

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2016-000432

Linda A. Gibson, individually and in capacity as
Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST;
HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
and 3205 PALM BOULEVARD, LLC, ... Appellants,

v.

ANDREW K. EPTING, JR., LLC; Andrew K. Epting, Jr.;
GEORGE J. KEFALOS, P.A.; George J. Kefalos;
GEDNEY M. HOWE, III, P.A.; Gedney M. Howe, III;
JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and John S. West, ... Respondents.

RECORD ON APPEAL

Thomas A. Pendarvis, J.D.
Christopher W. Lempesis, Jr., J.D., L.L.M.
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188

James R. Davis, Esq.
J. DAVIS LAW FIRM, P.C.
BB&T Plaza, Mail Stop Box #16
Daniel Island, South Carolina 29492

Counsel for Appellants

M. Dawes Cooke, Jr., J.D.
Jeremy E. Bowers, J.D.
BARNWELL, WHALEY PATTERSON & HELMS, LLC
PO Drawer H
Charleston SC 29402-0197

Counsel for Respondents

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Charleston SC 29402-0197

Counsel for Respondents

From: zzzDisabled - Zerbst, Karl
Sent: Monday, November 09, 2009 6:10 PM
To: Charpia, David; Snipes, Don
Subject: Linda Gibson

I met with her and her lawyer, Robert Papa, today. He is helping her to work out her issue with the banks, particularly with First Citizens but he came with her today to get an understanding of where we are. Meeting went well and they plan to visit with First Citizens tomorrow. They will get back to me very soon with a plan to resolve the current status. I'll let you know.

Karl H. Zerbst, Jr.

Ameris Bank | Market President

966-C Houston Northcutt | Mt. Pleasant, SC 29464

(D) 843-849-5488 (F) 843-881-8350

(C) 843-452-3838 (O) 843-375-4969

karl.zerbst@amerisbank.com



From: zzzDisabled - Zerbst, Karl
Sent: Tuesday, November 17, 2009 5:41 PM
To: Charpia, David; Snipes, Don; Sturm, Richard
Subject: FW: Linda Gibson

I met with Linda and her new attorney, Robert Papa last Monday. He was to get back with me last week but did not although I did receive this email today. Larry Richter confirmed today that his firm no longer represents Linda. I wish he did for our benefit but I understand why he no longer does. With respect to the below email, I'm not sure what Robert is asking for in the way of more help from Ameris. It seems they need to offer something that works for both of us. Linda did call me today and asked for a little more time. I do and will remain hopeful that we can resolve the issues we face but I don't think we can or should wait for 1st Citizens. I have selected two parcels of land that is income producing to Linda that would be used on the residual loan if Linda and Robert want to work for a win-win. David - I got your voice mail and can meet with you at 4:30 tomorrow and I will know more then.

Karl H. Zerbst, Jr.

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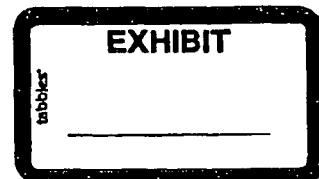
karl.zerbst@amerisbank.com

From: Robert Papa [mailto:papa@btitelecom.net]
Sent: Tuesday, November 17, 2009 4:20 PM
To: Zerbst, Karl
Subject: RE: Linda Gibson

Hi Karl,

I have been spending quite a bit of time with Linda trying to sort out things to be able to advise her on what is in her best interest. As you know, Linda has no earned income from a 9-5 job. Her subsistence is based on the real estate income. What Ameris is offering re the deferment of the \$300K is appreciated. The numbers for Linda are close but we need more help from Ameris. The attorney for First Citizens is in NYC and returns this Thursday or Friday so I do not have a concession package with them yet. I have court tomorrow in Chas in the morning and Walterboro in the afternoon but will check emails early and mid-day.

Rob



Zerbst, Karl

From: Zerbst, Karl
Sent: Tuesday, November 17, 2009 5:50 PM
To: 'Robert Papa'
Subject: RE: Linda Gibson

Rob – I appreciate your email. It appears you have a lot on your calendar. The problem is we don't have time as I shared with you we have attempted on many occasions to offer to Linda something that works for both. We certainly are not going to wait for 1st Citizens to arrange their schedule. Our offer is good and stays the same. If Linda can not or will not agree to what at least we offer Ameris will move forward to protect their interest. Surely you understand. It would be in the interest of all to move forward. Having said that, if Linda does not want to sell the apartments then she should seek financing for the loan amount in our offer and then simply close on the residual balance with the 2 parcels. Look forward to hearing from you tomorrow morning. You can call or email, thanks.

Karl H. Zerbst, Jr.
Ameris Bank | Market President
966-C Houston Northcutt | Mt. Pleasant, SC 29464
(D) 843-849-5488 (F) 843-881-8350
(C) 843-452-3838 (O) 843-375-4969
karl.zerbst@amerisbank.com

From: Robert Papa [<mailto:papa@btitelecom.net>]
Sent: Tuesday, November 17, 2009 4:20 PM
To: Zerbst, Karl
Subject: RE: Linda Gibson

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Rob

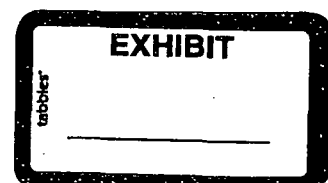
From: Zerbst, Karl [<mailto:Karl.Zerbst@amerisbank.com>]
Sent: Friday, November 13, 2009 5:39 PM
To: papa@btitelecom.net
Subject: Re: Linda Gibson

He represents me personally but not the bank. That would be his conflict in my opinion. I thank you for your immediate attention. We need to meet Monday and decide if Linda is in favor of the residual loan to include 2 parcels that she owns that will secure the loan. I can not stress the importance of that structure being put in place. I will be available Monday afternoon if that makes sense with you and Linda. Thank you

From: Robert Papa
To: Zerbst, Karl
Sent: Fri Nov 13 16:16:29 2009
Subject: Linda Gibson

11/17/2009

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Galt00007

Good afternoon Karl,

I just finished meeting with Linda. I was out yesterday all day and into the evening on a mediation so I essentially lost a day this week. I was unable to speak to Larry Richter this week by phone but I wrote to him. He wrote back and indicated that he did in fact have a conflict of interest as to Ameris Bank. He did not elaborate in his response other than to say he had such a conflict. You tell me he has no conflict. Is there any light you can shed on that? Did he or is he representing you personally or in some venture?

In any event, I also just got a response yesterday from Richter about First Citizens. I am trying to meet with not First Citizens but their attorney. I am waiting at this time to see if that can happen on Monday.

Please get back to me re the above. I look forward to moving this forward on a positive note next week.

Thank you

Rob Papa

Papa, Ungaro, and Falkiewicz
Attorneys at Law
6 Carriage Lane
Charleston, SC 29407

Charpia, David

From: Dave Whitener [DWhitener@wwlawsc.com]
Sent: Wednesday, December 30, 2009 12:18 PM
To: Charpia, David
Subject: Robert Papa

David,
I still have not received the promised email with a demand figure from Rob Papa. I do not think it wise for me to ask for it a second time. When I hear from him, I will let you know immediately.

Dave

H. Dave Whitener, Jr., Esq.
WHITENER, WHARTON & WILLIS, P.A.
2001 Park Street
Columbia, South Carolina 29201
(803) 779-7830 office
(803) 765-4649 fax
dwhitener@wwlawsc.com
www.wwandwlawfirm.com

12/31/2009

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Galt00013

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

LINDA A GIBSON, INDIVIDUALLY, AND IN CAPACITY
AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY
TRUST, AND HERITAGE SEVEN, LLC, AND SEVEN OAKS
APARTMENTS, LLC, AND 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs.

CASE NO. 2013-CP-10-4450

ANDREW K. EPTING, JR. LLC, and, GEORGE J.
KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A.,
and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants.

DEPOSITION OF: GEORGE J. KEFALOS, ESQUIRE

DATE: SEPTEMBER 18, 2014

TIME: 10:05 AM

LOCATION A. William Roberts, Jr.
& Associates
234 Seven Farms Drive
Charleston, SC 29492

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Laura J. Bash, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

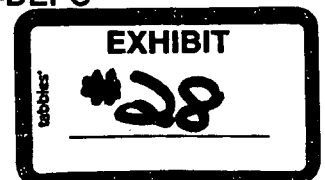
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1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR PLAINTIFFS
3 LINDA A GIBSON, et al.:
4 JAMES DAVIS LAW FIRM
5 BY: JAMES DAVIS
6 234 Seven Farms Drive, STE 211-B
7 Charleston, SC 29492
8 (800) 983-0455
9 jim@jdavispc.com
10
11 ATTORNEYS FOR DEFENDANTS
12 ANDREW K. EPTING, JR. LLC, and, GEORGE
13 J. KEFALOS, P.A. and, GEDNEY M. HOWE,
14 III, P.A., and JOHN H. WEST,
15 ATTORNEY-AT-LAW, LLC:
16 BARNWELL, WHALEY, PATTERSON & HELMS
17 BY: JEREMY E. BOWERS
18 288 Meeting Street, Suite 200
19 Charleston, SC 29401
20 (843) 577-7700
21 jbowers@barnwell-whaley.com
22
23 ALSO PRESENT:
24 Linda Gibson
25 John S. West, Esquire

(INDEX AT REAR OF TRANSCRIPT)

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1 GEORGE J. KEFALOS, ESQ.,
2 being first duly sworn, testified as follows:
3 EXAMINATION
4 BY MR. DAVIS:
5 Q. Good morning, Mr. Kefalos.
6 My name is Jim Davis. As you know, we
7 met at the mediation, and I think we've spoken a
8 couple of times at that mediation.
9 I represent Linda Gibson in a -- in a
10 claim I'm sure you're familiar with, where she's
11 asserted an excessive fee relating to the
12 Gibson/Galt -- or Galt v. Gibson matter in Berkeley
13 County, and particularly as to the deficiency claim
14 in that matter.
15 I understand that the lawyers -- and by
16 "lawyers," I mean yourself and Mr. West, Mr. Howe,
17 and Mr. Epting -- collected a fee of \$566,000 for
18 the work that was associated with the defense of
19 the deficiency claim that apparently Galt brought
20 against Linda; is that correct?
21 A. Yes.
22 Q. And do you recall how much out of the
23 \$566,000 fee -- and to be clear, I believe it was
24 \$566,666.66.
25 Do you recall how much of that fee you

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1 collected for your work?
2 A. No.
3 Q. Would it refresh your recollection if I
4 told you it was approximately \$188,888?
5 A. No. I mean, I don't remember.
6 If there's a record that -- and you can
7 show me a disbursement sheet, I'll be happy to
8 verify it. But I don't recall what my fee was.
9 I can tell you what the formula was. I
10 think I was to receive a third of the total fee.
11 Q. A third of the 566,000?
12 A. Yes.
13 Q. I would represent to you -- I will
14 represent to you that the lawyers have testified
15 prior that your fee was a third of the \$566,000 and
16 that it would have been approximately
17 180,000-some-odd dollars. There may have been some
18 additional costs involved.
19 Today I'm trying to determine and
20 examine what you did to earn that fee. And it's
21 really an opportunity for you to tell your story as
22 to why you felt the fee was reasonable.
23 But before we even get to that, I
24 wanted to ask you if you've had a chance to think
25 about this fee arrangement and think about whether

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1 or not you feel that \$566,000 was an excessive fee
2 relative to the amount of work that was done?
3 A. I think it was reasonable and it was
4 not excessive. It was what we agreed on.
5 Q. Can you talk to me a little bit about
6 why you feel that fee was not excessive?
7 A. In order to do that, I have to go back
8 to my first contact with Rob Papa, who called me up
9 and asked me if I would consider getting involved
10 in the case.
11 And I think Ameris was claiming against
12 Linda for about \$2.83 million. It was involved in
13 a collateral action with a Realtor and possibly a
14 real estate appraiser.
15 And we talked about it and I told Rob,
16 well, I -- I'd be willing to take over the claim
17 against the Realtor on a conventional contingency
18 fee. And I would consider bringing an action
19 against the appraiser, if I could get facts and
20 documentation saying he had done something wrong,
21 and I would handle that -- I would consider
22 handling that on a conventional contingency fee of
23 what I could recover.
24 But I told him that the banking case,
25 the claim that the bank was making, was such a

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1 complicated case. It involved so many different
2 issues. But the only way that I would consider
3 handling it is on a contingency of what we might
4 save.
5 At that point, we weren't thinking that
6 it was possible to make any kind of recovery
7 against the bank. Linda was facing a \$2.8 million
8 claim. She had assets to satisfy that.
9 Rob told me that she was not interested
10 in paying an hourly rate, did not have the cash to
11 pay for it. She had assets, but she didn't want to
12 pay.
13 And I told him the only way I would
14 consider doing this is if we took it on a
15 contingency of what we saved off the -- with the
16 claim, and if I could involve Drew Epting in the
17 case.
18 I thought that it was going to require
19 some considerable banking expertise, and Drew has
20 been on bank boards and knows a lot of things that
21 I don't know about banking law.
22 **Q. Why did you feel --**
23 A. Rob told --
24 **Q. Why did you feel the case was**
25 **complicated when it was first presented to you, as**

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1 **to Ameris, if you recall?**
2 A. Linda signed a note obligating herself
3 for -- let's just say \$3 million. She can read and
4 write English and understood, presumably, what she
5 signed.
6 In order to avoid the obligation that
7 she signed for, we would have to come up with
8 theories and facts to support that she'd been
9 misled, that there had been overreaching, there'd
10 been fraud and misrepresentation as to the bank.
11 We considered having then another
12 element, trying to tie the bank into the misconduct
13 of the broker, who had manipulated and
14 misrepresented and stolen money, and tie the bank's
15 conduct into any negligence of the appraiser.
16 This was a monumentally complicated
17 case. And I told him I wasn't interested in
18 handling it unless we do it on a contingency of
19 what we saved her, and let alone the contingency of
20 what we would recover. Because at that point, we
21 weren't even thinking that we could ever possibly
22 make a recovery, but we thought the best we could
23 accomplish is cut down some of the deficiency.
24 She signed a note for \$3 million.
25 What's her defense?

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1 I mean, you don't --
2 **Q. Is it your testimony that Ms. Gibson**
3 **had no defenses to the Galt note that Galt had**
4 **acquired from Ameris?**
5 A. No.
6 Anyway, so after that --
7 **Q. Well, did Ms. Gibson have any defenses**
8 **to the -- to the note that she signed, the**
9 **\$3 million note?**
10 A. At the time I met with Rob, I did not
11 know. Or at the time I talked to Rob, I didn't
12 know.
13 Later, we developed defenses. We had
14 to do some digging and researching, spent hours
15 reviewing documents, talking to Linda, deposing
16 witnesses. And we found out that she did have
17 defenses that -- not to the note itself, but to --
18 that would allow us to make collateral attacks on
19 the note.
20 **Q. And those collateral attacks on the**
21 **notes, those are really claims, right, not**
22 **defenses? But those would be claims, such as -- I**
23 **think you mentioned fraud and misrepresentation.**
24 **Those claims, some lender liability**
25 **claims; is that correct?**

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1 A. The best defense is a good offense. So
2 the way we were going to defend this case is to
3 threaten the claims.
4 **Q. Well, the understanding -- my -- so**
5 **would it be your testimony that the nature of the**
6 **work product that you were compiling and putting**
7 **together consisted of offense, that is, asserting**
8 **lender liability claims against Ameris Bank?**
9 **Would that be your testimony?**
10 A. No.
11 **MR. BOWERS:** Object to the form.
12 **THE WITNESS:** No. You're -- work
13 product is not theory.
14 Our theories were that we were going to
15 develop lender liability fraud and
16 misrepresentation claims, if there were facts to
17 support this, that might allow Linda to get out of
18 this obligation she had committed herself to.
19 The work product -- you're getting --
20 we're getting ahead of ourselves.
21 That's what I told Rob Papa --
22 **BY MR. DAVIS:**
23 **Q. Well, let me just ask a -- let me just**
24 **interrupt and ask a question.**
25 **Would you agree with me that there is a**

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1 legal distinction between claims and defenses?
2 A. No.
3 Q. Is it your testimony that legal claims
4 and legal defenses are one and the same?
5 A. No.
6 Q. Well, what defenses did Ms. Gibson have
7 against the \$3 million note?
8 A. When Rob contacted me, I did not know.
9 We would have to develop that.
10 But if you'll let me finish -- you
11 asked me a question, how do I justify the fee, did
12 I think it was reasonable. So I've begun to answer
13 it and you've interrupted me a couple times. Let
14 me finish my answer.
15 So I told Rob the only condition under
16 which I would accept the case is on a contingency
17 of what we saved. Then Rob brought Linda in -- Rob
18 said he'll talk to her about it.
19 Then Rob brought Linda in and
20 introduced me. And Rob summarized this
21 constellation of issues involving Ameris and
22 Rolando, the broker. And it was a very complicated
23 thing. And I --
24 Q. A very complicated fact pattern?
25 A. Very complicated fact pattern.

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1 So I told Linda, I said, I'm interested
2 in the case and I'd be willing to accept it. And I
3 told her at that time, I'm willing to pick up the
4 representation of the Rolando matter on the same
5 basis that she previously had, and that's the
6 contingency of any recovery we made, and I'm
7 willing to consider trying to bring an action
8 against the appraiser.
9 But I thought that since the appraiser
10 was a professional, we were going to need an
11 expert, an affidavit from an expert, before we
12 could bring the case. Because, you know, when
13 you -- when you bring a claim against a
14 professional, you must have an affidavit before you
15 file, because then if you file without an
16 affidavit, your case can be dismissed.
17 And, of course, that's what you did in
18 our case. You didn't -- you filed a claim against
19 me without an affidavit. And I don't know how you
20 learned eventually that you needed an affidavit,
21 but -- maybe Dessa told you. But you almost lost
22 the case on a statute of limitations, because you
23 failed to realize that you needed an affidavit.
24 But anyway --
25 Q. Well, Mr. Kefalos, let's stay focused

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1 on -- on the question at hand, as to how you feel
2 that \$566,000 is not an excessive fee.
3 Now, I --
4 A. I'm going on. I'll answer.
5 I told Linda that we needed an
6 affidavit. And then I asked her whether she was
7 capable of advancing the costs necessary for an
8 expert to review the appraisal. And she told me
9 that she was not, that she had problems with cash
10 flow and she couldn't afford to pay.
11 And I said, well, we'll have to think
12 about that. We're going to have to talk about
13 that, because I'm not prepared to jump into that
14 kind of case and advance the costs, without knowing
15 that we have a legitimate claim against this
16 fellow.
17 Q. And as "this case," just so I'm clear,
18 you mean as to Rolando?
19 A. As to -- no -- the appraiser.
20 Q. As to the appraiser --
21 A. The appraiser.
22 Q. -- Paul Moore?
23 A. That's right.
24 And then I told her, now, listen, in
25 the Rolando case, there's going to be a corpus from

Page 13

1 which we can calculate a fee. There's going to be
2 recovery eventually. I'm confident about that.
3 Rob outlined enough for me that I
4 understood that there's some wrongdoing here and
5 there's going to be a recovery. There's going to a
6 corpus from which we could recover a fee. And so
7 our fee -- my fee will be based on that corpus.
8 There will be money from which you can pay me.
9 So that does -- that's not going to
10 likely be the case with Ameris, because what we're
11 going to try to do is save you money so that
12 there's not going to be anything from which you can
13 pay a fee. You're not going to get money from them
14 from which you could pay a fee.
15 So the only thing that I can do, and
16 what I'm going to do, is handle it on a contingency
17 of what I save. So if you owe them \$300 and I save
18 you \$300, you -- your fee is \$100, because I've
19 saved -- I get a third of what I save.
20 She told me that she understood that
21 and that was fine. And we talked about it. I
22 said, you know, the alternative would be for you to
23 pay me \$400 an hour as we go. And if I don't
24 recover, you still pay as we go. But if I do
25 recover, maybe you've paid less than the percentage

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1 that you would otherwise pay.
2 Now, in the other event, in the
3 contingency case, if I -- we could go on for years
4 and if I make no recovery, you owe no fees. If you
5 pay by the hour, we can go on for years and you pay
6 an enormous amount of money and there might be no
7 recovery.
8 It could be, though, that if you paid
9 by the hour, you end up paying less than what you
10 would have paid if you paid a contingency.
11 And Linda said she understood that and
12 she felt better about a contingency because she
13 wasn't prepared to pay the money to go to -- to
14 hire me and Drew to represent her on an hourly
15 basis.
16 So fine. We had that meeting.
17 And then we met with Drew and Rob and
18 me and Linda. And I introduced everybody, and I
19 said -- and I -- and I summarized for Drew what Rob
20 had summarized for me about the interrelationship
21 of all these facts.
22 And I explained to Drew, and I said,
23 I'm going to want you to help me on the Rolando
24 case. I've agreed to handle the Rolando case, and
25 I'm going to handle it on the contingency of

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1 the -- of the recovery.
2 And we're going to consider bringing in
3 Paul Moore, but -- but we need to get an expert
4 first. And we need to talk about who's going to
5 advance the costs, because I'm not all that keen on
6 advancing costs against an expert when I don't know
7 whether there's going to be a claim or not.
8 And I said, as to the banking case, I
9 want you to take the lead, because I'm not familiar
10 enough with the banking regulations that you might
11 be aware of that may make an impact on the ability
12 of Ameris to recover.
13 And I told Linda that we'll accept that
14 on a contingency of what we might save her, so if
15 we save her, we get a third of whatever we save
16 her.
17 So if we make a recovery in the banking
18 case, she was going to do much better than she
19 would otherwise do. And, you know -- and I laid it
20 out and Rob and Linda said, yeah, that's true.
21 And Drew started talking and
22 questioning and asking Linda about things. And he
23 said, well, look, you know, it may be in this
24 market, in this banking environment, that I can
25 work this thing out with the bank. It may be that

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1 we can sit down and I can talk to them and I can
2 come to some kind of arrangement that they'll
3 either reduce or discharge the deficiency.
4 You know, the problem was Linda had the
5 assets to satisfy this thing.
6 And so he said, well -- you know, he
7 says, so I would propose that instead of handling
8 it right out of the box on a contingency basis,
9 I'll do it on an hourly basis. I'll keep track of
10 my time and I'll handle it. And as long as we can
11 talk with these people, I'll -- I'll -- for, say,
12 60 days, I'll see what I can do and work things
13 out.
14 **Q. And this is referenced in the**
15 **February 4th e-mail, correct?**
16 A. Yes. We'll get to that.
17 So we --
18 **Q. And would you agree with me, at that**
19 **point, that was a fair and reasonable thing to do**
20 **for Drew, to suggest that he handle it on an hourly**
21 **basis for six months until --**
22 A. 60 days.
23 **Q. Pardon me.**
24 **-- 60 days, until the parties were able**
25 **to determine whether Ameris or its successor in**

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1 **interest were going to put up a litigation fight?**
2 A. That was a sensible -- but it -- when
3 you asked about "reasonable," what reasonable is,
4 is what two people agree to.
5 And yes, she could agree to that and be
6 reasonable. Or yes, she could agree to a
7 contingency and that would be reasonable, if she
8 agreed to it and she understood it.
9 Drew -- and so he talked to Linda about
10 it -- but you're going to have to pay me as we go
11 on this thing. And she said, okay, but I have
12 somebody -- he said, I'll handle this initially.
13 So we set -- we finished up the meeting
14 and we walked out. And I was surprised, because I
15 was not willing to handle it on an hourly basis.
16 And Drew says, do you have any problem with that?
17 And I said, well, that's not the way I wanted to do
18 it.
19 **Q. To handle -- just so we're clear, to**
20 **handle what on a contingency basis? You were not**
21 **comfortable --**
22 A. No.
23 **Q. -- handling the Ameris action on a**
24 **contingency basis, or --**
25 A. No. He had just proposed -- I told him

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1 that I was going to handle the Ameris defense on a
2 contingency of what we saved, and Linda had agreed
3 to that and Rob had agreed to that.

4 And Drew then says, well, look, maybe I
5 can work this out. And he asked -- and this was
6 news to me. The first time I heard it was when we
7 were in the meeting. And he -- and after the
8 meeting, he comes up to me and he says -- he says,
9 do you have any problem with that? And I said,
10 well, that's not the way I wanted to handle it, but
11 if -- if that's -- you're going to be lead on it,
12 and that's what you want to do, that's fine with
13 me. So I agreed.

14 And then Drew wrote --

15 **Q. To be clear, the parties agreed to**
16 **handle it on an hourly basis for roughly 60 days**
17 **to --**

18 A. See if things could be worked out.

19 **Q. -- to see if it could be worked out.**

20 **And 60 days was a practical**
21 **consideration to determine whether or not you might**
22 **have some immediate success with reducing the**
23 **Ameris deficiency that they had asserted against**
24 **Linda; is that correct?**

25 A. Yeah. And we had some initial success

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1 And we got a good response from them.
2 And when I say "a good response," they didn't say,
3 no, we're insisting on it.

4 **Q. Which at that moment in time would have**
5 **been a good response?**

6 A. Yeah, exactly.

7 So we came out of the meeting and I
8 said, oh, this is going to work out.

9 And then there was a change from
10 Ameris.

11 **Q. What was the change?**

12 A. They said no -- no talk, no talk.

13 I think what happened is those fellows
14 did not understand -- the fellows that came down to
15 talk to us did not understand Linda's financial
16 situation. They did not know -- and we didn't --
17 certainly didn't tell them. We pitched it as if
18 Linda was simply a widow who was having trouble
19 making monthly ends meet, which was true.

20 We didn't tell them that Linda had -- I
21 don't know -- many millions of dollars of property.

22 **Q. Do you know if this meeting was before**
23 **June of 2010 or after June of 2010?**

24 A. Yeah. It was before June. It was
25 before June.

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1 with Ameris. Drew contacted some lawyers and
2 eventually we set up a meeting with some
3 representatives of the bank, and maybe some lawyers
4 came down.

5 And this was in late winter or early
6 spring. I think our meeting with Linda was in
7 December. Sometime in March I think we had this
8 meeting.

9 The meeting went very well. I came out
10 of it thinking, well, this is over, we're going
11 to -- we're going to work something out.

12 **Q. Do you recall who was at this meeting**
13 **with Ameris Bank? I'm assuming it was with Ameris**
14 **Bank's attorneys.**

15 A. Well, it was with Ameris Bank, but it
16 was -- I don't know. There were two fellows and
17 Drew and I. And Drew did most of the talking, you
18 know, basically saying, listen, you don't want to
19 fight this, this is not a big deal. Why don't you
20 just let her go? This is a widow. She's got her
21 hands full. This is causing a lot of stress. And
22 he talked emotion to their law.

23 And they said, well, we have this and
24 we have these notes and we're entitled to -- and he
25 said, well, don't do that.

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1 I think what happened is that they
2 found out. They went back and somebody said, hey,
3 wait a minute, you're not going to walk away from
4 this, this woman has got the money to respond.
5 Because their attitude when they came back to us
6 was 180 off. They said, no, we're not -- we're not
7 willing to compromise or negotiate this at all.

8 **Q. Well, how did they get back to you? I**
9 **mean, did they get back to you by way of filing a**
10 **nonjury foreclosure complaint, or did --**

11 A. No.

12 **Q. -- they get back to you with a phone**
13 **call or an e-mail, if you know?**

14 A. There was -- I don't remember if it was
15 an e-mail, a phone call, or a letter.

16 **Q. But can we agree the bank got back to**
17 **you and said, we're going to hold Linda liable on**
18 **the -- on the \$3 million note?**

19 A. Yes. Not to me. I heard it from Drew.
20 And we talked about what to do.

21 At that point, in my view, things got
22 in the ditch. It was -- there was no negotiating
23 with these people and it was going to be a hard
24 fight.

25 And at that point -- now, Drew had

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1 written an e-mail earlier, maybe in February, to
2 Rob, confirming that this is the stage, this is the
3 way the fee will be handled. And Rob had agreed.
4 And, of course, Linda had agreed orally, but it was
5 confirmed in writing with her attorney, Rob, at the
6 time.
7 **Q. Did Rob Papa ever reply to that e-mail,**
8 **if you know?**
9 A. I don't know if he had a written
10 response, but I know that it was acknowledged and
11 accepted.
12 **Q. How do you know it was acknowledged and**
13 **accepted?**
14 A. Because we continued to talk with him
15 throughout that time and talked to Linda.
16 **Q. And did -- or do you know if Linda was**
17 **copied on that February 4th e-mail?**
18 A. I don't know.
19 So anyway, Drew and I talked about the
20 case was now going to switch to a contingency and
21 it was going to be a fight.
22 **Q. And what time frame is this? This must**
23 **have been -- if I'm correct -- and my question**
24 **is: Would it have been around April?**
25 A. Around April. I don't remember exactly

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1 when it was.
2 **Q. February to April is roughly 60 days.**
3 **April approaches. There's no settlement with -- or**
4 **no attraction toward any mitigating Ameris's**
5 **claims.**
6 **And at roughly the April time frame,**
7 **whatever the fee arrangement, hourly as to the**
8 **deficiency claim, converts to contingency; would**
9 **that be correct?**
10 A. That's right.
11 And so Drew wrote the letter to Linda.
12 There's an April letter, saying we're now -- we're
13 now changing, it's going to go in to a contingency
14 because it's going to be looking like a fight.
15 And Linda came in -- I wasn't there for
16 the entire meeting when Linda came in. But I was
17 there and I spoke with Linda, acknowledging that
18 there was a change in the fee, we've now gone into
19 the contingency. And that was important to me,
20 because my job was to develop the facts that would
21 allow us to try to either avoid or mitigate the
22 amount of the claim, possibly make a recovery
23 against the bank.
24 But the problem with making a recovery
25 against the bank is that any recovery we would have

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1 against the bank, we -- the bank automatically had
2 about a \$3 million offset, so we'd have to recover
3 more than \$3 million just to get to ground zero
4 against the bank. And that was --
5 **Q. I understand.**
6 A. -- in my view, at that time, pretty
7 unlikely.
8 **Q. I'm handing you a document that is**
9 **dated April 7th. It's a letter from -- it purports**
10 **to be a letter from Mr. Epting to Linda.**
11 **Do you recognize this document?**
12 A. Yes.
13 **MR. DAVIS:** Introduce this document as
14 an exhibit.
15 (PLF. EXH. 15, 4/7/2010, Epting to
16 Gibson letter, Epting 15, was marked for
17 identification.)
18 **BY MR. DAVIS:**
19 **Q. Mr. Kefalos, do you recognize this**
20 **document?**
21 A. Yes.
22 **Q. Is this the document, in your opinion,**
23 **that memorialized the transition from an hourly fee**
24 **in the defense of the deficiency claim to a**
25 **contingent fee arrangement with Ms. Gibson?**

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1 A. This memorialized the change.
2 The original agreement had been made
3 already back in February, in Drew's letter to Rob
4 in writing, and in our conversations with Rob.
5 **Q. That would have been the February 4th**
6 **e-mail, correct?**
7 A. That's right.
8 **Q. Okay.**
9 A. So you want to know why I think it's
10 reasonable?
11 **Q. Yes, sir. That's the question.**
12 A. Because we negotiated it. We went
13 through the process. We reached the point -- Linda
14 did not want to pay on an hourly basis at that
15 point.
16 We discussed, you know, you want to go
17 forward on an hourly basis, we don't know where
18 it's going to go. You're going to be paying a lot
19 of money -- you could be paying a lot of money on
20 an hourly basis and we might not have any success.
21 On the other hand, where -- if we
22 don't have -- we're willing to handle it on a
23 contingency, which is what I wanted in the first
24 place, and if we make no recovery or we don't
25 offset anything for you, you don't owe us anything.

