybl	96,711	
N/P-GEA, INC.		120,000
Total	\$ 199,104	\$ 172,393

Statement 7 - Form 1120, Page 5, Schedule M-1, Line 5 - Expenses on Books Not on Return

Description	Amount
ROUNDING	\$
Total	\$ 0

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Oremus v. 4 K&D Corp, et al 4-7
Grand Estates Defendants_000234

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P1000 4K & D Corp
56-1732538
FYE: 12/31/2010

Federal Statements

9/12/2011 1:06 PM

Statement 8 - Form 1120, Page 5, Schedule M-2, Line 6 - Other Decreases

Description	Amount
ROUNDING	\$ 9
Total	\$ 9

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000235

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Form 1120 Department of the Treasury Internal Revenue Service		U.S. Corporation Income Tax Return				OMB No. 1545-0043 2011	
		For calendar year 2011 or tax year beginning ending					
		▶ See separate instructions.					
A Check (if): 1a Consolidated return (attach Form 951) ☐ b Life insurance consolidated return ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (see instructions) ☐ 4 Schedule M-3 attached ☐		NAME 4K & D Corp GRAND ESTATES AUCTION CO. 2359 PERIMETER POINTE PARKWAY, STE CHARLOTTE NC 28208		B Employer identification number 56-1732538		D Date incorporated 01/11/1991	
		E Check (if): Initial return (2) Final return (3) Name change (4) Address change		Total assets (see instructions) 364,338			
		1a Merchant card and third-party payments. For 2011, enter -0-		1b Gross receipts or sales not reported on line 1a (see instructions)		1c Total. Add lines 1a and 1b	
				1d Returns and allowances plus any other adjustments (see instructions)			
				1e Subtract line 1d from line 1c			
Income		2 Cost of goods sold from Form 1125-A, line 8 (attach Form 1125-A)		1a 3,022,144		1b 3,022,144	
		3 Gross profit. Subtract line 2 from line 1e					
		4 Dividends (Schedule C, line 19)					
		5 Interest					
		6 Gross rents					
		7 Gross royalties					
		8 Capital gain net income (attach Schedule D (Form 1120))					
		9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)					
		10 Other income (see instructions - attach schedule)		See Stmt 1			
		11 Total income. Add lines 3 through 10					
		Deductions (See instructions for limitations on deductions.)		12 Compensation of officers from Form 1125-E, line 4 (attach Form 1125-E)		1a 3,022,144	
13 Salaries and wages (less employment credits)						3 1,458,742	
14 Repairs and maintenance						4	
15 Bad debts						5 3	
16 Rents						6	
17 Taxes and licenses						7	
18 Interest						8	
19 Charitable contributions						9	
20 Depreciation from Form 4562 not claimed on Form 1125-A or 4562						10 2,150	
21 Depletion						11 1,460,895	
Tax, Refundable Credits, and Payments				22 Advertising		12 566,440	
		23 Pension, profit-sharing, etc., plans				14 2,953	
		24 Employee benefit programs				15	
		25 Domestic production activities deduction (attach Form 8903)				16 72,786	
		26 Other deductions (attach schedule)				17 56,832	
		27 Total deductions. Add lines 12 through 26				18 42	
		28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11				19 0	
		29a Net operating loss deduction (see instructions)		See Stmt 2		20 12,344	
		b Special deductions (Schedule C, line 20)				21	
		c Add lines 29a and 29b				22	
		30 Taxable income. Subtract line 29c from line 28 (see instructions)				23 129,650	
31 Total tax (Schedule J, Part I, line 11)				25		26 248,846	
32 Total payments and refundable credits (Schedule J, Part II, line 21)				27 1,477,792		28 -16,897	
33 Estimated tax penalty (see instructions). Check if Form 2220 is attached				29a		30 -16,897	
34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed				29b		31 0	
35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid				29c		32	
36 Enter amount from line 35 you want: Credited to 2012 estimated tax				30		33	
				31		34	
				32		35	
				33		36	
				34			
				35			
				36			
Sign Here		Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No	
		Signature of officer Valeria Devine Date _____ Title President					
Paid Preparer Use Only		Print/Type preparer's name Wesley E. Smith		Preparer's signature Wesley E. Smith CPA		Date 09/14/12	
		Firm's name Moyer, Smith & Roller, P.A., CPA's		Check ☐ if self-employed		PTIN P00051706	
		Firm's address 7229 Albemarle Road, Suite A		Firm's EIN 56-1679377			
		Charlotte, NC 28227		Phone no 704-566-0222			

For Paperwork Reduction Act Notice, see separate instructions.

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Oremus v. 4 K&D Corp, et al 1120 (09/11)
Grand Estates Defendants_000062

Form **7004**
(Rev. November 2011)
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns

► File a separate application for each return.
► See separate instructions.

OMB No 1545-0033

Print
or
Type

Name 4K & D Corp GRAND ESTATES AUCTION CO.	Identifying number 56-1732538
Number, street, and room or suite no. (If P.O. box, see instructions.) 2359 PERIMETER POINTE PARKWAY, STE	
City, town, state, and ZIP code (If a foreign address, enter city, province or state, and country (follow the country's practice for entering postal code)). CHARLOTTE NC 28208	

Note. File request for extension by the due date of the return for which the extension is granted. See instructions before completing this form.

Part I Automatic 5-Month Extension

1a Enter the form code for the return that this application is for (see below)			
Application Is For:	Form Code	Application Is For:	Form Code
Form 1065	09	Form 1041 (trust)	05

Part II Automatic 6-Month Extension

b Enter the form code for the return that this application is for (see below)			
Application Is For:	Form Code	Application Is For:	Form Code
Form 706-GS(D)	01	Form 1120-PC	21
Form 1041 (bankruptcy estate only)	03	Form 1120-REIT	23
Form 1041-OFT	07	Form 1120S	25
Form 1065-B	10	Form 1120-A	27
Form 1120	12	Form 8831	32
Form 1120-F	15	Form 8924	35
Form 1120-H	17		
Form 1120-ND	19		

- 2 If the organization is a foreign corporation that does not have an office or place of business in the United States, check here ☐
- 3 If the organization is a corporation and is the common parent of a group that intends to file a consolidated return, check here ☐
- If checked, attach a schedule, listing the name, address, and Employer Identification Number (EIN) for each member covered by this application.

Part III All Filers Must Complete This Part

- 4 If the organization is a corporation or partnership that qualifies under Regulations section 1.6081-6, check here ☐
- 5a The application is for calendar year 20 11, or tax year beginning 11, and ending 11

- b Short tax year. If this tax year is less than 12 months, check the reason:
☐ Initial return ☐ Final return ☐ Change in accounting period ☐ Consolidated return to be filed

6 Tentative total tax	6	0
7 Total payments and credits (see instructions)	7	0
8 Balance due. Subtract line 7 from line 6 (see instructions)	8	0

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 7004 (Rev. 11-2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000063

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Form 1120 (2011) 4K & D Corp

56-1732538

Page 2

Schedule C Dividends and Special Deductions (see instructions)		(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		SEE INSTRUCTIONS	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	Total. Add lines 1 through 8. See instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members		100	
12	Dividends from certain FSCs		100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	Total dividends. Add lines 1 through 17. Enter here and on page 1, line 4			
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b			

Form 1120 (2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000064

0431

Schedule J Tax Computation and Payment (see instructions)**Part I—Tax Computation**

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120))	☒	
2	Income tax. Check if a qualified personal service corporation (see instructions)	☐	2
3	Alternative minimum tax (attach Form 4626)		3
4	Add lines 2 and 3		4
5a	Foreign tax credit (attach Form 1118)	5a	
b	Credit from Form 8834, line 30 (attach Form 8834)	5b	
c	General business credit (attach Form 3800)	5c	
d	Credit for prior year minimum tax (attach Form 8827)	5d	
e	Bond credits from Form 8912	5e	
6	Total credits. Add lines 5a through 5e		6
7	Subtract line 6 from line 4		7
8	Personal holding company tax (attach Schedule PH (Form 1120))		8
9a	Recapture of investment credit (attach Form 4255)	9a	
b	Recapture of low-income housing credit (attach Form 8611)	9b	
c	Interest due under the look-back method—completed long-term contracts (attach Form 8697)	9c	
d	Interest due under the look-back method—Income forecast method (attach Form 8866)	9d	
e	Alternative tax on qualifying shipping activities (attach Form 8902)	9e	
f	Other (see instructions—attach schedule)	9f	
10	Total. Add lines 9a through 9f		10
11	Total tax. Add lines 7, 8, and 10. Enter here and on page 1, line 31		11

Part II—Payments and Refundable Credits

12	2010 overpayment credited to 2011		12
13	2011 estimated tax payments		13
14	2011 refund applied for on Form 4466		14
15	Combine lines 12, 13, and 14		15
16	Tax deposited with Form 7004		16
17	Withholding (see instructions)		17
18	Total payments. Add lines 15, 16, and 17		18
19	Refundable credits from:		
a	Form 2439	19a	
b	Form 4130	19b	
c	Form 3800, line 17c and Form 8627, line 8c	19c	
d	Other (attach schedule—see instructions)	19d	
20	Total credits. Add lines 19a through 19d		20
21	Total payments and credits. Add lines 18 and 20. Enter here and on page 1, line 32		21

Schedule J Other Information (see instructions)

1	Check accounting method: a ☒ Cash b ☐ Accrual c ☐ Other (specify) ▶	Yes	No
2	See the instructions and enter the:		
a	Business activity code no. ▶ 525990		
b	Business activity ▶ Real Estate Sales		
c	Product or service ▶ Auctions		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		X
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part I of Schedule G (Form 1120) (attach Schedule G)		X
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part II of Schedule G (Form 1120) (attach Schedule G)		X

Form 1120 (2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000065

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APPENDIX 000435

Form 1120 (2011) 4K & D Corp

56-1732538

Page 4

Schedule K Other Information continued (see instructions)

5 At the end of the tax year, did the corporation:

- a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on Form 854, Affiliations Schedule? For rules of constructive ownership, see instructions.
- If "Yes," complete (i) through (iv) below.

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

- b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 60% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions.
- If "Yes," complete (i) through (iv) below.

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 315.) ☒ Yes ☐ No

If "Yes," file Form 5452, Corporate Report of Nondividend Distributions.

7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of the corporation's stock entitled to vote or (b) the total value of all classes of the corporation's stock? ☒ Yes ☐ No

For rules of attribution, see section 318. If "Yes," enter:

(i) Percentage owned and (ii) Owner's country

(c) The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached

8 Check this box if the corporation issued publicly offered debt instruments with original issue discount ☐

If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

9 Enter the amount of tax-exempt interest received or accrued during the tax year \$

10 Enter the number of shareholders at the end of the tax year (if 100 or fewer)

11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ☐

If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.

12 Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) \$ 185,968

13 Are the corporation's total receipts (line 1c plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than \$250,000? ☒ Yes ☐ No

If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 5. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. \$

14 Is the corporation required to file Schedule UTP (Form 1120), Uncertain Tax Position Statement (see instructions)? ☒ Yes ☐ No

If "Yes," complete and attach Schedule UTP.

15a Did the corporation make any payments in 2011 that would require it to file Form(s) 1099 (see instructions)? ☒ Yes ☐ No

b If "Yes," did or will the corporation file all required Forms 1099? ☒ Yes ☐ No

Form 1120 (2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000066

0433

APPENDIX 000436

Form 1120 (2011) 4K & D Corp

56-1732538

Page 5

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		93,107		236,659
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (att. sch.) Stmt 4		55,044		117,012
7	Loans to shareholders		70,582		
8	Mortgage and real estate loans				
9	Other investments (attach sch.) Stmt 5				2,150
10a	Buildings and other depreciable assets	426,368		384,679	
b	Less accumulated depreciation	405,505	20,863	376,162	8,517
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach sch.)				
15	Total assets		239,596		364,338
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (att. sch.) Stmt 6		196,631		279,589
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule) Stmt 7		172,393		234,790
22	Capital stock: a Preferred stock				
b	Common stock	1,500	1,500	1,500	1,500
23	Additional paid-in capital				
24	Retained earnings—Appropriated (att. sch.)				
25	Retained earnings—Unappropriated		-130,928		-151,541
26	Adjustments to SE equity (att. sch.)				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		239,596		364,338

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return		Note: Schedule M-3 required instead of Schedule M-1 if total assets are \$10 million or more — see instructions	
1	Net income (loss) per books	-32,037	7 Income recorded on books this year not included on this return (itemize):
2	Federal income tax per books		Tax-exempt interest \$
3	Excess of capital losses over capital gains		
4	Income subject to tax not recorded on books this year (itemize):		
5	Expenses recorded on books this year not deducted on this return (itemize):		8 Deductions on this return not charged against book income this year (itemize):
a	Depreciation \$ 2,968		a Depreciation \$
b	Charitable contributions \$		b Charitable contributions \$
c	Travel and entertainment \$ 12,172		
		15,140	
6	Add lines 1 through 5	-16,897	9 Add lines 7 and 8
			10 Income (page 1, line 28)—line 6 less line 9
			-16,897

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)		
1	Balance at beginning of year	-130,928
2	Net income (loss) per books	-32,037
3	Other increases (itemize):	
4	Add lines 1, 2, and 3	-162,965
5	Distributions: a Cash	
b	Stock	
c	Property	
6	Other decreases (itemize): Stmt 8	-11,424
7	Add lines 5 and 6	-11,424
8	Balance at end of year (line 4 less line 7)	-151,541

Form 1120 (2011)

DAA

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000067

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APPENDIX 000437

SCHEDULE O
(Form 1120)
Consent Plan and Apportionment Schedule
for a Controlled Group

OMB No. 1545-0123

2011
Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, or 1120-RIC.

▶ See separate instructions.

Name

4K & D Corp

Employer identification number

56-1732538

Part I Apportionment Plan Information

- 1 Type of controlled group:
- a ☐ Parent-subsidiary group
- b ☒ Brother-sister group
- c ☐ Combined group
- d ☐ Life insurance companies only
- 2 This corporation has been a member of this group:
- a ☒ For the entire year.
- b ☐ From _____, until _____.
- 3 This corporation consents and represents to:
- a ☐ Adopt an apportionment plan. All the other members of this group are adopting an apportionment plan effective for the current tax year which ends on _____, and for all succeeding tax years.
- b ☐ Amend the current apportionment plan. All the other members of this group are currently amending a previously adopted plan, which was in effect for the tax year ending _____, and for all succeeding tax years.
- c ☐ Terminate the current apportionment plan and not adopt a new plan. All the other members of this group are not adopting an apportionment plan.
- d ☐ Terminate the current apportionment plan and adopt a new plan. All the other members of this group are adopting an apportionment plan effective for the current tax year which ends on _____, and for all succeeding tax years.
- 4 If you checked box 3c or 3d above, check the applicable box below to indicate if the termination of the current apportionment plan was:
- a ☐ Elected by the component members of the group.
- b ☐ Required for the component members of the group.
- 5 If you did not check a box on line 3 above, check the applicable box below concerning the status of the group's apportionment plan (see instructions).
- a ☐ No apportionment plan is in effect and none is being adopted.
- b ☐ An apportionment plan is already in effect. It was adopted for the tax year ending _____, and for all succeeding tax years.
- 6 If all the members of this group are adopting a plan or amending the current plan for a tax year after the due date (including extensions) of the tax return for this corporation, is there at least one year remaining on the statute of limitations from the date this corporation filed its amended return for such tax year for assessing any resulting deficiency? See instructions.
- a ☐ Yes.
- (i) ☐ The statute of limitations for this year will expire on _____.
- (ii) ☐ On _____, this corporation entered into an agreement with the Internal Revenue Service to extend the statute of limitations for purposes of assessment until _____.
- b ☐ No. The members may not adopt or amend an apportionment plan.
- 7 Required information and elections for component members. Check the applicable box(es) (see instructions).
- a ☐ The corporation will determine its tax liability by applying the maximum tax rate imposed by section 11 to the entire amount of its taxable income.
- b ☐ The corporation and the other members of the group elect the FIFO method (rather than defaulting to the proportionate method) for allocating the additional taxes for the group imposed by section 11(b)(1).
- c ☐ The corporation has a short tax year that does not include December 31.

For Paperwork Reduction Act Notice, see Instructions for Form 1120.

Schedule O (Form 1120) (2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000068

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APPENDIX 000438

Schedule O (Form 1120) (2011)

4K & D Corp

56-1732538

Page 2

Part II Taxable Income Apportionment (See instructions)

Caution: Each total in Part II, column (g) for each component member must equal taxable income from Form 1120, page 1, line 30 or the comparable line of such member's tax return.

(a) Group member's name and employer identification number		(b) Tax year end (Yr-Mo)	Taxable Income Amount Allocated to Each Bracket				(g) Total (add columns (c) through (f))
			(c) 15%	(d) 25%	(e) 34%	(f) 35%	
1 4K & D Corp	CO.	2011-12					
GRAND ESTATES AUCTION	56-1732538						
2 GEA, INC.	88-0508096	2012-03	32,126				32,126
3							
4							
5							
6							
7							
8							
9							
10							
Total			32,126				32,126

Grand Estates Defendants_000069

Schedule O (Form 1120) (2011)

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Schedule O (Form 1120) (2011)

4K & D Corp

56-1732538

Part III Income Tax Apportionment (See instructions)

Page 3

(a) Group member's name	Income Tax Apportionment						(h) Total income tax (combine lines (b) through (g))
	(b) 15%	(c) 25%	(d) 34%	(e) 35%	(f) 5%	(g) 3%	
1 4K & D Corp GRAND ESTATES AUCTION CO.	0	0	0	0	0	0	0
2 GEA, INC.	4,819	0	0	0	0	0	4,819
3 -----							
4 -----							
5 -----							
6 -----							
7 -----							
8 -----							
9 -----							
10 -----							
Total	4,819	0	0	0	0	0	4,819

Grand Estates Defendants_0000070
Orenus v. 4K&D Corp, et al

Schedule O (Form 1120) (2011)

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Schedule O (Form 1120) (2011)

4K & D Corp

56-1732538

Part IV Other Apportionments (See instructions)

Page 4

(a) Group member's name	Other Apportionments				
	(b) Accumulated earnings credit	(c) AMT exemption amount	(d) Phaseout of AMT exemption amount	(e) Penalty for failure to pay estimated tax	(f) Other
1 4K & D Corp (80) GRAND ESTATES AUCTION CO.	125,000				
2 GEA, INC.	125,000	40,000			
3					
4					
5					
6					
7					
8					
9					
10					
Total	250,000	40,000			

Schedule O (Form 1120) (2011)

Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000071

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APPENDIX 000441

0438

Form **1125-A**

(December 2011)

Department of the Treasury
Internal Revenue Service

Cost of Goods Sold

▶ Attach to Form 1120, 1120-C, 1120-F, 1120S, 1065, and 1065-B.

OMB No. 1545-0025

Name

4K & D Corp

Employer identification number

56-1732538

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	1,563,402
6	Total. Add lines 1 through 5	6	1,563,402
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on Form 1120, page 1, line 2 or the appropriate line of your tax return (see instructions)	8	1,563,402

9a Check all methods used for valuing closing inventory:

(i) ☐ Cost

(ii) ☐ Lower of cost or market

(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (If checked, attach Form 970) ☐

d If the LIFO inventory method was used for this tax year, enter the amount of closing inventory computed under LIFO

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☐ Yes ☒ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☐ No

For Paperwork Reduction Act Notice, see Instructions.

Form 1125-A (12-2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000072

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APPENDIX 000442

Form **4562**Depreciation and Amortization
(Including Information on Listed Property)

OMB No. 1545-0172

2011Department of the Treasury
Internal Revenue Service

(99)

▶ See separate instructions.

▶ Attach to your tax return.

Attachment
Reference No. **179**Name(s) shown on return
4K & D CorpIdentifying number
56-1732538

Business or activity to which this form relates

Regular Depreciation**Part I Election To Expense Certain Property Under Section 179**

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	500,000
2	Total elected cost of section 179 property placed in service (see instructions)	2	2,968
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	2,000,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	500,000
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
	COMPUTER	2,968	2,968
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	2,968
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	2,968
10	Carryover of disallowed deduction from line 13 of your 2010 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	0
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	0
13	Carryover of disallowed deduction to 2012. Add lines 9 and 10, less line 12	13	2,968

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	729

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2011	17	1,498
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶		

Section B—Assets Placed in Service During 2011 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use or lease instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 6-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2011 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	10,117
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions	22	12,344
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (2011)

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000075

Part V Listed Property (Include automobiles, certain other vehicles, certain computers, and property used for entertainment, recreation, or amusement.)
Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed?		☒ Yes ☐ No		24b If "Yes," is the evidence written?		☒ Yes ☐ No		
(a) Type of property (List vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)							25	
26 Property used more than 50% in a qualified business use:								
PORSCHE	04/01/07	100.00%	87,821	87,821	5.0	200DBRY	10,117	
		%						
27 Property used 50% or less in a qualified business use:								
		%				S/L-		
		%				S/L-		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1							28	10,117
29 Add amounts in column (i), line 28. Enter here and on line 7, page 1							29	

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1	(b) Vehicle 2	(c) Vehicle 3	(d) Vehicle 4	(e) Vehicle 5	(f) Vehicle 6
30 Total business/investment miles driven during the year (do not include commuting miles)						
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year. Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes No	Yes No	Yes No	Yes No	Yes No	Yes No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		X
39 Do you treat all use of vehicles by employees as personal use?		X
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		X
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		X
Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.		