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1 second motion and is subpoenaing witnesses to
2 testify at the hearing, neither George nor I feel
3 comfortable with the hearing going forward on the
4 29th, as George's involvement in this matter has
5 been very limited." End quote.
6 Can you think of any reason why
7 Mr. Epting would represent to the court that your
8 involvement in this Galt Valley matter, as of
9 September 23, 2010, had been very limited?
10 A. I can't tell you what was in Drew's
11 mind, but I've already explained to you that my
12 involvement in the receiver issue was very limited.
13 I had -- I knew nothing about it. I wasn't
14 familiar with the law.
15 That was Drew's responsibility. This
16 was a collaborative effort. He was handling those
17 aspects of the claim.
18 Q. Well, the matter -- when Mr. Epting
19 refers to "George's involvement in this matter has
20 been very limited," the matter referenced at the
21 top of the page is Galt Valley v. Heritage Seven.
22 Was your involvement in the Galt Valley
23 matter, up to September 23rd, very limited?
24 A. No. I explained to you that already,
25 that we had divided our responsibilities and Drew

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1 was handling the banking issues. And my
2 involvement in the banking issues was very limited.
3 My involvement in the substantive
4 issues of fraud and misrepresentation,
5 overreaching, and collusion with Rolando was
6 extensive.
7 Q. And the fraud, collusion, and other
8 lender claims, if you will, that were brought
9 against the bank, that is where you were directing
10 your time; is that correct?
11 MR. BOWERS: Object to the form.
12 THE WITNESS: Most of my time, yes.
13 BY MR. DAVIS:
14 Q. Would it be a fair statement to say
15 that up until September 23rd, you had very limited
16 involvement in the defense of the deficiency claim?
17 A. No.
18 Q. Why not?
19 A. Because it's not true.
20 Q. Well, why would Mr. Epting write
21 "George's involvement in this matter has been very
22 limited," on September 23rd?
23 MR. BOWERS: Object to the form.
24 THE WITNESS: I already told you, I
25 don't know what was in Drew's mind, and I've

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1 explained to you what my involvement was.
2 BY MR. DAVIS:
3 Q. Well, I understand your testimony to be
4 your involvement up to September 23rd was directed
5 towards the prosecution of the lender claim.
6 Would that be a fair statement?
7 MR. BOWERS: Object to the form.
8 THE WITNESS: No. My involvement was
9 monumental up until September 23rd.
10 I was not involved in this motion for
11 receiver. I knew nothing about bankruptcy receiver
12 law, that foreclosure stuff. I was handling the
13 substantive elements of the claims and the
14 defenses.
15 BY MR. DAVIS:
16 Q. Well, that's what I'm trying to
17 understand.
18 When you state you were handling the
19 substantive merits of the claims, I think I
20 understand those to be fraud, collusion,
21 misrepresentation, and so forth, as against the
22 bank.
23 A. Uh-huh.
24 Q. But I don't understand what the
25 substantive merits of the defenses were as to the

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1 \$3 million note.
2 What were the substantive defenses that
3 you were working on as to the defense of the
4 \$3 million note?
5 A. As far as I could tell, there were no
6 defenses to the note.
7 I explained to you earlier, the way
8 that you deal with a collection like this, whenever
9 you have a contract that somebody signs, is you
10 mount a collateral attack. You find other reasons
11 that they can't enforce the loan or they can't
12 enforce the written document.
13 Q. Such as lender liability claims?
14 A. Such as fraud and misrepresentation,
15 overreaching, breach of fiduciary duty, collusion
16 with Rolando. Yes, all of those things.
17 Q. Are you not being paid for your work
18 product in the prosecution of the lender liability
19 claims?
20 A. I was being paid for a result, and I
21 hadn't achieved a result yet.
22 If Linda was -- Linda did not agree to
23 pay me for my effort and my time. She
24 agreed -- she -- and specifically did not want to
25 pay us for our time and work involved in the case.

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1 She agreed to -- instead, to pay us a
2 percentage of what, if anything, we could save or
3 recover for her.
4 (PLF. EXH. 17, 9/23/2010, Kefalos to
5 West letter, Epting 2506, was marked for
6 identification.)
7 **BY MR. DAVIS:**
8 **Q. I'm handing you another document that's**
9 **dated September 23rd, 2010. It purports to be a**
10 **letter from your office to Mr. West, John West.**
11 **Do you recognize this document?**
12 A. I guess so. I don't remember it,
13 but...
14 **Q. Would you like to take a minute to read**
15 **the document?**
16 A. Yes. Okay. I remember it. I think I
17 remember it.
18 **Q. Did you draft this document?**
19 A. I don't know. I doubt it, simply
20 because of some of the wording, that "during that
21 time Drew and I will have an opportunity to bring
22 you up to speed on this most interesting file." I
23 wouldn't -- it's not my kind of language.
24 **Q. I would like to direct your attention**
25 **to the first -- strike, please.**

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1 **Would you agree with me that this**
2 **document came from your office, most likely?**
3 A. Yes.
4 **Q. I'd like to direct your attention to**
5 **the first sentence. And I quote: "Dear John,**
6 **following up on our telephone conversation, Drew**
7 **and I would like to associate you to assist us in**
8 **defending a foreclosure and pursuing a counterclaim**
9 **against the bank." End quote.**
10 **Would it be a fair statement to say**
11 **that this September 23rd day represents the time**
12 **when you and Mr. Epting decided, or gave notice to**
13 **Mr. West, to invite him to assist you in defending**
14 **the foreclosure and pursuing the counterclaim**
15 **against the bank?**
16 A. I don't know. My sense is that Drew
17 had talked to John a whole lot earlier than this.
18 I don't think this was the first time that John got
19 involved in the case.
20 I mean, John -- my recollection was
21 that Drew had been talking with Gedney for some
22 months about how to posture this thing. And then
23 the suit was filed, and Drew talked with Gedney and
24 again said, all right, we're in it now, let's
25 figure out what to do. And Gedney says, get West.

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1 And that would have been back in June.
2 And my sense is that I -- my sense is
3 that that was the first time we talked to John, was
4 way back then.
5 This looks like it might have been a
6 letter written by my secretary or my paralegal,
7 where I told her, send John the documents, tell him
8 that we tendered the deed, we're not asking for it
9 in lieu of foreclosure.
10 And my guess is that -- I mean, I don't
11 know. I don't think that I wrote this, but part of
12 it looks familiar and part of it doesn't.
13 But to answer your question -- I'm
14 sorry I'm rambling -- is this the first time? No,
15 I don't think so.
16 **Q. Can you think of any reason why you**
17 **would write, or your office would write at the**
18 **bottom of this September 23rd letter, and I quote,**
19 **"It would be very helpful if you could obtain a**
20 **postponement of the receiver hearing for about a**
21 **week. During that time, Drew and I will have an**
22 **opportunity to bring you up to speed on this most**
23 **interesting file"? Closed quote.**
24 A. Well, I knew Drew -- Drew wrote that
25 same day, asking Judge Watson to postpone it. I

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1 don't --
2 **Q. Mr. Kefalos, why would you and Drew**
3 **need to get Mr. West up to speed on this file on**
4 **September 23rd, 2010, if he had been involved prior**
5 **to September 23rd, 2010?**
6 A. You know, I'm not sure. My -- I
7 speculate we wanted to bring him up to speed on our
8 theories, what we -- what was developing, but I
9 don't -- I don't know.
10 **Q. Now, I'll represent to you that the**
11 **appointment of receiver hearing was on October 13th**
12 **of 2010, just about 10 days after this**
13 **September 23rd letter.**
14 And I'm handing you a document that
15 purports to be a proposed order as to receiver for
16 a one-acre tract.
17 **Do you recognize that document?**
18 A. No.
19 (PLF. EXH. 18, Order as to Receiver
20 for the One-Acre Tract, was marked for
21 identification.)
22 **BY MR. DAVIS:**
23 **Q. Have you seen this document before?**
24 A. I don't know.
25 **Q. Do you know who drafted this document?**

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1 A. No.
2 Q. In the caption on this document, and I
3 quote -- on the right side, it says, quote: "Order
4 as to Receiver for the One-Acre Tract."
5 And I'm just going to read the first
6 paragraph. It says, quote: "This matter comes
7 before me on plaintiff's motion to appoint a
8 receiver. The defendants do not contest that the
9 documents allow such appointment, but argue this is
10 a land lease and that a receiver is unnecessary.
11 The defendants also advance the plaintiff's duty to
12 mitigate, and that the expense of receiver is
13 unwarranted."
14 Would you agree with me that the
15 defendants were advancing at the appointment of
16 receiver hearing the duty to mitigate was, in
17 effect, a theory of a deed in reduction, Drew's
18 theory of a deed in reduction?
19 A. I don't know what Drew's theory was.
20 I -- I don't remember this document.
21 It looks to me like they're trying to tease out the
22 issue on the land lease from the rest of the
23 property. I -- but I don't know.
24 Q. Okay. Now, the appointment of receiver
25 hearing, I'll represent to you was on October 13th,

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1 2010. And I'm handing you a document dated
2 October 25th, 2010.
3 Do you recognize that document?
4 A. Yes.
5 MR. DAVIS: Can you introduce this,
6 please.
7 (PLF. EXH. 19, 10/25/2010, For
8 Settlement Purposes Only, McVey to Epting letter,
9 was marked for identification.)
10 BY MR. DAVIS:
11 Q. And what is this document?
12 A. It's a letter from McVey to Drew,
13 appointment of receiver.
14 Q. When did you first see this document,
15 if you recall?
16 A. I don't remember.
17 Q. Well, the document's dated
18 October 25th, 2010. That would have been 21 days
19 after the appointment of receiver hearing, which
20 was on October 13th, 2010; is that correct?
21 MR. BOWERS: Object to the form.
22 THE WITNESS: Well, I don't think it's
23 21 days. I mean, it's more like 10, 12, 13 days.
24 The 13th to the 25th is 12 days. But --
25 BY MR. DAVIS:

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1 Q. Pardon me. That's correct. It would
2 have been 12 days.
3 In any event, after the appointment of
4 receiver hearing, Galt Valley essentially presented
5 a settlement proposal to Ms. Gibson by and through
6 this letter.
7 Would you agree with that -- with me,
8 that that is correct?
9 A. It was a -- I would agree that it was a
10 proposal to resolve the case. I don't believe it
11 was a settlement proposal. It was an agreement
12 that says, lay down and die, okay, because it asks
13 for everything. And that was their attitude
14 after -- well, up until we got their letter of
15 capitulation.
16 From the time we filed -- or they
17 filed, and we filed our counterclaim, it was
18 scorched earth. There was no talk. They wanted
19 everything.
20 And even after our hearing and after my
21 displaying the -- what I thought was the smoking
22 gun memo, they were still saying, nothing, we're
23 going to take everything.
24 Q. So your testimony is that Galt was
25 going for the jugular. They wanted everything they

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1 could get out of Linda; is that correct?
2 A. Absolutely.
3 Q. And there's an appointment of receiver
4 hearing and counsel appears at the hearing; is that
5 correct?
6 A. Yes.
7 Q. And then subsequent to the appointment
8 of receiver hearing, Galt, by and through this
9 October 23rd letter, says, I don't care what you
10 guys said at the hearing, lay down and die, we
11 still want \$1.5 million out of your client; is that
12 correct?
13 MR. BOWERS: Object to the form.
14 THE WITNESS: That's it. That's it.
15 The receiver hearing was hot. It was
16 not a polite hearing.
17 BY MR. DAVIS:
18 Q. Did the receiver hearing result in Galt
19 deciding to waive its claims for deficiency against
20 Ms. Gibson?
21 A. I don't know. I don't know what
22 prompted Galt.
23 I can speculate. I think that the
24 information that they learned at the receiver
25 hearing, and afterwards in our talks with them,

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1 convinced them that they didn't want any part of
2 this. And I think that they were really angry with
3 Ameris for having gotten them into this mess.
4 And the reason I say that is because
5 when we structured the settlement with Galt on the
6 deficiency, we were able to keep the claim extant
7 against Ameris.
8 Now, normally Galt would have
9 -- normally you would have expected somebody like
10 Galt to say, no, no, no, we want a full release.
11 But we were able to convince them not
12 only to drop their deficiency, but allow us to
13 proceed against Ameris, which was extraordinary.
14 And the only thing that I think -- the
15 only reason I think we were able to convince them
16 is because they were mad at Ameris and they were
17 happy to turn them over to us and let us go after
18 them, because I think Galt knew nothing about our
19 claim when they bought this thing.
20 Q. I would like to direct your attention
21 to Page 2, Paragraph b.
22 And I quote, at Paragraph b: "Your
23 client will execute a new promissory note in the
24 total amount of 1.5 million in favor of Galt. Said
25 note shall have a term of 20 years with interest

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1 accruing at 5 percent per annum with monthly
2 payments of principal and interest in the amount of
3 \$9,899.34."
4 Would you look at that document, look
5 at that Paragraph b, see if I read that right?
6 A. Yes, you did.
7 Q. So after the appointment of receiver
8 hearing, Galt was continuing with its scorched
9 earth, we want everything, or at least 1.5 million
10 out of Linda, plus the property.
11 Would you agree with that?
12 A. Yes.
13 Q. I'm handing you a document that
14 purports to be a letter from Mr. Epting's office
15 dated November 3rd of 2010.
16 Do you recognize that document?
17 A. Well, it shows me as recipient, but I
18 don't remember it.
19 I do remember that Linda rejected the
20 settlement proposal.
21 Q. Do you remember talking with Linda
22 about the \$1.5 million note offer from Galt?
23 A. No.
24 (PLF. EXH. 20, 11/3/2010, Epting to
25 McVey letter, was marked for identification.)

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1 **THE WITNESS:** Wouldn't surprise me if
2 we talked about it. But I mean, it was so
3 preposterous that we rejected it out of hand.
4 I mean -- we didn't reject it out of hand. We had
5 to get Linda's approval to reject it, but it was
6 crazy.
7 **BY MR. DAVIS:**
8 Q. This letter is dated -- this exhibit
9 identified as Exhibit Number 20, the letter is
10 dated November 3rd, 2010.
11 And I'll read the first sentence. It
12 says: "Ian, our client, Linda Gibson, rejects your
13 settlement proposal. It shows no recognition of
14 where she stands or the facts of this case."
15 Closed quote.
16 Did I read that correct?
17 A. Yes, you did.
18 Q. So would you agree with me that on
19 November 3rd, 2010, the lawyers, Mr. Epting and
20 Mr. Kefalos, rejected Linda's -- excuse me --
21 rejected Galt's settlement proposal?
22 A. Yes.
23 Q. I'm handing you a document dated
24 November 8th, 2010.
25 (PLF. EXH. 21, 11/8/2010 For Settlement

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1 Purposes Only, McVey to Epting letter, was marked
2 for identification.)
3 **BY MR. DAVIS:**
4 Q. It purports to be a letter from Mr. Ian
5 McVey, Galt's counsel. And this letter is titled
6 "For Settlement Purposes Only," and it's dated
7 November 8, 2010.
8 Do you recognize that document?
9 A. Yes, I do.
10 Q. And have you seen this document before?
11 A. Yes.
12 Q. What is this document?
13 A. It's a letter from Ian McVey to Drew
14 Epting dated November 8th, 2010.
15 Q. And I'd like to direct your attention
16 to Paragraph 4 of this letter, if you'd read along
17 with me.
18 And I quote: "My client will forgive
19 the remainder of the debt and waive any right to a
20 deficiency judgment against your clients."
21 Did I read that correct?
22 A. Yes, you did.
23 Q. And November 8th would have been five
24 days subsequent to November 3rd, when you rejected
25 Galt's offer; is that correct?

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1 A. Yes.
2 **Q. It had been three business days.**
3 A. I don't know.
4 **Q. Well, I'll represent to you that**
5 **between November 3rd and November 8th, there are a**
6 **total of five days, two of which are a weekend. So**
7 **there's three business days between November 3rd**
8 **and November 8th.**
9 **So my question, Mr. Kefalos, is: What**
10 **did the attorneys do, if anything, between**
11 **October 25th, when Galt made its \$1.5 million**
12 **offer, till 10 days later, when Galt waived the**
13 **offer?**
14 A. What attorneys are you talking about?
15 **Q. Well, what did you do, Mr. Kefalos,**
16 **that may have motivated Galt to waive their**
17 **deficiency between October 25th and November 8th?**
18 A. I don't think I had any communication
19 with them. I did continue to work on the case. We
20 were immersed in it at that time.
21 **Q. Well, there's a total of 10 business**
22 **days between November 3rd -- excuse me.**
23 **There's a total of 10 business days**
24 **between October 25th and November 3rd.**
25 A. Uh-huh. If you want to know why they

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1 changed their position, I have no idea. If you
2 want to know if I did anything to change their
3 position, I don't know. Did Drew do anything? I
4 don't know.
5 I got this letter and I was stunned.
6 **Q. Why were you surprised that they**
7 **changed their position?**
8 A. Why was I surprised they changed their
9 position? That should be self-evident.
10 **Q. I'm asking --**
11 A. I'm surprised they changed their
12 position. Five days before, they said they wanted
13 \$1.5 million, and suddenly they say they'll -- they
14 don't want anything.
15 I'm surprised. You'd be surprised.
16 Linda was surprised. We were all surprised.
17 **Q. Well, if you're Galt Valley and you're**
18 **facing lender liability -- let me rephrase that.**
19 **If you're a buyer of distressed paper,**
20 **if you're Galt Valley and you've acquired a note**
21 **and you've learned that that note was subject to**
22 **the borrower's setoff for claims being brought**
23 **against the note, are you not, as Galt Valley, now**
24 **in a position where you would have to essentially**
25 **sit on the sidelines and wait until the resolution**

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1 **and termination of the outcome of the lender**
2 **liability claims, before you could assert your**
3 **deficiency claim?**
4 A. I have no idea what went through Galt's
5 mind.
6 **Q. Is it possible that Galt --**
7 A. Anything's possible.
8 **Q. -- just unilaterally waived the**
9 **deficiency on their own?**
10 A. I have no idea. I don't know what
11 motivated them.
12 I can tell you what we did up until
13 that point, and I've already told you. I have no
14 idea why they did a 180 at that point.
15 The best thing that ever happened to
16 Linda. Allowed her to walk away from that claim
17 and preserve her claim against Ameris.
18 **Q. Well, I --**
19 A. See, up until that point, we thought
20 the best that was going to happen was we'll be able
21 to get out of the claim, out of the deficiency.
22 Suddenly Drew negotiated it so that not
23 only did we get out of deficiency, but we preserved
24 the right to sue Ameris.
25 And then my question at that time --

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1 there's somewhere in the file -- can we do that,
2 can we -- are we -- do we have damages that we can
3 pursue over and above this \$1.8 million that they
4 were claiming?
5 Because I wasn't sure that we even had
6 any cognizable damages. I thought that the --
7 cognizable damages in addition to what we had
8 against Rolando. Because we were going to get
9 something from Rolando, I was sure. And I thought
10 they would subsume anything that we would get
11 against Ameris.
12 And I -- I -- it was a remarkable
13 result, an absolutely stunning result.
14 **Q. Do you think the result was -- the**
15 **result I would assume you're referring to is Galt's**
16 **complete waiver of any deficiency claims against**
17 **Linda?**
18 A. That's part of it. But the idea that
19 we got Linda out of the Galt deficiency and
20 preserved a claim for \$3 million against Ameris is
21 nothing short of miraculous. And I'm telling you,
22 miraculous. It is astonishing.
23 **Q. Mr. Kefalos, you have a fee agreement**
24 **to get paid for your work in prosecuting the lender**
25 **claim; is that correct?**

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1 A. Yes.
2 Q. And would you agree with me that it's
3 33 percent of any recovery in the lender claim?
4 A. I don't remember what it is, but it's a
5 contingency of what we could save.
6 Q. I'm sorry. I'm speaking as to the
7 lender claim.
8 Would you agree with me that you have a
9 fee agreement of 33 percent of any recovery
10 realized in the prosecution of the lender claim as
11 against Ameris?
12 A. I thought it was 40 percent. I thought
13 it went to 40 percent once it was docketed for
14 trial. And, of course, this went to trial, to
15 verdict.
16 Q. In all events, it would have been some
17 percentage?
18 A. It's a contingency.
19 Q. It's a contingency fee of some
20 percentage of whatever you recover in the lender
21 claim litigation?
22 A. That's correct.
23 Q. Do you think that there's some
24 crossover or overlap of work product that was
25 prepared in the prosecution of the lender claim

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1 that may have motivated Galt to settle the
2 deficiency claim?
3 And I realize that might be difficult
4 to quantify.
5 A. God; I don't understand your question,
6 because you're talking about work product.
7 The work -- the product for which we
8 were hired was the result, and I don't see that
9 there's any crossover there.
10 What you're really asking, is there any
11 duplication, is there any crossover of facts, is
12 there any crossover of damages or theories.
13 There is some common facts, but the
14 damages and theories and the intellectual effort
15 that went into the cases are very different.
16 Q. Well, that's what I'm trying to
17 understand, did the lawyers get paid twice for
18 doing the same job?
19 I mean, in effect, you were prosecuting
20 a lender claim. And arguably, the measure of
21 degree to which you prosecute the lender claim
22 would be the measure of degree to which you defeat
23 the deficiency claim.
24 Would you agree with that or not?
25 A. No, I do not.

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1 Let me show you -- we were not -- no
2 one was paid twice.
3 (Witness drawing a diagram.)
4 There's one payment due. Think about
5 it like this. This is zero, this is minus, this is
6 plus (indicating).
7 When we got in the case, Linda had a
8 \$3 million claim against her. Our fee was one fee.
9 It was a percentage of what we could save or
10 recover. So it's a continuum. It's the same fee.
11 Q. I understand.
12 A. So you asked about getting paid twice.
13 No, we didn't get paid twice. We got paid once.
14 And that was the agreement, that we would get paid
15 once.
16 Now, it's been staggered in time, but
17 that's the way it was paid. That's the way it was
18 agreed.
19 Q. Well, did you give or consider giving
20 Ms. Gibson any credit for any setoff value realized
21 in the lender claim litigation?
22 MR. BOWERS: Object to the form.
23 THE WITNESS: Giving her credit for
24 setoff? Setoff of what?
25 BY MR. DAVIS:

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1 Q. Well, the property was worth a
2 million-three?
3 A. Oh, yeah. We did -- there was a --
4 Q. So you gave her a setoff off for a
5 million-three, or credit for a million-three?
6 A. Whatever it was that Paul Tecklenburg
7 negotiated. I don't remember what the figure was.
8 But there was a reduction in the amount.
9 Could we take a break so I could use
10 the restroom?
11 MR. DAVIS: Yes. Why don't we take a
12 break for lunch.
13 THE WITNESS: I'd rather just work on
14 through. I've got a busy afternoon, and I -- I'd
15 like to go straight on through.
16 MR. DAVIS: And that's fine with me.
17 But could I just have 15 minutes?
18 MR. BOWERS: Yeah.
19 MR. DAVIS: And then we'll reconvene at
20 noontime. So not really a lunch break, but just
21 15 minutes.
22 MR. BOWERS: That's fine.
23 (A recess transpired.)
24 BY MR. DAVIS:
25 Q. Mr. Kefalos, you were representing

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1 The only way to defend that is to mount
2 a collateral attack on that note, and that's what
3 we did.
4 **BY MR. DAVIS:**
5 **Q. To assert lender claims, correct?**
6 A. Well, to assert fraud,
7 misrepresentation, breach of fiduciary duty,
8 overreaching, negligence, and collusion with the
9 Rolando thing, yes.
10 **Q. In other words, would you agree with me**
11 **that the only way to defeat the deficiency claim in**
12 **the Galt matter was to assert lender claims against**
13 **the lender?**
14 A. The only way that we could defend it
15 was with an offense, and we did that.
16 **Q. I think I asked you this before, but**
17 **I'll ask again, if I may. Is it your opinion that**
18 **there's no difference between a defense and a**
19 **claim?**
20 A. Sometimes they're the same. Sometimes
21 you assert a counterclaim as a defense,
22 strategically. It's not, strictly speaking, an
23 answer, a defense, but it's used to defend the
24 claim in chief.
25 **Q. Well, what I'm trying to understand is,**

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1 what work did you do to defend Galt's deficiency
2 claims against Linda that were not also the
3 prosecution of lender claims, if any?
4 I mean, you were paid \$566,000. More
5 specifically, my client paid \$566,000 for the
6 defense of deficiency claims brought against her.
7 And now she's paying, or being asked to pay some
8 number, X, some percentage out of any recovery in
9 the lender claim.
10 A. Yeah.
11 **Q. And my question is: What work did you**
12 **do to defend the deficiency claim that was not also**
13 **work to prosecute the lender claim?**
14 I mean, aren't they one and the same,
15 opposites of the same coin?
16 The claims and defenses are arising out
17 of a single note and mortgage between the same
18 parties.
19 A. Well, Galt --
20 **MR. BOWERS:** Object to the form.
21 **THE WITNESS:** Galt had no involvement
22 in making the claim. So everything we used against
23 Galt came from Ameris, but it's a continuum.
24 And to try to create a distinction and
25 say, oh, well, you've already recovered, we already

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1 paid, it's illusory, it's phony.
2 What happened is we had an agreement
3 that we would take a contingency on this spectrum
4 from what was claimed against her to what we could
5 recover, and it's all part of the same thing. It
6 involved a enormous amount of work that continued
7 up until last year, and had an extraordinary
8 result.
9 And to quibble about the obligation to
10 pay the fee after it's done, after she's agreed and
11 chosen this path, is dishonest.
12 **BY MR. DAVIS:**
13 **Q. I think that Ms. Gibson is willing and**
14 **has always been willing to pay a fee as to the**
15 **defense of the deficiency claims. The question is,**
16 **in her mind, what would be a reasonable fee?**
17 A. The reasonable fee would be the fee
18 that she negotiated with me and Rob Papa and Drew
19 Epting. And the fee is the same fee that she
20 agreed when we put the mortgage and asked her to
21 collateralize the thing, and she went and got a
22 second opinion from Paul Tecklenburg. That's the
23 reasonable fee.
24 Because at those times, this was a
25 contest, and taking a contingency on that -- on

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1 that savings and the recovery was reasonable under
2 those circumstances.
3 What she's trying to do now is she's
4 saying, well, I don't like it, I could have done
5 better if I paid you by the hour.
6 Well, in fact, we gave her the
7 opportunity to pay us by the hour from the
8 beginning, and she refused. She would rather have
9 gambled.
10 You know, the one way, if you pay by
11 the hour, she risks the loss, because if there's no
12 recovery then she's all out of pocket. In the
13 contingency, we risk the loss, the attorneys risk
14 the loss. And she wanted us to take the risk. And
15 we said, fine, all right, all right, we'll do that.
16 Now she wants to change the deal.
17 Well, she can't. It's improper. She had lawyers.
18 She signed it. We agreed. We proceeded in good
19 faith in this.
20 **Q. What was the risk that you undertook in**
21 **defending the deficiency claim?**
22 A. That we wouldn't get paid.
23 We agreed to work for free, without
24 regard to the amount of hours or effort that we put
25 in, depending on a contingency of what we could

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1 A. No. I'll postpone my commitments. I'd
2 like to be out of here by 4, but I'll stay as long
3 as it needs to be.
4 Q. I'm handing you a document. It's Bates
5 stamped TLF -- as in Tango, Lima, Fox -- 000145.
6 Do you recognize that document?
7 (PLF. EXH. 22, 10/29/2010, Kefalos to
8 Tecklenburg e-mail, TLF_000145, was marked for
9 identification.)
10 THE WITNESS: Yes.
11 BY MR. DAVIS:
12 Q. And what is it?
13 A. It's an e-mail from me to Paul
14 Tecklenburg.
15 Q. And I direct your attention to the
16 first sentence.
17 It says, "Paul, I'm writing to explain
18 that I need a few minutes of your time to review a
19 fee arrangement that I have with Linda Gibson."
20 Did I read that correctly?
21 A. Yes, you did.
22 Q. And the e-mail is dated October 29th,
23 2010?
24 A. Yes.
25 Q. My question first is: How did you know

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1 on October 29th, 2010, that Ms. Gibson was going to
2 go see Mr. Tecklenburg with respect to negotiating
3 the deficiency?
4 A. She told me.
5 Q. Do you recall when she told you that
6 she was going to go see Mr. Tecklenburg?
7 A. No.
8 Q. Do you recall a meeting between you and
9 Linda and Mr. Epting on November 15th of 2010?
10 A. Not specifically.
11 Q. Well, on November 8th, 2010, Galt
12 Valley sent their offer to waive the deficiency
13 claims brought against Linda.
14 When did you first become aware that
15 Galt Valley was waiving the deficiency claims
16 against Linda, if you recall?
17 A. I don't remember.
18 Q. And did you meet with Mr. Epting and
19 Linda, shortly after learning that Galt had
20 waived the -- or was offering to waive the
21 deficiency claims against Linda?
22 A. I'm sure I did.
23 Q. Do you remember the date of that
24 meeting?
25 A. No.

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1 Q. Did you meet with Linda after
2 November 8th?
3 A. I'm sure I did. I don't remember when.
4 Q. Do you remember meeting with her to
5 discuss with her whether or not she should accept
6 Galt's November 8th offer?
7 A. Yes.
8 Q. And that meeting would have happened
9 after November 8th, correct, because --
10 A. I said I'm sure I met with her after
11 November 8th.
12 Q. And would it surprise you to know that
13 Linda recalls at that meeting that you and
14 Mr. Epting suggested that she seek independent
15 counsel for the purposes of reviewing the fee
16 arrangement?
17 A. November 15th? You're saying -- I
18 don't know what Linda remembers. And would it
19 surprise me if you tell me that Linda says some
20 things that aren't true? It wouldn't surprise me,
21 not at all.
22 Q. Well, I'm just trying to understand how
23 you knew that Linda was going to go see
24 Mr. Tecklenburg on October 29th of 2010, when you
25 sent him the letter saying, "I am writing to

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1 explain I need a few minutes of your time to review
2 a fee arrangement I have with Linda."
3 A. Well, you have Paul Tecklenburg's
4 records. You know that Linda went to see him
5 before I wrote that letter.
6 Why are you asking me when she went? I
7 don't remember when she went.
8 Q. Do you recall exchanging a series of
9 e-mails with Mr. Tecklenburg while -- after
10 November 8th, with respect to negotiating the
11 deficiency amount against which you were going to
12 determine your fee?
13 A. No, I don't.
14 Do you have any e-mails like that?
15 I know we talked, Paul and I did talk
16 about the fee and about determining the deficiency
17 amount.
18 Let me put it in context. We
19 originally asked Linda to find a lawyer, to get a
20 lawyer, because we wanted to put a mortgage -- we
21 wanted to collateralize the anticipated payment of
22 the fee.
23 We didn't know the case had settled at
24 that point. All we knew is that this was -- this
25 was going to get down into the trenches, and we

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2 MR. BOWERS: You said

4 MR. DAVIS: I'm sorry.

7 Do you have any --

8 **MR. BOWERS:** No questions.

9 MR. DAVIS: -- any cross?

10 MR. BOWERS: No, I don't.

11 **MR. DAVIS:** My exam is completed.

12 Thank you.

13 (The deposition concluded at 12:45 p.m.)

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1 SIGNATURE OF DEPONENT

2 DEPONENT: GEORGE J. KEPALOS, ESQUIRE
DEPOSITION DATE: SEPTEMBER 18, 2014
3 REPORTER: LAURA J. BASH
CASE CAPTION: GIBSON vs. EPTING

5 (Please return both Signature of Deponent pages)

6 I, the undersigned, GEORGE J. KEPALOS,
7 ESQUIRE, do hereby certify that I have read the
8 foregoing deposition and find it to be a true and
accurate transcription of my testimony, with the
following corrections, if any:

9	PAGE	LINE	CHANGE	REASON

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

LINDA A GIBSON, INDIVIDUALLY, AND IN CAPACITY
AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY
TRUST, AND HERITAGE SEVEN, LLC, AND SEVEN OAKS
APARTMENTS, LLC, AND 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs.

CASE NO. 2013-CP-10-4450

ANDREW K. EPTING, JR. LLC, and, GEORGE J.
KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A.,
and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants.

DEPOSITION OF: JOHN S. WEST, ESQUIRE

DATE: SEPTEMBER 11, 2014

TIME: 10:12 AM

LOCATION A. William Roberts, Jr.
& Associates
234 Seven Farms Drive
Charleston, SC 29492

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Laura J. Bash, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Page 10

1 do?

2 A. I do foreclosure work for some lenders,
3 but primarily for the landowner, the borrower.

4 Q. Is your commercial -- is your
5 foreclosure work typically in the field of
6 commercial foreclosures or residential
7 foreclosures?

8 A. Residential.

9 Q. Do you do any commercial real estate
10 workout work?

11 A. Very little now.

12 In my former employment with South
13 Carolina Public Service Authority, which I was
14 employed for about 15 years, I did a substantial
15 amount of commercial work.

16 Q. Have you read the pleadings in the
17 action that has been brought against the lawyers in
18 this matter regarding the excessive fee?

19 MR. BOWERS: Object to the form.

20 THE WITNESS: Yeah, I think I looked at
21 the pleadings when I was served.

22 BY MR. DAVIS:

23 Q. Are you familiar with the -- with the
24 claim that's been brought in this Gibson matter?

25 A. Generally, yes.

Page 11

1 Q. And from your perspective, what is the
2 nature of the claim that's been brought?

3 A. It appears that Ms. Gibson is saying
4 that the fee that was charged in the Galt matter
5 was excessive.

6 Q. I would represent to you that that is
7 the gravamen of the complaint that's been brought,
8 that Ms. Gibson feels like her lawyers took
9 advantage of her by charging over half-a-million
10 dollar fee for work product she feels is
11 essentially a deed in lieu of foreclosure.

12 A. That -- that's what I gathered.

13 Q. Do you think this was a routine deed in
14 lieu of foreclosure?

15 A. No.

16 Q. Why not?

17 A. Because Ms. Gibson, as was represented
18 to me when I was first contacted about this matter,
19 was in a dire situation and she was at risk of
20 losing substantial assets, and her life was in
21 peril at the time and --

22 Q. Ms. Gibson's life was in peril at the
23 time?

24 A. That's the way I understood it.

25 Q. Did you actually meet with

Page 12

1 Ms. Gibson --

2 A. No.

3 Q. -- during the course of your
4 representation?

5 A. I did not meet with Ms. Gibson and was
6 not in her presence at any time except in hearings
7 where she was in attendance.

8 Q. How many hearings did you have in the
9 Galt matter?

10 A. I don't recall.

11 Q. Would it have been at least one
12 hearing?

13 A. There was at least one hearing, yes.

14 Q. Was there two hearings?

15 A. I don't recall.

16 Q. I'll represent that there was one
17 hearing and it was an appointment of receiver
18 hearing.

19 Does that refresh your recollection?

20 MR. BOWERS: Object to the form.

21 THE WITNESS: Well, I -- you can
22 represent all you want to represent.

23 I told you I don't recall how many
24 hearings I attended. I know I attended a motion
25 for a receiver hearing. And there may have been

Page 13

1 other procedural hearings, but I don't recall.

2 BY MR. DAVIS:

3 Q. In your experience in Berkeley County,
4 does the Berkeley County Court keep an index of
5 hearings and papers and pleadings filed with the
6 court?

7 A. Yes.

8 Q. What do we call that index?

9 A. The public index.

10 Q. Sometimes referred to as a docket;
11 would that be correct?

12 A. I don't know.

13 Q. Well, this public index -- would you
14 agree with me that the public index reflects the
15 papers and pleadings and hearings that were
16 presented or held before the court?

17 A. Generally.

18 MR. DAVIS: Could I have Exhibit 8 from
19 yesterday for Mr. Epting?

20 Do you have another Exhibit 8? This
21 one's --

22 COURT REPORTER: No.

23 MR. DAVIS: No? Okay.

24 BY MR. DAVIS:

25 Q. Mr. West, I'm going to hand you a

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1 document we'd like to introduce -- was introduced
2 yesterday in Mr. Epting -- you can share it with --
3 share it with your counsel.
4 Do you recognize this document?
5 A. No.
6 Q. Have you ever seen this document
7 before?
8 A. No.
9 Q. Would you agree with me that this
10 document would typically reflect the docket entries
11 in the public index in the matter of
12 Galt v. Gibson?
13 A. I would tell you that it appears to be
14 a representative sample of public index indices
15 that I have seen before. But beyond that, I
16 couldn't tell you anything about it because I
17 haven't seen it until this moment.
18 Q. Was there more than one hearing in the
19 Galt v. Gibson matter?
20 A. I've answered that question.
21 Q. You don't recall?
22 A. I don't recall.
23 Q. Do you recall getting paid over a
24 hundred thousand dollars for your work in this
25 case?

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1 A. I recall at the conclusion of the Galt
2 matter that I received a check in accordance with
3 the fee agreement.
4 Q. What was the amount of the check?
5 A. 94,000 and some-odd dollars.
6 Q. And when did you first meet Ms. Gibson?
7 A. When did I first meet Ms. Gibson, ever?
8 Q. Yes.
9 A. I met Ms. Gibson back in the late '80s
10 when I represented her mother in a quiet title suit
11 in Berkeley County.
12 Q. Since the late '80s, have you seen or
13 had the occasion to see Linda?
14 A. Not until my involvement in this case.
15 Q. And when were you -- when did you get
16 involved in this case?
17 A. In the summer of 2010.
18 Q. Would that be on or about July 9th of
19 2010?
20 A. It would be in the summer of 2010. I
21 don't recall the specific date.
22 Q. Was it in July of 2010?
23 A. I don't know.
24 Q. Was it in June of 2010?
25 A. I think it was the mid to latter part

Page 16

1 of the summer of 2010.
2 Q. Was it before or after Galt was
3 substituted as -- or included as a party in the
4 Ameris matter, if you recall?
5 A. I don't know procedurally what the
6 posture of Galt was when I was first contacted.
7 Q. But it was in the late summer of 2010
8 you got involved in this?
9 A. Within the summer of 2010.
10 Q. And when did you resolve the Galt
11 matter?
12 MR. BOWERS: Object to the form.
13 THE WITNESS: Well, I didn't resolve
14 the Galt matter.
15 BY MR. DAVIS:
16 Q. Who resolved the Galt matter?
17 A. Mr. Epting was the primary point of
18 contact on Linda's behalf in the resolution of the
19 Galt matter.
20 Q. Was Mr. Epting lead counsel in the
21 Galt v. Gibson matter?
22 A. I heard many references to "lead
23 counsel" yesterday, and I really don't know what
24 that means. So I don't know how to answer the
25 question.

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1 It was a collaborative effort of the
2 lawyers who were representing Linda, and Drew was
3 the primary point of contact with Linda and, as I
4 understand it, with Galt Valley's representatives.
5 Q. Were you lead counsel in the matter of
6 Gibson v -- or excuse me -- Galt v. Gibson?
7 A. No.
8 Q. Was Mr. Howe lead counsel in the
9 matter?
10 A. No.
11 Q. Was Mr. Kefalos the --
12 A. No.
13 Q. -- lead counsel in the matter of --
14 A. No.
15 Q. -- Galt v. Gibson?
16 There was no lead counsel?
17 A. I wouldn't describe any of the lawyers
18 who were representing Linda Gibson as "lead
19 counsel."
20 Q. How would you describe the attorneys
21 representing Ms. Gibson, their relationship, that
22 is?
23 A. I don't understand your question.
24 Q. Well, if nobody was lead counsel, was
25 the four attorneys generally just working together

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1 on this case?
2 A. We all worked together on Linda's case,
3 yes.
4 Q. Did you talk with Galt's attorney
5 during your representation of your client in this
6 case?
7 A. I talked to Ian McVey at the motion for
8 receivership hearing, and that was the only
9 conversation I ever had with Ian McVey.
10 Q. You had one conversation with
11 Mr. McVey?
12 A. That's what I just said.
13 Q. So if you were engaged or asked or
14 somehow got involved in this case in July of -- or
15 the late summer of 2010, when did Mr. Epting
16 resolve the matter, if you know?
17 MR. BOWERS: Object to the form.
18 THE WITNESS: The case was resolved
19 with Galt Valley, procedurally and formally, and
20 documents executed in the early part of 2011, as I
21 understand it.
22 BY MR. DAVIS:
23 Q. Would it refresh your recollection if I
24 were to tell you that in the matter of
25 Galt v. Gibson the settlement agreements were

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1 executed on December 1st of 2010?
2 A. No, it wouldn't refresh my
3 recollection.
4 I just answered the question, as far as
5 I understand it, that the matter was resolved and
6 documents were executed and it was wrapped up in
7 early 2011, as I understand it.
8 Q. Can I direct your attention to the
9 index, the public index, Exhibit -- Exhibit 8.
10 And turning to Page 3, five block
11 entries up from the bottom, it reads, and I quote:
12 Gibson, Linda, Order/Dismissing Claims
13 of the Plaintiff. And reading across the block,
14 "July 6, 2011."
15 Does that refresh your recollection
16 that the orders against the plaintiff Galt were
17 dismissed in January 6 of 2011?
18 A. That's consistent with what I just
19 said.
20 Q. And so if you came in to the case in
21 the late summer of 2010 and the case was resolved
22 in January 9th of 2011, that would be about
23 four-and-a-half months that you were involved in
24 the matter of Galt v. Gibson.
25 Would that be correct?

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1 A. Whatever the record will reflect in
2 terms of my actual -- the date I actually became
3 involved until the Galt matter was resolved.
4 Of course, I continued to be involved
5 in the Ameris litigation.
6 Q. You're getting paid, or you're -- you
7 got your hands out to get paid in the Ameris
8 litigation, correct?
9 MR. BOWERS: Object to the form.
10 THE WITNESS: I don't have my hand out
11 for anyone, Mr. Davis. And I do expect to be paid
12 in the Ameris litigation in accordance with the
13 agreement, if there is an opportunity for anyone to
14 receive a recovery, yes.
15 BY MR. DAVIS:
16 Q. So between the late summer of 2010 and
17 January 9th of 2011 when the Galt matter was
18 dismissed, would it be a fair statement that the
19 work product that you prepared or were involved in
20 occurred solely as to the deficiency claim?
21 A. Would you rephrase the question,
22 please? I didn't follow you.
23 Q. Between the late summer of 2010 and
24 January 6th of 2011 when the Galt matter was
25 dismissed, the work product, if any, that you

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1 prepared, would have been as to the Galt claims
2 against Ms. Gibson.
3 Would you agree with that statement?
4 A. I would not agree with that statement.
5 I was involved in activities and
6 representation of Ms. Gibson in the Ameris
7 litigation, which was overlapping, of course, the
8 matter of Galt Valley.
9 Q. But Mr. West, a few minutes ago you
10 testified that you expect to be paid out of any
11 settlement proceeds in the Ameris lender claim
12 litigation; is that correct?
13 A. I do.
14 Q. And what I'm asking is: Any work
15 product that you did between January 10th -- pardon
16 me -- between the summer of 2010 and January 6th
17 when the Galt matter was dismissed, or in that
18 roughly four-and-a-half month period, that work
19 product, for which you've already been paid, was
20 work product for preparing defenses against the
21 purported deficiency claim Galt brought against
22 Linda; is that correct?
23 MR. BOWERS: Object to the form.
24 THE WITNESS: That really was not your
25 question.

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1 Your question, as I understood it, was
2 whether or not the only work that I was doing
3 during that period of time of the summer of 2010
4 and the early part of 2011 was on the Galt Valley
5 matter, was how I understood your question.
6 And if that is your question, the
7 answer is that's not accurate, because I was at the
8 same time working on the Ameris litigation.
9 If you're asking me if I was paid for
10 the work that I performed in the Galt matter, I've
11 already answered that question, I have.
12 **BY MR. DAVIS:**
13 **Q. Mr. West, were you working on the**
14 **Ameris matter between January -- between the summer**
15 **of 2010 and January 9th?**
16 A. The Ameris litigation?
17 **Q. Yes.**
18 A. Yes.
19 **Q. And between the summer of 2010 and the**
20 **dismissal on January 9th, were you also working on**
21 **the Galt matter?**
22 A. Yes.
23 **Q. And are you getting -- or do you expect**
24 **to be paid for your work on the Ameris matter**
25 **between the summer of 2010 and -- I believe it's**

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1 still going on, on appeal?
2 A. Yes.
3 **Q. And do you expect to get -- or, in**
4 **fact, you've been paid as to the work you did in**
5 **the deficiency, with respect to the deficiency**
6 **claim between the summer of 2010 and January 9th**
7 **when the case was dismissed?**
8 A. Yes.
9 **Q. So in that four-and-a-half-month period**
10 **when you were working on the defense of the**
11 **deficiency claim as to the Galt matter, what did**
12 **you do?**
13 A. Well, I was in regular consultation
14 with Mr. Epting, Mr. Howe, and Mr. Kefalos. I was
15 participating in the strategy sessions that went to
16 the matter of those subjects that Mr. Epting
17 discussed yesterday.
18 I prepared, along with co-counsel, for
19 the motion for receivership hearing. I attended
20 the receivership hearing, and then reviewed -- at
21 some level reviewed the settlement documents.
22 **Q. Did you do any other work as to the**
23 **Galt deficiency claim on behalf of Ms. Gibson in**
24 **the four-and-a-half month period between the summer**
25 **of 2010 and January 6th of 2011?**

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1 A. I'm sure the record would show some of
2 the details and specifics of what I just generally
3 described. But I think generally I have described
4 the categories of the work that I did.
5 **Q. And this work that you just described,**
6 **this work was as to the deficiency claim; is that**
7 **correct?**
8 A. Well, you asked me about the deficiency
9 claim, so my answer to you was in response to your
10 question about what did I do specifically in regard
11 to the deficiency claim.
12 **Q. Did you do anything else with respect**
13 **to the deficiency claim that you didn't just**
14 **mention?**
15 A. I told you, the record will show
16 whatever it will show.
17 **Q. I'm not asking what the record will**
18 **show, Mr. West. I'm asking you if you did any**
19 **other work with respect to the deficiency claim --**
20 A. And my answer --
21 **Q. -- other than what you just mentioned?**
22 A. And my answer is I have generally
23 described what my recollection of my activities is,
24 but the record will show if there are any other
25 specific details.

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1 **Q. Did you serve any interrogatories?**
2 A. No.
3 **Q. Did you serve any requests for document**
4 **production?**
5 A. No.
6 **Q. Did you serve any requests for**
7 **admissions against Galt?**
8 A. No.
9 **Q. Did you attend any Rule 16 pretrial**
10 **hearings?**
11 A. I don't know that there was a hearing.
12 There may have been some telephonic conferences
13 with Judge Watson, but I don't recall the specifics
14 of that.
15 **Q. How many conferences do you think you**
16 **had with the judge?**
17 A. I don't recall.
18 **Q. During that four-month period, did you**
19 **have the occasion to meet with Ms. Gibson as to the**
20 **claims that were brought against her?**
21 A. Well, let me back up and object to your
22 characterization.
23 The time period of my participation is
24 shrinking each time you ask a question, and I'm not
25 going to accept your characterization of the time

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1 frame of my involvement.
2 **Q. Well, let's nail down the time frame.**
3 **A. Well, I've told you what I recall.**
4 Summer of 2010 until -- on the Galt matter, until
5 the matter was resolved in January of 2011.
6 Now, if you have a document that will
7 refresh my recollection of a specific date, I'm
8 happy to review it. But you keep shrinking the
9 time frame, and I'm not going to accept your
10 characterization of the time frame.
11 **Q. Well, between January -- pardon me --**
12 **between July 1st of 2010 and January 9th of 2011,**
13 **there's a little under five months, about four**
14 **months and 28 days.**
15 **MR. BOWERS:** Object to the form.
16 **BY MR. DAVIS:**
17 **Q. So can we agree, in terms of**
18 **establishing a time frame with respect to the work**
19 **product that you did on the Galt deficiency claim,**
20 **that it would have been done between July and**
21 **January 6th of 2011?**
22 **A. We can agree that the summer of 2010**
23 **was when I was first contacted about this matter**
24 **and that the Galt Valley deficiency matter was**
25 **resolved in early 2011.**

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1 **Q. Did you do any work in the Galt matter**
2 **prior to the summer of 2010?**
3 **A. No.**
4 **Q. Did you do any after January 6th of**
5 **2011?**
6 **A. Again, I don't know whether it was**
7 **January 6th or some other date.**
8 I know in early 2011, the Galt Valley
9 matter was officially resolved and concluded. I
10 did not do any further work on the Galt Valley
11 matter after early 2011.
12 **Q. Mr. West, you testified that you did**
13 **not have a fee agreement with Ms. Gibson; is that**
14 **correct?**
15 **A. I did not have a fee agreement directly**
16 **with Ms. Gibson. I did sign a document in November**
17 **of 2010 which, as I understood it, was a**
18 **restatement of the existing agreement. I think**
19 **Ms. Gibson signed that document.**
20 **Q. I'm handing you a document entitled:**
21 **Attorney-Client Contract, dated November 18th,**
22 **2010.**
23 **Do you recognize that document?**
24 **A. Yes.**
25 **Q. Let the record reflect that that's**

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1 **Exhibit 3 in Mr. Epting's deposition of yesterday.**
2 **Have you seen this document before,**
3 **Mr. West?**
4 **A. I have.**
5 **Q. What is this document?**
6 **A. It is a document which was executed, it**
7 **appears, in November of 2010. And it's my**
8 **understanding that this was a document that was**
9 **prepared by Mr. Tecklenburg to restate and put in**
10 **to writing the agreement as it relates primarily to**
11 **the issue of security of the debt.**
12 **Q. I would like to direct your attention**
13 **to Paragraph A in the document, and I quote:**
14 **"One-third of all sums saved client**
15 **from the deficiency amount claimed by Ameris, in**
16 **the amount of \$1.7 million."**
17 **Is that correct?**
18 **A. That's what the document said.**
19 **Q. Would you agree with me that this**
20 **document represents a purported fee arrangement**
21 **with Ms. Gibson solely as to the deficiency claim?**
22 **A. No, I do not agree with that.**
23 **Q. Is it your testimony that this document**
24 **relates also to the prosecution of the lender**
25 **claims?**

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1 **A. It's my position that this document**
2 **must be read in combination with other documents**
3 **and that the totality of the documents represents**
4 **the arrangement with Ms. Gibson as to both the**
5 **deficiency matter, the Galt Valley matter, and the**
6 **Ameris litigation.**
7 **Q. My question is: Does this document --**
8 **and I quote, "One-third of all sums saved client**
9 **from the deficiency amount claimed by Ameris, in**
10 **the amount of \$1.7 million," this document relates**
11 **to the work that you did for the deficiency claim;**
12 **is that correct?**
13 **A. In part.**
14 **Q. Well, what part of this document in**
15 **your opinion relates to any other work that you've**
16 **done for Ms. Gibson?**
17 **A. This document cannot be read as a**
18 **standalone document.**
19 **Q. Mr. West, I'm not asking you how to**
20 **read the document.**
21 **I'm asking you, what part of this**
22 **document, what specific language in this document**
23 **refers to the prosecution or any fees for the**
24 **prosecution of the lender claim?**
25 **A. I've already answered your question.**

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1 Q. Are there any -- is there any language
2 in this document that purports to award you an
3 attorney fee for your work in the prosecution of
4 the lender claim in the Ameris matter?
5 A. I've already answered the question.
6 Q. Would you answer the question again,
7 please?
8 A. This document can only be read in
9 combination with all the other documents that
10 relate to the fee arrangement with Ms. Gibson on
11 the Galt Valley matter and the Ameris litigation.
12 Q. What other documents would relate to
13 the fee?
14 A. The documents that Mr. Epting and
15 Mr. Kefalos entered into with Ms. Gibson.
16 Q. Did you see the documents, or have you
17 ever seen the documents that Mr. Kefalos and
18 Mr. Epting claimed to be a fee agreement with
19 Ms. Gibson?
20 A. The documents were produced in the
21 course of discovery in your case and I saw them for
22 the first time in connection with this proceeding.
23 Q. The first time you saw the fee
24 arrangement with your client, Ms. Gibson, was when
25 Ms. Gibson filed suit against the four lawyers for

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1 an excessive fee?
2 MR. BOWERS: Object to the form.
3 THE WITNESS: Mr. Davis, you referred
4 several times to a fee agreement that I have with
5 Ms. Gibson, and I want to refresh your memory on
6 that and clarify if there's been any confusion on
7 that.
8 The fee agreement with Ms. Gibson is
9 the fee agreement that was reached by Mr. Epting
10 and Mr. Kefalos.
11 They later associated Mr. Howe and me
12 in connection with the Galt Valley matter and the
13 Ameris litigation --
14 Q. That's --
15 A. -- so...
16 BY MR. DAVIS:
17 Q. Did you complete your answer?
18 A. You were talking.
19 Q. Would you like to complete your answer?
20 A. I don't even remember what the question
21 is now.
22 Q. Well, I'll ask the question again,
23 then.
24 A. Please.
25 Q. In the document that I put in front of

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1 you, the attorney-client contract dated
2 November 18th, 2010, can you show me in this
3 document anything --
4 A. That was not the question you asked.
5 That was a prior question, Mr. Davis.
6 Q. Well, let's disregard the question that
7 you believe I asked or didn't ask and just start --
8 A. Why don't you start all over again?
9 Ask me what you want me to answer.
10 Q. Mr. West, I've handed you a document
11 dated November 18th, 2010.
12 A. Uh-huh.
13 Q. Can you show me in this document any
14 language that purports the attorneys are entitled
15 to a fee award out of any work they did in the
16 prosecution of lender claims in the Ameris
17 litigation?
18 MR. BOWERS: Object to the form.
19 THE WITNESS: And I've answered that
20 question.
21 BY MR. DAVIS:
22 Q. Would you answer the question again,
23 please?
24 A. No.
25 MR. BOWERS: Object to the form.

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1 BY MR. DAVIS:
2 Q. Did you draft this November 18th
3 agreement?
4 A. No. Mr. Tecklenburg, as I understand
5 it, drafted the document.
6 Q. Is that your signature on Page 2 of the
7 document?
8 A. Which document are you referring to?
9 Q. There's only one document that we're
10 examining right now. That's the attorney-client
11 contract dated November 18th, 2010. I'm referring
12 to Page 2.
13 A. Do you have a marked exhibit, so I can
14 make sure I'm answering the question you're asking
15 me?
16 Q. I believe the exhibit is marked and
17 identified as Exhibit Number 3 in the Epting
18 deposition, and we'll keep it Exhibit 3 in this
19 deposition as well.
20 A. And what's the question?
21 Q. Is that your signature on Page 2 of
22 this document?
23 A. No.
24 Q. Did you sign this document?
25 A. I signed a document, but the exhibit

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1 I'm asking you if I read it right.
2 A. It sounded pretty close.
3 Q. Was this the first time, in September
4 23rd of 2010, that you saw Ameris's foreclosure
5 complaint?
6 A. I'm not sure.
7 Q. Is this the first time you saw the
8 answer and counterclaim?
9 A. I'm not sure.
10 Q. Would you have possibly seen the
11 complaint, answer and counterclaim, prior to
12 September 23rd?
13 A. It's very possible, yes.
14 Q. Can you think of any reason why
15 Mr. Kefalos would be enclosing it for your review
16 on September 23rd, 2010?
17 A. I don't know.
18 Q. Well, you see where I'm going with
19 this, Mr. West.
20 It appears that you got involved in the
21 case in September 23rd, 2010, or that at least you
22 started to see the pleadings filed in the action in
23 September of 2010.
24 A. Well, that's not my testimony.
25 Q. When did you first see the complaint in

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1 the action?
2 A. I don't know.
3 Q. Do you remember when you first reviewed
4 the complaint, the foreclosure complaint in the
5 Ameris action?
6 A. Well, that's just a repackaging of the
7 previous question.
8 I don't know.
9 Q. You testified earlier that you were
10 paid \$94,000 for your work in the defense of the
11 deficiency claim that Galt purportedly brought
12 against Ms. Gibson; is that correct?
13 MR. BOWERS: Object to the form.
14 THE WITNESS: Yes. I have, on a number
15 of occasions, represented to you that that's what I
16 was paid, yes.
17 BY MR. DAVIS:
18 Q. Do you think \$94,000 is an excessive
19 fee in the matter of Galt v. Ameris?
20 A. No.
21 Q. Why not?
22 A. Because there was an agreement with
23 Ms. Gibson for a contingency fee. She was
24 represented by counsel in connection with entering
25 into the fee agreement in the first instance. I

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1 was associated by Mr. Kefalos and Mr. Epting to
2 assist in the case, and that's what I did, and I
3 believe that is in accordance with the agreement.
4 Q. Do you think that it's possible a fee
5 could be excessive, even if a client signs an
6 agreement with their attorney?
7 A. Well, you're asking me to speculate on
8 a hypothetical. That's not my normal practice, and
9 so I don't -- I don't know.
10 Q. You don't know if a fee agreement could
11 be excessive? If a client signs an agreement with
12 their attorney, could the fee still being
13 excessive?
14 A. I don't know.
15 Q. Is it possible?
16 A. Every -- every situation must stand on
17 its own merits. So you're asking me to opine about
18 a possibility in an abstract situation. I don't
19 know.
20 Q. Is Ms. Gibson's fee not excessive
21 because she signed a fee agreement, a purported fee
22 agreement with her attorneys?
23 A. That's part of the reason.
24 Q. Have you ever received a \$90,000 fee
25 for representing a client in a foreclosure action

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1 before?
2 A. I don't recall.
3 Q. Were you aware that after you were paid
4 \$94,000 for your work defending the deficiency
5 claim, that the other lawyers were paid
6 approximately \$450,000 for their participation in
7 the defense of the deficiency claim?
8 A. I don't know what any other lawyer was
9 paid in this matter, other than what Mr. Howe
10 received, which was the same fee I received.
11 Q. Would you agree with me that the
12 lawyers collected \$566,000 in this matter?
13 A. I don't know.
14 Q. You don't know?
15 A. I do not know.
16 Q. Would you agree with me that Ms. Gibson
17 paid \$566,000 in this matter?
18 A. I would agree with you that I received
19 a fee slightly over \$94,000 for my participation in
20 the case, which I understand to be one-half of
21 one-third of the fee collected in the Galt matter.
22 Q. Do you know what Ms. Gibson paid the
23 lawyers in this Galt matter?
24 A. I just told you. I don't know what she
25 paid anybody else. I know what she paid -- or what

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1 was paid to me and what was paid to Mr. Howe.
2 **Q.** I'm not asking you, Mr. West, what
3 **Ms. Gibson paid each of the other attorneys.**
4 I'm asking you if you know what your
5 client paid for the defense of the deficiency
6 claims in the Galt matter?
7 **A.** No.
8 **Q.** Do you think that would be an important
9 piece of information to know?
10 **A.** I think that Ms. Gibson was represented
11 by eminently qualified, trusted counsel, and that I
12 was relying on Mr. Epting and Mr. Kefalos to manage
13 the fee portion of the case.
14 **Q.** Mr. West, you may be competent counsel,
15 and I'm certain --
16 **A.** Well, you've done your best to
17 challenge that today.
18 **Q.** You may be competent counsel and
19 Mr. Howe and Mr. Epting and Mr. Kefalos may be
20 competent counsel, but my question is not directed
21 towards the competency of counsel.
22 My questions are directed towards what
23 work product you produced to determine -- to defend
24 the deficiency claim to determine the
25 reasonableness of the fee that was charged.

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1 **A.** Well, you're jumping back to about an
2 hour ago now, if that is the question.
3 **Q.** My questions are directed towards the
4 excessiveness of the fee.
5 **A.** I get that.
6 **Q.** And specifically, if you know what fee
7 your client, Ms. Gibson, paid for the work the
8 lawyers did in the deficiency, in the defense of
9 the deficiency claim?
10 **A.** And I answered that. I know what I got
11 paid and I know what Mr. Howe got paid. And I
12 don't know anything else.
13 **Q.** When you signed the November 18th
14 document entitled an Attorney-Client Contract, did
15 you form an opinion as to what the fee would be
16 that your client, Ms. Gibson, would pay?
17 **A.** I did not.
18 **Q.** Were you aware that Ms. Gibson was
19 going to pay one-third of \$1.7 million for the
20 defense of the deficiency claim?
21 **A.** Yes.
22 **Q.** Then would it be a fair statement to
23 say that you were aware that your client was paying
24 \$566,000 for the defense of the deficiency claim?
25 **A.** I didn't do the calculation.

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1 **Q.** You didn't do the calculation to
2 determine what your client would be paying --
3 **A.** I did not.
4 **Q.** -- her lawyers to defend the deficiency
5 claim?
6 **A.** I did not.
7 **Q.** Why not?
8 **A.** Because it didn't matter to me.
9 **Q.** Why didn't it matter to you?
10 **A.** Because I knew that there was going to
11 be a point in time when a fee would be paid, if
12 there were funds against which to collect the fee,
13 and that was good enough for me.
14 **Q.** In this matter there's no funds against
15 which to collect a fee, is there?
16 **A.** Not at the time that document was
17 signed.
18 **Q.** Well, I'm talking about the deficiency
19 claim. As to the deficiency claim, there was no
20 funds against which to collect?
21 **A.** That's right.
22 And that -- that goes to the element of
23 risk, Mr. Davis. We didn't know if we were going
24 to get paid at all.
25 **Q.** You didn't know you would get paid at

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1 all as to the risk you were taking in the Ameris
2 action; is that correct?
3 **A.** Uh-huh.
4 **MR. BOWERS:** Is that a "yes"?
5 **THE WITNESS:** Yes.
6 And when we undertook -- when I
7 undertook representation, when I got involved in
8 the case, I didn't know I was going to get paid in
9 the Galt Valley, either. I was not on an hourly
10 basis. I was on a contingency basis.
11 And so when we undertook this case in
12 Berkeley County, there was a risk -- I don't know
13 how to quantify it as we sit here today, but there
14 is -- was a risk that we could have a substantial
15 investment of time and effort and not collect
16 anything.
17 **BY MR. DAVIS:**
18 **Q.** And that risk premium that the
19 attorneys undertook, that is why attorneys are
20 typically entitled to a 33 percent fee award, for
21 undertaking that risk; is that correct?
22 **A.** That's part of the reason. And that's
23 the -- that's the reason I was willing to undertake
24 representation or be associated, was the fact that
25 it was on a contingency basis.

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1 any discovery in this action; is that correct?
2 A. That's correct.
3 Q. Did you take any depositions in the
4 defense of the claims Galt brought against Ameris?
5 A. No.
6 Q. Excuse me.
7 Against Ms. Gibson?
8 A. No.
9 Q. Serve any subpoenas?
10 A. No.
11 Q. Amend any pleadings in defense of the
12 deficiency claims brought against Linda?
13 A. I don't -- I don't know that I -- when
14 you direct those questions to me, I can tell you
15 that I did not independently do any work on any
16 pleading.
17 I may very well have reviewed proposed
18 documents that may have been filed, but I did not
19 personally prepare a pleading.
20 Q. I may have asked this already and I
21 can't remember.
22 Did you review the documents that
23 Mr. Epting represented constituted his fee
24 arrangement with Ms. Gibson?
25 A. I've already answered that question,

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1 but to answer it again, I have not -- did not see
2 any of those documents until this case was brought
3 and discovery was had.
4 Q. Do you know what a reasonable fee would
5 be for an attorney in Berkeley County representing
6 a client in a mortgage foreclosure action, just a
7 range?
8 MR. BOWERS: Object to the form.
9 THE WITNESS: Well, I don't know what
10 anybody else would charge in a routine matter.
11 But, of course, we've already established that this
12 is not a routine matter. So I don't know what that
13 has to do with anything.
14 BY MR. DAVIS:
15 Q. Mr. West, you and Mr. Epting may in
16 your minds have established that this was not a
17 routine matter, but I'm trying to understand why
18 this was not a routine foreclosure matter.
19 A. Well, there's plenty of reasons to
20 that, but here's the primary reason why it's not
21 routine.
22 Rarely in Berkeley County, South
23 Carolina, in my experience in over 33 years, do we
24 have a situation where an individual is personally
25 exposed to a substantial deficiency judgment, in

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1 excess of a million dollars, and that that
2 individual who has assets in Berkeley County has
3 assets which are unencumbered and subject to
4 collection. That would be an exceptional case.
5 And so based on the fact that that's
6 what we have here, among other things, that's what
7 makes this other than routine.
8 Q. Well, at the parties' execution of the
9 fee agreement, if there was a fee agreement, at the
10 parties' execution of a fee agreement, do you
11 believe that their intent or their expectation was
12 that they might be in for a very long, hard fight
13 with Galt Valley in defending the deficiency claim?
14 A. I don't have any idea what the intent
15 of the parties was at the time the agreement was
16 reached. I was not involved.
17 You heard the testimony yesterday.
18 This was a product of multiple conversations and
19 the participation of outside counsel. I accept
20 that as a fair and accurate representation of what
21 happened, but I was not there.
22 Q. Do you think Mr. Epting anticipated in
23 April of 2010 that Linda and he would be engaged in
24 a lengthy battle with Galt to defend the deficiency
25 claim?