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2011 tax year (see instructions):					
43 Amortization of costs that began before your 2011 tax year					43
44 Total. Add amounts in column (f). See the instructions for where to report					44

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Oremus v. 4 K&D Corp, et al 4562 (2011)
Grand Estates Defendants_000076

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Charitable Contribution Carryover Worksheet	
Form 1120	For calendar year 2011 or tax year beginning _____, ending _____
Name 4K & D Corp	Employer Identification Number 56-1732538

Regular Tax Calculations						
		Prior Year		Current Year		Next Year
Preceding Tax Year	Excess Contributions	Utilized Or Reclassified to NOL	Carryover	Reclassified to NOL Reg. Sec. 1.170A-11(c)(2)	Carryovers Utilized	Carryover
5th 12/31/06						
4th 12/31/07						
3rd 12/31/08						
2nd 12/31/09	6,254		6,254			6,254
1st 12/31/10						
Charitable Contribution Carryover To Current Year - Regular			6,254			
Current Year		0				0
Charitable Contribution Carryover Available To Next Year						6,254

Alternative Minimum Tax Calculations						
		Prior Year		Current Year		Next Year
Preceding Tax Year	Excess Contributions	Utilized Or Reclassified to NOL	Carryover	Reclassified to NOL Reg. Sec. 1.170A-11(c)(2)	Carryovers Utilized	Carryover
5th 12/31/06						
4th 12/31/07						
3rd 12/31/08						
2nd 12/31/09						
1st 12/31/10						
AMT Charitable Contribution Carryover To Current Year			0			
Current Year		0				0
AMT Charitable Contribution Carryover Available To Next Year						0

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000077

0444

Net Operating Loss Carryover Worksheet - Regular Tax	
Form 1120	2011
For calendar year 2011 or tax year beginning , ending	
Name 4K & D Corp	Employer Identification Number 56-1732538

Precoding Taxable Year	Adj. To NOL Inc/(Loss) After Adj.	Prior Year		Current Year	Next Year
		NOL Utilized (Income Offset)	Carryovers	Income Offset By NOL Carryback/ Carryover NOL Utilized	Carryover
15th 12/31/96	-15	15			
14th 12/31/97	-705	705			
13th 12/31/98	-900	900			
12th 12/31/99					
11th 12/31/00					
10th 12/31/01	3,275	-3,275			
9th 12/31/02	-95,926	95,926			
8th 12/31/03	101,761	-95,926			
7th 12/31/04	12,719				
6th 12/31/05	3,041				
5th 12/31/06	59,865				
4th 12/31/07	24,025				
3rd 12/31/08	4,976	-4,976			
2nd 12/31/09	62,710	-62,710			
1st 12/31/10	-253,654	67,686	185,968		185,968
NOL Carryover Available To Current Year			185,968		
Current Year	0 -16,897				16,897
NOL Carryover Available To Next Year					202,865

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000078

0445

Federal Statements

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Statement 1 - Form 1120, Page 1, Line 10 - Other Income

Description	Amount
Other Income-GEA-Colorado	\$ 2,150
Total	\$ 2,150

Statement 2 - Form 1120, Page 1, Line 19 - Charitable Contributions

Description	Amount
Carryover From Prior Years	\$ 6,254
Total Contributions Available	6,254
Less Contributions Disallowed	6,254
Less QCC Contributions Disall	0
Total Deduction Allowed	\$ 0

Statement 3 - Form 1120, Page 1, Line 26 - Other Deductions

Description	Amount
Insurance	\$ 11,723
Insurance	23
Legal & Accounting	86,145
Legal & Accounting	850
Office Supplies	1,199
Office Supplies	11,693
Bank Charges	3,585
Bank Charges	320
Filing Fees	3,227
Mailing Lists	3,487
Computer Service & Cons	41,385
Comp. Service	31,527
Telephone	24,609
Telephone	2,913
Utilities	2,879
Suscriptions	92
Professional Assoc.	3,590
Credit Card Svc. Chgs.	343
Other Exp	3,757
Lease	3,326
50% of Meals & Entertainment	12,173
Total	\$ 248,846

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Oremus v. 4 K&D Corp, et al¹⁻³
Grand Estates Defendants_000079

0446

Federal Statements

9/14/2012 1:39 PM

Statement 4 - Form 1120, Page 5, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
Deposits held by 4K&D	\$ 52,393	\$ 110,790
Deposits	2,651	6,222
Total	\$ 55,044	\$ 117,012

Statement 5 - Form 1120, Page 5, Schedule L, Line 9 - Other Investments

Description	Beginning of Year	End of Year
Investment in GEA-Colorado	\$	\$ 2,150
Total	\$ 0	\$ 2,150

Statement 6 - Form 1120, Page 5, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
Ga W/H	\$ 4,228	\$
NC SUTA Payable	1	
Customer Mktg Deposits	139,904	279,589
401k W/H Payable	5,500	
Deposits-GE Adv		
Federal W/H Payable	36,222	
FICA Payable	5,402	
NC W/H Tax Payable	5,333	
FL SUTA Payable	41	
Total	\$ 196,631	\$ 279,589

Statement 7 - Form 1120, Page 5, Schedule L, Line 21 - Other Liabilities

Description	Beginning of Year	End of Year
Deposit-GE ADV	\$ 52,393	\$ 110,790
Profit Sharing Payable		124,000
N/P GEA INC	120,000	
Total	\$ 172,393	\$ 234,790

Statement 8 - Form 1120, Page 5, Schedule M-2, Line 6 - Other Decreases

Description	Amount
Tax Refund	\$ -11,424
Total	\$ -11,424

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Oremus v. 4 K&D Corp, et al 4-3
Grand Estates Defendants_000080

0447

P1000 4K & D Corp
56-1732538
FYE: 12/31/2011

Federal Statements

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Statement 9 - Form 1125-A, Line 5 - Other Costs

<u>Description</u>	<u>Amount</u>
Comm. Draw-Jared Foerst	\$ 11,433
Outside Sales Comm	318,628
Adv-Customer	511,482
Adv-Institutional	11,978
Adv-Internet	36,228
Billboards & Signs	14,897
Auctioneer	13,000
Auction Expenses	6,953
Postage & Express Mail	21,388
Postage & Exp. Mail	37,113
Photography & Video	30,351
Ad Layout	6,442
Printing	1,441
Printing	62,034
Outside Services	57,530
Outside services	66,944
Travel	2,173
Travel	148,176
Air charter	1,000
Sales Commissions	149,294
Outside Realtor Comm	36,250
Adv-Customer	3,874
Adv-Internet	14,793
Total	\$ <u>1,563,402</u>

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Oremus v. 4 K&D Corp, et al 9
Grand Estates Defendants_000081

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AUCTION SALES &
MARKETING PROPOSAL PRESENTED TO

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn
Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

GRAND ESTATES AUCTION COMPANY®

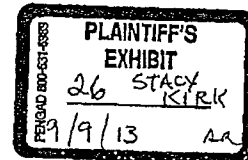
Stacy Kirk
President

November 10, 2009

"This proposal includes information derived from the extensive efforts of the Grand Estates Auction Company. The following information shall not be disclosed or duplicated in whole or in part for any purpose other than "evaluation" by those persons directly related to the decision for the Event as described in the Proposal without the expressed written permission of Grand Estates Auction Company."

PRIVATE

This document is subject to a
Protective Order
Civil Action No. 2010-CP-02-3055



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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000752

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GRAND ESTATES AUCTION COMPANY®

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000753

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APPENDIX 000453

PROPOSAL

GRAND ESTATES AUCTION COMPANY®

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Oremus v. 4 K&D Corp, et al
Grand Estates Defendants_000754

0451

APPENDIX 000454

836 Whiskey Road
Aiken, South Carolina 29501

PROPOSAL

SALE METHODOLOGY

The auction would be held on or before Tuesday, February 9th, 2010 on-site. The sale terms would be all cash, with a ten percent (10%) non-refundable down payment auction day and the balance due upon closing within thirty (30) days.

EVENT TIMING

The auction date is scheduled approximately Sixty (60) days from the execution of the Exclusive Real Estate/Auction Marketing Agreement. This provides sufficient time to implement our S.M.A.R.T program. The Strategic Marketing and Accelerated Real Estate Transaction is a highly specialized sales and marketing plan that utilizes the auction process to produce a sale in a short time frame for maximum market value.

The schedule is very important and so as not to experience any delays, sellers are requested to provide us with all necessary documents and/or information regarding the property. Time is of the essence. Receiving this in the timeliest manner enables us to prepare the marketing materials.

MARKETING PLAN

Grand Estates Auction Company® proposes an auction using our unique style of auctioning for your luxury property using our S.M.A.R.T. Program for the sale of your luxury home in Aiken, South Carolina.

Our program will incorporate the expertise of our corporate staff to insure that your luxury property is professionally promoted through public relations, special events, real estate office visits, newspapers, magazines, direct mailing, telemarketing, the internet, and a comprehensive showing period. The following will ensure maximum exposure and highlight the different phases of our marketing program that will be customized to promote the sale of your luxury property.

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MARKETING STRATEGY

To ensure maximum exposure for your luxury home we will use a combination of the following marketing elements:

PHOTOGRAPHY

We utilize only the services of some of the finest architectural photographers in America. Photography is a critical element to well-developed brochures, Internet sites and advertisements. The photography provides the introduction to prospective purchasers who will want to obtain more information on these properties based upon their first impression.

LUXURY BROCHURES

Your brochure is designed and developed by our staff to illustrate the fine and exciting features of your home. Its purpose is to entice and create desire for more information, along with an opportunity to own a "one of a kind, prestigious property". Based upon the media schedule requirement we would order between 8,000 and 60,000 full color brochures. These brochures are used for the direct mail campaign and for public relations.

PPP™ – PROPERTY PURCHASE PACKAGE™

Your property will have a customized Property Purchase Package™, a proprietary information packet exclusively provided by Grand Estates Auction Company®, to be offered to prospective bidders. A typical package is made up of: Auction overview, a description of the property, survey, maps, floor plans, area information, property inspection report, termite report, legal description, tax information, terms and conditions of the sale and instructions on how to participate in the auction. Bidders feel more confident in escalating their bids because they know what they are buying. The due diligence has been performed for them, however we welcome them to perform their own as well. We open the property to any prospective bidder's inspectors, surveyors, etc. so that they can verify the information provided to them. The more confident the bidders are about what they are buying the higher the bids.

The sale of your property takes place "where is, as is," therefore the PPP™ is a prerequisite to being allowed to bid. It states multiple times in the PPP™ that the sale is "where is, as is," and all bidders are required to sign that they are aware of this condition. This also means that there are no contingencies of the sale. The 10% binder money is non-refundable.

DIRECT MAIL

Through diligent effort and person to person screening we have developed a highly desirable mailing list that belongs exclusively to Grand Estates Auction Company®. This list has not been purchased nor can it be sold. We have captured and qualified prospects that have expressed a definitive interest in purchasing high-end luxury real estate through our auctions. We also buy lists that are specific to the profile of the buyer we have developed for your property.

NEWSPAPER & MAGAZINE ADVERTISING

Grand Estates Auction Company® will immediately begin advertising design and placements for the sale of your property. A proprietary media schedule has been developed to ensure that the media campaign will promote your luxury property in business newspapers, national and international magazines and publications, as well as local and area newspapers. This advertising will be placed in premium locations of these publications (as available).

The advertising will be well designed to create maximum interest and encourage potential prospects to request additional information. (See - Sample Advertisements)

Grand Estates Advertising, LLC will be used to develop and place all advertising ads. Grand Estates Advertising, LLC is a separate but related Company to Grand Estates Auction Company®.

INTERNET ADVERTISING AND PROMOTION

Your luxury property and its information will be featured on our website, www.GrandEstatesAuction.com. We will design elegant and informative pages to promote your property on our website as well as offer the opportunity to be one of our featured properties on our homepage.

Our web address is optimized with leading search engines such as Google, Yahoo, and MSN, resulting in first page organic keywords related to luxury real estate and auctions. We also utilize paid search advertisements with high placements through each search engine. In addition we have numerous strategic partnerships with real estate websites, and blogs to promote the auction and invite potential prospects to order a brochure and a Property Purchase Package™.

SIGNS AND BANNERS

Property signs will be placed at strategic locations to draw attention to the property and auction. These signs will have a toll free number for prospects to call to request additional information. The signage also serves as directionals to the property.

PUBLIC RELATIONS

Grand Estates Auction Company® has an exclusive public relations agreement with Grand Estates Advertising, LLC. They oversee the public relations campaign for our auctions. Also through the efforts of Grand Estates Advertising, LLC, Grand Estates Auction Company® will produce an effective public relations campaign to generate enthusiasm and a level of excitement for the sale of your luxury property that can not be replicated with other sales methods. This coverage may include, but is not limited to, highly visible newspaper articles, pre-auction television coverage, radio coverage, special event coverage and Internet web broadcasts. Our top-notch public relation campaign can produce outstanding press releases, ensuring enhanced marketing.

TELEMARKETING

Every ad carries our toll-free number inviting prospects to call for a free color brochure. We talk to each inquiry for as long as possible, ascertaining as much pre-qualifying information as possible beyond name,

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address, phone number and source of lead. A brochure is mailed immediately. Follow-up calls are made to each and every prospect in which we try to develop a relationship that allows us to further qualify the prospect. A Property Purchase Package™ is offered with this call. A second qualifying follow-up call culls the list and extends personal invitations to the preview.

We are constantly monitoring the level of interest and providing you with weekly detailed printed reports on each individual.

The media schedule is reviewed weekly for cost per lead, lead quality and lead quantity.

PREVIEW

We strongly encourage prospective bidders to personally examine the property. The preview is key to creating intense excitement about the opportunity to purchase your property. Bid assistants man the property during the established preview period of typically three to six days. Our people are experienced working with prospective bidders conducting pre-sale inspections. Grand Estates' bid assistants concentrate on further developing rapport with the bidders during this preview period to help them feel as confident as possible with the upcoming auction.

All preview appointments are arranged through Grand Estates Auction Company®. If there are prospects that are unable to attend during the set preview schedule we welcome them to make an appointment to see the property at another time. We want to accommodate the prospective bidders in any way we can. We assist the prospects with travel arrangements, hotel accommodations, car rental or livery service, etc. We do not leave anything to chance.

BROKER PARTICIPATION

The Bid Assistants from Grand Estates Auction Company® will contact every top-notch real estate firm in the area. We also provide all of the agents with the appropriate documentation so they can register their clients and explain the commission structure advantage of submitting a high initial bid.

Inviting high end brokers to participate is an important element. We want them on our side, therefore we recommend that up to a 3% commission be paid to a broker who brings in a successful buyer who purchases and closes on the property. For a broker to properly represent a client they must submit a written opening bid 24 hours prior to the auction. The agent's clients can attend the auction to continue to raise their bid. We recommend paying 3% on the opening bid amount and only 1% on the difference between the original written bid and the final winning bid. This encourages the agent to obtain the highest opening bid possible from their buyer prior to the auction.

AUCTION DAY

The remainder of Grand Estates Auction Company® staff will have arrived one to two days prior to the auction. All bid assistants will have been on site for the duration of the preview.

The day of the auction the bid assistants will greet and meet with all prospective bidders as they arrive. They will escort them to the registration table if they have not yet registered. At the registration table they will sign in and present the required forms from the Property Purchase Package™.

All bidders must be properly registered in order to participate in any of the auction formats. Registration will only be allowed to those who have brought with them the required certified funds, personal check with Bank letter of guarantee, credit card with prior approval, or have pre-registered by sending to the trust account in advance the required funds. Registration Instructions and Participation Instructions are provided to prospective bidders in the Property Purchase Package™.

The bid assistant will then offer to answer any final questions and at this time try to secure opening bids before the sale starts. These bids will be brought to the auctioneer. The auctioneer will open the auction with these bids and any written bids that were received from real estate agents.

Upon the completion of the auction the high bidder will be escorted to the closing office where our closing agent will collect the full 10% down payment and commence with the signing of all necessary documents. The unsuccessful bidders will remain on site until all paperwork and contracts are signed. It is recommended that closing take place as soon as possible, no

more than 30 days. If buyer and seller choose they may make other arrangements.

AUCTION FORMATS

ON-SITE BIDDING

OPEN OUTCRY

This is the most common auction format, and can take place either on-site or at another location depending upon circumstances. A bidder will raise their hand, paddle, call out their bid or have a bid assistant place a bid for them. Upon the auctioneer recognizing the bid it is then confirmed with the bidder. The auctioneer then goes to the next price increment, again asking the audience for a bid. Our auctioneer is highly skilled in crowd psychology and will move at a pace that creates a comfort level with the bidders. We do not blow whistles, run through the audience yelling or want to create a circus atmosphere. Serious business is being conducted and serious money is being spent. It is our experience that theatrics and hysterics create distrust and buyers withdraw.

TELEPHONE BIDDING

Upon receipt of the paperwork and funds, the bidder will be assigned a bidder number. The bid assistant will contact the bidder to discuss the auction procedures, to answer questions, and discuss any concerns that the bidder may have. The bid assistant will remain available via telephone to the bidder throughout the auction. Any bids that the bidder wants to place will be relayed through the bid assistant to the auctioneer. Should a phone bidder be declared the high bidder, a purchase contract will be executed after verification by the accountant and immediately faxed to the buyer for initialing and execution. The balance of the 10% earnest money due shall be sent to the escrow agent within 24 hours of execution of the contract. All other procedures shall remain the same.

ABSENTEE BIDDING

The bidder will be required to sign a blank purchase contract and bidding authorization form. The bidding authorization form shall entitle Grand Estates Auction Company®, to place bids for the absentee bidder in

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previously specified increments up to an authorized dollar amount. These executed forms must be received in full before a bid can be received from the prospective bidder. If an absentee bidder is declared the winning bidder the balance of the 10% earnest money due shall be sent to the escrow agent within 24 hours of execution of the contract. All other procedures shall remain the same.

BUYER'S PREMIUM

A buyer's premium will be utilized and added to the highest offer to arrive at the total contract sale price for your property. The buyer's premium is an amount paid by the purchaser to the seller, in addition to the bid amount, and is used to offset the auction expenses, including the buyer broker. For this auction, we recommend a Seven and One Half Percent (7 ½%) buyer's premium. The buyer's premium proceeds are used as follows: The first FOUR AND ONE HALF PERCENT (4 ½%) goes to the Seller to help reimburse the seller for the marketing expenses. Next up to a THREE PERCENT (3%) commission is paid to any cooperating broker. In the event that there is no cooperating broker, the balance will be paid to the seller.

OPENING BID INCENTIVE

We also offer on all of our auctions a Buyer Opening Bid Incentive Program, which creates a built in protection to the seller. It allows the seller to receive and review bids prior to the auction day. These bids will be used as a ground floor to the actual bidding on auction day. The seller will also have the knowledge of what the community of bidders is thinking in relationship to the value of the property. The incentive for the bidder to bring forth a written opening bid prior to auction is a credit of a percentage of the written bid amount. (See opening bid incentive form enclosed).

COMMISSION

Grand Estates Auction Company® is to be paid a commission from the seller of TEN PERCENT (10%) on the total contract price for the property payable at the time of closing. Marketing and sales expenses to market and promote the property are payable upon execution of the Auction Marketing Agreement.

SUMMARY

Grand Estates Auction Company® has the resources and capability to work with you to develop the auction strategy that is suited to marketing your luxury property. Our firm has developed a multitude of strategies and techniques based upon years of auction and marketing experience to devise the best program for marketing your property. We will be more than happy to discuss your goals and objectives under this proposal or a combination of scenarios in order to achieve your success.

The final ingredient for a successful auction, and one that Grand Estates Auction Company® alone can offer, is that the sale of your property will be conducted by some of the most experienced sales and marketing people in the business. On behalf of the entire staff of Grand Estates Auction Company®, we would like to thank you for the opportunity of presenting this proposal.

*Property Purchase Package™ and PPPTM are trademarks of Grand Estates Auction Company® and may not be used by any other organization for any purpose without written consent from Grand Estates Auction Company®.

**MEDIA, MARKETING &
PROMOTIONAL SCHEDULE**

GRAND ESTATES AUCTION COMPANY®

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APPENDIX 000464

GRAND ESTATES ADVERTISING, LLC

Outlined below are the media selections designated in a joint selection process between Grand Estates Auction Company® and Grand Estates Advertising, LLC for your auction marketing campaign. These selections are based upon the Seller's goals and objectives for this auction, to take place on February 9, 2010.

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

MAGAZINES	ISSUE	DATE	SIZE	NO.	COST
FORBES MAGAZINE					
BIWEEKLY BUSINESS MAGAZINE	Jan 4 - 17	4-COLOR 1/4 PAGE	1X	\$4,025.00	
NEW YORK TIMES MAGAZINE					
WEEKLY LIFESTYLE MAGAZINE	Jan 10 - 16	4-COLOR 1/4 PAGE	1X	\$5,943.80	
HOMES AND LAND OF AUGUSTA					
MONTHLY REAL ESTATE MAGAZINE	January Issue	4-COLOR FULL PAGE + COVER	1X	\$1,351.25	
THE REAL ESTATE BOOK OF AIKEN & NORTH AUGUSTA					
MONTHLY REAL ESTATE MAGAZINE	January Issue	4-COLOR FULL PAGE + COVER	1X	\$912.00	
THE AIKEN HORSE					
MONTHLY HORSE PUBLICATION	Jan 1 - Feb 28	4-COLOR FULL PAGE	1X	\$695.00	
THE CHRONICLE OF THE HORSE					
WEEKLY HORSE CHRONICLE (REAL ESTATE SPECIAL)	Jan 8 - 15	4-COLOR 1/2 PAGE	1X	\$838.44	
WEEKLY HORSE CHRONICLE	Jan 15 - 22	4-COLOR 1/2 PAGE	1X	\$838.44	
WEEKLY HORSE CHRONICLE	Jan 22 - 29	4-COLOR 1/2 PAGE	1X	\$838.44	
SIDELINES MAGAZINE					
MONTHLY HORSE PUBLICATION	January Issue	4-COLOR 1/2 PAGE	1X	\$1,140.00	
EQUINE MONTHLY MAGAZINES					
SOUTHEAST EQUINE	Jan 1 - 30	4-COLOR 1/2 PAGE	1X	\$600.00	
HORSIN AROUND	Jan 1 - 30	4-COLOR 1/2 PAGE	1X	\$600.00	

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NEWSPAPERS	RUN DATES	SIZE	NO.	COST
WALL STREET JOURNAL- NATIONAL EDITION				
REAL ESTATE CLASSIFIED DISPLAY	Jan 8	BW 2 COL X 4 1/2"	1X	\$5,230.78
REAL ESTATE CLASSIFIED DISPLAY	Jan 15	BW 2 COL X 4 1/2"	1X	\$5,230.78
NEW YORK TIMES				
ESCAPES	Jan 8	BW 2 COL X 5.25"	1X	\$2,694.23
SUNDAY BUSINESS	Jan 17	BW 2 COL X 5.25"	1X	\$2,694.23
WASHINGTON POST				
REAL ESTATE CLASSIFIED DISPLAY AD	Jan 9	BW 2 COL X 3 1/2"	1X	\$1,233.95
REAL ESTATE CLASSIFIED DISPLAY AD	Jan 10	BW 2 COL X 3 1/2"	1X	\$1,233.95
ATLANTA JOURNAL-CONSTITUTION				
SUNDAY BUSINESS DISPLAY AD	Jan 17	BW 1/4 PAGE	1X	\$2,447.20
SUNDAY BUSINESS DISPLAY AD	Jan 24	BW 1/4 PAGE	1X	\$2,447.20
CHARLOTTE OBSERVER				
SUNDAY DISPLAY AD (MAIN NEWS)	Jan 17	BW 2 COL X 3"	1X	\$873.58
SUNDAY DISPLAY AD (MAIN NEWS)	Jan 24	BW 2 COL X 3"	1X	\$873.58
MIDDLEBURG, VA. NEWSPAPERS				
LEESBURG TODAY & ASHBURN TODAY	Jan 8	BW 1/8 PAGE (5" x 2.75")	1X	\$532.80
MIDDLEBURG LIFE	Jan 11	BW 1/4 PAGE (5" x 5.75")	1X	\$471.60
LEESBURG TODAY & ASHBURN TODAY	Jan 15	BW 1/8 PAGE (5" x 2.75")	1X	\$532.80