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1 A. I think that would have been a
2 reasonable expectation of anybody at that point in
3 time, given the aggressive -- apparent aggressive
4 attitude of the lender at that time, yes.
5 Q. The lender was Ameris Bank at that time
6 in April of 2010, correct?
7 A. Whoever was asserting the claim at that
8 time was asserting it aggressively. So it would
9 have been a reasonable conclusion by the borrower
10 and counsel that they could be in for a long fight,
11 yeah.
12 Q. And Ameris assigned, sold, or otherwise
13 transferred the note/obligation to Galt Valley; is
14 that correct?
15 A. However it happened, the record will
16 reflect. Galt Valley was involved at the time I
17 got involved.
18 Q. Do you think the parties -- that
19 Mr. Epting and Linda, in execution of the purported
20 fee arrangement, anticipated that Ameris Bank might
21 sell the note to a third party?
22 A. I have no way of knowing that.
23 Q. Wouldn't the sale of the note from
24 Ameris Bank to a third party be an intervening
25 event unforeseeable to the parties of execution of

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

LINDA A GIBSON, INDIVIDUALLY, AND IN CAPACITY
AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY
TRUST, AND HERITAGE SEVEN, LLC, AND SEVEN OAKS
APARTMENTS, LLC, AND 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs.

CASE NO. 2013-CP-10-4450

ANDREW K. EPTING, JR. LLC, and, GEORGE J.
KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A.,
and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants.

DEPOSITION OF: GEDNEY M. HOWE, III, ESQUIRE

DATE: SEPTEMBER 11, 2014

TIME: 1:37 PM

LOCATION A. William Roberts, Jr.
& Associates
234 Seven Farms Drive
Charleston, SC 29492

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Laura J. Bash, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

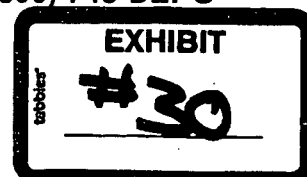
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1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR PLAINTIFF
3 LINDA A GIBSON, et al.:
4 JAMES DAVIS LAW FIRM
5 BY: JAMES DAVIS
6 STEPHANIE E. KEBLER
7 234 Seven Farms Drive, STE 211B
8 Charleston, SC 29492
9 (800) 983-0455
10 jim@jdavispc.com
11 stephanie@jdavispc.com
12
13 ATTORNEYS FOR DEFENDANTS
14 ANDREW K. EPTING, JR. LLC, and, GEORGE
15 J. KEFALOS, P.A. and, GEDNEY M. HOWE,
16 III, P.A., and JOHN H. WEST,
17 ATTORNEY-AT-LAW, LLC:
18 BARNWELL, WHALEY, PATTERSON & HELMS
19 BY: M. DAWES COOKE, JR.
20 288 Meeting Street, Suite 200
21 Charleston, SC 29401
22 (843) 577-7700
23 MDC@barnwell-whaley.com
24
25 ALSO PRESENT:
Linda Gibson
John S. West, Esq.
Andrew K. Epting, Jr., Esq.

(INDEX AT REAR OF TRANSCRIPT)

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1 Q. Do you recall who called you or
2 e-mailed you or contacted you to assist in the
3 matter of Galt v. Gibson?
4 A. I think it was a two-step process.
5 Drew Epting came by to see me one
6 morning to kick a problem around, which was this
7 case, and just to get my -- my thoughts on it.
8 We do that on a regular basis, not just
9 Drew and I. The Charleston Bar generally exchanges
10 ideas and we have a group we work with. So it
11 wasn't unusual.
12 We talked and -- about approaches and
13 about things that could be done. And then at some
14 later date, sometime after that, he called me about
15 possibly becoming involved in the litigation.
16 Q. Do you remember about when that -- or
17 do you remember what month it was when Mr. Epting
18 came to see you originally?
19 A. No.
20 Q. Would it have been in the summer of
21 2010?
22 A. I don't know.
23 Q. Might it have been the spring of 2010?
24 A. Well, "might" is a big -- big word.
25 I really don't know.

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1 GEDNEY M. HOWE, III, ESQ.,
2 being first duly sworn, testified as follows:
3 EXAMINATION
4 BY MR. DAVIS:
5 Q. Good afternoon, Mr. Howe.
6 My name is Jim Davis. I represent
7 Linda Gibson in a fee disagreement in an action
8 that she has asserted in the matter of
9 Gibson v. Attorney Kefalos, Attorney Epting,
10 Attorney West, and yourself.
11 Have you had a chance to read the
12 pleadings --
13 A. No.
14 Q. -- and the claims that have been
15 brought?
16 A. I've had a chance, but I haven't.
17 Q. Mr. Howe, when did you first meet
18 Linda Gibson?
19 A. I think the first time I met her was
20 with you.
21 Q. When was that, if you recall?
22 A. Six months ago, eight months ago.
23 Q. When were you first invited to help in
24 the matter of Galt v. Gibson, if you recall?
25 A. I don't recall.

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1 Q. Okay. Did you have a fee agreement
2 with Ms. Gibson in the Galt v. Gibson matter?
3 A. I had a fee agreement with -- with Drew
4 Epting.
5 Q. Was that a fee share agreement with
6 Mr. Epting?
7 A. I don't know what you classify it as.
8 Q. I'm sorry. I didn't understand.
9 A. I don't know -- I don't know what
10 classification it would have.
11 Q. Did you have a fee agreement with Linda
12 Gibson in the matter of Galt v. Gibson?
13 A. Well, there was a fee agreement with
14 Linda Gibson, which you have heard discussed ad
15 nauseam, which was a series of documents
16 personified in Exhibit Number 3, or at least
17 partially personified in Exhibit Number 3, that it
18 reflected a contingency fee agreement.
19 Q. Are you a party to that contingency fee
20 agreement, if you know?
21 A. I believe I -- I signed that.
22 Q. What agreement did you sign, if you
23 know?
24 A. I think Exhibit Number 3.
25 Q. Would that be the November 18th?

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1 A. I don't know the date. I would have to
2 look at the document.
3 Q. I'm going to hand you a document
4 identified as Exhibit Number 3.
5 Do you recognize that document?
6 A. I recognize my signature on that
7 document. I do not recognize the document. Which
8 is another way of saying I agree I signed it, but
9 don't -- don't remember the circumstances.
10 Q. Have you met Ms. Gibson about six
11 months ago -- strike that, please.
12 You testified you met Ms. Gibson about
13 six months ago; is that correct?
14 A. I said six to eight.
15 Q. Six to eight months ago.
16 And this document is dated
17 November 18th, 2010, this Exhibit 3 document; is
18 that right?
19 A. That's what it says.
20 Q. When you signed this agreement, this
21 fee share or attorney-client contract, as it's so
22 designated, you hadn't yet met Ms. Gibson; is that
23 correct?
24 A. That's correct.
25 Q. Did you ever discuss a fee arrangement

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1 with Ms. Gibson for your services?
2 A. No.
3 Q. Do you know if Drew ever discussed a
4 fee arrangement with Ms. Gibson for your services?
5 A. I understand he did.
6 Q. Now, do you know the nature of the
7 claims in the Ameris Bank v. Linda Gibson action
8 that were asserted against Linda?
9 A. You have to be more specific what you
10 mean.
11 Q. Did you ever read the complaint that
12 Ameris Bank brought against Linda?
13 A. I don't remember one way or the other.
14 Q. You don't recall?
15 A. I don't recall.
16 Q. I'm going to hand you a document. The
17 first page of the document says it's a summons.
18 Do you recognize that document?
19 A. No.
20 Q. Have you ever seen that document
21 before?
22 A. Not that I know of.
23 (PLF. EXH. 13, Summons, was marked for
24 identification.)
25 BY MR. DAVIS:

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1 Q. Well, this document, in the title
2 caption, and I'll read, on the right side, says:
3 Summons, quote "Nonjury Foreclosure," end quote.
4 Did I read that correct?
5 A. Yes, sir.
6 Q. And the document is dated June 15th,
7 2010, entered in the court, or filed by Mary P.
8 Brown, Clerk of Court.
9 I'll represent to you that this is the
10 Summons and Complaint that was filed in the
11 foreclosure action.
12 Would you agree with me, that this was
13 the Summons and Complaint that was filed in the
14 foreclosure action?
15 A. I don't know.
16 Q. You don't know if this is the document
17 that was filed in the summons and foreclosure
18 action?
19 A. Do not know.
20 Q. Did you collect a fee in this
21 foreclosure action?
22 A. Yes, sir.
23 Q. How much was your fee?
24 A. 90-some thousand dollars.
25 Q. What did you do, Mr. Howe, to earn

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1 90-some-odd thousand dollars in the matter of
2 Galt v. Gibson?
3 A. I agreed to join a team of lawyers
4 representing this lady to use our best efforts to
5 extricate her from a very bad situation that she
6 put herself in, and use our best efforts to save
7 her from financial ruin. And I would now add to
8 that, successfully.
9 Q. We know the result, Mr. Howe.
10 A. Doesn't mean I can't tout a little bit.
11 Q. I'm sorry?
12 A. Just because you know it, doesn't mean
13 I can't tout a little bit.
14 Q. We know the result, Mr. Howe.
15 The question is: What did you do,
16 besides join a team of competent attorneys, to
17 assist extricating Ms. Gibson from the claims that
18 Ameris brought against her?
19 A. Well, Drew put together a team of
20 lawyers that he thought would each bring something
21 to the table, so as he would have a -- so they
22 would be a formidable force.
23 He was doing the best he could to bring
24 about a good result for this lady and enlisted my
25 help. I considered it and agreed to participate.

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1 And when I agreed to participate, I gave my best
2 efforts. I don't coin to say I gave a hundred
3 percent, but I tried to be available, be helpful,
4 give advice, and participate in the litigation
5 process.
6 **Q. Well, I understand that Drew put**
7 **together a team and I understand the strategy of**
8 **the team to be a formidable defense to the claims.**
9 **And I understand you to say you've made yourself**
10 **available to the team, but other than your general**
11 **availability to the defense team, did you do**
12 **anything else?**
13 A. Well, I mean, I think I was a part of
14 many strategy sessions, some on the phone --
15 majority on the phone, probably. I helped steer
16 the litigation. And based on my experience, I
17 think it got steered in the right direction.
18 **Q. You were here for Mr. West's deposition**
19 **this morning, were you not?**
20 A. Yep.
21 **Q. Did you hear Mr. West when he testified**
22 **that he called on you to assist him with the**
23 **preparation of the appointment of receiver hearing?**
24 A. Yes.
25 **Q. And did you assist Mr. West with the**

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1 **preparation of the appointment of receiver hearing?**
2 A. Yes.
3 **Q. And what did you do to assist Mr. West**
4 **with the preparation of the hearing?**
5 A. My best recollection is there were a
6 series of strategy decisions to be made, something
7 as simple as -- and I would admit that this sounds
8 simplistic, but in hindsight and -- not
9 hindsight -- very important -- the question was,
10 was Drew going to take the lead or was John West
11 going to take the lead, because John was a local
12 boy, and that's always a big question with local
13 counsel.
14 You know, sometimes you're local
15 counsel for a New York firm, and they want to talk
16 all the time, and nobody from the south wants to
17 hear from them. So you -- the hardest thing you
18 have to do is convince your own people not to try
19 take the lead in the case.
20 Drew is not that kind of guy. Drew was
21 the natural person to take the lead, but also
22 wanted to make the right call on who carried what
23 share of the load at that point. And there were
24 phone calls and conversations and many, many
25 discussions about how to best present this to Butch

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1 Watson, Judge Watson.
2 **Q. Were most of these telephone**
3 **conversations that you had with Mr. Epting, was**
4 **Mr. Kefalos and Mr. West on the calls as well, if**
5 **you know?**
6 A. It was mostly Mr. West, because knowing
7 Drew -- Drew's position is, on something like that,
8 he wants to fill whatever is the right role for him
9 to fill. He does not take sort of a lead, big-shot
10 role, except when it's important.
11 So the idea was how could you give a
12 local -- as much local color through John West, and
13 yet have Drew carry the load in his argument,
14 because it was a novel issue, a creative issue, and
15 it sort of sprung from his head and he was the one
16 that needed to advocate it.
17 **Q. What was the novel issue in the**
18 **foreclosure matter?**
19 A. Too novel for me to remember. But it
20 was a variation on a deed in lieu of foreclosure
21 that was designed to put some pressure and risk
22 back on the bank and to take all the -- all the
23 pressure off of this lady and put some of it back
24 on the bank to position the case of the bank to
25 want to settle the case.

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1 And it was well-received by Judge
2 Watson and, as Mr. West pointed out, who sits in
3 equity, and that was the pitch, and one of the
4 discussions was how do you play this, how do you
5 play it without overplaying it. And that was
6 successfully done by Drew, and Judge Watson went
7 for it, and it became the genesis of a terrific
8 result in this case.
9 **Q. Is it true that Judge Watson went for**
10 **this novel issue of law with respect to Galt?**
11 Let me rephrase the question.
12 **What exactly was this novel issue of**
13 **law, if you know?**
14 A. I just explained to you my limited
15 knowledge of that.
16 **Q. Did you hear Mr. West refer to a novel**
17 **issue of law as a deed in mitigation?**
18 A. Yeah, I heard that.
19 **Q. And you were here yesterday for**
20 **Mr. Epting's deposition, as well, in the morning;**
21 **is that correct?**
22 A. Yeah. And I don't think y'all ended
23 that in the morning, but...
24 **Q. Do you recall Mr. Epting ever talking**
25 **to you about this novel area of law, this deed in**

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1 Q. Do you think \$566,000 is a lot of
2 money?
3 A. Depends on what you're buying for it.
4 What she bought -- it was a very reasonable amount
5 for what she bought.
6 (Cell phone interruption.)
7 MR. EPTING: You learn a lot about
8 people from their cell phone music. I never knew
9 you were such a hip fellow.
10 MR. COOKE: And that phone is a
11 collector's item, too.
12 THE WITNESS: Don't you worry about my
13 phone. My phone is just fine. The fact that the
14 Smithsonian wants it...
15 MR. DAVIS: I have no further
16 questions, Mr. Howe. Thank you for your time.
17 Dawes, do you have any questions?
18 MR. COOKE: No questions.
19 Thank you.
20 MR. DAVIS: I'm concluding my exam.
21 (The deposition concluded at 2:30 p.m.)
22
23
24
25

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SIGNATURE OF DEPONENT

DEPONENT: GEDNEY M. HOWE, III, ESQUIRE
DEPOSITION DATE: SEPTEMBER 11, 2014
REPORTER: LAURA J. BASH
CASE CAPTION: GIBSON vs. EPTING

(Please return both Signature of Deponent pages)

I, the undersigned, GEDNEY M. HOWE, III,
ESQUIRE, do hereby certify that I have read the
foregoing deposition and find it to be a true and
accurate transcription of my testimony, with the
following corrections, if any:

PAGE	LINE	CHANGE	REASON
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
LINDA A GIBSON, individually, and in capacity
as TRUSTEE of THE PAUL WILLIAM GIBSON FAMILY
TRUST, and, HERITAGE SEVEN, LLC and, SEVEN OAKS
APARTMENTS, LLC, and, 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs. CASE NO. 2013-CP-10-4450

ANDREW K. EPTING, JR. LLC, and, GEORGE J.
KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A.,
and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants.

DEPOSITION OF: PAUL F. TECKLENBURG, ESQUIRE

DATE: November 6, 2013

TIME: 10:12 PM

LOCATION: A. William Roberts, Jr.
& Associates
234 Seven Farms Drive
Charleston, SC 29492

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Laura J. Bash, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
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Charleston, SC Hilton Head, SC Myrtle Beach, SC
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(803) 731-5224 (864) 234-7030 (704) 573-3919

1 PAUL F. TECKLENBURG, ESQUIRE,
2 being first duly sworn, testified as follows:
3 MR. DAVIS: Okay. Just a couple
4 preliminaries, before we get started. We can agree
5 to -- Carl, if it's agreeable with you, on the
6 stipulations, just objections -- substantive
7 objections. Objections as to form, we can waive
8 for the time being.

9 And I would like to read and sign and
10 certify.

11 MR. PIERCE: That's the witness's
12 decision, obviously, but we'll wait and see. You
13 don't get to make that choice, he gets to.

14 MR. DAVIS: Well, understood. But just
15 trying to get an agreement to that, if we can.

16 MR. PIERCE: We'll decide that later.

17 And just so the record is clear -- I probably need
18 to put this on the record, and have you affirm it.

19 There is a signed waiver of the attorney-client
20 privilege, executed as of today, by

21 Ms. Linda Gibson as to the Linda Gibson,
22 individually, and as trustee of Paul William Gibson
23 Family Trust, Heritage Seven, LLC, Seven Oaks
24 Apartments, and 3205 Palm Boulevard, LLC, versus
25 Andrew Epting, George Kefalos, Gedney Howe,

1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR PLAINTIFF
3 LINDA A GIBSON, et al.:

4 JAMES DAVIS LAW FIRM
5 BY: JAMES DAVIS
6 234 Seven Farms Drive, Suite 111-B
7 Charleston, SC 29492
(800) 983-0455
jim@jdvaispc.com

8 ATTORNEYS FOR DEFENDANTS
9 ANDREW K. EPTING, JR. LLC, and, GEORGE
10 J. KEFALOS, P.A. and, GEDNEY M. HOWE,
11 III, P.A., and JOHN H. WEST,
12 ATTORNEY-AT-LAW, LLC:

13 BARNWELL, WHALEY, PATTERSON & HELMS
14 BY: M. DAWES COOKE, JR.
15 JEREMY E. BOWERS
16 288 Meeting Street, Suite 200
17 Charleston, SC 29401
18 (843) 577-7700
19 MDC@barnwell-whaley.com
20 jbowers@barnwell-whaley.com

21 ATTORNEYS FOR PAUL F. TECKLENBURG, ESQUIRE:

22 PIERCE, HERNS, SLOAN & MCLEOD
23 BY: CARL E. PIERCE, II
24 321 East Bay Street
25 The Blake House
Charleston, SC 29401
(843) 722-7733
Carl.pierce@phsm.net

ALSO PRESENT:
Linda Gibson

(INDEX AT REAR OF TRANSCRIPT).

1 John West.

2 You, as counselor for Ms. Gibson,
3 have authorized her to sign a letter waiving that
4 so that Mr. Tecklenburg can answer fully and fairly
5 the questions that you pose to him, and counsel for
6 the defendants in this action, as to the matters in
7 which you represented Ms. Gibson on with regard
8 to -- you know, as he'll define today.

9 Is that fair enough?

10 MR. DAVIS: That's fair enough.

11 MR. PIERCE: But any subsequent matters
12 involving the purchase of the -- the Ports
13 Authority and Hidden Cove Boat & Yacht Sales
14 matters, we're not going to waive -- you're not
15 going to waive privilege, unless it comes up during
16 the day. Right?

17 MR. DAVIS: Agreed.

18 MR. PIERCE: So we just want to make
19 sure that's on the record.

20 We all agree to that. You understand,
21 Linda?

22 MS. GIBSON: Yes.

23 MR. DAVIS: That's fair enough. And
24 it's understood that -- my understanding that
25 privilege is waived to the extent of the parties

EXHIBIT

1 (Pages 1 to 4)

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tabb

#31

1 A. I would agree with that.
 2 Q. Now I might use the term today,
 3 "holder in due course." And by this term, I mean a
 4 person entitled to enforce an instrument against a
 5 person obligated to enforce an instrument, as
 6 defined by the Uniform Commercial Code Article 3?

7 A. You know, I haven't looked at holder
 8 and due course stuff and those definitions in a
 9 while. But basically, it's the person who holds
 10 the commercial paper, and is entitled to enforce
 11 it.

12 Q. I'll accept that. I'll agree with your
 13 definition, for the purposes of today.

14 And conversely, I might use the term
 15 "non-holder in due course." And by this I mean, a
 16 person entitled to enforce an instrument, but who
 17 acquires a negotiable instrument subject to certain
 18 defenses, real or personal defenses.

19 A. What was the definition again?

20 Q. This is --

21 A. What was the term you're trying to
 22 define?

23 Q. I'm just, for the purposes of today,
 24 trying to distinguish between a holder in due
 25 course and a non-holder in due course.

1 A. Non-holder?

2 Q. Correct.

3 A. Okay. And what's your definition,
 4 again?

5 Q. And a definition of a non-holder in due
 6 course is a person entitled to enforce an
 7 instrument, but who requires the instrument, the
 8 note, for example, subject to personal and real
 9 defenses under the UCC.

10 A. I'm not familiar with that term or
 11 concept, honestly. I would have to think through
 12 that, and probably open Article 2, so...

13 Q. So when we get to these terms, then, if
 14 you have any questions while we're going through
 15 the exam today, please feel free to say, hey, I
 16 don't understand --

17 A. Yeah. If you use the term
 18 "non-holder," you can go ahead and assume I don't
 19 understand. So...

20 Q. Now, we have some purported agreements,
 21 that is, fee agreements, by and between the lawyers
 22 and Ms. Gibson. And I'm going to refer to these
 23 purported fee agreements as an April 7th agreement.
 24 And by the April 7th agreement -- and let me just
 25 pull it out, so we can make sure what I'm saying.

1 MR. PIERCE: If you are going to show
 2 an agreement, you might want to mark it and ask it
 3 by exhibit number, so we'll know exactly
 4 what -- the record is clear what we're talking
 5 about.

6 Maybe I can help you. Which one you
 7 looking for?

8 MR. DAVIS: The April 7th agreement
 9 that was signed. Linda has a copy of it there, and
 10 I have a copy of it here.

11 I would like to introduce this first
 12 exhibit. And I'll define this exhibit as the
 13 April 7th agreement.

14 (PLF. EXH. A, April 7, 2010 Epting to
 15 Gibson Letter/Agreement, was marked for
 16 identification.)

17 THE WITNESS: My understanding is, is
 18 that this agreement constitutes two pages, which I
 19 don't see the second page. An e-mail goes with it.

20 BY MR. DAVIS:

21 Q. And again, for the purposes of going
 22 through this this morning, I'm just going to refer
 23 to the April 7th agreement. When I do, I'm
 24 referring to the agreement that was dated April 7th
 25 and was executed on April 27th, by Ms. Gibson, with

1 respect to the fee arrangement in this matter.

2 MR. PIERCE: Did you hear him when he
 3 said there's another page to it?

4 THE WITNESS: There's another page, so
 5 I don't agree that's the April 7th agreement.

6 (PLF. EXH. B, 2/4/2010, Epting Office
 7 E-mail, was marked for identification.)

8 BY MR. DAVIS:

9 Q. I'm going to introduce another document
 10 at this time. This is an e-mail dated February 4th
 11 of 2010, from Mr. Epting, or more specifically,
 12 Epting's office. The e-mail is directed to
 13 papa@btitele.com (sic). And it's copied to
 14 George Kefalos, Andrew Epting, Sheri Towne and
 15 Oana Johnson. I hope I'm pronouncing that
 16 correctly.

17 Do you recognize this e-mail?

18 A. I do.

19 Q. And does this e-mail constitute the
 20 second page, in your opinion --

21 A. That's my understanding.

22 Q. -- of the April 7th agreement?

23 A. Correct. All right. So I identified
 24 Exhibit A and B as constituting one agreement, is
 25 my understanding.

1 period we're talking about?

2 A. I believe the time records show I
3 talked to them in November of 2010.

4 Q. With respect to this fee
5 arrangement -- and when I say "fee arrangement,"
6 I'm referring to the reverse -- \$566,000 reverse
7 fee, the subject of the present litigation in
8 Charleston County.

9 With respect to this fee arrangement,
10 when did you first come to learn that Ms. Gibson
11 was seeking an attorney opinion with respect to the
12 reasonableness of the fee and/or the extent of the
13 mortgages?

14 A. She called me in late October 2010.
15 It's reflected in my time records. She advised me
16 that she was in litigation, which I don't think I
17 was aware of, and that she was asked to contact a
18 private lawyer, independent lawyer, because her
19 lawyers were seeking to enter, essentially, a
20 transaction with her, a mortgage agreement. And
21 that's when it happened, late October 2010.

22 Q. And do you recall if Ms. Gibson
23 contacted you first, or did one of the lawyers?

24 A. She contacted me first.

25 (PLF. EXH. E, 10/29/2010 Kefalos

1 A. I received a phone call from her
2 and -- if I had my time records I could give you
3 the sequence of events -- but I received a phone
4 call from her. And then I met with Esther Lapin,
5 my assistant, to arrange a conference call to
6 discuss the matter with Mr. Epting.

7 Q. When you received an e-mail from
8 Mr. Kefalos on the 29th, then your reply was to
9 contact Mr. Epting. Is that correct?

10 A. No. I received a phone call from
11 Ms. Gibson, and I met with my assistant, Ms. Lapin
12 and --

13 Q. Here you go. I'm handing you a
14 document entitled: Tecklenburg & Jenkins. It's an
15 invoice document dated November 19th.

16 A. Yeah.

17 Q. And there's actually two exhibits -- or
18 excuse me -- there's two statements, one dated
19 November 19th, and the second one attached to the
20 same exhibit, dated January 27, of 2011.

21 A. That's correct. I received a phone
22 call from her on October 25th. And I, then, met
23 with my paralegal/assistant, Esther Lapin, to
24 basically help set up -- let's see --

25 Actually, my associate, Joe Jackman,

1 E-mail, Bates TLF_000007, was marked for
2 identification.)

3 BY MR. DAVIS:

4 Q. I'm going to introduce an exhibit.
5 It's an e-mail dated Friday October 29th, 2010 at
6 9:46 a.m. It's from Mr. Kefalos, and it's directed
7 to Annette Mixson and Mr. Tecklenburg.

8 Mr. Tecklenburg, do you recognize that
9 e-mail?

10 A. I do.

11 Q. And will you read the first sentence of
12 that e-mail?

13 A. "I'm writing to explain that I need a
14 few minutes of your time to review a fee
15 arrangement I have with Linda Gibson."

16 Q. And this coming from Mr. Kefalos. This
17 is Mr. Kefalos writing to you that he would like a
18 few minutes of your time to review a fee
19 arrangement that he has with Linda Gibson. Is that
20 correct?

21 A. That's what he wrote.

22 Q. And is it your testimony that you met
23 with Ms. Gibson, or you received a call from
24 Ms. Gibson, prior to this e-mail, or subsequent, if
25 you recall?

1 met with Esther Lapin, and he held the initial call
2 with Drew Epting. And then I had a subsequent call
3 with him on October 29th -- with Mr. Epting.
4 Mr. Jackman is no longer with me, he's in Kansas.

5 MR. DAVIS: Like to introduce this as
6 an exhibit as well.

7 (PLF. EXH. F, 11/19/2010, Tecklenburg &
8 Jenkins, LLC, Invoice #4649, was marked for
9 identification.)

10 THE WITNESS: All right. Question on
11 the table?

12 BY MR. DAVIS:

13 Q. So Mr. Tecklenburg, on October 25th,
14 it's your testimony you received a telephone call
15 from Ms. Gibson, appears you spoke .3. And it's
16 your testimony that this telephone call was with
17 respect to retaining your services for assessing
18 the reasonableness of the fee, the \$566,000 fee.

19 Is that your recollection?

20 MR. PIERCE: Object to the form.

21 THE WITNESS: The purpose -- no. The
22 purpose was to assist her in engaging in a
23 transaction with a lawyer. And it morphed a little
24 wider than that, because I -- in order for me to
25 give advice on that issue of entering a transaction

1 with a lawyer, I had to get an understanding of her
2 litigation situation. And as a result, I advised
3 her, very broadly, on where she was as far as her
4 debt situation, which was very upsidedown; where
5 she was trying to go to with her counsel, which was
6 to reduce that debt.

7 And so it started out as, will you help
8 me with a transaction with my lawyers? But it
9 expanded, for me, to -- able to give advice on
10 that, to give her general advice about where she
11 was headed and how she was going to get there, and
12 whether it was a good course of action for her.
13 And anyhow, so it was -- it was not really the
14 reasonableness of a fee. Although, that did come
15 into play.

16 BY MR. DAVIS:

17 Q. My question is: Did you first hear
18 from Ms. Gibson or did you first hear from
19 Mr. Epting or Mr. Kefalos?

20 A. I heard from Ms. Gibson on
21 October 25th.

22 Q. And that is -- is it your testimony
23 that's the first time that you were -- became aware
24 of her needing --

25 A. That's the best I can recall, yeah. I

1 don't have anything in my file that would indicate
2 otherwise, that there was anything prior to
3 October 25th.

4 Q. Can you think of any reason why
5 Mr. Kefalos, then, four days later, would send an
6 e-mail requesting that he needed a few minutes of
7 your time to review a fee arrangement with
8 Ms. Gibson?

9 A. Well, by that time, his -- and I'll
10 call him his partner -- but his colleague,
11 Mr. Epting, had already talked to my office, so
12 his -- his use of this sentence doesn't really make
13 a lot of sense. Because I'd already talked to
14 Linda Gibson, and my associate had already talked
15 to Drew Epting, so we were already two
16 communications into this representation by the time
17 this e-mail got written. So I don't know why he
18 wrote it this way. I really don't. You'll have to
19 ask Mr. Kefalos.

20 Q. Well, in this e-mail -- and again, I'm
21 looking at the October 29th e-mail, at the bottom,
22 in the sixth paragraph. In the last sentence,
23 Mr. Kefalos writes, and I quote: There is some
24 urgency to this as we would like to put this
25 mortgage in place before we finalize the settlement

1 with First Citizens. First Citizens is likely to
2 want a mortgage on the same property.

3 So it appears -- strike, please.

4 When you first spoke with Mr. Epting,
5 did Mr. Epting express to you some urgency with
6 respect to getting this fee arrangement completed
7 with Ms. Gibson?

8 A. I don't know if it was -- well, it
9 probably was in the first conversation. Because
10 the first conversation I had with him was
11 October 29th, and one of the objectives was to
12 hinder First Citizens' position vis-a-vis
13 Ms. Gibson's security.

14 Q. Do you know who represented Ms. Gibson
15 with respect to the First Citizens foreclosure?

16 A. Drew Epting.

17 Q. Did Ms. Gibson have any other counsel
18 representing her with respect to the First Citizens
19 pending foreclosure, if you know?

20 A. Not that I'm aware of.

21 Q. Did Mr. Epting talk to you about the
22 First Citizens' pending foreclosure, when he first
23 contacted you in late October?

24 A. He did.

25 Q. What did he say, if you recall?

1 A. He said there wasn't much he could do,
2 other than to get the deficiency down as low as
3 possible and to negotiate the best deficiency note
4 he could. She was, essentially, going to lose the
5 properties. She had no defense to that action.

6 Q. Do you recall the value of the
7 property? And by "the property," I think we're
8 referring to the 3205 Isle of Palms Boulevard
9 property.

10 A. I do not. I do know, however, that at
11 the time they were trying to negotiate a deficiency
12 note with First Citizens between 4 and \$500,000. I
13 seem to recall that.

14 Q. Do you know the form of that
15 negotiation for the deficiency?

16 A. I do not. I did not review any of
17 those documents.

18 Q. Were you aware there was a forbearance
19 agreement executed between First Citizens Bank and
20 Ms. Gibson, with respect to limiting the purported
21 deficiency that First Citizens was claiming against
22 Ms. Gibson to the extent of \$450,000?

23 A. Again, I haven't seen any First
24 Citizens' agreements. All I know is, is that at
25 the end of the day, the hypothetical I was working

1 with was, was it was likely the amount she would
2 owe after foreclosure would be 450,000?

3 Q. After foreclosure of the 3205 Palm
4 Boulevard property. Is that correct?

5 A. Foreclosure, or deed in lieu.

6 Q. So that 450,000, you
7 considered -- strike, please.

8 Did you consider that \$450,000 to be a
9 liability to Ms. Gibson, at the time that you were
10 counseling her in the first week of November?

11 A. I did. It was one of her many
12 liabilities.

13 Q. And when you say "many liabilities,"
14 what other liabilities did she have at the time?

15 A. Her primary liability is she owed
16 Ameris \$3 million. Which was growing daily.

17 Q. And the \$3 million that Ms. Gibson owed
18 to Ameris, I'm assuming, and correct me if I'm
19 wrong, please, that's arising out of the note,
20 mortgage and guaranty documents that she executed
21 back in 2007 to acquire the Otranto Apartment. Is
22 that correct?

23 A. I don't remember the date, but it dealt
24 with the apartment building and the cell tower.

25 Q. Do you know what the value of the

1 apartment building was?

2 A. That was an issue of discussion. And
3 something that, fortunately, I was able to discuss
4 favorably, I think, in favor of Ms. Gibson. At one
5 point it was contended it was only worth \$700,000,
6 but I convinced her counsel that, in my opinion,
7 based upon bank correspondence, it was worth more.
8 And was -- more in the range of a million dollars.
9 And fortunately, for her, that's the amount they
10 ultimately accepted as the value.

11 Q. Who's "they?"

12 A. Her counsel. I think you referred to
13 them as "the lawyers."

14 Q. The lawyers.

15 A. Yeah.

16 Q. So is it your testimony that the
17 apartment is worth approximately \$1 million?

18 A. According to -- the bank was willing to
19 assign that value to it, in their negotiations.

20 Q. Which bank, if you recall?

21 A. You know, there's a letter in my file
22 from a Columbia law firm, and that law firm sets
23 forth that value. I think it's the Callison Law
24 Firm. And --

25 Q. Did you produce that letter --

1 A. I did.

2 Q. -- in discovery today?

3 A. I did, yeah.

4 Q. Do you have a copy of it?

5 A. You need me to find it?

6 MR. BOWERS: You want the number? It
7 starts on 171.

8 THE WITNESS: Thank you. That's it.
9 BY MR. DAVIS:

10 Q. Did the Callison Law Firm ultimately
11 accept the \$1 million number?

12 A. No. They offered her a very bad deal.

13 And it sounded like she ended up with a much better
14 deal. The deal that they were offering, about a
15 week before my involvement, or two weeks, was that
16 they would take a deed in lieu on the two
17 properties and her execute them a note for a
18 million-and-a-half dollars. That was terrible.

19 Q. You're referring to the October 25th
20 offer from --

21 A. The Callison Law Firm.

22 Q. -- the Callison Law Firm, who was
23 representing Galt Valley, at the time.

24 A. That's correct.

25 Q. So just for clarity. On

1 October 25th -- is it your testimony that on
2 October 25th, the Callison Law Firm, or Galt
3 Valley, by way of the Callison Law Firm, made an
4 offer to Ms. Gibson for \$1.5 million, together with
5 a deed in lieu of the apartments, in full
6 settlement and compromise of the liability due and
7 owing?

8 A. You know, I think the letter speaks for
9 itself. And you'll have to read it, it's
10 Bates-labeled TLF 171 and 172.

11 But the way I read it is, is that she
12 would be executing deeds in reduction for both
13 properties, in favor of Galt. And she would be
14 signing a note for 1.5 million. Which, you know,
15 my understanding, she achieved a much better deal
16 than that.

17 Q. So a few minutes ago you testified the
18 apartments were worth \$3 million -- excuse me.
19 Strike, please.

20 A few minutes ago you testified that
21 the liability in the apartments that Linda owed was
22 \$3 million. Is that correct? Approximately.

23 A. She -- in that same letter I referred
24 to, actually, summarizes the current balance due as
25 of October 2010, and it's right at 3 million. It

1 Q. Would you consider yourself an expert
2 in understanding contract law with respect to fee
3 agreements?

4 MR. PIERCE: Object to the form.

5 THE WITNESS: It's South Carolina and
6 we don't use the word "expert." But I certainly
7 have a good understanding of contract law.

8 BY MR. DAVIS:

9 Q. And when Ms. Gibson came to see you
10 with respect to this fee arrangement, and
11 specifically the November 18th fee contract, did
12 you have the occasion to examine Mr. Epting's file
13 and Mr. Kefalos's file and Mr. Howe's file and/or
14 Mr. West's file?

15 A. Well, keep in mind, Ms. Gibson already
16 had a contract. I mean, she had the April -- what
17 was it -- April 7th agreement. So for better or
18 for worse, she was locked and loaded with her
19 counsel. She had an agreement in place, she had
20 signed the agreement.

21 Q. The agreement --

22 A. The April 7 agreement. So what she
23 agreed to was already in writing and signed by her.
24 Really, all the November 18th document did was to
25 restate that agreement. That's what I perceived it

1 to be.

2 And the reasoning behind it was, is
3 that I think rather than having a letter attached
4 to an e-mail, it was better to formalize the
5 agreement, so that in -- so that, essentially, a
6 mortgage needs to have a nice agreement with it,
7 not an e-mail or a letter. So the November 18
8 agreement was intended to essentially restate what
9 had already been agreed to.

10 Q. Is it your testimony that there's one
11 fee agreement in this Ameris/Galt litigation with
12 respect to Ms. Gibson, and that fee agreement is
13 the April 7th agreement?

14 A. Well, the first agreement is Exhibit B,
15 which is February 4. It apparently was reached
16 between Drew Epting and Mr. Papa. And that
17 agreement was apparently modified on
18 April -- signed by Ms. Gibson on April 26th. It's
19 dated April 7th.

20 So there was a February agreement,
21 modified by the April agreement. And in my
22 opinion, all the November agreement was doing was
23 restating what had already been agreed to in the
24 Ameris litigation.

25 Q. Why would it be necessary to restate

1 the agreement that's already been agreed to?

2 A. Honestly, because I thought that if
3 you're going to have a mortgage that is tied to a
4 particular piece of litigation, you really need to
5 have a very -- a clear agreement as to that
6 litigation, as well. And the agreement that she
7 signed, or was committed to in February, basically
8 said that one-third -- well, it depends on -- I
9 don't have it in front of me -- but basically, that
10 there would be a reverse contingency on any
11 savings. And that contingency amount varied,
12 depending upon whether the case was in trial or on
13 appeal.

14 Apparently, Ms. Gibson also had
15 negotiated, or it was offered to her, that there
16 would be a 60-day hourly period, where she would
17 only get charged an hourly. Apparently, the case
18 didn't resolve in that 60 days, so it became a
19 contingency fee case.

20 Q. So is it your testimony the
21 February 4th e-mail is, in fact, an agreement
22 between Ms. Gibson and Mr. Epting?

23 A. I would think so, because Mr. Papa was
24 her counsel at the time.

25 Q. Do you see Ms. Gibson's signature on

1 this February 4th e-mail?

2 A. You know, I don't know. But I do see
3 an agent for her --

4 Q. Do you see that Ms. Gibson --

5 A. -- proposing it.

6 MR. PIERCE: Let him finish. You have
7 been doing pretty good at that.

8 THE WITNESS: No. There's an agent
9 that is, essentially, hiring Mr. Epting. And I
10 think Mr. Papa can bind Ms. Gibson.

11 BY MR. DAVIS:

12 Q. It's your testimony that Mr. Papa was
13 acting in his capacity as Ms. Gibson's agent for
14 purposes of negotiating this fee agreement with
15 Mr. Epting and his colleagues?

16 A. I -- I think that's a reasonable
17 inference from what I reviewed. If that didn't do
18 it, the April 7th agreement is the icing on the
19 cake, because it incorporates the February e-mail.

20 Q. Would it surprise you to know that
21 Ms. Gibson feels that she didn't retain Mr. Papa to
22 represent her interest with respect to negotiating
23 a fee agreement with her attorneys?

24 A. You know, I haven't talked to
25 Ms. Gibson about that.

1 Q. Would it be typical, in South Carolina
2 practice, to hire an attorney to negotiate the
3 attorney fee with another attorney, who is going to
4 represent the underlying merits of the action?

5 A. It is common for attorneys to associate
6 co-counsel. And the waters get a little murky
7 after that point, as to what can be agreed to.

8 Q. Do you see on this February 4th e-mail,
9 that Ms. Gibson was copied on this e-mail?

10 A. I do not see her copied, no. Again, I
11 do think it's just water under the bridge, because
12 she did sign an April agreement that incorporates
13 it.

14 Q. It's water under the bridge but for one
15 thing, my client has a \$566,000 liability now that
16 she owes her attorneys and they're looking to get
17 paid.

18 MR. PIERCE: Object to the form.

19 BY MR. DAVIS:

20 Q. On this e-mail dated
21 February 4th, 2010, do you see the term "reverse"?
22 Or the word "reverse," or "reverse fee," or
23 "reverse contingency fee," anywhere on that e-mail?

24 A. What I see, it says that the
25 percentages will apply for any recovery or any

1 savings. And they put there, basically, defined as
2 a settlement at less than the amount due to Ameris.

3 Q. And you interpreted that -- strike,
4 please.

5 Mr. Tecklenburg, when you read that
6 sentence that you just read into the record, did
7 you interpret that to mean a reverse contingency
8 fee?

9 A. I did.

10 Q. When you met with Ms. Gibson in
11 November, did you discuss with her that you felt
12 that this was a reverse contingency fee, based on
13 this February 4th e-mail, if you recall?

14 A. I may have not used the word "reverse,"
15 because that's something that, you know, us lawyers
16 may talk about. But I did advise her she had
17 signed the April letter, that it incorporated,
18 essentially, a contingency agreement on savings and
19 that these lawyers were saving her money. So I
20 advised her she was bound to these attorneys.

21 Q. Now with respect to the April 7th
22 agreement, you mentioned -- if you would turn your
23 attention to the April 7th agreement.

24 Do you see Ms. Gibson's signature on
25 the bottom of the agreement?

1 A. I do.

2 Q. And do you see in the body of the
3 agreement the words "reverse" or "reverse
4 contingency fee"?

5 A. Do I see what?

6 Q. Do you see the words "reverse" -- the
7 word "reverse," or "reverse fee" or "reverse
8 contingency fee," in the body of this April 7th
9 letter?

10 A. Let me take a moment and look at it.

11 MR. DAVIS: We'll take a break in a
12 minute. By the way, thank you everyone for your
13 patience.

14 THE WITNESS: I do not see the word
15 "reverse." With respect to contingency agreement,
16 it refers back to the February 4th letter, which I
17 think, as I've already said, is pretty clear
18 there's a contingency fee arrangement with respect
19 to any savings.

20 BY MR. DAVIS:

21 Q. Do you think that was clear to
22 Ms. Gibson, that there was a reverse contingency
23 fee with respect to any savings?

24 A. Absolutely. I can show it on my notes,
25 that I discussed with her on November 8.

1 Q. Well, I can see that maybe on
2 November 8th she may have begun to understand. But
3 back on February 4th, and then again on April 7th,
4 do you see anything in these two documents that
5 would give Ms. Gibson a sense that she would owe
6 both a reverse fee, or straight fee, or direct fee,
7 as you call it, with respect to the contingency?

8 For clarity --

9 MR. PIERCE: You want to rephrase that?
10 He may have lost you.

11 MR. DAVIS: I think I lost myself.

12 BY MR. DAVIS:

13 Q. Let me be clear. When you look at the
14 April 4th e-mail, which appears to be
15 incorporated --

16 MR. PIERCE: February.

17 MR. DAVIS: Thank you.

18 BY MR. DAVIS:

19 Q. When you look at the February 4th
20 e-mail, which appears to be incorporated into the
21 April 7th agreement, do you see any language, in
22 your opinion, that would give Ms. Gibson an
23 understanding that she would be paying what, in
24 effect, is two fees; a straight fee for prosecution
25 of the lender claim, and a reverse fee for the

1 defense of the deficiency claim?

2 A. I do. I mean, I think that the
3 language saying that the same percentages will
4 apply for any recovery or any savings does that.
5 And to me, to a person that, you know, understands
6 the English language, and certainly Linda does,
7 that that would alert you that savings or recovery
8 are -- result in a fee.

9 Q. Okay. And you feel that to be the
10 case, even though neither the February 4th e-mail
11 or the April 7th agreement states reverse fee or
12 deficiency fee.

13 A. Well, in the February 4 e-mail, it
14 does -- it essentially refers to a deficiency,
15 because it talks about less than the amount due to
16 Ameris. So it's dealing with the deficiency
17 recovery that Ameris is seeking.

18 I really do not think that using the
19 word "reverse" is magical to me. And as a matter
20 of fact, it may be better not even using that word,
21 if a layman doesn't understand it.

22 Q. Did you contact Mr. Papa with respect
23 to the February 4th e-mail and the April 7th
24 agreement when you -- in November of 2010?

25 A. I don't recall talking to Mr. Papa.

1 Q. If it's your testimony that Mr. Papa
2 was acting in his capacity as an agent for Linda
3 with respect to representing or negotiating Linda's
4 arrangement with the four attorneys, why didn't you
5 speak with Mr. Papa?

6 A. Because, again, the February 4
7 agreement is of little consequence, since it was
8 incorporated in a -- essentially, amended
9 agreement, in my opinion. But in your -- way your
10 questioning goes, it could be the first agreement.
11 It doesn't really matter.

12 When she signed on April 26, she's
13 agreeing to pay a contingency on any recovery or
14 any savings. So it really didn't matter what
15 Mr. Papa -- what his frame of mind was in February,
16 when in April, Ms. Gibson is signing up for it.

17 Q. Is it fair to say, then, that your
18 testimony is that in November, when Ms. Gibson came
19 to see you, she already had a fee agreement with
20 these attorneys?

21 A. I believe she did.

22 Q. In the scope of that fee agreement
23 would it be fair to say you believe it to be that
24 she owed the attorneys both a straight fee as to
25 the prosecution of the lender claim of some

1 percentage, and a reverse fee as to the deficiency
2 claim of some percentage?

3 A. The reverse -- you know, that's -- it's
4 kind of a tricky question. Because, in my opinion,
5 at the time, the contingency fee was driven by the
6 case against the broker and the Realtor. And I
7 knew that they had a case against the bank, as
8 well, but -- and I believe that she agreed to a
9 contingency with the bank.

10 But as you'll see in my notes, I didn't
11 give a whole lot of credit to that bank litigation.
12 I thought that the better piece of litigation was
13 against the broker and the Realtor. And I don't
14 know if that answers your question. But I guess
15 what I'm saying is, is that I saw the reverse
16 contingency dealing with the bank and I saw the
17 straight contingency dealing more with the broker
18 and the Realtor.

19 Now, apparently, the case against the
20 bank turned out pretty good, is my understanding.
21 But...

22 Q. Now what is the percentage of the
23 contingency that Ms. Gibson, in your opinion, would
24 owe, based on this April 7th agreement and this
25 February 4th e-mail?

1 A. Well, at the time she presented to me,
2 it would have been 33 percent. The case, to my
3 knowledge, had not -- the Ameris foreclosure case
4 was not on the active trial roster. So that is the
5 number that I was working with, was 33 percent.

6 And in my e-mails, I actually asked the
7 lawyers to consider a lower percentage, in the 20
8 to 25 percent range.

9 Q. Is that 33 percent for the -- any
10 recovery in the lender claim, and in addition to
11 that 33 percent, as to any recovery in the
12 deficiency claim?

13 A. Again, you keep saying "the lender
14 claim." I felt the stronger contingency case for
15 recovery was against the broker and the Realtor.
16 There was another piece of litigation against the
17 broker and the Realtor. So, you know, I looked at
18 it as 33 percent. And the broker/Realtor case,
19 33 percent savings against the bank on -- so that's
20 the percentages I was applying.

21 And again, since I was primarily
22 dealing with the bank's savings case, in other
23 words, what savings she was getting on the
24 deficiency, I did try to get a lower amount. And I
25 suggested 20 to 25 percent, I think.

1 Q. I saw that, and I think you were
2 successful in negotiating the lower amount for
3 Linda from the 2.3 to the 1.7, based on my dialogue
4 with Linda and based on the documents that are
5 here.

6 For clarity, is it your testimony that
7 Ms. Gibson owed these attorneys both 33 percent as
8 to any recovery in the prosecution of lender claim,
9 and in addition to that, 33 percent for any
10 recovery as to the deficiency claim?

11 And it's really just a yes or no
12 question.

13 A. Yeah, I know. And I think the answer
14 is yes. But I discounted that lender claim. I
15 thought the broker case was a better case.

16 Q. Okay.

17 MR. DAVIS: Well, if there's no
18 objection, why don't we take a break at this time?

19 MR. PIERCE: That's good. I'm always
20 good for a break.

21 (A recess transpired from 11:33 a.m. to
22 11:45 a.m.)

23 BY MR. DAVIS:

24 Q. Welcome back. Thank you,
25 Mr. Tecklenburg, again, for being here today.

1 Before we left on break, we had talked about
2 the -- we were talking about the February 4th and
3 April 7th agreement, if you will. And I want to
4 understand your testimony.

5 Is it your testimony, specifically,
6 that this April 7th agreement incorporates the
7 February 4th e-mail?

8 A. That's what it says, yeah.

9 Q. Is that your opinion of this agreement?

10 A. Yes, it incorporates the February 4
11 e-mail.

12 Q. And is it your testimony that Mr. Papa
13 negotiated the February 4th e-mail that's
14 incorporated into the April 7th agreement, on
15 behalf of Ms. Gibson?

16 A. Well, it appears he retained
17 Drew Epting on her behalf. And again, you know,
18 what -- what happened on February 4, in my opinion,
19 as far as law of contracts, really didn't make any
20 difference, because it had been agreed to on
21 April 26th, when she signed this April 7th letter.
22 So whether this was a contract in February, or not,
23 probably didn't matter, because they were
24 incorporating more additional terms in April.

25 Q. Okay. And then the April 26th

1 agreement, then, is it your testimony that the term
2 "contingency," in the last sentence of
3 Paragraph 3 -- and I'll read the sentence: George
4 and I will handle the existing case against RE/MAX,
5 Rolando, Moore and Ameris on a contingency, as set
6 forth in our February 4th agreement.

7 That term "contingency," is it your
8 testimony that that contingency referred to there
9 represents both a straight contingency fee as to
10 any recovery in the lender claim, purportedly as
11 against Ameris, and, in addition to that,
12 represents also a reverse contingency fee as to any
13 recovery in the deficiency with Ameris?

14 A. Yes. Because the February 2 (sic)
15 e-mail refers to both a recovery or savings.

16 Q. Okay. So in effect, your
17 testimony -- strike please.

18 So in effect, it's your testimony that
19 Ms. Gibson, in fact, is signing two
20 contingency -- or obligating herself to pay two
21 contingencies -- two contingent fees.

22 A. That is correct.

23 Q. And these two contingent fees would be
24 due and owing to the lawyers arising out of any
25 recovery in the prosecution of lender claim, and

1 any recovery in the defense of the deficiency
2 claim. Is that correct?

3 A. I wouldn't use the word "recovery." I
4 would say any recovery in the lender claim, any
5 recovery in the broker claim, and any savings in
6 the deficiency claim.

7 Q. Okay. And what is the amount of the
8 contingency, if you know?

9 A. The percentage appears to be
10 33 percent, until the case is put on the trial
11 docket.

12 Q. And did you expect a contingency to be
13 33 percent, if the case were settled?

14 A. Yes.

15 Q. You testified earlier you had a
16 professional relationship with these four
17 attorneys, Mr. Howe, Mr. West, Mr. Kefalos and
18 Mr. Epting.

19 MR. PIERCE: Object to the form.

20 THE WITNESS: No. I testified that I
21 have had business relationships with Mr. Howe and
22 Mr. Kefalos. I've not met, to my recollection,
23 Mr. West. And I don't know Drew Epting very well.

24 BY MR. DAVIS:

25 Q. Have you referred clients to Mr. Epting

1 itself, and it is rather complicated. But
2 basically they are saying she has a \$1.7 million
3 deficiency and they're willing to take the
4 property, so long as she signs a \$1.5 million note.

5 Q. Okay. So essentially, on
6 October 25th, 2010, Galt Valley makes its first
7 offer to Ms. Gibson.

8 MR. BOWERS: Object to the form.

9 THE WITNESS: Based upon -- I don't
10 know if it's the first offer, but they made an
11 offer, in this letter that we have been discussing,
12 dated October 25th.

13 BY MR. DAVIS:

14 Q. And is it your understanding that
15 Ms. Gibson, then, rejected this offer?

16 A. I did not understand the status of what
17 she had been offered or accepted. All I knew was
18 that there was discussion that it was likely they
19 would agree to waive the entire deficiency.

20 Q. Did you get that October 25th document
21 from Mr. Epting, or the lawyers?

22 A. I got it from the lawyers. Yeah.
23 (PLF. EXH. J, 11/8/2010, For Settlement
24 Purposes Only document, was marked for.
25 (PLF. EXH. K, Berkeley County Register

1 of Deeds, Instrument Number: 2010-00024871, was
2 marked for identification.)

3 BY MR. DAVIS:

4 Q. I have another document that I'm
5 handing you, it's dated November 8th, 2010. And
6 this document is also from Mr. McVey, who is Galt's
7 attorney. And I'm handing you, Mr. Tecklenburg,
8 this document, for your review.

9 Mr. Tecklenburg, have you seen this
10 document, this November 8th offer from Galt,
11 before?

12 A. I don't recall seeing Exhibit J.

13 Q. Like to turn your attention to
14 Paragraph 4 of the first page of this November 8th
15 Galt offer.

16 A. I will say, while I didn't see this
17 document, the discussion was that this was in the
18 mix, so to speak; it was being considered, they
19 were agreeable to waive their deficiency.

20 Q. And the discussion by and between who?

21 A. I had that discussion with Mr. Epting,
22 Mr. Kefalos, and, I think, Mr. Howe.

23 Q. When did you have that discussion?

24 A. It's in my time records.

25 Q. That would have been in the November

1 timeframe that is set forth on the statement?

2 A. November 2010, yeah. November 17th.

3 Q. So were you aware of the existence of
4 this document purporting that Galt would waive its
5 deficiency by way of deed in lieu of foreclosure
6 and full settlement and compromise of the entirety
7 of Ms. Gibson's \$1.7 million liability?

8 A. I wasn't aware of the letter itself,
9 but I was aware that a proposal had been made.

10 Q. Were you aware that Ms. Gibson had
11 accepted this offer in November of 2010, when you
12 met with her?

13 A. I don't -- I don't know whether she had
14 accepted an offer at that point. I really don't
15 recall that, because I met with her before November
16 8th.

17 Q. Would it surprise you to know she had
18 accepted an offer by way of deed in lieu of
19 foreclosure and settlement for compromise of the
20 \$1.7 million, prior to your meeting with
21 Ms. Gibson?

22 A. Well, I don't know what she had been
23 discussing with her counsel. But the first
24 detailed meeting I had with Ms. Gibson was
25 on -- actually, was on November 8. And I don't

1 know -- you know, honestly, at that stage, I don't
2 know -- she never showed me this letter -- I don't
3 know whether she had accepted or not accepted --

4 Q. Is your testimony --

5 A. -- at the point I met with her.

6 Q. So it's your testimony that as of
7 November 1st, when you were meeting with Ms. Gibson
8 November 1st through November 5th of 2010, that you
9 were unaware as to whether or not she had, in fact,
10 accepted Galt's offer to waive the deficiency.

11 Is that your testimony?

12 A. My testimony is, is I met with her
13 November 8th. The letter, making the offer you
14 showed me, is dated November 8th. And as of the
15 time I met with her on November 8th, I do not
16 believe she had voiced to me that she had formally
17 accepted any offer.

18 Q. November 8th was a Friday. Did
19 Mr. Epting or the lawyers disclose this offer to
20 you -- strike.

21 Did Mr. Epting, or the lawyers, give
22 you this letter?

23 A. I have not seen the letter before.

24 Q. The November 8th letter.

25 And would you read Number 4, on the

1 first page.

2 A. I've read it. You need me to read it
3 into the record?

4 Q. If you would.

5 A. Quote: My client will forgive the
6 remainder of the debt and waive any right to a
7 deficiency judgment against your clients, unquote.

8 Q. And when they say "my client," this
9 November 8th offer is referring to Galt Valley?

10 A. I assume so. That's what is on the
11 caption, Galt Valley, LLC.

12 Q. And whose is the signature, on the
13 letter?

14 A. Mr. McVey apparently signed it..

15 Q. And would it surprise you to know,
16 Ms. Gibson, by and through her lawyers, had
17 accepted this offer?

18 A. Again, I don't know when and if she
19 accepted the offer. It obviously is a very
20 favorable offer, and I would have expected her to
21 accept it. I think, by this point the lawyers had
22 had a hearing before the master-in-equity, and I
23 don't think the hearing went so well for the bank.

24 Q. Do you know what the hearing was for?

25 A. I'm not sure. I don't know if it was a

1 status -- I had sort of the feeling that it was a
2 status conference. There may have been other
3 things.

4 Q. Do you know when the hearing was?

5 A. I do not know. And I don't know if it
6 was a formal hearing. It could have just been a
7 meeting in chambers. That often happens,
8 particularly in Berkeley County.

9 Q. Do you know if the hearing occurred
10 prior to October 31st, or subsequent to
11 October 31st?

12 A. I don't know the date. All I know is
13 that I believe there was either a hearing or a
14 status conference with the Berkeley County judge
15 prior to the offer of November 8th.

16 Q. How did you know there was a hearing?

17 A. Mr. Howe told me.

18 Q. When did Mr. Howe tell you there was a
19 hearing?

20 A. Again, it may not have been a hearing,
21 it may have just been a status conference. But
22 there was a meeting between the judge and counsel.
23 And that was on November 17, the discussion I had
24 with Mr. Howe.

25 Q. And do you recall the substance of that

1 discussion you had with Mr. Howe?

2 A. The best I could recall is he said that
3 the judge had looked at the file and told the bank,
4 essentially, it was not going to be an easy
5 foreclosure for the bank.

6 Q. Did Mr. Howe tell you whether or not
7 Galt's counsel was at this meeting?

8 A. To my understanding, there was all
9 counsel of record. Not of record, but there was
10 counsel for each side.

11 Q. Had you seen this November 8th offer in
12 which Galt makes an offer to forgive the remainder
13 of the debt and waive the deficiency as against
14 Ms. Gibson and her entities, do you think that
15 would have changed your opinion as to the amount of
16 the fee, the \$566,000 that Ms. Gibson owed?

17 A. No.

18 Q. Why not?

19 A. Well, first of all, she had committed,
20 in the April agreement, to a contingency fee on any
21 savings, so she was contractually bound.

22 Secondly, I was told that this type of
23 offer had been made and was in the works. So
24 again, while I did not have the letter, I had the
25 knowledge that they were willing to waive the

1 deficiency. So I gave my advice with the knowledge
2 that this offer was in the works.

3 Q. You referred to the -- you have
4 referred to the April 7th and February 4th e-mail
5 as constituting and representing a contingent fee
6 agreement. Is that correct?

7 A. That's correct.

8 Q. Is it your testimony that the
9 November 18th agreement is sort of an addendum or a
10 memorialization of this contingent fee agreement?

11 A. I would call it a restated agreement,
12 limited to the Ameris counterclaim only. As you
13 recall, this April 7th agreement deals with so many
14 matters that Linda had going on, it doesn't deal
15 with those other matters. I mean, they were trying
16 to deal with Larry Richter and his contingency fee.
17 They were trying to deal with the loans on her home
18 in St. George. It's all stated here. They were,
19 you know, dealing with the beach house. And then
20 they were suing the broker, and had a counterclaim
21 against the bank. So they had their hands full.

22 Q. Now when we look at the basket of
23 lawsuits that they had their hands full with, the
24 basket contained all claims that Linda was
25 asserting against various parties, but for this

1 singular claim asserted against her by Ameris and
2 First Citizens.

3 Would you agree with that?

4 MR. PIERCE: Object to the form.

5 THE WITNESS: Yeah, I don't know. I
6 mean, if you look -- again, I think my handwritten
7 chart, I showed Linda during our meetings, sort of
8 captures what you're headed at. On the debt side,
9 you had potentially 2.3 million in deficiency, 450
10 owed to First Citizens on the beach. Those were
11 the debit side.

12 And then if you look at what litigation
13 could do, litigation could reduce that exposure.
14 At that point, I told her 767. Fortunately, it
15 came down to about 567, which we're here about.
16 And then, ultimately, if she were to prevail
17 against the broker, I just gave an estimate,
18 because you can't estimate the outcome of
19 litigation. But I basically said that if she was
20 successful in her broker suit, that she could
21 likely recover around a half million dollars for
22 that.

23 So in the long run, she's starting out
24 with the downside of, potentially, 2.75 million in
25 debt, and at the end of the day, she only had

1 717,000 in debt, under this scenario. So -- and I
2 explained that to her in the letter I ultimately
3 wrote, that summarizes all of our meetings.

4 So as far as the basket goes, the
5 basket was the debts owed to Ameris, the debts owed
6 to First Citizens, and on the -- and the debts owed
7 to the lawyers, for their fees, versus any credits
8 she might receive from the broker litigation. And
9 fortunately, for her, I hear that in the
10 bank/lender litigation, she's been quite successful
11 in that case. So anyhow, that's what I saw as the
12 debits and the credits.

13 And I know that's a long answer, but,
14 you know, I'm not sure you had everything in the
15 basket.

16 Q. Okay.

17 MR. PIERCE: Does that make you a
18 basket case, if you have to deal with all that?
19 Because I would be.

20 BY MR. DAVIS:

21 Q. In the interest of time -- and Carl and
22 I talked about this briefly during the breaks. In
23 the interest of time, Mr. Tecklenburg, and I don't
24 mean any disrespect and I'm very grateful, and I
25 know Linda is, for your responses. But in the

1 interest of time, if we can just answer very
2 specifically the question I'm asking, as succinctly
3 as you can, then I can move on. And it's really to
4 respect you and Carl's and Linda's time.
5 Otherwise, we'll be here for, I fear, a week.

6 A. Sure. The answer is: I don't agree
7 with your description of the basket.

8 Q. Let's talk about the basket for a
9 minute -- the basket of cases that Linda was
10 involved in at that time. And I'll just go through
11 each one.

12 I understand that she was asserting a
13 claim against Larry Richter for a \$20,000 fee,
14 which she had paid. Is that correct?

15 A. That's my understanding.

16 Q. And I understand that she was
17 prosecuting a claim against Mr. Moore, who I
18 believe was the appraiser with the bank, and that
19 Mr. Epting was representing her and prosecuting
20 Mr. Moore's claim. Is that correct?

21 A. Correct. And Mr. Moore was
22 co-defendant with some other people.

23 Q. And I understand that Ms. Gibson was
24 asserting a lender claim against Ameris Bank. Is
25 that correct?

1 A. That's is my understanding. Correct.

2 Q. And I understand that Ms. Gibson was
3 also asserting certain claims against a
4 Mr. Villavicencio, with respect to some wrongdoing.

5 A. I think he was a co-defendant with
6 Mr. Moore.

7 Q. And Ms. Gibson was also
8 representing -- excuse me -- Ms. Gibson was also
9 asserting claims against RE/MAX, the broker, who
10 assisted her in the sale of the apartments. Is
11 that correct?

12 A. They were also a co-defendant with
13 Mr. Moore. That's correct.

14 Q. Would you agree that in each and every
15 one of the cases that I just mentioned, or claims,
16 that those were all prosecution claims being
17 asserted by Ms. Gibson?

18 A. Yes, I would agree that she was seeking
19 a recovery in those claims.

20 Q. And in addition to those suits, there
21 was some suits against Ms. Gibson. One suit being
22 a deficiency claim purportedly being asserted by
23 Galt Valley as against Ms. Gibson and her entities.
24 Is that correct?

25 A. That is correct.

1 second.

2 Q. If I said it was 567,000, would that
3 refresh your recollection?

4 A. Yeah. They started it around -- it
5 started at a higher amount.

6 Q. You know what the original amount was
7 they started at?

8 A. I think it was close to 800. Between
9 7- and 800.

10 Q. If I told you it was \$810,000, would
11 that refresh your recollection as to the original
12 amount they were asking for?

13 A. Yep.

14 Q. And for clarity, the 810,000 which you,
15 I understand from your testimony, negotiated down
16 to -- successfully negotiated it down to 566,000,
17 that was a fee exclusively and solely for the work
18 product, the attorney work-product, relating to the
19 defense of the deficiency claim.

20 A. Well, it was a fee for both the work
21 product and what I was advised would be the result,
22 which is that the deficiency would be waived.

23 Q. Is it your testimony that you based, at
24 least in part, your opinion, the reasonableness of
25 the fee, to be based on the result?

1 A. Absolutely. That's what a contingent
2 fee is often -- it's built in. The client has
3 expectations as to the result and the lawyer has
4 expectations as to the result, and hopefully those
5 expectations work out.

6 Q. And the basis of the contingent fee,
7 would you agree that the attorneys entitled to a,
8 sort of, risk premium for the risk that they take
9 in taking on the case without any assurance that
10 they are going to be paid?

11 A. I would agree with that. Particularly
12 if they get the case settled. Well, on the
13 attorney's side, the risk is that you'll end up
14 having to go to trial and potentially an appeal and
15 you'll get -- I call it upsidedown on your time;
16 meaning that you'll have far more hours invested in
17 it than is worth it. So that's the -- that's -- or
18 may lose entirely, so that's the risk the attorney
19 takes.