Seller's Initials KVSeller's Initials K

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NEWSPAPERS (CONT'D)

DESCRIPTION	RUN DATES	SIZE	NO. OF PAGES	NO. OF ISSUES	COST
OCALA STAR BANNER					
DISPLAY AD (SATURDAY REAL ESTATE)	Jan 9	BW 1/8 PAGE	1X		\$788.89
DISPLAY AD (SATURDAY REAL ESTATE)	Jan 23	BW 1/8 PAGE	1X		\$788.89

AIKEN STANDARD

HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 9	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 16	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 23	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Jan 30	4-COLOR FULL PAGE			\$300.00
HOME HUNTER (SUNDAY REAL ESTATE PUBLICATION)	Feb 6	4-COLOR FULL PAGE			\$300.00

OTHER MEDIA

REALTOR.COM					
SKYSCRAPER AD	Jan 1 - Feb 1	160 X 600 PIXELS			\$2,300.00

PRODUCTION COSTS

\$2,800.00

TOTAL MEDIA

\$52,457.82

Seller's Initials

KL

Seller's Initials

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Proposed Marketing Expenses

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

Brochures:	
6-Panel Color @ 100lb, 10,000 text gloss	\$5,675.00
Brochure Production Costs:	
Camera ready artwork, layout, design, typesetting, mechanical preparation, color separations, & film	\$2,000.00
Brochure Postage & Handling:	
Folding, sealing, labeling & mailing	\$4,840.00
Brochure Mailing Lists:	
Selectively Targeted: In-house list for all buyers in VA, NC, SC, GA and FL; All Buyers that have expressed interest in Equestrian Properties; Local Area MLS & High-End Realtors specific to Equestrian Properties; Aiken Trainers; and Masters of Fox Hounds Association of America Officers & Directors.	
Appraisal:	Seller to provide
Internet Site Development: Includes site development for our site plus links to our sponsors	\$650.00
Telemarketing & Call Follow Up:	\$890.00
Public Relations:	\$3,500.00
Photography:	Interior & Exterior \$2900
	Stock \$375.00 \$3,275.00
Video:	\$500.00
Signage: Quantity: 2 - 4' X 6' Signs, plus 10 - 24" X 30" Auction Directionals & 1 - Banner	\$2,575.00
Property Purchase Package:	
Includes approximately 5 chapters, previewing contracts, data regarding property, maps, Title commitment zoning, tax info. etc. (see example)	
	\$1,125.00
Total Proposed Marketing Expenses:	\$25,030.00

Seller's Initials *KW* Seller's Initials *EF*
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PROPOSED PROMOTIONAL EXPENSES

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

The following Auction personnel list consist of independent contractors and employees who will be involved in your auction.

<u>AUCTION STAFF</u>	<u>RATE</u>	<u>NO.</u>	<u>TOTAL</u>
Auctioneer	\$3,500.00	1	\$3,500.00
Auction Coordinator	\$3,600.00	1	\$3,600.00
Bid Assistants	\$1,100.00	1	\$1,100.00
Registrar and Closing Agent	\$1,400.00	1	\$1,400.00
<u>AUCTION SITE STAFF</u>			
Site Director	\$300.00 per day	1	Amount of days 6 \$1,800.00
Site Assistant	\$250.00 per day	2	6 \$3,000.00
Auction Day Expenses: Shipping of materials, Security, Food and Rentals for Auction Day			\$1,100.00
TOTAL PROPOSED PROMOTIONAL EXPENSES			\$15,500.00

Rates include hotel, travel & meals.

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SUMMARY OF AUCTION EXPENSES

MEDIA EXPENSES: \$52,457.82

MARKETING EXPENSES: \$25,030.00

PROMOTIONAL EXPENSES: \$15,500.00

TOTAL EXPENSES: \$92,987.82

Seller's Initials KL

Seller's Initials KL

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APPENDIX 000470

Seller's Checklist

Grand Estates Auction Company will make the arrangements for all or any of the items listed below. The items below will need to be charged directly to Seller unless the items are included in the proposed contract between Grand Estates Auction Company and Seller or the Sales Contract between Seller and Buyer. Otherwise, the items will be at Sellers expense.

The following is a list of items that need to be received by our office no later than 35 days prior to auction, so that our staff can start putting together your PROPERTY PURCHASE PACKAGE for prospective bidders, the Preliminary Title Report must be ordered 5 days after signing your contract, (Grand Estates Auction Company will order the title report) this sometimes takes a little longer to receive. Please forward these items to the attention of:

Desiree Watson
Grand Estates Auction Company
9115-F Old Statesville Road
Charlotte, NC 28269

1. **PRELIMINARY TITLE INSURANCE COMMITMENT (THIS MUST BE ORDERED 5 DAYS AFTER YOU HAVE SIGNED THE CONTRACT):** A representative of Grand Estates will order this for you. Call us if you have any questions about this.
2. **A CURRENT SURVEY:** including not only the boundary lines, but also all buildings, improvements, fences, pools, driveways, easements, etc. Tell your surveyor that you will be getting an updated title insurance policy with this survey and that your buyer will be using it to obtain title, mortgage and deed.
3. **ATTORNEY:** We will need the name, address and telephone number along with the fax number of a real estate attorney who you will want to use to handle any of your legal work and closing details for you. It is the responsibility of the Seller for the expense of your attorney's review to our Purchase & Sale Agreement, any legal and documentation prep fees including the survey. The closing will take place with a third party title company or a third party attorney. This is specified on the Sales Contract between buyer and seller.
4. **HOME INSPECTION REPORT:** You will want to find the most thorough and reputable home inspection company you can. If there is any kind of problem, known or unknown by you, you will want it disclosed in this report to the buyer. It doesn't mean that you will necessarily have to repair it, however, you will want to disclose it. In many states if a buyer can prove that a seller should have known of a defect and failed to disclose it, the seller can be held responsible. Talk to your attorney about any particular liability laws in your state. Tell him this is an "AS IS, WHERE IS" sales contract, and see what he has to say about your state. This is also the Sellers expense.

Initials: *K/8*

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5. SWIMMING POOL INSPECTION: If applicable
6. SEPTIC TANK & WELL WATER INSPECTION: If applicable
7. APPRAISAL: If applicable
8. OIL HEATING: Are tanks in the house? Where buried? What size? How old?
9. ENVIRONMENTAL INSPECTION: If applicable.
10. TERMITE INSPECTION REPORT: Get a clear report for all wood destroying insects if you can, if not we will want to disclose any damage.
11. FLOORPLANS OR ARCHITECT'S DRAWINGS.
12. ELEVATION CERTIFICATE: if your property is a waterfront property.
13. FLOOD INSURANCE: requirements if your property is in a flood zone.
14. CERTIFICATE OF OCCUPANCY: if your property is new construction.
15. PRIVATE CLUB'S GOLF, EQUESTRIAN FACILITIES, MARINA'S, ETC: joining fees, and literature.
16. RESIDENTIAL PROPERTY DISCLOSURE STATEMENT: We will provide this to you if you don't have it.
17. LEAD PAINT DISCLOSURE: Only if your home is built before 1977.
18. RADON GAS INSPECTION: Only if applicable in your state.
19. ASBESTOS DISCLOSURE: Only if you live in an older home that has asbestos.
20. ZONING OF PROPERTY: Can property be subdivided?
21. MOST RECENT TAX BILL: Any reassessment papers, if a recent reassessment was done.
22. MORTGAGE INFORMATION: Updated information on all outstanding mortgages including Lender's names, current balances, account #'s.
23. HOMEOWNER'S ASSOCIATION BYLAWS, SUBDIVISION RESTRICTIONS & DEED RESTRICTIONS: If HOA, how much are the monthly dues.
24. FURNITURE AND OR FURNISHINGS: If you are including any we need an itemized list clearly detailing each item.
25. FURNITURE THAT IS NOT GOING TO BE INCLUDED: We need an itemized list clearly detailing each item.

****ADDITIONAL ITEMS NEEDED**

1. MARKETING MATERIALS, BROCHURES, LITERATURE, PHOTOGRAPHY AND NEGATIVES: Anything that you may have that will help us put together a better description of your property.

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Initials: BK

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PROPOSED TERMS AND CONDITIONS

GRAND ESTATES AUCTION COMPANY®

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APPENDIX 000473

PROPOSED AUCTION TERMS AND CONDITIONS
FOR

Karl Wesley Hirschhorn and Erin Francis Hirschhorn,
As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn
Revocable Trust Dated May 24, 1993
836 Whiskey Road
Aiken, South Carolina 29501

AUCTIONEER

Auctioneer reserves the right to announce any additional terms and conditions before or during the auction.

All decisions of the Auctioneer shall be final, including but not limited to decisions on matters of increments of bidding, disputes among bidders, and any other matters that may arise during the Auction.

SELLER

The Seller has the right to add to or withdraw from the sale any property prior to the auction.

The property will be sold "AS IS, WHERE IS". NO WARRANTIES, either statutory or otherwise, expressed or implied as to the fitness, the functionality, habitability, workmanship, expressed or implied is offered.

AUCTION COMPANY

The Auction Company has relied upon the Seller for all information in regards to the property. It is believed that this information is true and correct.

The Auction Company has relied upon the seller for information published in all advertising.

Grand Estates Auction Company® is the selling Agent only and makes no representation concerning the property.

ATTORNEY

Title will be conveyed by a warranty deed subject to the matters set forth.

Closing shall take place in the county in which the property is located by a recognized pre-approved Title Company or attorney.

Closing shall be held within 30 days of contract signing or sooner.

Closing costs shall be paid by the buyer including the County transfer tax of \$_____ per thousand of purchase price.

All monies will be held in a non-interest bearing escrow account under the control of Richard M. Koch, Attorney at Law, Charlotte, NC, as escrow agent, pending the closing and in accordance with the terms of the Real Estate Sales Agreement. No disbursement shall be made from this account until the closing.

PURCHASER

Purchaser has agreed that purchaser has inspected the property and is not relying on any warranty or representation of Seller or Seller's agent or any member of auction company contracted or subcontracted employees. Purchaser agrees to buy property "AS IS, WHERE IS".

Purchaser agrees to sign Sales Agreement and pay a 10% earnest money deposit, with \$50,000.00 being in certified funds, personal check with a bank letter of guarantee, credit card with prior approval, or any other form that seller finds acceptable immediately after being declared the winning bidder. The balance of the earnest money may be paid in personal check. Buyer agrees that the earnest money is non-refundable should Buyer fail to close.

REGISTRATION

All bidders must be registered to bid at the auction and present a certified check, personal check with a bank letter of guarantee, credit card with prior approval, or any other form that seller finds acceptable in the amount of \$50,000.00 in order to register and obtain a bid number. The check is to be made payable to the bidder.