20 As I stated previously in my testimony,
21 the risk the client takes is that the case gets
22 settled earlier and the lawyer doesn't necessarily
23 put that much work in it. That happens.

24 Q. Do you think that happened in this
25 case, with respect to the deficiency claim?

1 A. As I testified earlier, my recollection
2 is that Mr. Howe and Mr. West did not have a lot of
3 work into it; Mr. Kefalos and Mr. Epting, though,
4 had substantial work invested in all of Linda's
5 litigation. So when I thought of the work product
6 that Mr. Kefalos and Mr. Epting -- I had to think
7 more of a big picture, because they had been living
8 with Linda for a while and, you know, they were
9 dedicated to a number of fronts. So I felt that
10 they had more work invested in it than the other
11 two.

12 Q. Do you recall, when you met with Linda,
13 discussing with her that you considered the
14 \$566,000 fee to be reasonable, based not merely on
15 the November 18th terms, but also as a result of
16 all these other cases that they were simultaneously
17 working on with Linda?

18 A. I think in my letter to her that was
19 dated in December, that sort of summarized our
20 dealings over the past few weeks, I mentioned to
21 her that getting the fee secured for them would
22 provide incentive to her counsel to work diligently
23 on all her other matters. So in my opinion, yeah,
24 I talked to her about the big picture of the other
25 litigation they were handling.

1 I think that -- I think if I were in
2 their shoes and were looking at a contingent fee
3 that I might not collect and had a bunch of other
4 contingent fee cases for that client, you know, at
5 some point you have to think about whether you're
6 going to collect your fees or not. So giving a
7 security to those lawyers, I think, certainly gave
8 them incentive to continue vigorously in pursuit of
9 her various claims.

10 Q. Did you advise Linda that if she didn't
11 agree to sign the November 18th agreement, the
12 attorneys would then, therefore, be de-incentivized
13 to pursue vigorously the other claims in the other
14 cases?

15 A. I felt if she balked on the agreed
16 contingency fee agreement and decided to
17 essentially breach her end of the bargain, that she
18 would probably lose the interest of her attorneys
19 on the other matters.

20 Q. What other matters would they lose
21 their interest in, Mr. Tecklenburg?

22 A. They had two matters pending. One was
23 the counterclaim against Ameris, another was the
24 lawsuit against the broker and the appraiser. So
25 they had two other claims. And as you know, in a

1 distinct.

2 Q. When was that conversation?

3 A. It's reflected in my notes.

4 Q. Is that the conversation you had on
5 November 18th?

6 A. November 17th.

7 Q. November 17th?

8 A. Yeah.

9 Q. The day before Ms. Gibson executed the
10 November 18th attorney-client agreement. Correct?

11 A. That's correct.

12 Q. Okay. Did Mr. Epting, or any of the
13 lawyers, share with you or provide to you any
14 discovery interrogatories, production of documents,
15 admissions they had exchanged between Galt Valley
16 and the lawyers?

17 A. The only thing they shared with me was
18 orally, so I don't think I have the written
19 discovery, if it's not in my file.

20 Q. Do you know if Mr. Epting or the
21 lawyers attended any hearing prior to
22 November 18, 2010, with respect to the deficiency
23 claim against Ms. Gibson?

24 A. As I mentioned previously, I think
25 there was one hearing or conference with

1 between 1.7 million and 1.5 million that Galt was
2 covering in the October 25th letter?

3 A. No. Because in the October 25th
4 letter, they're asking her to sign a note for
5 1.5 million, so -- from Galt's point of view the
6 deficiency was 1.5 million that they wanted her to
7 sign, at the time. I took the deficiency
8 calculation of 1.7 million from my conversations
9 with Linda on the value of the land, as well as
10 Galt's letter that gave a value of what they
11 thought the land was. And frankly, did some very
12 simple math. Took \$3 million and subtracted 1.3
13 million for the land value.

14 Q. You testified earlier you had not seen
15 the November 8th letter from Callison Tighe,
16 Mr. McVey, attorney for Galt. You testified
17 earlier you had not seen that November 8th letter
18 in which Galt offers to waive the entire deficiency
19 by way of deed in lieu.

20 The question is: In November, the
21 first two weeks of November when you were engaged
22 by Ms. Gibson to assess the reasonableness of the
23 proposed \$566,000 fee, had you been aware of that
24 November 8th letter, might you have determined the
25 \$566,000 fee to be excessive?

1 Judge Watson, and counsel for Ms. Gibson and
2 counsel for the bank were present.

3 Q. Did Mr. Epting or any of the lawyers
4 provide to you documents evidencing negotiations to
5 reduce the deficiency claim Galt was then bringing
6 against Ms. Gibson, prior to November 2010?

7 A. Well, you do have in one letter from, I
8 think, the Callison Law Firm, where they agreed to
9 reduce the deficiency by 200,000.

10 Q. Which letter is that?

11 A. It's the letter dated October 25th.

12 Q. I'm sorry. We were asking which letter
13 you're referring to that was exchanged between
14 Mr. Epting and the lawyers and Galt's counsel with
15 respect to the deficiency claim.

16 A. Yeah. There's an October 25th letter
17 that was shared with me, where the amount of
18 deficiency was discussed. And the bank offered
19 reducing the deficiency \$200,000.

20 Q. Is it possible that when you reviewed
21 the documents, the lawyers' documents, and when you
22 had these telephone conferences with the lawyers
23 with regard to this \$566,000 fee, that you
24 understood the deficiency recovery to be
25 approximately \$200,000, that being the difference

1 A. I was made aware of the contents of the
2 November 8th letter by conversations with the
3 lawyers, so I was not aware of the physical
4 document, but I was aware of the contents and the
5 offer. So no, it would not change my opinion,
6 because it was my understanding that the offer was
7 afoot, near; either on the table or close to on the
8 table.

9 Q. So to summarize what -- the testimony
10 to this point: The attorney work-product that you
11 had to review and assess with respect to determine
12 the reasonableness of the \$566,000 fee was the
13 hearing, or a hearing, a letter, the October 25th
14 letter, and your understanding that Mr. Epting and
15 the lawyers had been in negotiations with Galt to
16 resolve the deficiency claim.

17 Is that correct?

18 A. No. Because as I testified previously,
19 I didn't find my primary role to be to advise Linda
20 on the reasonableness of the fee. She had already
21 agreed to the fee. I was retained to advise her on
22 getting a mortgage. And I gave, as I've said
23 previously, a 20,000-foot view of all the
24 litigation she had pending, to advise her whether
25 the ultimate outcome may be good for her. Which, I

1 did advise her it would be good, and apparently
2 was.

3 So I really don't think reasonableness
4 of the fee was my primary goal. Now, she obviously
5 wanted to discuss whether the fee was reasonable.
6 I did discuss it with her. And she certainly
7 thought 7- or 800,000 was too much. And I went to
8 the bargaining table and tried to get it reduced.

9 Q. Mr. Tecklenburg, is it your testimony
10 that your primary purpose for meeting with Linda in
11 November 2010 was to determine whether or not she
12 should permit the mortgages to be put on her
13 property to secure a \$566,000 fee?

14 A. To secure a fee, yes. Not necessarily
15 \$67, but to secure a fee.

16 Q. Who came up with the \$566,000 fee?

17 A. As I've testified previously, when the
18 lawyers first approached me, they felt the fee
19 should be in the range of around -- close to
20 800,000, certainly in the 700s.

21 After learning from bank correspondence
22 what they felt the value of the land was, and after
23 talking with Linda as to the value of the
24 land -- which honestly, the owner, I think, often
25 has the best view of what their land is worth -- we

1 arrived at a \$1.3 million value. And the loan
2 amount as of October was 3 million. So that leaves
3 a \$1.7 million savings. So that's how the number
4 came up. That, divided by 3, is \$567,000.

5 Q. Did you have the cell tower lot
6 appraised?

7 A. I did not. I think the bank indicated
8 there was testimony on what it was worth, based on
9 their documents.

10 Q. Do you know if the lawyers had the cell
11 tower lot appraised?

12 A. I don't know. I cannot recall, as I
13 sit here.

14 Q. Do you know if the lawyers had the
15 Otranto Apartments property appraised?

16 A. I cannot recall that, either. I do
17 know they felt the Otranto property was only worth
18 about 700 to 750. And there is testimony,
19 apparently from the bank, that's mentioned in their
20 correspondence, that that is the value.

21 Q. Mr. Tecklenburg, you've testified
22 earlier, twice, that you believe that Mr. Howe and
23 Mr. West did not do a lot of work. Is that
24 correct?

25 Let me rephrase. You testified that /

1 Mr. Howe and Mr. West didn't do a lot of work with
2 respect to the reverse fee negotiations and/or the
3 negotiations with Galt Valley.

4 A. That was my impression, based upon the
5 interviews of the attorneys.

6 Q. Why did you have that impression? What
7 gave you that impression?

8 A. Because I confronted them with it.

9 Q. And you confronted --

10 A. I asked them how much time they had
11 spent on it.

12 Q. Who did you ask?

13 A. Mr. Kefalos, Mr. Epting, and Mr. Howe.

14 Q. And did you ask Mr. West?

15 A. I didn't. But I knew he was in the
16 same category, pretty much, as Mr. Howe.

17 Q. When you asked Mr. Howe how much time
18 he had spent on this case, what did he respond?

19 A. I cannot remember, exactly, but it
20 was -- it was probably in the range of a few hours.

21 Q. And when --

22 A. But I will say, that's not unusual for
23 him. He collects many fees where his hourly input
24 is very little. He's -- he's fortunate to be able
25 to do that.

1 Q. How is Mr. Howe able to collect many
2 fees for putting in few hours?

3 A. Because he -- he's very successful at
4 what he does. And when he brings a case, the other
5 side knows he's serious and the judges know he's
6 serious. And he has a reputation of getting cases
7 done quickly.

8 Q. And as a result of his --

9 A. Plus -- plus, he's a monster in the
10 courtroom.

11 Q. Are you aware of any other cases
12 similar to this one, where Mr. Howe has collected a
13 lot of fees for very little work?

14 A. You can see it in the newspapers. Look
15 at the articles that have been written about him
16 over the years. And there are many people that
17 have left with good results and probably felt that,
18 you know, the work was not as much as they felt
19 they paid for, but it's just the nature of hiring
20 Mr. Howe. He gets things done quickly.

21 Q. What specifically did Mr. Howe do, if
22 you know, to advance the negotiations with Galt
23 Valley with respect to the reverse fee?

24 A. You know, as I sit here today, I can't
25 recall the details. All we talked about were the

1 Q. And what was the nature of it?

2 A. Well, there are a number of things over
3 the years. I started with her husband, Bill, who
4 has passed, in the mid '90s. And they had some
5 property, which, actually, I think is mortgaged,
6 in this case. But they had some property near
7 Marina Drive, which is Joe Bartone's little
8 development over there, and they had this winding
9 road through it, called Pinefield Drive.

10 And Bill came to me -- all this is
11 public record, so I'll try to stay with the public
12 record -- to straighten out the road. And we filed
13 litigation on behalf of Linda, at Bill's request,
14 to straighten out Pinefield Road. We kind of got
15 there, and then John Kuhn got involved and started
16 a whole another set of litigation. And then we had
17 another resolution with John Kuhn -- and I think
18 Bill had passed, along -- about that time. I don't
19 think we were completely there. And as a result of
20 Mr. Kuhn's litigation, we relocated Pinefield
21 Drive.

22 In the interim, the Ports Authority
23 condemned part of the railroad, toward Daniel
24 Island, and we had to deal with the railroad. And
25 I represented the Gibson family with the Ports

1 Authority condemnation, which really was more of a
2 negotiated sale.

3 And I think I represented the Gibsons
4 with respect to a County condemnation in the same
5 area. So I did some road relocation work for them
6 that, unfortunately, took many, many years. And
7 then other than that, Linda has involved me, from
8 time to time, on advice on her leases with
9 Mr. Bartone, which are long-term leases.

10 And I represented her in the repurchase
11 of land from the Ports Authority, very recently,
12 where the Ports Authority sold back the land.

13 And then, Carl Pierce and I represented
14 Linda in a tort case in which some --

15 MR. PIERCE: Extremely negligent people
16 cut her trees.

17 THE WITNESS: -- extremely negligent
18 people cut her trees down and she wanted
19 compensation for that. So I have been involved
20 primarily in real estate matters for her, but a
21 tort case with Mr. Pierce, as well.

22 BY MR. COOK:

23 Q. Okay. And Jeremy's notes say she has
24 already said this. She's the one who retained you
25 in this matter, as opposed to the other attorneys.

1 A. That's correct. My -- my time records
2 show that she called me first, at the end of
3 October of 2010, and the bill was sent to her, and
4 she ultimately paid the bill.

5 Q. All right. And did she tell you that
6 she had been represented by Rob Papa in some
7 capacity?

8 A. You know, she had a slew of lawyers go
9 through this. She had Richter involved. I know
10 that, for sure. And I don't think Richter did
11 anything, and that's why she wanted her fee back.
12 And then, you know, Papa, I just don't recall her
13 talking much about him. He, obviously, is
14 mentioned in an e-mail, but I don't remember Linda
15 talking too much about Papa.

16 Q. I noticed in your handwritten notes in
17 the back of your file, there is a mention of
18 Rob Papa. And he's the -- he's a party to the
19 February 24th e-mail.

20 A. Yeah. That note you're referring to is
21 a discussion with Mr. Epting and Mr. Kefalos, when
22 I think they -- he felt that Linda was not being
23 properly represented. I'm assuming, at that point,
24 that was about Mr. Richter, but by someone. She
25 needed better representation. And apparently he

1 saw fit to reach out to Mr. Epting and Mr. Kefalos.

2 Q. I'm glad you interpreted that note.
3 She was not complaining about Mr. Papa's
4 representation, then.

5 A. Not that I recall, no.

6 Q. Okay.

7 A. But she certainly complained about
8 Mr. Richter.

9 Q. All right. Did she -- I'm going back
10 to -- see if I can find it -- the e-mail which was
11 incorporated into the April fee agreement.

12 A. It's Exhibit B.

13 Q. Exhibit B is an e-mail dated
14 February 4, 2010, from Epting's office to Papa
15 at -- looks like an e-mail address.

16 Were you aware that that was an e-mail
17 between Drew Epting and Rob Papa?

18 A. Yeah. But, you know, I thought it more
19 as an attachment to the April agreement.

20 Q. Okay. In any of your conversations
21 with Ms. Gibson, did she ever deny having agreed to
22 the terms of that February 4th and April agreement?

23 A. I can't -- no, I can't recall her
24 denying that agreement.

25 Q. Did she ever tell you that Rob Papa,

1 that she felt that Rob Papa did not have authority
2 to agree to anything on her behalf?

3 A. I don't recall a discussion like that.

4 Q. Now in your December 8, 2010 letter,
5 you made reference -- see if I can get your
6 language exactly -- it appears to be a simple but
7 enforceable fee agreement, words to that effect.

8 A. Yeah.

9 Q. Did she ask you to give an opinion as
10 to the enforceability of the fee agreement?

11 A. I felt like she did, yeah. Because she
12 certainly would, if she could, you know, lawfully
13 walk away, she may have.

14 Q. Okay.

15 A. It was -- but my feeling was if she
16 tried to walk away from the commitment she made to
17 her attorneys, there would be a breach of contract
18 she would have to deal with.

19 MR. COOK: That's all I have. Thanks.

20 MR. DAVIS: Couple question --
21 questions on redirect.

22 FURTHER EXAMINATION

23 BY MR. DAVIS:

24 Q. With respect to this February 4th
25 e-mail to Mr. Papa, did you contact Mr. Papa and

1 don't remember -- I don't remember that coming up.

2 I -- I looked at the face -- four corners of the
3 agreement, and I had an April signed agreement with
4 an attachment, and I based my -- my opinions on the
5 agreement, based upon the four corners and what was
6 in writing.

7 Q. Is it fair to say the only reference to
8 Mr. Papa in all the analysis of this fee
9 arrangement, is the February 4th e-mail?

10 A. Well, there were discussions about
11 Mr. Papa that were just asked in cross-examination.
12 He did appear in my notes. He was mentioned by
13 either Mr. Epting or Mr. Kefalos. He apparently,
14 referring -- he apparently referred Ms. Gibson, in
15 some way, to Mr. Epting and Mr. Kefalos. I don't
16 know how that referral occurred, or the facts of
17 it. As far as the referral itself, it's probably
18 best represented by the February 4th e-mail.

19 MR. DAVIS: I have no further
20 questions.

21 MR. PIERCE: I have none.

22 MR. COOK: All right.

23 (The deposition concluded at 4:10 p.m.)
24
25

1 inquire of him whether he was, in fact, engaged by
2 Ms. Gibson back in late 2009 early 2010 --

3 A. Yeah. I think --

4 Q. -- to negotiate --

5 A. I think I testified to that earlier,
6 that I do not recall contacting Mr. Papa. And
7 really, since it was already attached to the
8 April 7th agreement, it really doesn't matter who
9 wrote it or drafted it or sent it, it was
10 incorporated as part of the April agreement. So...

11 Q. Did Ms. Gibson ever tell you that she
12 retained Mr. Papa to negotiate a fee agreement with
13 the lawyers on her behalf, with respect to the
14 Ameris litigation or in any other litigation, that
15 you're aware of?

16 A. I don't recall her telling me that
17 directly.

18 Q. Did Mr. Epting tell you that?

19 A. I don't recall him telling me that,
20 either.

21 Q. Did any of the lawyers tell you that
22 Mr. Papa negotiated their fee agreement, the
23 subject of this litigation, on behalf of
24 Ms. Gibson, with the lawyers?

25 A. Gosh, it's been three years ago, I just

1 SIGNATURE OF DEPONENT

2 DEPONENT: PAUL F. TECKLENBURG, ESQUIRE

3 DEPOSITION DATE: November 6, 2013

4 REPORTER: LAURA J. BASH

5 CASE CAPTION: GIBSON vs. EPTING

6 (Please return both Signature of Deponent pages)

7 I, the undersigned, PAUL F. TECKLENBURG,
8 ESQUIRE, do hereby certify that I have read the
9 foregoing deposition and find it to be a true and
10 accurate transcription of my testimony, with the
11 following corrections, if any:

12 PAGE LINE CHANGE REASON
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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF MARVIN INFINGER

LINDA A. GIBSON, Individually, and in capacity as
TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST;
HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
and 3205 PALM BOULEVARD, LLC,

Plaintiff,

vs. CASE NO. 2013-CP-10-4450

ANDREW K. EPTING, JR., LLC; GEORGE J. KEFALOS,
P.A.; GEDNEY M. HOWE, III, P.A.; and JOHN S.
WEST, ATTORNEY-AT-LAW, LLC,

Defendants,

DEPONENT: MARVIN INFINGER

DATE: MAY 5, 2015

TIME: 10:00 AM

LOCATION: BARNWELL WHALEY
CHARLESTON, SOUTH CAROLINA

REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
NCRA CERTIFIED MERIT REPORTER
CLARK & ASSOCIATES, INC.

CHARLESTON, SC 29415

843-762-6294
WWW.CLARK-ASSOCIATES.COM
Lynn@clark-associates.com

APPEARANCES

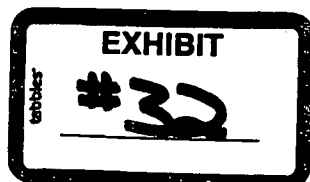
ON BEHALF OF PLAINTIFF:

LAW OFFICE OF JAMES DAVIS
BY: JAMES DAVIS
234 Seven Farms Drive
Charleston, SC 29492

ON BEHALF OF DEFENDANTS:

BARNWELL WHALEY PATTERSON & HELMS
BY: JEREMY BOWERS
288 Meeting Street
Charleston, SC 29401

ALSO PRESENT: LINDA A. GIBSON



Clark and Associates Inc.

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BY MR. DAVIS

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MARVIN INFINGER,

having been first duly sworn, was examined and
testified as follows:

EXAMINATION

BY MR. DAVIS:

Q. Good morning, Marvin. As we've been
talking this morning, I have the privilege to
represent Linda Gibson.

MR. DAVIS: And just a quick
housekeeping matter, Jeremy, we just follow the
Rules of Civil Procedure with respect to any
objections, stipulations and so forth.

MR. BOWERS: (Nodded.)

MR. DAVIS: If that's agreeable.

MR. BOWERS: Sounds good.

Q. Marvin, have you been deposed before?

A. You know, I was thinking about that this
morning, and I think I was. I testified many,
many years ago in my sister's divorce proceeding
in Virginia. I was a witness at the hearing, and
I think I was deposed beforehand, but I'm not
absolutely sure. And I believe that's the only
time I've been deposed before.

Q. And you're licensed to practice law in
South Carolina; is that correct?

1 the ODC?

2 A. I'm one of the commissioners. And so
3 the way it would work is there would be a
4 complaint filed against -- I'm using that term
5 broadly -- against an attorney, and I would
6 either be assigned to be the investigative
7 commissioner -- and in that role what I would do
8 is I would take the complaint against the
9 attorney. I would interview the complainer. I
10 would interview potential witnesses or -- yeah,
11 potential witnesses. Investigate it. And then I
12 would make a recommendation that the commission
13 as a whole would either say, we agree with
14 Mr. Infinger's recommendation or we don't. Did a
15 bunch of that.

16 Sat on probably -- I don't know -- five
17 or six hearing panels where I would be one of
18 three commissioners, and the attorney general
19 would prosecute the claimed ethical violations.

20 Q. Did any of these grievances that you
21 were involved in with -- I'm just going to refer
22 to it as ODC for the moment.

23 A. That's fine.

24 Q. Did any of these grievances before the
25 ODC deal with excessive fees complaints?

1 any attorneys in any agency cases in terms of --
2 have you represented any attorneys in
3 agency-related cases?

4 A. I'm trying to think. You know, I have
5 represented -- let me think. I've represented
6 people several times -- but I'm very selective
7 and have been approached a bunch -- about helping
8 with state ethics commission issues. And I want
9 to say I did represent John -- well, John
10 Tinken's clients one time in one of those
11 proceedings. John Tinken is -- it's interesting.
12 He was a predecessor to John West as general
13 counsel at Santee Cooper and then ascended to the
14 CEO-ship, I think, if I remember correctly. And
15 I certainly did do that.

16 I was requested I believe by Boeing to
17 assist them in an issue in an advisory opinion,
18 but it wasn't a real case in controversy sort of
19 issue.

20 Q. What in your opinion qualifies you to be
21 an expert in this case?

22 A. In attorney's fees reasonableness?

23 Q. Yes.

24 A. Well, I'd say about three or four
25 things, two of which we have discussed. One is

1 A. Yes, they did. But only a handful. And
2 from time to time what we would do, which segues
3 into another service that I had, we probably had
4 five or six when I served, and probably half of
5 those would have been I'll say remanded in the
6 loosest sense of the word to the various fee
7 committee organizations that the circuits have.

8 And at that point, for instance, there
9 was a 9th Circuit committee on fee disputes. And
10 prior to serving on the ODC, I served either
11 three or four terms on the 9th Circuit fee
12 dispute committee.

13 Q. Do you have a well-developed
14 understanding of how the ODC might assess the
15 reasonableness of a fee? Would the ODC actually
16 get into assessing the reasonableness of the fee?

17 A. No. It would -- my recollection is is
18 where that was the case, they would transfer or
19 remand it to the fee dispute committees at the
20 circuit level, if it was where there was some
21 sort of extenuating circumstance that was
22 fraudulent or overreaching or something a bit
23 more odious than a claim that it was
24 unreasonable.

25 Q. Have you had the occasion to represent

1 the ODC where we did deal from time to time with
2 attorney's fees issues. The other would have
3 been my fairly extensive service on the 9th
4 Circuit fee dispute committee.

5 I served on that committee a minimum of
6 five years. I can't tell you exactly. And
7 that's all we dealt with. Moreover, 20 years
8 ago, maybe, maybe it's longer than that, the
9 seeds of mediation were being planted by the
10 Supreme Court and they actually required a series
11 of pilot programs, one of which was in Charleston
12 County. And we had a one-day seminar which was
13 run by Bill Howard, who I think at that time
14 either was on the -- he was either on the Circuit
15 bench or the Court of Appeals, and I want to say
16 he was on the Court of Appeals. And I was one
17 of -- I don't know -- 25, 30 lawyers selected in
18 Charleston to deal with that.

19 And probably since that time I've
20 probably mediated 8- or 900 cases. And in
21 virtually all of those mediations the issues of
22 attorney's fees comes up as far as net recovery,
23 what's the arrangement, what will be the net
24 effect on the take particularly to the plaintiff,
25 because generally the contingency fees would be

1 on the plaintiff's side typically.

2 And so I've dealt with attorney's fees,
3 not daily, but probably -- certainly monthly for
4 25 years in my role as a mediator.

5 Q. So it's certainly likely the Court would
6 find you as a -- qualify you as an expert --

7 A. I'm not going to speak for the Court.

8 (Off-the-record discussion.)

9 Q. Marvin, assuming that the Court
10 qualifies you as an expert as to some of the
11 issues in this case -- and I'll represent them to
12 be essentially reasonableness of a fee --

13 A. Right.

14 Q. -- agency, breach of the standard of
15 care and contract construction interpretation --
16 that being the case -- and assuming the Court can
17 qualify you or would qualify you as an expert as
18 I suggest that it would, would you have any
19 problem or issues giving a completely unbiased
20 opinion as to the reasonableness of the fee or
21 agency or any of the issues that might come up at
22 trial?

23 A. No, not in the least. I would -- I
24 would not take on an expertship role unless I
25 felt comfortable that my opinion was sound.

1 Q. Now, who retained you?

2 A. I was contacted -- I can't remember
3 whether it was by Jeremy Bowers or whether it was
4 by Dawes Cooke, but it was one of the two.

5 Q. So you've been retained by the
6 defendants; is that correct in this case?

7 A. Yes. Well, the defendants through
8 counsel, yes.

9 Q. And despite your being retained by the
10 defendants, do you feel that you'd be able to
11 give a completely unbiased opinion as to the
12 issues in this case that may arise?

13 A. I do. If I couldn't, I wouldn't have
14 accepted the appointment.

15 Q. Turning to fees for a minute --

16 A. I did -- if I could interrupt, one --
17 the last bit of experience in fees is I have
18 dealt with contingency fees in my private
19 practice as well and have actually entered into
20 some -- not as many as people who have a totally
21 traditional plaintiffs practice, but certainly --
22 certainly a dozen or so if not more.

23 Q. I'm handing you a document. Do you
24 recognize that document?

25 A. I do.

1 Q. What is it?

2 A. It's a subpoena.

3 Q. And I'd like to direct your attention to
4 the center of the page enumerated 1, 2, 3, and
5 then there's subsections A and B.

6 A. Uh-huh.

7 Q. And the subpoena states, you are
8 commanded to produce and permit for inspection a
9 copy of the following documents or objects in
10 your possession, custody and control at the
11 place, date and time. And beneath that it lists
12 some enumerated documents that we've asked --
13 that is, the plaintiff has asked -- you to
14 produce. Have you produced all those records?

15 A. There are two that I brought today that
16 I had not printed off when the subpoena was
17 returnable, but one is simply a copy of the model
18 rules as adopted by the South Carolina Supreme
19 Court.

20 Q. Thank you for that.

21 A. And the other is an article that I
22 Googled, and it is Formal Opinion 94-389 from the
23 American Bar Association. And I figured since
24 the American Bar Association was the author of
25 the model rules that I might look to them to see

1 what they have to say about some issues that
2 may attach to this.

3 Q. Thank you for that.

4 A. Other than that -- excuse me. Go ahead.

5 Q. Are there any other documents in your
6 office that are in your possession that we don't
7 have?

8 A. The only thing that I can possibly think
9 of would be e-mails concerning things like
10 scheduling. No documents other than what were
11 given me in the return that I gave you, which
12 were a separate set of documents in a binder and
13 a separate set of depositions and pleadings,
14 which were the documents that were delivered to
15 me initially when there was an inquiry about
16 retaining me.

17 Q. Is it your testimony that you have no
18 other documents other than the two documents that
19 you gave me today and the documents that were in
20 this well-organized binder that you delivered
21 as -- produced as part of the subpoena?

22 A. That's it. I mean there may be a note
23 on a sticky pad somewhere. I mean I don't know,
24 but nothing of any substance.

25 Q. Now, you haven't received any documents

1 Q. What is the concept as your
2 understanding of a deed in reduction? If you
3 recall.

4 A. Well, I do recall that a creditor who is
5 seeking to preserve a wasting asset through the
6 form of receivership proceedings, perhaps among
7 others, will further encumber the property
8 through the receivership fees, which -- which, by
9 the way, act in effect as in custodia legis
10 charges which take priority over anything. They
11 stand first in line.

12 And that in order for the debtor not to
13 get further in debt or the property further
14 encumbered by these receivership fees, that an
15 outright conveyance to the creditor cuts off that
16 bleeding, and the creditor then takes primary
17 responsibility for preserving the asset,
18 collecting the rents, renting the property,
19 making sure the fixtures aren't removed and all
20 of those things that were outlined in the
21 petition for appointment of receiver.

22 So I think, getting back to
23 possibilities as to what motivated them, had a
24 receiver been appointed, this is what you're left
25 with. You're left with a receiver being able to

1 think there's a mutual respect.

2 I've never been in his home in almost 38
3 years of practice. He's never been in my home.
4 But I have a great deal of respect for him. I
5 think he's a fine lawyer.

6 Q. As do I. And sans the Bar fights years
7 ago, I have come to respect his opposition as
8 well in cases that I've been up against him.
9 He's a fine attorney. Do you know Mr. Howe?

10 A. I know Mr. Howe very well.

11 Q. Do you consider him a personal friend?

12 A. I've been in Mr. Howe's houses. I've
13 fought with him far more than I've allied with
14 him. I've tried cases against both of them, both
15 Mr. Howe and Mr. Epting. I'm friendly with
16 Mr. Howe, but would I consider him -- I certainly
17 would not consider him a close friend. I would
18 consider him a professional colleague for whom I
19 have a great deal of respect.

20 Q. Do you know Mr. Kefalos?

21 A. I know Mr. Kefalos.

22 Q. Would you consider him a personal
23 friend?

24 A. A great deal of respect for Mr. Kefalos
25 as a lawyer although I really have not litigated,

1 spend money to preserve the asset, to take
2 actions to collect the rents, to do whatever --
3 maybe to sell assets in order to protect the
4 creditor's position, maybe reducing the mortgage
5 exposure or interest in that particular property,
6 but it's a zero sum gain because they can go
7 after additional assets on the deficiency.

8 And I think when the Court apparently
9 indicated that a receivership was not in the
10 cards, that that was something that they didn't
11 want to take a bath on. That is a possible
12 explanation for it. Did it happen? I don't
13 know.

14 Q. Did you have the occasion to talk to any
15 of the defendants in this case with respect to
16 this case?

17 A. Not once.

18 Q. Do you know Mr. Epting?

19 A. Very well.

20 Q. Do you consider him a personal friend?

21 A. I consider him a professional colleague
22 against whom I have fought more than I've allied,
23 and the fights have been respectful. And back in
24 the day when we were young bucks, we had some of
25 the great fights of this Bar. And I think -- I

1 at least to verdict, against Mr. Kefalos ever.

2 Q. Do you know Mr. West?

3 A. I do, and I would not consider him a
4 personal friend. I know him to a degree, limited
5 socially, and my practice and his practice never
6 really intersected, because for the -- for 20 or
7 so years he was general counsel of Santee Cooper,
8 which in a delicious piece of irony, one of the
9 first cases that I tried against Drew Epting, I
10 represented Santee Cooper about 100 years ago.
11 And he was suing them. This was long before
12 Mr. West was counsel for them.

13 Q. And you testified earlier that despite
14 being retained by Barnwell Whaley on behalf of
15 the defendants --

16 A. Right.

17 Q. -- as the defendants' expert, and I'm
18 asking you now, despite your professional
19 relationship and social acquaintances with the
20 defendants, in your opinion, would you be able to
21 testify completely unbiased as to -- and give a
22 completely unbiased opinion, expert opinion as to
23 the issues that are brought before the Court in
24 this case?

25 A. If you use bias in a pejorative way, I

1 vague recollection that there may have been some
2 back and forth between Epting and McVey on that,
3 but I may be wrong on that.