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APPENDIX 000476

EXCLUSIVE REAL ESTATE/AUCTION MARKETING AGREEMENT

1. In consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the undersigned, Karl Wesley Hirschhorn and Erin Francis Hirschhorn, As Trustees of the Karl Wesley Hirschhorn and Erin Francis Hirschhorn Revocable Trust Dated May 24, 1993, hereinafter referred to as "Seller(s)," hereby represents to be the owner(s) of real estate located at 836 Whiskey Road, Aiken, South Carolina 29501. Seller(s) hereby appoints "4 K&D Corporation d/b/a GRAND ESTATES AUCTION COMPANY," a North Carolina Corporation; located at 9115-F Old Statesville Road Charlotte, NC 28269, phone # 704-529-0026, the sole and exclusive agent for Seller(s), hereinafter referred to as "GEA," through South Carolina Real Estate Broker Scott Kirk, License No. 75461. "GEA" has the exclusive right to sell said Property by public or private sale, from the date this Agreement is executed and up to the auction and including One Hundred Eighty (180) days after the auction.

2. PROPERTY DESCRIPTION(S): 836 Whiskey Road, Aiken, South Carolina 29501. Legal description of said property will requested through title search upon execution of Exclusive Real Estate/Auction Marketing Agreement. The title search will be known as "Exhibit A" in contract between GEA, Seller(s) and Buyer(s). The legal description from title search will provide the complete description of property that is the subject of this Agreement known as the "Property."

3. Seller(s) warrants the truth of all statements made by Seller(s) contained herein to the best of Seller(s)' knowledge and belief, and further warrants that Seller(s) has the right to convey title to said Property and that there are no pending claims or suits affecting Property; that there is no litigation involving the Property; that the Seller(s) is current on all mortgage obligations effecting the Property; that there are no known dangerous conditions on the Property; that there is no hazardous waste on the Property, that there are no violations of any kind regarding building or zoning, including but not limited to FEMA; and that there are no structural defects of workmanship.

4. TYPE OF AUCTION: The auction sale will be held on Tuesday, February 9, 2010, or such earlier date as may be agreed upon by Seller(s) and GEA. "GEA" will offer the Property located at 836 Whiskey Road, Aiken, South Carolina 29501 at ABSOLUTE AUCTION with no minimums or reserves. The Seller(s) has the right, in its sole discretion, to add or withdraw all or any portion of the property, prior to commencement of the bidding. "Commencement of the bidding" as used herein shall mean the commencement of the bidding on the day of the auction, when the auctioneer opens the auction and solicits verbal bids. Solicitation and receipt of any opening bid prior to the actual commencement of the bidding by the auctioneer, including without limitation any bid that qualifies for an incentive under the Buyer Opening Bid Incentive Program shall not trigger a commencement of the bidding as used herein. If the property is withdrawn, a withdrawal fee shall be due and

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payable on auction day that will be credited to the stated commission at closing. Seller(s) acknowledges that upon the commencement of the bidding, the Property will be sold to the highest bidder(s) regardless of the bid price, and Seller(s) understands and acknowledges that he/she relinquishes any right to place any minimum or reserve on the bidding with respect to the Property.

5. AUCTION COMPANY DISCLAIMER: Seller(s) acknowledges that "GEA" has made no representations or promises as to the price that may be bid at the auction. (See Disclaimer Addendum)

(a) "GEA" HAS NO OPINION AS TO THE VALUE OF THE PROPERTY.

(b) The following disclaimer shall be included in and become a part of the Purchase & Sale Agreement: DISCLAIMER AS TO AUCTION COMPANY: Buyer shall look only to Seller(s) as to all matters regarding this Contract and the Property, and GRAND ESTATES AUCTION COMPANY shall not be responsible or liable in any way if Seller(s) fails or refuses to or cannot close title hereunder, or if the Property is affected in any way or is in any other way unsatisfactory to Buyer as Buyer may determine before or after closing.

6. DUTIES OF GRAND ESTATES AUCTION COMPANY: "GEA" will do or perform the following as the case may be:

- (a) Prior to the auction sale, "GEA" shall prepare and distribute advertising and sales literature in a manner reasonably calculated to advise persons who might be interested in the Property and in the sale thereof.
- (b) Prepare a full-color, descriptive sales brochure with photographs of the Property for sale.
- (c) Provide and direct all auction personnel reasonably necessary for the purpose of promoting and conducting the auction.
- (d) Perform the marketing and auction of the Property in a manner consistent with the Auction Sales & Marketing Proposal presented to Seller(s) dated November 10, 2009.

7. CONVEYANCE OF THE PROPERTY: The SELLER(S) acknowledges and understands that the SELLER(S) ability to transfer to a buyer a good, clear, marketable and

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insurable title is one of the primary inducements of "GEA" to undertake the sale of the property and expend its time, resources and efforts toward receiving a commission from one or more successful sales. In consideration thereof, the SELLER(S), at or before closing, undertakes and agrees to perform or permit the following with respect to the Property, in whole or in part, as the case may be:

- (a) The SELLER(S) shall be in a position and will convey a good, clear, marketable and insurable title to each of the buyers.
- (b) The SELLER(S) shall effect all conveyances by general warranty deed.
- (c) SELLER(S) covenants and warrants that there are no liens or encumbrances against the property except those as may be shown on the title insurance commitment to be provided as a part of the Seller's Checklist.
- (d) The buyers at auction may pay the purchase price for the property in cash.
- (e) "GEA" shall not be responsible for any closing or recording costs or any brokerage commissions.

8. SELLER(S) AFFIDAVIT: Seller(s) agrees to refer to "GEA" any material inquires received while this Agreement is in effect, including but not limited to all requests for property information, any potential or prospective bidders or buyers, auction information, terms and conditions, offers to purchase, or media requests for interviews.

Seller(s) shall give GEA, prospective bidders, buyer, photographer, and etc. reasonable access to the Property before, during, and after the sale of the Property until the closing.

Seller(s) shall perform no act which could hinder the actions of the auction company in the promotion, marketing or sale of the property, including but not limited to the disclosure to any person or entity terms or price or value of the Property.

Failure to perform according to these paragraphs shall be considered a breach of contract upon Seller(s) and the penalty for such breach shall be construed as a withdrawal including the withdrawal fee (to be credited to the stated commission at closing) and all of its terms and conditions of such as stated in section 12.

9. COMMISSIONS: For its services in preparing for and/or conducting the Auction Sale, Seller(s) shall pay "GEA" a commission equal to Ten percent (10%) of the gross sales price

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paid by the Buyer at Closing on the Property. Both Seller(s) and "GEA" agree that all deposits and purchase funds shall be paid to the Escrow for its proper disbursement. "GEA'S" commission shall be due and payable by the Seller(s) from the first proceeds of each sale on the date and at the time when the Property, in whole or in part, is conveyed to one or more buyers, and those commissions shall be deducted from the purchase price or prices. Seller(s) will instruct the ESCROW AGENT to pay commissions to "GEA" according to this Agreement. No funds shall be disbursed to any party without commissions being paid to "GEA" (See Escrow Instructions attached hereto.) If Buyer defaults in closing a Sales Contract, and the escrow is disbursed, "GEA" shall be entitled to Fifty percent (50%) of the deposit paid by the Buyer.

(a) During the Exclusive Listing Period "GEA" is entitled to the full commission if Seller(s) sells, leases, trades, transfers or otherwise disposes of all or any part of the Property, regardless of whether the buyer is secured by "GEA", Broker, Seller(s) or any other person. If within 180 days after the expiration date of the Exclusive Listing Period Seller(s) transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom Seller(s), Broker, or any other person communicated regarding the Property prior to the expiration date of the Exclusive Listing Period "GEA" shall be entitled to its full commission.

(b) Seller(s) also agrees to pay "GEA" its full stated commission if the closing of a Sales Agreement is prevented by existing liens, judgements, or suits pending against the Property or if Seller(s) is unwilling to close same after having agreed in writing to such a sale.

(c) After the deduction of all commissions due "GEA" hereunder, the balance of the purchase price may be utilized to satisfy and discharge all outstanding liens on the Property, in whole or in part, in order to enable a conveyance under the terms required of the Seller(s) hereunder. If, however, the net purchase price is insufficient to pay all of the outstanding liens and encumbrances on the Property, then the Seller(s) shall forthwith make available all funds necessary to obtain discharges of said encumbrances and to permit the conveyance(s).

10. BUYER'S PREMIUM: Seller(s) understands that a Seven and One Half Percent (7 ½%) Buyer's Premium will be automatically added to the winning bid of the Buyer(s) purchasing the Property at the auction sale. This fee will be explained in the auction terms

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and conditions distributed to all bidders and will be automatically added to the winning bid. This Buyer's Premium, together with the high bid price, will determine the Gross Sales Price. In the event a Buyer Broker is due a commission under the guidelines of "GEA" Broker Participation Program (up to a three percent (3%) of the bid price), the Buyer Broker fee will be paid from this Seven and One Half Percent (7 1/2%) Buyer's Premium. The remaining Buyer's Premium will be paid to the Seller(s) as part of the total sales price.

11. ADVERTISING AND AUCTION SALES CAMPAIGN FEES: In addition to said commission, Seller(s) shall pay to "GEA" for promotion and expense of conducting the auction sale the sum of Ninety-Two Thousand Nine Hundred Eighty-Seven and 82/100 Dollars (\$92,987.82) due in three (3) installments, one third (1/3) at execution of this agreement, 1/3 at the time Seller(s) approves and signs off on print Advertising, and the final 1/3 thirty (30) days prior to auction.

(a) All costs outlined in the auction sales campaign proposal are best estimates as of the time the proposal was prepared. In the event that the actual costs of the advertising and auction expenses exceed the original estimates, "GEA" agrees not to pass the additional expenses on to the Seller(s). Likewise, in the event that costs come in lower than projected, "GEA" will not pass along any refunds to the Seller(s). Should the auction not be held on the Property, Seller(s) shall be responsible for all expenses related to auction day site.

(b) Seller(s) agrees to permit "GEA" to take photographs and/or videotapes of auction(s) and related events, and Seller(s) also agrees to grant "GEA" the right to utilize these materials for promotional purposes. These materials will remain the Property of GRAND ESTATES AUCTION COMPANY. Seller(s) name and likeness shall not be utilized in such materials without the prior written approval of Seller(s).

12. WITHDRAWAL: Seller(s) agrees that if Seller(s) withdraws Property or any portion of the Property from the date of this Agreement for any reason, Seller(s) will pay "GEA" a withdrawal fee of Fifty Thousand and no/100 Dollars (\$50,000.00) for the Property withdrawn plus any unreimbursed expenses incurred by "GEA" within three (3) days of written withdrawal notice unless withdrawal occurs within ten (10) days of auction date in which case the withdrawal fee is due with notice of withdrawal.

If either of the following two Buyers, MR + MRS J COLLIC or Green Berrary Corp make an offer prior to January 1st, 2010 that is acceptable to Seller(s), the Exclusive Listing with GEA would be terminated, no

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Withdrawal fee would be due, but instead a \$10,000.00 termination of contract would be paid by Seller(s) to GEA, and GEA would refund all marketing and promotional expenses from proposal except those incurred.

In the event Property sells prior to the Auction, the withdrawal fee will be waived and only the unreimbursed expenses and stated commission will be due. Should Property sell after withdrawal within the confines of paragraph 9A the full commission shall become immediately due and payable at closing and the withdrawal fee shall apply towards the commission due.

Seller(s) agrees to pay the withdrawal fee if the conducting of a sale is prevented by lawsuits, suits pending, liens, or judgments against the Property, unless such lawsuits, suits pending, liens, or judgments against the Property were caused by the conduct of GEA.

In the event that "GEA" is obliged to incur any expenses (including attorneys' fees, court costs, or other out-of-pocket monies) to collect any monies, including but not limited to commissions, auction campaign costs or withdrawal fees, due to Grand Estates Auction Company, Seller(s) agrees that the cost of collection will be added to these monies due and will be paid by the Seller(s).

13. LICENSING AND APPROVALS: Seller(s) agrees to obtain written approval of any governing bodies including but not limited to any applicable HOA, and or government bodies with jurisdiction over sale of Property.

14. BINDING EFFECT: This Agreement will be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and this Agreement constitutes the entire contract between parties. There are no oral representations or understandings other than the terms set forth herein. Any changes to be effective shall be in writing and signed by both parties.

15. ASSIGNMENT AND THIRD PARTIES: Neither party may assign, transfer, or delegate any right, obligation, or interest in this Agreement without prior, written consent of the other. This Agreement shall not create any rights in, nor be deemed to have been executed for the benefit of, any third party, except as expressly provided.

16. INSURANCE AND RISK OF LOSS: Seller(s) shall at all times prior to closing have, and maintain in effect, adequate insurance of the type and amount needed to insure Seller(s) and GEA, including GEA's agents, assigns, attorneys, brokers, contractors, directors, employees, members, officers, representatives, and successors in interest for any claim that might arise for casualty, damage, death, destruction, injury, or loss of any kind, to either person or property, during the inspection, preparation, preview, marketing, auction, or sale of the Property, as a result of any accident, act, act of God, death, error, fire, hazard,

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negligence, omission, theft, or vandalism, and Seller(s) shall solely pay the cost for this insurance. The risk of loss pertaining to the Property shall remain exclusively on Seller(s) until closing. Once Seller(s) has conveyed good title and possession to the buyer, the risk of loss shall immediately pass to the buyer.

17. **HOLD HARMLESS AND INDEMNIFICATION:** A Party at fault shall hold a Party not at fault harmless from, and indemnify the Party not at fault against, any action, arbitration, award, claim, cost, damage, deficiency, demand, expense, indemnity, injury, judgment, liability, loss, obligation, and suit of every kind, including reasonable attorneys' fees and costs of defense, asserted by any person, real or artificial, or by any entity of government, that the Party not at fault incurs as a result of any act, error, omission, or wrongdoing attributable to the Party at fault or that Party's agents, assigns, attorneys, brokers, contractors, directors, employees, invitees, licensees, members, officers, shareholders, representatives, or successors in interest, and which arises out of this Agreement, the transaction contemplated, or the related dealings of the Parties, except otherwise expressly provided herein.

18. **LEGAL ACTION AND ARBITRATION:** Any action, claim, controversy, counterclaim, dispute, or proceeding arising out of this Agreement or its breach, enforcement, interpretation, termination, validity, or the transaction contemplated, or any related dealings between the Parties (collectively "arbitration matter"), whether controlled by federal or state law, and whether an issue of law or equity, including the scope and applicability of this agreement to arbitrate, shall be determined and resolved exclusively by final and binding arbitration, with no appeal permitted, except as provided by applicable law for judicial review or enforcement of arbitration decisions. The arbitration shall be administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties waive the right to any legal action and trial by jury.

The costs of arbitration, including the fees and expenses of the arbitrators, but not including the Parties' attorneys' fees, shall initially be paid equally by the Parties. The prevailing Party shall be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys' fees. The filing, proceedings, decisions, result, rulings, and award from any arbitration shall be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person, and the Parties shall jointly move the court entering judgment on the arbitration award to so order.

Any arbitration matter must be commenced within one (1) year from the date when the cause of arbitration accrues or it will be forever barred. The right of arbitration shall accrue, and the one (1) year limitation period shall begin to run, on the date the breach, damage, or injury is sustained and not when the resulting damage or harm is discovered. A

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memorandum referencing this contract and its terms may be filed at the sole discretion of GEA in the county the property is located in.

19. CHOICE OF LAW, JURISDICTION, AND VENUE: This Agreement, the Auction Escrow Instructions, and all issues and matters related to either shall be exclusively construed and governed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws principles. The exclusive jurisdiction and venue for any controversy, claim, or arbitration between the Parties shall be in the County of Mecklenburg in the State of North Carolina.

Parties only option of litigation will be to submit to binding arbitration. If arbitration is held to be an inappropriate remedy by any Court of Law, then any action at law shall be held only in the Superior Court of Mecklenburg County, North Carolina.

20. CONSTRUCTION: Article headings are for reference only and not intended to expand or restrict the scope or substance of the terms of this Agreement. Any reference to an Article includes all relevant sections and paragraphs within that Article. Wherever used, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine, or neuter, as the context requires.

This Agreement contains the final, complete, and exclusive agreement of the Parties and there are no oral or written agreements, inducements, promises, representations, or warranties, other than those expressly set forth herein. Any previous agreement, negotiation, or understanding between the Parties regarding the subject herein has been merged into this Agreement and shall not survive its execution. A deletion, modification, revision, supplement, or waiver of any term of this Agreement shall be effective only if made in writing and executed by the Parties with the same formality as this Agreement, unless otherwise provided herein.

No waiver by either Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach, and no waiver of any right shall be construed as a waiver of any other right. A Party shall not be required to give the other any notice to enforce strict adherence to the terms of this Agreement.

The terms of this Agreement shall be severable and, if any term is held illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected or impaired and, in lieu of the term held illegal, invalid, or unenforceable, there shall be added, to become part of this Agreement, a term as similar in effect as the illegal, invalid, or unenforceable term, as is possible, legal, valid, and enforceable.

The Parties have mutually participated in the negotiation and drafting of this Agreement and no legal inference, presumption, principle, or rule of draftsmanship or

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construction shall be used in favor of, or against, any of them. This Agreement may be signed in multiple counterparts and each shall be an original, with all counterparts constituting a single instrument. A facsimile signature shall be considered as valid as an original signature.

21. MISCELLANEOUS: Seller(s) acknowledges that every question Seller(s) had regarding this Agreement and its subject has been answered by GEA to Seller(s) satisfaction. Each Party has had the opportunity to seek the advice of legal counsel of its choosing, and each has either done so or has voluntarily decided to forgo such advice, with full understanding of the risk involved in such course.

GEA and the Broker shall conduct all brokerage activities in regard to this Agreement without respect to race, color, religion, sex, national origin, handicap or familial status of any party or prospective party to the Agreement.

22. TIME OF THE ESSENCE: Time is of the essence of this Agreement.

23. FORCE MAJEURE: A Party shall not be liable to the other for any failure or delay in performance arising out of an unforeseeable cause or contingency beyond that Party's reasonable control and without that Party's fault, negligence, or wrongdoing, and such failure or delay shall not constitute a material breach of this Agreement, provided the Party claiming *force majeure* gives the other notice at the earliest reasonable date and uses commercially reasonable efforts to cure the *force majeure* event. In such case, there shall be an equitable adjustment to the time for performance of this Agreement and the Parties shall take account of and resolve any issues that arise including, but not limited to, unanticipated and additional expenses.

24. SURVIVAL: The following Articles shall survive any termination of this Agreement and remain in full force and effect: *Auction Company Disclaimer, Seller's Warranties and Conveyance of the Property, Commissions, Hold Harmless and Indemnification, Legal Action and Arbitration, Binding Effect, Choice of Law, Jurisdiction, and Venue, Construction, Miscellaneous, Survival, "Auction Escrow Instructions"*.

25. COMPANY APPROVAL: This Agreement is subject to the final approval of an officer of Grand Estates Auction Company.

26. COUNSEL: Seller(s) and GEA agree to cooperate to draft a proposed sales contract to be utilized at the auction, and the proposed sales contract shall be subject to review and approval by the Seller(s)' South Carolina counsel.

EXECUTED as of the 12 day of Nov, 2009.

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I HAVE READ AND ACCEPTED THE TERMS OF THIS AGREEMENT.
ACCEPTED:

Name of Corporation _____ Print Name _____
BY: _____ Date _____
Seller's Signature-Officer of Corporation _____
Home No.: _____ Fax No.: _____
Work No.: _____ Tax Id: _____
Seller's Mailing Address: _____

Witness to signature of officer or secretary _____ Date _____ Print Name _____

BY: Karl Hirschhorn _____ Date 11/12/09
Seller's Signature Personally _____
Karl Hirschhorn _____ Social Security No. _____
Print Name _____
Home No.: 912 319 2007 Fax No.: KHIRSCHHORN@MAIL.COM
Work No.: 808 206 3511
Seller's Mailing Address: P.O. Box 30910 Sea Island GA 31561

BY: Erin Hirschhorn _____ Date 11/12/09
Seller's Signature Personally _____
Erin Hirschhorn _____ Social Security No. _____
Print Name _____
Home No.: 912 319 2007 Fax No.: _____
Work No.: 808 206 0698
Seller's Mailing Address: P.O. Box 30910 Sea Island, GA 31561

BY: Scott Kirk _____ Date 11/30/09
South Carolina Real Estate Broker's Signature _____
Scott Kirk _____ License # 75462
Print Name _____
ACCEPTED BY: Scott Kirk _____ Date 11/30/09
Officer _____

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DISCLAIMER ADDENDUM

THE SELLER(S) ACKNOWLEDGE(S) THAT NEITHER GRAND ESTATES AUCTION COMPANY, A NORTH CAROLINA CORPORATION, HEREINAFTER "GEA," NOR ANY OF ITS STOCKHOLDERS, OFFICERS, AGENTS OR REPRESENTATIVES, HAVE GUARANTEED OR PROMISED THAT THE AUCTION SALE SHALL BRING ANY PARTICULAR PRICE FOR THE PROPERTY AND THAT SELLER(S) SETTING A MINIMUM OR RESERVE SHALL NOT BE CONSTRUED AS A GUARANTEE OR WARRANTY OF ANY PRICE. SELLER(S) REPRESENT(S) AND WARRANTS THAT THE AUCTION COMPANY DOES NOT DO REAL ESTATE APPRAISALS AND HAS, IN FACT, STATED TO SELLER(S) THAT THEY HAVE NO OPINION AS TO THE VALUE OF THE PROPERTY OR OF THE PRICE IT WILL BRING AT THE AUCTION SALE. ALSO, THIS AGREEMENT REPRESENTS ALL AGREEMENTS BETWEEN "GEA" AND SELLER(S), UNLESS AGREED UPON IN WRITING AND SIGNED BY ALL PARTIES. BY SIGNING MY NAME BELOW, "WE ACKNOWLEDGE THAT "WE HAVE READ AND UNDERSTAND THE ABOVE DISCLAIMER.

Name of Corporation

Print Name

BY: _____

Seller's Signature-Officer of Corporation

Date

Witness to signature of officer or secretary

Date

Print Name

BY: _____

Seller's Signature Personally

11/12/09

Date

Print Name

BY: _____

Seller's Signature Personally

11/12/09

Date

Print Name

Seller's Initials KK

Seller's Initials BSR

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AUCTION ESCROW INSTRUCTIONS

1. All earnest monies/down payment shall be received by an escrow agent or title company mutually agreed upon by both parties and deposited in a special, non-interest bearing escrow account at a FDIC approved bank.
2. Upon verification of "Good Funds" in this account, the proceeds thereof will be disbursed at settlement, along with the recording of the deeds as follows:

"GEA" WILL BE PAID ACCORDING TO THE FOLLOWING SCHEDULE;

For its services in preparing for and conducting the Auction Sale, Seller(s) shall pay "GEA" a commission equal to Ten percent (10%) of the gross sales price paid by the Buyer at Closing. Both Seller(s) and "GEA" agree that all deposits and purchase funds shall be paid to the Escrow Agent for its proper disbursement. If Buyer defaults in closing a Sales Contract, "GEA" shall be entitled to Fifty percent (50%) of the deposit paid by the Buyer.