4 Q. Well, you testified a few minutes ago
5 that the 1.7 million dollar marker arises from
6 the face value of the note minus the value of the
7 collateral. And I'm asking you --

8 A. Well, not the face value. The face
9 value plus the accrued interest and whatnot.

10 Q. Fair enough. I'm asking a very specific
11 question. Do you have any evidence, any
12 documentary evidence or other evidence that
13 supports whether Mr. Epting and the other
14 defendants negotiated either a reduction in the
15 note or a reduction in the collateral?

16 A. Reduction in the collateral
17 inferentially between him and Tecklenburg or one
18 of the lawyers and Tecklenburg, but that's --
19 that's it.

20 Q. So the computation -- would you agree
21 with me or is it fair to say that the computation
22 to arrive at this \$1.7 million purported
23 deficiency essentially arises out of the value of
24 the note, \$3 million --

25 A. Right.

1 through Mr. Tecklenburg -- and whether there were
2 negotiations or not, I don't know -- and the
3 lawyers who had the fee agreement.

4 Q. Do you know if Mr. McVey was a party to
5 the negotiations as to the increase or reduction
6 of the collateral?

7 A. Again, all I remember is Mr. Tecklenburg
8 saying that there was some information in the
9 bank documents that showed the apartments to be
10 valued, and the bank documents, at \$1 million.
11 And whether he discussed that with Mr. McVey --
12 it wouldn't surprise me since what started this
13 whole thing was that the broker and the appraiser
14 for the broker apparently, allegedly, you know,
15 overvalued the property and represented it and
16 the appraisal backed that up. So the bank
17 appraisal I would think may have been suspect,
18 but I don't know.

19 Q. Do you know if Ms. Alice Paylor was a
20 party to the negotiations --

21 A. I don't.

22 Q. -- as to the increase or reduction of
23 the value of the collateral?

24 A. I don't. The only thing that I saw with
25 respect to Alice was a reference -- well, I saw

1 Q. -- minus the value of the collateral?

2 A. Yeah. There was an agreed-upon value of
3 the collateral for purposes of establishing the
4 fee.

5 Q. And who were the parties to the
6 agreement to establish the value of the
7 collateral, if you know?

8 A. Well, the parties, I guess, were
9 Ms. Gibson represented by Mr. Tecklenburg to
10 establish a proposal which I think largely was
11 driven out of the fact that there was a proposal
12 that the fee be secured by a mortgage and a piece
13 of property on -- well, pieces of property. And
14 I think that's what drove the consultation that
15 they said you ought to get independent counsel
16 and get advice on this, is what I remember
17 reading. But whether they advised her to do that
18 or whether she did it on her own, it was done.

19 Q. So if you know, who negotiated the value
20 of the collateral either up or down? Who was the
21 party to those negotiations?

22 A. There was -- the negotiation would have
23 been or the establishment of how you would apply
24 the fee agreement to the settlement of the case
25 was -- I would say was done between Ms. Gibson

1 your time records -- but was a reference to her,
2 I think, and Ian McVey's entreaty to
3 Mr. Henderson that they extend the offer of
4 November 8th, the deadline for the offer, a week.
5 That's all I remember.

6 Q. So is it your testimony with respect to
7 assigning a valuation to the note and to the
8 collateral that the assignment of those
9 valuations were principally arrived at by
10 Mr. Tecklenburg, Mr. Epting and Mr. Kefalos;
11 would that be correct?

12 A. That would be my assumption. I know on
13 Ms. Gibson's side that it was being negotiated by
14 Mr. Tecklenburg because that's what his testimony
15 was and I know him and I believe him.

16 Q. So what we have, would you agree with
17 me, is Linda's attorneys negotiating with Linda's
18 attorneys as to how to arrive at \$1.7 million as
19 a dollar marker against which to compute the fee?

20 A. I think so. I mean normally that's a
21 step that's not taken. You have -- you know,
22 you've got a fee arrangement and the settlement
23 is reached, and there's no intermediary to advise
24 the -- your client on the sufficiency of the
25 matter or any problems with the matter, and I

1 think that arose as a consequence of the
2 mortgage --

3 Q. And do you know --

4 A. -- to secure the fee.

5 Q. Do you know during these discussions by
6 and amongst Linda's attorneys, Mr. Tecklenburg,
7 Mr. Epting, Mr. Kefalos --

8 A. I'm assuming the latter, that they --
9 that he talked with Kefalos -- I think he said he
10 talked with George, but the testimony will show
11 it.

12 Q. But you did testify a few minutes
13 ago that based on your review of the documents in
14 this case Ms. Paylor and Mr. McVey were not a
15 party to determining the value of the note or
16 determining the value of the collateral for the
17 purposes of coming up with \$1.7 million; is that
18 correct?

19 A. No. I said I didn't know whether they
20 were. I haven't seen anything that indicates
21 they were. Inferentially again, when Paul
22 Tecklenburg finds the reference in the bank
23 documents to the million, it's conceivable to me
24 he could have talked to McVey or talked to Alice
25 Paylor about that, but I don't know that.

1 Q. I mean for the purposes of today, can
2 we inferentially assume that none of the
3 attorneys were around when -- that is Mr. Epting,
4 Mr. Kefalos, Mr. West, Mr. Howe, Mr. McVey, or
5 Alice Paylor, none of these attorneys were around
6 back in 2007 when the note was drafted for
7 roughly \$3 million so --

8 A. Oh, I assume that to be that they
9 weren't. I mean I don't know that to an absolute
10 certainty, but I would be hugely surprised had
11 they been around at that time. Yes.

12 Q. And once the note was executed by Linda,
13 it would be highly unlikely, would you agree with
14 me, that the holder of the note would renegotiate
15 the price term of the note?

16 A. You know, I don't know what the
17 circumstances were that she was experiencing in
18 2008. I'm pretty sure by late 2009 she was in
19 dire straits. So, you know, I don't know. I
20 just can't answer that.

21 Q. Going back to my question, and I'm
22 trying to understand the circumstances as to how
23 the attorneys arrived at \$1.7 million. And if
24 I'm understanding your testimony correctly,
25 Linda's attorneys came up with this dollar marker

1 of \$1.7 million based on the value of the note
2 minus the collateral, the value of the
3 collateral; is that correct?

4 A. Well, I would imagine Linda did with the
5 advice of her attorneys. I mean that's -- with
6 the advice of Mr. Tecklenburg, and the subsequent
7 agreement of Kefalos on behalf of the four -- or
8 all four. But, no, I would think it was her
9 decision, but it was done with Paul running
10 interference for her, analyzing the situation and
11 saying, this is the best we're going to do.

12 Q. And did you come across any evidence at
13 all that Alice Paylor was party to these
14 negotiations as to determining the value of the
15 collateral?

16 A. You know, I didn't. Maybe if I reviewed
17 the timesheets, it might show it, but I haven't
18 reviewed them.

19 Q. Did you find any evidence that would
20 suggest Mr. McVey was a party to the negotiations
21 to determine the value of the collateral?

22 A. No. But again, putting it in context,
23 the October 25th letter showed a million and a
24 half dollar offer. So they're pretty close, and
25 that's on a compromise basis, which they

1 ultimately just totally gave up. So that would
2 be an indication to me that it was in the
3 ballpark, but just an indication.

4 Q. Did you find any evidence in the
5 documents that you reviewed in this case that
6 Mr. Tecklenburg or Mr. Epting or Mr. Kefalos
7 discussed asserting a setoff value as against the
8 \$1.7 million during their negotiations of coming
9 up with the value of the collateral?

10 A. I don't understand what you mean by
11 that. They've got a total excusing of it.

12 Q. That's not my question. My question is,
13 did you see any evidence in the documents that
14 you reviewed in this matter that suggest or from
15 which you could infer that Mr. Tecklenburg,
16 Mr. Epting and Mr. Kefalos might have considered?

17 A. Reducing the deficiency amount?

18 Q. Might have considered applying a setoff
19 value to the \$1.7 million dollar marker for the
20 purposes of computing the fee?

21 A. The only way I could conceptualize that
22 is that they would say, we're willing to go lower
23 than 1.7 million, but there's nothing to set off
24 against it.

25 Q. Well, the attorneys are essentially --

1 Linda's attorneys are sitting around trying to
2 come up with how are we going to get paid, and
3 they establish this dollar marker of \$1.7
4 million.

5 And my question is, during all this
6 negotiation between Mr. Tecklenburg, Mr. Kefalos
7 and Mr. Epting, did you find anything in your
8 review of the documents in this case that would
9 suggest that any of them brought up the notion of
10 applying a value, a setoff value as against the
11 1.7 million?

12 MR. BOWERS: Object to the form.

13 A. I'm going to define setoff as meaning
14 less than 1.7 million. No. I did see where the
15 initial indication from Mr. Kefalos as far as the
16 deficiency amount was 2.3 million and that that
17 was lowered to 1.7 by the good work and agreement
18 of his client, I suppose, to 1.7. That is the
19 reduction that I saw.

20 But I didn't see anything after the 1.7
21 was set that discussed lowering it beyond that,
22 and I saw nothing in Tecklenburg's testimony
23 that -- after he persuaded the million dollar
24 value to be -- how shall I put it? -- attributed
25 to the apartments, that it should be lower. I

1 value in the representation could result in a
2 relieving or forgiving of a portion of the debt,
3 that that has value, but there's no corpus from
4 which to collect the value, so we would have to
5 arrange a contingency arrangement that would be
6 secured by a mortgage.

7 Q. Who did Mr. Kefalos have that discussion
8 with, if you know?

9 A. It was sent to -- the e-mail was sent to
10 Rob Papa.

11 Q. Do you know if the e-mail was sent or a
12 copied to Ms. Gibson as well?

13 A. I don't even know if he knew who
14 Ms. Gibson was. He may have, but the initial
15 inquiry was made by Mr. Papa without reference to
16 any particular client. Then after that
17 obviously, on December the 10th, there was a
18 meeting among Mr. Epting, Mr. Kefalos, Ms. Gibson
19 and Mr. Papa in Mr. Epting's office, because
20 there was a December 11th e-mail from Mr. Epting
21 to -- excuse me -- from Mr. Papa to Mr. Epting.
22 And he says, thank you for your time. Thank you.
23 After the meeting, I stayed and used your
24 conference room and discussed options with Linda
25 but told her to sleep on them -- or something to

1 did see where he tried to negotiate the
2 percentage agreement as well, maybe ask them to
3 lower it from 40 and 33 to 25 and 20 maybe,
4 something like that.

5 Q. Did you review the fee agreements?

6 A. I did.

7 Q. How many fee agreements did you review?

8 A. I reviewed documents that related to fee
9 agreements, probably five or six. There was --
10 this is -- these are the documents relevant to
11 the fee that I reviewed. And I've got to start
12 at the beginning. Although it didn't mention a
13 fee, this whole thing started on November the
14 13th of 2009 when Mr. Papa reaches out to
15 Mr. Kefalos about a potential \$2.8 million
16 matter.

17 Two weeks later -- and there's no
18 indication as to who the client would be. Two
19 weeks later, on November the 27th of 2009,
20 Mr. Kefalos writes back and he says, I'm
21 interested. This might have -- this might have
22 some value or something to that effect, but I
23 want to speak with Mr. Epting.

24 And that early in the game, November
25 27th, he discusses that perhaps the only real

1 that effect -- and this is what we're more
2 comfortable with on all non-Ameris issues. I
3 think she said 40 percent, but a contingency fee
4 arrangement. With respect to the Ameris issues,
5 we wish you to do it hourly, and I think he -- he
6 even set out a rate -- but maybe he didn't -- to
7 try to negotiate a resolution of it. And if it
8 looks like a lawsuit is required, then the
9 contingency arrangement that you discussed on
10 yesterday. That was December the 11th.

11 On December 14th, Mr. Epting writes back
12 and he in effect says, okay, I'll try to
13 negotiate it with Karl, but I think we need to
14 bring a lawsuit. Karl, I think, is Karl Zerbst,
15 but I'm not sure of that. I think Karl Zerbst
16 worked at Ameris Bank at that time. He says,
17 we've got to start the lawsuit but hourly is
18 okay.

19 On February the 4th is the next writing
20 that I see of significance. And it's a slight
21 variation on it. And it says, both the
22 non-Ameris matters, we will do it on a
23 contingency basis. On the Ameris matters we will
24 bill on hourly for past efforts and for 60 days
25 in the future. We will bill you hourly. If

1 we're not able to find a resolution, then it will
2 revert the contingencies described above, which
3 were the non-Ameris litigation.

4 60 days later, almost, if not to the
5 day, within a day or two, after negotiations
6 didn't work, they send a letter to Ms. Gibson on
7 April the 7th, and they solidify their fee
8 arrangement as a contingency arrangement based on
9 savings and recovery from Ameris Bank, based on
10 savings and recovery.

11 She signs the letter. Then on -- I
12 guess it's July the 9th, 2010, shortly after the
13 foreclosure proceeding is brought, Mr. Epting
14 e-mails directly to Ms. Gibson and illustrates
15 how the fee arrangement is going to work, and
16 indicates to her that a lot of -- a lot of the
17 potential, as Mr. Kefalos recognized two weeks
18 after the initial inquiry, could be in the
19 savings by excusing debt obligations, and told
20 her that if that transpires you're going to have
21 to find a way to pay me.

22 So, you know, by -- at that point, by
23 April the 7th for sure, the contingency -- a
24 signed contingency agreement is in place.

25 Q. And you realize the April 6th document

1 or April 7th document was signed on April 26th;
2 is that correct?

3 A. It was -- okay. By April 26th. When
4 the April -- when the April 7th document was
5 consented to by her, yes.

6 Q. Marvin, you just presented to us a very
7 succinct review of the facts of the case as the
8 defendants have articulated quite eloquently in
9 their prior depositions. And I'm assuming that
10 this succinct opinion or -- excuse me -- this
11 succinct recitation or citation of the facts of
12 this case have come from the documents you
13 received from the defendants; is that correct?

14 A. It's come from those documents that I
15 referred to. At the beginning of this
16 deposition, I said I thought there was seven,
17 eight, nine, 10 key documents.

18 Q. And you haven't seen any documents from
19 our office yet other than those that may have
20 come and been delivered to you by and through the
21 defendants; is that correct?

22 A. The documents that I've reviewed you
23 have before you. And I don't know where they
24 came from. Although I do know they came from
25 Barnwell Whaley Patterson & Helms to me, but I

1 don't know where they got them from.

2 Q. I would represent or I will represent to
3 you that there are other documents involved in
4 this case that we'll be glad to produce for you
5 and, secondly, that your summary recitation of
6 the facts as you see in the documents dovetail
7 and are almost exactly as these facts have been
8 presented in four prior depositions by the
9 defendants in this case.

10 All that said, I'm handing you a
11 document. It's a February 4th e-mail. I think
12 you referred to this just a couple of minutes
13 ago.

14 A. I did, yes.

15 Q. Have you seen this document before?

16 A. Oh, yeah.

17 Q. I'd like to direct your attention to the
18 title for the recipient section, if you will, of
19 this e-mail. Do you see Ms. Gibson being copied
20 on this February 4th e-mail?

21 A. You know, I don't, but I also never saw
22 her copied on e-mails sent by Mr. Papa.

23 Q. Do you know if Ms. Gibson ever received
24 this e-mail?

25 A. I don't know whether she did or not. I

1 assume she did, since it was referred to in the
2 April 7th fee agreement and was referenced in it.

3 Q. Well, the April 7th agreement -- to the
4 extent it's an agreement at all -- is dated April
5 26, is it not?

6 A. She consented to the terms on April 26,
7 as I recall it.

8 Q. And what's the date on this e-mail?

9 A. This is February 4.

10 Q. So would you agree with me that the
11 April 26 document was prepared or executed by
12 Ms. Gibson two months and 18 days following this
13 February 4th e-mail?

14 A. I haven't done the math. All I know is
15 it was -- it was almost to the day 60 days after
16 this letter that said, we'll bill you for 60 more
17 days, the April 6th letter.

18 Q. This e-mail that Ms. Gibson wasn't
19 copied on?

20 A. The April 6 letter was authored and
21 sent.

22 Q. This e-mail that Ms. Gibson wasn't
23 copied on?

24 A. I don't know whether she -- no. She was
25 not copied on. She is not shown as a copy -- as

1 a copy party.

2 Q. Do you know if Linda received a copy of
3 this e-mail?

4 A. Do I know -- no. I would be hugely
5 surprised if she didn't since it's referred to in
6 the agreement of April 7th that she acceded to or
7 assented to.

8 Q. Would you agree with me that under South
9 Carolina law a contingent fee agreement must be
10 in writing and signed by the party against whom
11 you're going to obligate to pay the fee?

12 A. I think that Rule 1.5 states that, and
13 the April 7th agreement was signed.

14 Q. I'd like to direct your attention to the
15 third paragraph in this February 4th e-mail. And
16 I'll read it. Quote, as to Ameris, the same
17 percentages will apply for any recovery or any
18 savings defined as a settlement at less than the
19 amount due Ameris.

20 Marvin, do you see any ambiguity in that
21 sentence at all?

22 A. Not when you look at it in the context
23 of it, because --

24 Q. Well, what context are you looking at it
25 in?

1 and any savings, does it not?

2 A. They use "or," but I mean that's -- a
3 recovery or a savings.

4 Q. Well, "or" is a conjunction that
5 connotes or at least could be interpreted in
6 ordinary customary usage as apples or oranges,
7 not apples and oranges. I mean, those are very
8 different --

9 A. I'm not going to dispute -- I mean I'm
10 not going to get into a grammar lesson with you.
11 It also can be a particular type of clause, but I
12 mean it's -- that's parsing it pretty thinly.

13 Q. Well, aside from it possibly could be
14 another clause or it could be the conjunction
15 "and" which would mean Ms. Gibson is paying a fee
16 for both the recovery and any savings, what other
17 connotations might be interpreted from this first
18 sentence, assuming she even saw this February 4th
19 e-mail for the moment?

20 A. Well, you might make a recovery and
21 effect no savings or you might do both. You've
22 got two pots of value, a forgiveness of debt or
23 the recovery. And I think all concerned thought
24 that the biggest potential was for savings. As
25 it turned out, they underestimated themselves.

1 A. Looking at it in the context that the
2 Ameris issue is a matter of a defaulted piece of
3 note paper secured by two pieces of property.

4 Q. Could there be any other context to view
5 this February 4th e-mail?

6 A. Not as I recall the -- what ultimately
7 resulted from that conflict as shown in the
8 foreclosure proceedings. There wasn't anything
9 in addition to that. So, no.

10 Q. Well, it says, quote, as to Ameris, the
11 same percentages will apply for any recovery or
12 any savings.

13 A. Right. They were looking at two things,
14 as we discussed earlier.

15 Q. Who's they? Who's they?

16 A. Ms. Gibson, through her lawyers, were
17 looking at an affirmative recovery on the lender
18 liability issues, and they were looking at a
19 potential and probably the primary potential of
20 having the debt reduced or forgiven, the
21 deficiency debt.

22 Q. But it doesn't say "and," does it? It
23 says "or," does it not? It says, as for Ameris,
24 the same percentages will apply for any recovery
25 or any savings. It doesn't say for any recovery

1 Q. Well, could the first sentence mean, as
2 to Ameris, the percentages will apply for any
3 recovery and any savings? Could it mean that?
4 In fact, that's what the defendants are
5 suggesting it means, is it not?

6 A. Yes, if both occurred, of course.

7 Q. Yes. Yes. And could it mean any
8 recovery or, alternatively, any savings? Could
9 it mean that?

10 A. Only if there was no recovery realized,
11 which there hasn't been yet. There's been a
12 judgment but it's not been collected, as I
13 understand it. But, yeah, in that circumstance,
14 had they failed on their lender liability claim,
15 it would be limited to any savings.

16 Q. So in a sense -- in enumerated number 1,
17 it says 33 percent. In a sense, this document
18 could purport that Linda would be responsible for
19 33 percent of both any recovery and any savings;
20 is that correct?

21 A. I think that's exactly right.

22 Q. And conversely, this document would
23 be --

24 A. Of course, what is at issue today in
25 this case that I'm involved in deals simply with

1 talking about. And in the truck driver analogy,
2 my Lord, you've got access to your truck driver.
3 If you were involved in a wreck, I would think
4 you'd have a pretty good indication that you
5 weren't. It just -- I don't know what condition
6 or --

7 Q. When Ms. Gibson signed the contract that
8 said -- strike that, please.

9 When Ms. Gibson signed the April 26
10 document that made reference to a, quote,
11 contingency, do you think the parties intended
12 that any contingency that occurs she's going to
13 owe the \$566,000? In any way that Galt waives
14 that fee, she's still going to be entitled or
15 still obligated, I should say, to pay the
16 566,000?

17 A. I think she was entitled to pay the
18 percentage of whatever savings were realized off
19 the deficiency.

20 Q. Regardless of how they came --
21 regardless of how those savings came about. Is
22 that your testimony?

23 A. In the context of actually what happened
24 in this case, yes.

25 Q. But that's not my question. My question

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1 is, in the -- my question is is it your testimony
2 that subsequent to Ms. Gibson signing the April
3 26 document, she would have been obligated to pay
4 the attorneys a third of whatever was saved
5 regardless of how the result came about? And I'm
6 trying to test the limits of contingency here. I
7 mean was it -- was the term contingency that
8 broad that it encompassed even Galt waiving the
9 deficiency, she still has to pay the 566?

10 MR. BOWERS: Object to the form.

11 A. That was a whole -- that was a primary
12 goal of the litigation from the outset. That was
13 a primary goal of the litigation from the outset.

14 Q. I understand.

15 A. And so my answer to it is yes. And they
16 spent four or five months trying -- I say over
17 four or five months -- they spent or expended
18 efforts trying to get Ameris to -- or Galt, I use
19 them interchangeably -- to waive the deficiency.

20 Q. And --

21 A. Or to waive all or part of the
22 deficiency.

23 Q. In all of these efforts that they
24 engaged opposing counsel, opposing counsel time
25 records show they expended roughly 25 hours --

1 excuse me -- 53 hours.

2 A. It doesn't surprise me. I would
3 assume -- I don't know if they show it. I would
4 assume -- let me back up since you're on
5 analogies. Back when I was clerking during law
6 school, I worked for a fellow who had a
7 collection practice, and it was through
8 subrogation. And what would he do to Marvin
9 Infinger? Marvin, go down to the RMC office and
10 do asset searches on these judgment debtors to
11 see whether there's any use in us continuing to
12 pursue the debt against them.

13 I assume that they did an asset search
14 on Ms. Gibson. And if Ms. Gibson is showing
15 millions in hard assets, I can't -- it doesn't
16 surprise me at all that up until that time they
17 didn't spend a whole lot of time on it, because
18 they would have felt fairly secure that they
19 could collect a large portion, if not all, of the
20 deficiency to her very grave detriment.

21 Now, something changed, and I've told
22 you some scenarios that in my mind and through my
23 experience could have caused the change. I don't
24 have any direct evidence of what caused it. But
25 I have to believe that the lawyers had something

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1 to do with it. And not only in those different
2 scenarios, but also in who they had. The -- who
3 you hire as a lawyer is the most underrated
4 aspect of a lawsuit. It is the number one most
5 important thing in a lawsuit. And they had --
6 and Ms. Gibson had a dream team.

7 Q. I have a document I'd like to hand to
8 you with respect to the dream team. These are
9 snapshots from the website of the law firm of
10 Gedney Howe and the snapshots from the website of
11 George Kefalos. I'll represent for the record
12 that I didn't find any website for Mr. West or
13 Mr. Epting.

14 (Exhibit No. 51 was marked for
15 identification.)

16 (Exhibit No. 52 was marked for
17 identification.)

18 Q. I'll represent for the record that these
19 are photographic images taken from the website of
20 Mr. Howe and Mr. Kefalos. I'd like to direct
21 your attention first to Mr. Howe's website and
22 his practice areas, and read along with me, if
23 you would.

24 Practice areas: The law office of
25 Gedney M. Howe handles a broad array of legal

1 in Berkeley County.

2 I mean isn't that all-inclusive?

3 They're saying --

4 A. No. It doesn't include the Charleston
5 County action for extra contractual damages for
6 lender liability. It couldn't possibly include
7 that. It doesn't mention it. It carries a
8 separate case number. It's in a different
9 circuit.

10 Q. Would your opinion change if you came to
11 learn that the lender liability action in the
12 Galt purported deficiency claim were one and the
13 same action in Berkeley County?

14 A. That can't possibly be the case.
15 There's a judgment that was rendered in
16 Charleston County -- was it in Charleston County?
17 -- against Ameris for \$2.8 million. If they were
18 one and the same, that couldn't have gone
19 forward.

20 Forgive me. I had a sort of incredulous
21 tone in my voice. I'm sorry for that.

22 (Off-the-record discussion.)

23 Q. Marvin, I'd like you to take a moment
24 and read this attorney-client -- this document
25 that purports to be an attorney-client contract

1 dated November 18th, 2010.

2 And after you've had a chance to read
3 this document, tell me if there's any way, in
4 your expert opinion, to interpret this document
5 as a fixed fee agreement.

6 A. Again, what it is doing is it's
7 determining an exact amount of a fee based on the
8 settlement result which was entered into.

9 Q. Well, that's certainly the defendants'
10 testimony. I mean certainly the defendants have
11 each and all testified in their deposition that
12 this document, this November 18 document,
13 purports to be a memorialization of some prior
14 agreement, particularly a February 4th e-mail
15 that Ms. Gibson never saw, was not copied on, and
16 an April 26 letter that just makes no reference
17 at all to any reverse contingency, but just says,
18 we'll represent you on a contingency.

19 And my question is, when you look at
20 this now second document that she signed with
21 these attorneys, does it anywhere in this
22 document say that she's going to pay based on a
23 contingency?

24 A. Other --

25 MR. BOWERS: Object to the form.

1 A. Other documents say that, and this
2 applies the one-third contingency fee percentage
3 agreed upon in those other documents to an amount
4 of savings that only recently had been
5 determined. I don't see how else you can read
6 it. It was over. They had made an agreement.
7 There was nothing more to litigate except, as it
8 turns out, a fee, but --

9 Q. Is it your testimony that they --
10 strike, please.

11 Is it your testimony that at the time of
12 this November 18th document being signed by the
13 parties the litigation was over?

14 A. Well, it had been settled. There had
15 been an agreement to the terms of the November
16 8th letter. There's a November 15th e-mail from
17 Epting or Epting's office saying, we will agree
18 to the terms, and there was some issue about a
19 right of first refusal on one of the pieces of
20 property. But they were pressed because of the
21 protestations of Mr. Jeremy Henderson who said
22 they've got to respond by November 15th. And
23 they responded, yes, we will -- we'll take the
24 deal.

25 Q. Do you know if the Galt settlement had

1 occurred as of November 18th when this document
2 was signed?

3 A. I know that there had been a proposal of
4 November the 8th, that it had a November 15th
5 deadline, and that on November 15th, they said --
6 they, in behalf of Ms. Gibson, that being
7 Epting's office, I think -- we agree to the
8 terms. So that, to me, that is, yes, a
9 settlement.

10 Q. Were you aware that the actual
11 settlement documents executed by the parties
12 occurred on December 1st of 2010, roughly two
13 weeks following this agreement?

14 A. That always happens. You hardly ever
15 agree to a settlement and on the day that you
16 agree to it, execute a form of full release. You
17 hardly ever do.

18 Q. Would you agree with me that this is
19 really a forward-looking document --

20 A. No.

21 Q. -- this November 18th agreement?

22 A. No. I've stated I don't know how many
23 times that I think it is an application of a fee
24 arrangement to a past event. A settlement.

25 Q. Can you point to the terms in this

1 document, this November 18th document, that
2 suggests the parties are looking back in time to
3 some prior event?

4 A. Yes. The \$1,700,000 savings term. It
5 lines -- it lines up with the agreement that
6 Tecklenburg was able to strike or -- not
7 strike -- able to help bring about in speaking
8 with somebody on behalf of the Kefalos, Howe,
9 Epting, West team.

10 Q. Mr. Tecklenburg essentially negotiated
11 with Mr. Epting, Kefalos, West and Howe to
12 amongst themselves come up with this 1.7 dollar
13 marker; is that correct? Is that your testimony?

14 MR. BOWERS: Object to the form.

15 A. My testimony was that Mr. Tecklenburg,
16 on behalf of Ms. Gibson, had negotiated, at least
17 in some way and I think it was with George
18 Kefalos, a reduction in the amount of the
19 deficiency saved from \$2.3 million to 1.7, and
20 had failed to get them to voluntarily -- them
21 being the four defendants -- voluntarily reduce
22 their percentage contingency. So, yes, he was
23 negotiating with some of them, one or more of
24 them, in all probability.

25 Q. Would you agree with me that if this

1 November 18 document is capable of more than one
2 interpretation --

3 A. I don't --

4 Q. -- then that would be a question of fact
5 for a jury? Would you agree with that statement
6 under -- in your expert opinion, as a South
7 Carolina attorney, would you agree with the
8 general premise that if the Court were to
9 determine that this November 18th document were
10 ambiguous, that that would be a question of fact
11 for the jury?

12 A. No, I don't. And step back and look at
13 this for a minute. You've called this a fixed
14 fee. You've called it ambiguous. You've called
15 it a bunch of things. But one thing that is
16 absolutely clear from it, if this document, no
17 matter how it is designated and which is signed
18 by Ms. Gibson, is executed -- by that, I mean
19 performed -- the lawyers will be entitled to
20 \$567,000, which is exactly the fee.

21 So I don't care what you call it. If --
22 but it's clear to me. You can't rip things out
23 of context. They had brought this aspect of the
24 claim to conclusion. And in order to determine
25 what the fees were going to be and the

1 disbursements on closing, a document similar to
2 this, whether it was in this form or just a
3 closing statement, had to be produced.

4 Q. Marvin, I understand that the attorneys
5 talked amongst themselves and clearly understood
6 amongst themselves as to what their fee was going
7 to be, and I understand that the attorneys'
8 testimony in their depositions is that this
9 document reflects their internal communications
10 amongst themselves and their thoughts.

11 The question really is, do you think
12 that Linda Gibson might have interpreted this
13 document to be something other than a contingent
14 fee agreement?

15 MR. BOWERS: Object to the form.

16 A. You know, I can't say what Ms. Gibson
17 had in her mind. I can say it would be highly
18 puzzling to me if that thought were in her mind.
19 And I say that on this basis. From the very
20 beginning, they're talking about contingencies of
21 savings. That's Kefalos back to Papa. Papa
22 reached out to Kefalos, I doubt on his own, I
23 expect with the knowledge of Ms. Gibson. The --
24 the e-mails are replete -- the December 11th
25 e-mail from Papa talks about this very situation,

1 and it talks about, we want you to pursue Ameris
2 for a limited time on an hourly basis. If it
3 doesn't work, we'll go to the contingency
4 arrangement discussed. Epting says, okay, we'll
5 try that.

6 It goes to February 4th, and he says
7 we'll do it hourly for 60 more days and you'll be
8 responsible to us hourly for past efforts, and if
9 not -- if not concluded, the same percentages
10 will be applied to the Ameris claims, savings or
11 recovery. After the suit is brought, he walks
12 Ms. Gibson through it with an example as to how
13 the fee would be calculated, which the numbers
14 are different, but it looks just like this
15 document from the standpoint of the example he
16 gave her. Then she sees it after their
17 successful efforts, and she signs it.

18 So I don't know what was in her mind but
19 if anything other than this is what was agreed on
20 was in her mind, I'm exceedingly surprised and I
21 think it's unjustified. But that's not part of
22 my expert testimony.

23 Q. Did you find anything in your review of
24 the documents or the evidence that you reviewed
25 in this case that would suggest that Linda Gibson

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, individually, and in
capacity as TRUSTEE OF THE PAUL WILLIAMS
GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC;
SEVEN OAKS APARTMENTS, LLC; and 3205
PALM BOULEVARD, LLC,

Plaintiffs,

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K.
EPTING, JR.; GEORGE J. KEFALOS, P.A.;
GEORGE J. KEFALOS; GEDNEY M. HOWE, III,
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST,
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,

Defendants.

STATE OF FLORIDA)

COUNTY OF DUVAL)

DEPOSITION OF

MICHAEL DANHOUR

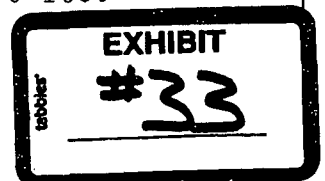
DATE TAKEN: Wednesday, September 9, 2015

TIME: 10:00 a.m. - 3:25 p.m.