Seller(s) understands that a Seven and one-half Percent (7 1/2%) Buyer's Premium will be automatically added to the successful bid of the Buyer(s) purchasing the property at the auction sale. This fee will be explained in the auction rules distributed to all bidders and will be automatically added to the winning bid. This Buyer's Premium, together with the high bid price, will determine the Gross Sales Price. In the event a Buyer Broker is due a commission under the guidelines of "GEA" Broker Participation Program (Maximum Three Percent (3%) of the bid price), the Buyer broker fee will be paid from this Seven and one-half Percent (7 1/2%). The remaining Buyer's Premium will be paid to the Seller(s) as part of the total sales price.

3. Escrow Agent will disburse all funds (to Seller(s) & "GEA") at the same time.
4. Escrow Agent will supply "GEA" with a copy of the Closing Statement for each disbursed transaction.
5. Please remit all payments to:

GRAND ESTATES AUCTION COMPANY

9115 F OLD STATESVILLE ROAD, CHARLOTTE, NC 28269, (704) 529-0026

THE ABOVE ESCROW INSTRUCTIONS ARE HEREBY AGREED UPON BY THE FOLLOWING PARTIES FOR THIS TRANSACTION:

Name of Corporation

Print Name

BY:

Seller's Signature-Officer of Corporation

Date

Witness to signature of officer or secretary

Date

Print Name

BY:

Seller's Signature Personally

Date

Print Name

BY:

Seller's Signature Personally

Date

Print Name

BY:

South Carolina Real Estate Broker's Signature License #

Date

Print Name

GRAND ESTATES AUCTION COMPANY®, A NORTH CAROLINA CORPORATION

BY:

ETHEL KIRK, AS ITS PRESIDENT

DATE

ESCROW AGENT

DATE

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AUCTION ESCROW INSTRUCTIONS

1. All earnest monies/down payment shall be received by an escrow agent or title company mutually agreed upon by both parties and deposited in a special, non-interest bearing escrow account at a FDIC approved bank.
2. Upon verification of "Good Funds" in this account, the proceeds thereof will be disbursed at settlement, along with the recording of the deeds as follows:

"GEA" WILL BE PAID ACCORDING TO THE FOLLOWING SCHEDULE:

For its services in preparing for and conducting the Auction Sale, Seller(s) shall pay "GEA" a commission equal to Ten percent (10%) of the gross sales price paid by the Buyer at Closing. Both Seller(s) and "GEA" agree that all deposits and purchase funds shall be paid to the Escrow Agent for its proper disbursement. If Buyer defaults in closing a Sales Contract, "GEA" shall be entitled to Fifty percent (50%) of the deposit paid by the Buyer.

Seller(s) understands that a Seven and one-half Percent (7 1/2%) Buyer's Premium will be automatically added to the successful bid of the Buyer(s) purchasing the property at the auction sale. This fee will be explained in the auction rules distributed to all bidders and will be automatically added to the winning bid. This Buyer's Premium, together with the high bid price, will determine the Gross Sales Price. In the event a Buyer Broker is due a commission under the guidelines of "GEA" Broker Participation Program (Maximum Three Percent (3%) of the bid price), the Buyer broker fee will be paid from this Seven and one-half Percent (7 1/2%). The remaining Buyer's Premium will be paid to the Seller(s) as part of the total sales price.

3. Escrow Agent will disburse all funds (to Seller(s) & "GEA") at the same time.
4. Escrow Agent will supply "GEA" with a copy of the Closing Statement for each disbursed transaction.
5. Please remit all payments to: **GRAND ESTATES AUCTION COMPANY**
9115-F OLD STATESVILLE ROAD, CHARLOTTE, NC 28269, (704) 529-0026

THE ABOVE ESCROW INSTRUCTIONS ARE HEREBY AGREED UPON BY THE FOLLOWING PARTIES FOR THIS TRANSACTION:

Name of Corporation

Print Name

BY: _____
Seller's Signature-Officer of Corporation

Date

Witness to signature of officer or secretary

Date

Print Name

BY: _____
Seller's Signature Personally

Date

Print Name

BY: Erin Hirschhorn
Seller's Signature Personally

11/12/09
Date

Erin Hirschhorn
Print Name

BY: Scott Kirk 75467
South Carolina Real Estate Broker's Signature License #

11/30/09
Date

Scott Kirk
Print Name

GRAND ESTATES AUCTION COMPANY®, A NORTH CAROLINA CORPORATION

BY: SCOTT KIRK
SCOTT KIRK, AS ITS: PRESIDENT

11/30/09
DATE

ESCROW AGENT

DATE

Seller's Initials KK

Seller's Initials 121

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BUYER BROKER REGISTRATION FORM
BUYER BROKER GUIDELINES

Broker Information

Broker _____
License No. _____ Tax Id / SS No _____
Company _____
Address _____
City _____ State _____ Zip _____
Telephone _____ Fax _____

Client Information

Client _____
Print Name _____
Address _____
City _____ State _____ Zip _____

OPENING BID AMOUNT

Please refer to the Broker Participation Guidelines below for clarification and instruction.

\$ _____ 836 Whiskey Road, Aiken, South Carolina 29501
(not including the 7 1/2 % Buyer's Premium)

1. All prospects must be registered with Grand Estates Auction Company® with the Buyer Broker Registration Form provided. This form must be received by GRAND ESTATES AUCTION COMPANY® no later than by 4 p.m., Monday, February 8, 2010. FORMS SENT DIRECTLY TO THE SELLER WILL NOT BE HONORED.
2. For a Broker to properly represent a client they must:
 - A. Be a Licensed Real Estate Buyer's Broker in the state in which the property is located who will abide by the National Association of Realtors® Code of Ethics whose registered prospect pays for and settles in full according to the Buyer Broker guidelines set forth, for the above property to be sold at the auction on Tuesday, February 9, 2010 in Aiken, South Carolina.
 - B. Submit this form including the opening bid amount filled in 24 hours prior to the auction. The commission that is paid to the agent is on a sliding scale. For the agent that represents the winning bidder, a commission of three percent (3%) of the written opening bid price not to include the buyer's premium is paid. If their client attends the auction and continues to bid the agent is also compensated an additional one percent (1%) for the difference between the initial written opening bid and the final winning bid.
 - C. If no opening bid is written on the Broker Participation Form then one percent (1 %) of the high bid price of the property purchased by that broker's client will be paid to that broker as a commission/referral.
 - D. The broker commission/referral will not exceed three percent (3%) of the high bid price of the property purchased by that broker's client.
3. In order to be entitled to any commission/referral, the broker must:
 - A. Broker or Agent must sign in and inspect the property with the Client during a scheduled Open House or by private appointment with a Grand Estates Auction Company® representative.
 - B. Broker must also attend and register with the client at the auction and encourage bidding.
4. Commission will be paid only upon final closing and when the property has been settled in full.
5. No commission will be paid on any non-arms length transaction to any Broker or Agent participating in the purchase of the property or by any member of the Agent's immediate family. An Affidavit may be required that the Broker is

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serving only as a Broker and not as a Principal or member or shareholder or any other form of participation or related to the buyer.

6. No Broker will be recognized for a Client who has had previous contact with the Seller, their representatives, Auctioneer or Grand Estates Auction Company®.
7. Buyer and Broker must complete the following documentation IN FULL:
 - A) Buyer Broker Registration Form

THIS FORM MUST BE RECEIVED NO LATER THAN 4:00 P.M., Monday, February 8, 2010.

Send to the following address: Grand Estates Auction Company
Attn: Client Relations
9115-F Old Statesville Road
Charlotte, NC 28269

Or fax to: (704) 598-7911

8. In the event that you are not the successful high bidder, your certified funds will be returned to you.
9. A complete registration file on all buyer broker registrations will be maintained. For further information or questions, feel free to call Grand Estates Auction Company® Information Office at (704) 529-0026 or (800) 552-8120.
- A) The Broker and the Principal Bidder, by placing their signatures below, certify that they have inspected the premises of the subject property during a scheduled open house or by appointment.
- B) The Broker and the Principal Bidder hereby attest that the Broker is serving only as an Agent for the Buyer and not as a Principal involved in the purchase of the property.
- C) The Bidder hereby acknowledges that GRAND ESTATES AUCTION COMPANY® represents the Seller in this transaction.
- D) Commission shall be paid to Broker representing Principal Bidder only if he/she has met all of these requirements. No referral fee will be paid to a referring broker, even if the referring broker's client purchases a property.
- E) Broker agrees to abide by the Buyer's Broker Guidelines outlined herein to qualify for registration.
- F) CLIENT ACKNOWLEDGES THAT BROKER IS WORKING ON BEHALF OF CLIENT AS A BUYER'S BROKER.
- G) BROKER ACKNOWLEDGES THAT HE/SHE IS NOT A SUBAGENT OF GRAND ESTATES AUCTION COMPANY® AND REPRESENTS THE CLIENT AS A BUYER'S BROKER.
10. Client/Bidder must fully and properly register for the auction in order for this bid and/or broker registration to be valid.
11. This bid is only valid once the auction commences and the auctioneer accepts the bid.

Purchaser acknowledges that he/she agrees to abide by the terms and conditions of sale and agrees to open the bidding at the commencement of the auction for the property or parcel, by gavel at the amount stated above. I authorize the bid assistant to enter this bid during the auction at the request of the auctioneer.

The undersigned hereby certifies and agrees to the herein terms and conditions of registration.

Client/Bidder's Signature

Date

Broker's Signature

Date

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BUYER OPENING BID REGISTRATION FORM

Bidder's Name: _____ Bid #: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone #: _____ Evening phone #: _____

Fax #: _____

GUIDELINES FOR PARTICIPATION

1. Three Percent (3%) of the opening bid amount written in the blank provided below will be deducted from the total contract price, should you be the successful purchaser of the property for which you have provided an opening bid.
2. If you specify no opening bid amount, you will not receive any credit.
3. In order to participate, this form must be received by Grand Estates Auction Company® no later than 4:00 p.m., Monday, February 8, 2010.
4. All opening bids must be submitted in U.S. funds in total dollar amounts. The property will be bid by the dollar.
5. Bidder is required to bring a copy of the executed form with him/her on sale day.
6. Bidder must fully and properly register for the auction.
7. This bid is only valid once the auction commences and the auctioneer accepts the bid.
8. Bidder may increase their bid during auction, but the Three Percent (3%) credit will only be issued on the written opening bid amount on this form.

OPENING BID AMOUNT

\$ _____ 836 Whiskey Road, Aiken, South Carolina 29501
(not including the 7 1/2 % Buyer's Premium)

Purchaser acknowledges that he/she agrees to abide by the terms and conditions of sale and agrees to open the bidding at the commencement of the auction for the property or parcel, by gavel at the amount stated above. I authorize the bid assistant to enter this bid during the auction at the request of the auctioneer.

Please submit form to Grand Estates Auction Company®, 9115-F Old Statesville Rd, Charlotte, NC 28269, or fax to (704) 598-7911. For further information or assistance, please call (800) 552-8120.

Bidder's Signature

Date

Please note: This form does not allow for Broker Participation. If you have a Broker this form will be void, no credits or commissions shall be provided to winning bidder.

SAMPLE MEDIA & NEWSPAPER ADS

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APPENDIX 000493