PLACE: 233 East Bay Street, Suite 1010
Jacksonville, Florida 32202

Examination of the witness taken before:

CHINA COCHRAN, RPR
FIRST COAST COURT REPORTERS
2442 ATLANTIC BOULEVARD
JACKSONVILLE, FLORIDA 32207 (904) 396-1050



1 foreclosure action against Heritage Seven and
2 Ms. Gibson?

3 A The first time we accepted a deed in
4 lieu offer from Ms. Gibson?

5 Q No. When was the first time that
6 Heritage -- that -- or when Galt Valley extended
7 an offer that it would accept a deed in lieu of
8 foreclosure of the properties to Heritage Seven
9 and Ms. Gibson?

10 A It certainly happened on November 8th in
11 writing, and it happened in -- whatever -- the
12 October 28th one in writing. And I think it was
13 probably verbally discussed probably as early as
14 September or August.

15 Q Okay.

16 A Just deed in lieu of foreclosure being
17 the mechanism; right?

18 Q Okay. But the first time you're aware
19 of it in writing is in October of 2010.

20 A In a legal document. I don't know what
21 -- I mean, there may have been emails between Ian
22 McVey and counsel, their counsel.

23 Q Would those emails have been produced to
24 you by Mr. McVey?

25 A He would have -- yeah. He -- so we had

1 conversations, again, about are they open to a
2 deed in lieu or are they open to a deed in
3 reduction. I'm -- I feel comfortable saying that
4 some of those conversations happened prior to the
5 first actual written, signed settlement offer,
6 but it probably would have been verbally or via
7 email.

8 Q And the first time that it was offered
9 in October of 2010, that included a 1.5 million
10 dollar deficiency; correct?

11 A That's correct. That's correct.

12 Q And that was a -- an additional debt
13 that Ms. Gibson would have been obligated to pay
14 over 20 years.

15 A I believe that's correct.

16 Q The first time that Galt Valley offers
17 to accept a deed in lieu of foreclosure and to
18 waive the deficiency is on November 8th of 2010;
19 correct?

20 A That's correct.

21 Q And had not made such an offer before
22 that.

23 A That's correct.

24 Q When was the first time that Galt Valley
25 asked for a settlement conference with Ms. Gibson's

1 amended complaint stating that it was not seeking
2 a waiver -- or that it was not seeking a
3 deficiency?

4 A Not to my knowledge.

5 Q So at that point Galt Valley, according
6 to the pleadings that were filed, as the
7 plaintiff was seeking a deficiency judgment
8 against Ms. Gibson and the other debtors;
9 correct?

10 A If we didn't amend the pleadings, then,
11 yeah, that would be --

12 Q Are you aware of Galt Valley amending
13 the pleadings?

14 A No.

15 Q Mr. Danhour, I'm going to ask you to
16 look at Exhibit No. 92.

17 A Okay.

18 Q Do you recall that document?

19 A I do.

20 Q Who drafted that document?

21 A I had a verbal conversation with Jim and
22 we -- he put it together. It's based on our
23 conversation. He sent it to me, and I edited it
24 for clarity.

25 Q Do you have a copy of the original one

1 made phone calls and did things. It was -- it
2 was not an official appraisal process when we
3 start making offers.

4 Q Do you know if Galt Valley came to an
5 opinion as to what the value of the property was
6 as it -- as it was being purchased?

7 A I think I -- I know we came to an
8 opinion. I think our opinion was probably in the
9 1.2 to 1.4 range, maybe 1.5, but somewhere in
10 that range based on what we paid for the note.

11 Q And so after checking on the status of
12 the litigation, I think the next step you had
13 outlined was substituting the parties; correct?

14 A Right.

15 Q And then after that is when you said you
16 would request a settlement conference.

17 A Generally, yes.

18 Q Is that what happened here?

19 A I don't know. I think this one had a
20 little bit of other issues. When did we
21 substitute? I don't have that written down. Was
22 it in August? I know we were talking about
23 substitution in August.

24 I think the difference with this one was
25 -- was we felt receivership was -- was much more

1 important. Two -- two issues; right? One is
2 that with an oceanfront condo in Florida, you can
3 look at it, look in the windows, and you can get
4 a pretty good feel for what's going on. You also
5 don't have a tenant base that can steal and
6 vandalize, et/cetera.

7 And then the Columbia property there's
8 people still -- I mean, the actual borrowers were
9 in the property, and so it's a little bit of a
10 different animal. Receivership was -- was kind
11 of the only way we can get inside and make sure
12 everything was what we thought it was and -- and
13 that's a big part of the -- kind of the business
14 model, is there's definitely unknowns when you
15 buy some stuff. The sooner you can find out
16 those knowns, tie them down as much as possible,
17 the easier it is to say, okay, let's -- let's
18 move forward and try to get this resolved.

19 Q And so after, then, the parties are
20 substituted, was it Galt Valley's focus to have a
21 receiver appointed?

22 A I believe that was our intent, yeah.

23 Q Did that take priority over demanding a
24 settlement conference?

25 A Probably. And I think once the -- the,

1 you know, motion was denied, et cetera -- and I
2 -- I think the other part of the settlement
3 conference was -- again, if I recall correctly,
4 right out of the gate we were sent a deed. And
5 we were like, well, what -- I recall trying to
6 say, you know, let's get this deed fixed up. Do
7 we want to take it? What's going on?

8 I mean, there was some confusion with
9 why that -- and I think it happened out of the
10 blue. I don't think it was something where, you
11 know, here's something coming to you. It just
12 kind of happened. So that indicated clearly a
13 desire for the borrower to get out of that
14 specific asset, which, again, leads us to think,
15 well, they're absentee. This thing is not being
16 run right. This is a huge concern. It's going
17 down the tanks.

18 So, again, I think that's why the
19 receiver took -- took a little bit more
20 importance than -- than the settlement. And,
21 again, our point to settle and take a deed was
22 both collateral properties. And, again, I think
23 they made it pretty clear that she didn't want to
24 give up the cell phone tower.

25 Q Okay.

1 pages where Mr. McVey has requested a
2 substitution of the parties yet?

3 A August 10th.

4 Q Okay.

5 A Or I don't know that it's a request, but
6 it's a telephone call between Ian and Drew.

7 Q Correct. Okay. Is there anything in
8 that time entry to indicate that there was a
9 discussion of Galt Valley's willingness to accept
10 a deed in lieu of foreclosure with a waiver of
11 the deficiency?

12 A No. It looks like it was only a
13 20-minute call, so it probably wasn't.

14 Q And based on these entries for August
15 9th and August 10th, does it still -- does it
16 look like the title work is still being done?

17 A Yes.

18 Q And then on August 11th, Mr. McVey
19 actually drafts the consent order of
20 substitution; correct?

21 A Correct.

22 Q So that's a consent order; correct?

23 A That's correct.

24 Q So there was no fight from Mr. Epting;
25 correct?

Client Name	Description	File	Field

Search Text: JORDANIS KARAGIANNIDIS
Total finds for JORDANIS KARAGIANNIDIS: 0

Search Text: IORD KARAGIANNIDIS
Total finds for IORD KARAGIANNIDIS: 0

Search Text: CHRYSOULA MALOGIANNI
Total finds for CHRYSOULA MALOGIANNI: 0

Search Text: CHRY MALOGIANNI
Total finds for CHRY MALOGIANNI: 0

Search Text: SOULA MALOGIANNI
Total finds for SOULA MALOGIANNI: 0

1 Second of all, my client has not accepted said
2 deed, and at this point I would not recommend it
3 do so until we work out a resolution.

4 Q Okay. Breaking this down, does the
5 first sentence of that paragraph reference the
6 tender of the deed that you were mentioning
7 earlier?

8 A It mentions the tender of a deed which
9 was to the apartment complex, one of the two
10 assets we were seeking a deed to.

11 Q And then it outlines two issues with
12 that; correct?

13 A Uh-huh (affirmative response).

14 Q And the first issue is that it's not
15 properly executed and may not convey the property
16 to -- or convey the correct property; correct?

17 A Or to the correct lender; correct.

18 Q And then the second sentence says,
19 Second of all, my client has not accepted said
20 deed and at this point I would not recommend it
21 do so until we work out a resolution.

22 Well, if your testimony, Mr. Danhour, is
23 that Galt Valley was willing to accept a deed in
24 lieu of foreclosure with a waiver of the
25 deficiency, what resolution is there to seek out?

1 A The other property. This is two assets,
2 two collateral assets, and they're saying take
3 one and go away.

4 Q Am I missing it in this letter where
5 Mr. McVey demands that second property?

6 A No. I don't think he does. I think he
7 says, I would not recommend it until we work out
8 a resolution.

9 Q Okay.

10 A And he also doesn't demand deficiency
11 though.

12 Q Correct. But at this point you're not
13 willing to even accept one of the deeds to the
14 property; correct?

15 A Well, that's correct. Again, I think
16 that's a -- what mechanism do you do it? Maybe
17 that's where the deed in reduction principal came
18 through.

19 Q Couldn't Mr. McVey, in this letter, have
20 been instructed to say, We won't accept the deed
21 the way it is because it's got errors with its
22 execution and to the -- to which lender, but if
23 Ms. Gibson is willing to tender the deeds to both
24 properties, we can do a deed in lieu of
25 foreclosure?

1 A Yeah.

2 MR. DAVIS: Object to form.

3 Q I mean, at this point the attorney,
4 Mr. Epting, has no idea that Galt Valley is
5 willing to accept a deed in lieu of foreclosure;
6 correct?

7 A I would imagine so.

8 Q And, in fact, Galt Valley has
9 specifically rejected one of the deeds, correct,
10 for the reasons outlined here?

11 A Well, yeah. I mean --

12 MR. DAVIS: Object to form.

13 A -- we did not reject it. Our client or
14 our -- what does it say? "My client has not
15 accepted said deed, and at this point I would not
16 recommend it do so until we work out a
17 resolution."

18 Q Did you see this letter before it went
19 out to Mr. Epting?

20 A I'm sure I did.

21 Q And so you could have recommended to
22 Mr. McVey or instructed Mr. McVey to include
23 additional language to say, Fix the deed; give us
24 the other deed; we'll do a deed in lieu of
25 foreclosure.

1 Q -- wherein Mr. McVey -- in that letter,
2 did he say that there was problems with accepting
3 the tender of the deed?

4 A Yes.

5 Q And that, in fact, Galt Valley does not
6 accept the tender of the deed.

7 A That's correct.

8 Q So at this point we -- we're now at
9 September 1st, and there's no indication that's
10 been made by Galt Valley that it would accept a
11 deed in lieu of foreclosure with a waiver of the
12 deficiency; correct?

13 A Appears to be correct.

14 Q And there is no request for a settlement
15 conference at this point; correct?

16 A Correct.

17 Q Okay. Now we'll move along to the next
18 bill. It appears that there are, on the first
19 page of the next bill, a couple of -- several
20 telephone calls with Mr. Epting and Mr. Kefalos
21 about the receiver; correct?

22 A Correct.

23 Q Do you see any indication that
24 settlement discussion was initiated during those
25 conversations?

1 A No.

2 Q Do you see anywhere where it requests a
3 settlement conference?

4 A No.

5 Q Do you see anywhere where it asks for
6 Galt Valley to speak directly with Ms. Gibson?

7 A No. And, again, I would add here that
8 the receiver was kind of that first fight.

9 Q And so the first fight happens
10 approximately 45 days after you purchase the
11 paper.

12 A I think so. I don't know how many days
13 after we were substituted but yeah.

14 Q Okay. But you guys had had discussions
15 -- or your attorney had had discussions with the
16 attorneys for Ms. Gibson before ya'll were
17 substituted; correct?

18 A Was it that one phone call?

19 Q Looks like there is one on July 28th,
20 one on July 29th, one on August 9th, and then,
21 finally, substitution of counsel was discussed on
22 August 10th; correct?

23 A Okay. So three phone calls,
24 introductory status-of-suit phone calls.

25 Q But then there aren't any telephone

1 deficiency as quickly as possible, why wasn't a
2 letter written on August 12th making that
3 request?

4 A Well, I think we were not on the attack.
5 We were certainly on the -- kind of the -- the
6 defense and preservation.

7 Q But you've already testified that your
8 number one goal was getting the property;
9 correct?

10 A Correct.

11 Q And that's the quickest way to do it.

12 A Correct.

13 Q So before you get into a fight at every
14 corner, why didn't Galt Valley just make the
15 demand that -- that give us the two properties
16 and we'll waive the deficiency?

17 A I just don't think that's how you do it.

18 Q How did you do it with the other
19 properties, then?

20 A We had a conversation with the person,
21 figured out the person's story, where they're at,
22 what they're capable of.

23 Q What do you mean capable of?

24 A What they're capable of doing. I mean,
25 if they're, you know --

1 reduction idea comes up instead of deed in lieu
2 of foreclosure.

3 Q Okay.

4 A So I don't know if it was -- again, what
5 side, but somebody said, hey, forget deed in lieu
6 of foreclosure. Let's do deed in reduction.

7 So then it's put on us to say, Well, you
8 guys make the first offer.

9 So this is that offer.

10 Q Okay. And this is ya'll's first written
11 settlement demand; correct? Sorry. This is Galt
12 Valley's first written settlement demand;
13 correct?

14 A I mean, I think our first written
15 settlement demand is saying, Heritage Seven, put
16 something in writing that we can work with.
17 Right here, I think that's our first demand for
18 settlement.

19 Q So your first written settlement demand
20 is the October 18th letter wherein Galt Valley
21 asked for a proposal from the debtor.

22 A Correct.

23 Q Okay. And then you consider this to be
24 your second written settlement demand, the
25 October 25, 2010.

1 A Correct.

2 Q And what -- what is the -- what is the
3 summary of this letter, in essence?

4 A Give us both properties and we'll take
5 the deficiency over a period of 20 years.

6 Q And the deficiency amount that Galt
7 Valley was seeking was how much?

8 A 1.5 million.

9 Q And what was the interest rate?

10 A Five percent.

11 Q And so what had Galt Valley valued the
12 collateral at?

13 A About -- well, we had valued the
14 collateral at about a million dollars, but for
15 purpose of this discussion, we gave her a credit
16 of \$250,00 for the apartment complex seen as a
17 concession.

18 Q And the total debt at this point in time
19 was --

20 A 3,000,000.

21 Q -- a little over 3,000,000?

22 A Uh-huh (affirmative response).

23 Q Okay. And so in this letter Galt Valley
24 is seeking a deficiency payment from Ms. Gibson
25 in the total amount of 1.5 million dollars over

1 20 years at five percent interest..

2 A They're asking for a new promissory
3 note.

4 Q Okay. And the promissory note is taking
5 the place of the deficiency?

6 A Right.

7 Q Okay. Moving on to Exhibit No. 101,
8 then, Mr. Danhour, do you recall reviewing this
9 document during Mr. Davis' examination?

10 A Yes.

11 Q I just want to focus in on one paragraph --

12 A Okay.

13 Q -- the middle paragraph. It says, "I
14 accept your consent to allow us to amend to state
15 our claim directly against Galt. We will do so
16 by the 15th of November."

17 What did that mean to you?

18 A I'm not sure. Does it have to do with
19 the Ameris stuff?

20 Q Do you know whether or not Galt Valley
21 initially consented to allow Ms. Gibson to assert
22 her claims that she had asserted against Ameris
23 also against Galt Valley?

24 A I don't recall.

25 Q Do you recall discussing that? I'm

1 Q Do you think they're possibly talking
2 over each other, misunderstanding what they're
3 saying?

4 A It's possible.

5 Q Okay. And then moving to Exhibit No.
6 103, this is the November 18th, 2010, letter. Do
7 you recall that one?

8 A Yeah.

9 Q Is this the first time in writing Galt
10 Valley expresses its offer to accept a deed in
11 lieu of foreclosure with a waiver of the entire
12 deficiency?

13 A I think it was the first time we put in
14 writing the waiver of deficiency.

15 Q Okay. There had previously been
16 discussions about accepting the deed; correct?

17 A Right.

18 Q Okay. But there had not been any
19 discussion before November 8th about waiving the
20 deficiency.

21 A To my knowledge there was nothing in
22 writing signed, sealed and delivered like this.

23 Q Did you participate in any conversations
24 with your attorney and Mr. Epting and the
25 attorneys for Ms. Gibson wherein there was a

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs :

vs. :

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants :

NOTICE OF MOTION

Hearing Requested

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2015 AUG 11 PM 3:07

FILED

**PLAINTIFFS' OPPOSITION MOTION AND
CROSS MOTION FOR SUMMARY JUDGMENT**

TO: M. DAWES COOKE, JR., ESQ., ATTORNEY FOR THE DEFENDANTS

PLEASE TAKE NOTICE the above named Plaintiffs ("Plaintiff(s)"), by and through their undersigned counsel, will move before the Honorable Court in the County of Charleston, South Carolina, on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for a hearing on Plaintiffs' Opposition Motion and Cross Motion for Summary Judgment, for an Order granting Summary Judgment in favor of the Plaintiffs, and as against the Defendants, for the relief sought in the Plaintiffs' Second (8-6-2015) Amended Complaint, and on the facts, pleadings, discovery, depositions, affidavits, and papers before the Court, and applicable law, as more fully set forth by the points and authorities in the Plaintiffs' accompanying memorandum of law.

I. *Summary of Case:*

This is an action to determine the enforceability of an attorney-client fee contract; and, if enforceable, to determine whether the fee is excessive. This action arises out of a \$566,666.00 fee disagreement between Ms. Gibson and her lawyers relating to the lawyers' representation of Ms. Gibson in foreclosure and guaranty action that ended in a routine deed-in-lieu of foreclosure transaction.

Any inquiry of the source of the fee misunderstanding necessarily begins with the lawyers' fee documents, - *namely*, (i) the February 4th e-mail; (ii) April agreement; and, (iii) November document, none of which contemplates two fees in the Ameris matter.¹ Exhibit A.

Ms. Gibson was not copied, nor ever given, or even aware, of the February 4th e-mail until this litigation. (Gibson Dep. 153:1-7; 262:21-23; 263: 1-4). The express terms of the April agreement contemplates a contingent fee arrangement computed as a percentage of any (actual) cash recovery; and, the November document terms *prima facie* purport a flat-fee agreement.

Summarily stated, at execution of the various fee documents, Ms. Gibson believed she was agreeing to pay her lawyers' fees out of any *actual* (cash) recovery, if any, as a contingent fee is commonly grasped by the public; *conversely*, the lawyers believed (apparently) that they were getting paid two fees, both a *straight*-contingent fee and a *reverse* fee (\$566,666.00) based on any "savings" of a purported deficiency.

Furtively, inadvertent or not, the lawyers never disclosed their global "duel-fee" intention to Ms. Gibson. In this regard, the parties' minds were nowise connected at execution of the April fee agreement, or the November agreement.

¹ Separately, before the Court is, inter alia, the question of whether a straight and reverse contingent fee on the same loan document results in an excessive fee where, as here, the lawyers' work product to defeat, or reduce, the deficiency claim is the same, or substantially the same, work product to prosecute the lender claim for which the lawyers are also being paid? In other words, is Ms. Gibson entitled to a credit for, and to the extent of, duplicative work product; or, are the lawyers entitled to be paid twice for the same work?

Even assuming the April agreement's terms constitute both a *straight*-contingent fee and a *reverse*-fee constituting a "dual-fee" arrangement, which it does not, Plaintiffs' argue the \$566,666.00 *reverse*-fee is clearly excessive given the nominal time involved on a non-complex deed-in-lieu transaction against a non-Holder-in-due-course, where the Holder *unilaterally* forgave the debt; and, the lawyers argue they are entitled nonetheless to the half-million dollar fee.

Plaintiffs respectfully request this Honorable Court restore to Ms. Gibson in equity \$566,666.00, minus a fair and reasonable *quantum meruit* fee entitlement in an amount to be determined by this Court *as to the* (inchoate) deficiency claim; and, issue an Order directing the lawyers to cancel, and to record a cancellation of, the lawyers' (fee) mortgages on Ms. Gibson's property; or, alternatively, submit for Jury Trial the claims and counts set forth in the Plaintiffs' Second Amended (8-6-2015) Complaint for the trier of fact to determine, inter alia, the parties' intent at execution of the April agreement; the Plaintiffs' damages; and, such other and further relief this Court deems fair and just.

II. *Plaintiffs' Motion in Opposition to Defendants' Motion for Summary Judgement:*

Plaintiffs move this Court Deny the Defendants' Motion for Summary Judgment whereas there exist before the Court a genuine issue of material fact as to (i) whether the plain terms of the April agreement constitutes just a *straight*-contingent fee; or, both a *straight*-contingent fee and a *reverse*-fee; and, (ii) the parties' intent at execution of the April agreement and the November agreement; and, (iii) whether a \$566,666.00 fee is excessive beyond a fee commensurate with like-kind deed-in-lieu work product. These disputed facts spring from the fee documents and bear directly on the parties' legal consequences the subject of this action.

As more fully set forth in the Plaintiffs' Memorandum of Law in Support of the Plaintiffs' Motion in Opposition to the Defendants' Motion for Summary Judgment, there exists evidence the lawyers breached their fiduciary duty owing to the Plaintiffs (which the lawyers dispute), by the lawyers' knowing and willful, or grossly negligent, material omissions of which the lawyers were aware, and Ms. Gibson was not, as to (a) their "dual-fee" scheme at execution of the April agreement; (b) their failure to disclose to Ms. Gibson, and to Mr. Tecklenburg, Esq., the true nature of Galt's inchoate (unperfected) deficiency claim; (c) their failure, or negligent omission, to initiate an offer to Galt for a deed-in-lieu of foreclosure in consideration of debt forgiveness, if any; and, (d) their material misrepresentations, and omissions, concerning the terms of the November document, *namely*, (i) "*Client hereby hires "Law Firm" in the defense and pursuit of a counterclaim*" when, in fact, (a) lawyers had already been engaged under the April agreement; and, (b) the "*defense*" of the deficiency liability already had been settled, and extinguished; and, (ii) "*leaving a potential deficiency judgment of \$1.7MM*" when, in fact, lawyers knew the deficiency claim had already been waived, leaving no deficiency; and, (iii) "*[f]or their services, Law Firm shall receive a fee based upon []... "One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount \$1,700,000.00*" when, in fact, (a) the "*sums saved*" for the purposes of computing the undisclosed *reverse*-contingent fee was already certain and known to the lawyers to be \$566,666.66; and, (iv) that the lawyers "*will advance these costs during the prosecution of the case...*" when, in fact, there was no case to prosecute (or defend) as to the deficiency claim because the deficiency contemplated in the November Arrangement had prior been settled by deed-in-lieu of foreclosure.

These fact issues in dispute are relevant as to the parties' intent at execution of the fee documents; and, are also relevant to the "contingency of risk" undertaken by the lawyers in

determining the excessiveness of the fee arrangement.

There are disputed facts in evidence also before this Court that support the Plaintiffs' claims for unjust enrichment (and Money Had and Received); *namely*, to the extent the lawyers charged and received an excessive fee, for nominal time expended on a non-complex deed-in-lieu transaction, on the basis of, and as a result of, the foregoing material omissions (above) and stated in Plaintiffs' Complaint, the lawyers have been unjustly enriched at Ms. Gibson's expense of over a half-million dollars. In this regard, the lawyers' conduct constitutes civil conversion of the assets of the litigation estate, and unfair and deceptive trade practices. As a direct and proximate result of the lawyers' wrongful conduct, Ms. Gibson has incurred additional legal fees for the prosecution of the lender claim (Ameris) she otherwise would not, and she is therefore entitled to equitable indemnity to cover appellate costs.

The Plaintiffs have withdrawn their claim for an accounting whereas the lawyers are under an affirmative obligation to disclose their full accounting in response to the Plaintiffs' discovery requests in this action; and, on information and belief, and relying that the lawyers' conscientiously and diligently complied with Plaintiffs' discovery requests, Plaintiffs believe that Plaintiffs are in possession of the lawyers' time records and accounting pertaining to the Ameris matter, with reservation of rights.

Further set forth in the Plaintiffs' accompanying memorandum of law, the parties' deposition testimony shows the parties held inconsistent and opposite views of the meaning of the express terms of the April and November fee documents at execution; and, that the \$566,666.00 is clearly excessive for a routine deed-in-lieu of foreclosure. On these disputed facts, and further disputed facts in accompanying memorandum of law, this Court must Deny the Defendants' Motion for Summary Judgment; and, should void or otherwise rescind the fee

agreement(s), if any, and restore the parties in equity to a *quantum meruit* fee arrangement guided by Rule 1.5(a) RPC, Rule 407, SCACR.

III. *Plaintiffs' Cross Motion for Summary Judgment in Favor of Plaintiffs, and as against the Defendants:*

Plaintiffs hereby move for Summary Judgment in favor the of Plaintiffs, and as against the lawyers, on the grounds there is no genuine issue as to any material fact Ms. Gibson believed she was entering into a (single) straight contingent fee agreement, or otherwise would pay a fair and reasonable fee for services - *specifically*, (i) the April agreement expressly states, unequivocally, "*George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010*"; (ii) the lawyers failed to disclose the February document (proposing a *reverse* fee); (iii) Ms. Gibson was unaware of the February 4th document until revealed by discovery in this fee action; (iv) no Court or trier of fact could reasonably ascribe any meaning to the plain language of the April Agreement other than "contingent on (cash) recovery"; (v) no Court or trier of fact could reasonably deduce, or otherwise infer, from the plain language of the April agreement both a *straight*-contingent fee and a *reverse*-fee constituting a "dual-fee" arrangement; (vi) no Court or trier of fact could reasonably deduce, or otherwise infer, from the express terms of the April agreement any other interpretation or construction of the fee terms without adding to or varying the terms of the April agreement; (vii) the lawyers are barred by the parole evidence rule from admitting into evidence any facts tending to vary or contradict the terms of the April agreement; and, that (viii) the lawyers have no admissible evidence before this Court that the Plaintiffs agreed to pay the lawyers both a *straight*-contingent fee and a *reverse*-fee constituting a "dual-fee" arrangement.

To the extent the Court finds the plain meaning of the April agreement's terms constitute both a *straight*-contingent fee and a *reverse*-fee constituting a "dual-fee" arrangement - *i.e.*,

adopts the lawyers' view, and thereby rejects Plaintiffs' view, then the Court necessarily must grant Plaintiffs' trial by jury on the genuine issue of material fact of the parties' intent at execution of the April agreement as to the fee arrangement.

Separately, Plaintiffs move this Court to exercise its inherent equitable power to find that a \$566,666.00 fee is clearly excessive upon the facts, deposition testimony, and affidavits before this Court – *namely*, on the Affidavits of Linda Gibson, (“Ms. Gibson”), Galt Valley, LLC, (“Galt”), and the (billing) statements of Callison Tighe and Rosen Hagood, all that illustrate by way of admissible evidence that (i) Ms. Gibson never agreed to pay the lawyers a dual-fee; (ii) Galt never intended to prosecute any deficiency against Heritage, or Ms. Gibson; (iii) Galt did not prosecute any deficiencies as against the other mortgagee-borrowers of the debt portfolio Galt acquired; (iv) the nature of the legal work *as to the deficiency* involved nominal time on a non-complex (routine) deed-in-lieu of foreclosure transaction, and otherwise, involved the same, or substantially the same, work product necessary to prosecute the lender claim, for which Ms. Gibson already agreed to pay the lawyers (April agreement), (v) Galt was a non-Holder-in-due-course; (vi) the lawyers failed, or otherwise neglected, to disclose to Ms. Gibson Galt was a non-Holder-in-due-course at execution of the November document; (vii) Ms. Gibson executed the November document without full disclosure and informed consent; (viii) any ambiguities in the April and November documents must be construed against the drafter (lawyers), and in favor of Ms. Gibson; and, that (ix) even assuming the lawyers had a mistaken belief as to Galt's intentions, having learned of their mistaken belief, the lawyers owe Ms. Gibson a duty to account for their mistaken belief and to adjust their \$566,666.00 fee commensurate with like-kind deed-in-lieu work product, and refund the balance to Ms. Gibson.

On the foregoing facts, and as more fully set forth by the points and authorities in the

Plaintiffs' Memorandum of Law in Support of the Plaintiffs' Motion for Summary Judgment, the Plaintiffs move this Court to enter Summary Judgment in favor of the Plaintiffs, and as against the lawyers with prejudice, and grant the Plaintiff the following:

IV. Relief Requested:

Plaintiffs' respectfully request that this Honorable Court Deny the Defendants' Motion for Summary Judgment; and, Grant the Plaintiffs' Motion for Summary Judgment in favor of the Plaintiffs, and as against the Defendants, and Order the following:

- (a) Set aside, rescind or otherwise reform, the fee "contract" arrangement; and,
- (b) Declare the \$566,666.66 fee Award excessive, and disgorge and restore to Ms. Gibson, *together with* accrued interest thereon, from the date of payment, that amount remaining after a reasonable *quantum meruit* fee allocated to Counsel commensurate with like-kind "deed-in-lieu" work product; and,
- (c) Recover from Defendants the \$20,000.00 (Richter fee) under the April Agreement; and, \$16,616.00, or two-thirds (2/3) of the recovery of the Moore Settlement; and, \$70,000.00 for the lawyers' mishandling of the cell tower conveyance at settlement; and,
- (d) Cancel and Release the mortgage liens of \$297,500.00 ("Mortgage Lien") recorded against Ms. Gibson's real property; and,
- (e) Direct any settlement proceeds received in the Berkeley County Action styled as *Linda A. Gibson, et. al., v. Ameris Bank*, Case No.: 2010-CP-08-2134, be deposited with this Court pending resolution of this fee dispute; and,
- (f) Direct the lawyers to indemnify in equity Ms. Gibson her total loss of any attorney fees, costs and expenses attendant to the appellate litigation in the Berkeley Action; and,

(g) Direct the lawyers pay Ms. Gibson her reasonable attorney fees and costs in connection herewith; and,

(h) award such other and further relief as this Court deems fair and just.

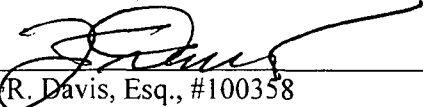
Plaintiffs submit their Opposition Motion and Cross Motion for Summary Judgment with reservation of all of the Plaintiffs' rights at law, and in equity, inclusive of the right to supplement the Plaintiffs' Motion(s) and the accompanying memorandum of law with additional facts, affidavits, applicable law or other evidence in support hereof.

The Plaintiffs respectfully request a hearing on the parties' dispositive motions before the Court and that the motions be joined and heard together. The parties have stipulated each party will submit to the other party, and to the Court, that parties' memorandum of law in advance of the hearing with sufficient time for the parties and the Court to review the record.

Respectfully Submitted,

LINDA A. GIBSON, Individually, and in capacity
as TRUSTEE of THE PAUL WILLIAM
GIBSON FAMILY TRUST, and, HERITAGE
SEVEN, LLC, and, SEVEN OAKS
APARTMENTS, LLC, and, 3205 PALM
BOULEVARD, LLC,

By Their Counsel,


James R. Davis, Esq., #100358
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Daniel Island, SC 29492
800.983.0455 (office)
800.983.0153 (fax)
843.364.2218 (direct)
jim@jdavispc.com

Dated: August 10, 2015

2013-CP-10-4450

Certificate of Mailing

I, James R. Davis, hereby certify and attest that I served a true and accurate copy of this document on August 10, 2015 upon all counsel of record, and parties appearing *pro se*, by email, U.S. Mail, Federal Express or other courier.

James R. Davis

FILED
2015 AUG 11 PM 3:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, Individually; and in capacity)
as TRUSTEE OF THE PAUL WILLIAM GIBSON)
FAMILY TRUST; HERITAGE SEVEN, LLC;)
SEVEN OAKS APARTMENTS, LLC; and 3205)
PALM BOULEVARD, LLC,)

Plaintiffs,

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K.)
EPTING, JR.; GEORGE J. KEFALOS, P.A.;)
GEORGE J. KEFALOS; GEDNEY M. HOWE, III,)
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST,)
ATTORNEY-AT-LAW, LLC; and JOHN S.)
WEST,)

Defendants.

1256

EXHIBITS

EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A.	FEBRUARY 4 TH EMAILS
B.	APRIL LETTTER AGREEMENT
C.	NOVEMBER 18 TH DOCUMENT
D.	EMAILS RE: SETTLEMENT CONFERENCE
E.	NOVEMBER 8 TH GALT OFFER
F.	GALT'S COUNSELS' INVOICES (1) Callison, Tighe & Robinson, LLC (2) Rosen, Rosen & Hagood, LLC
G.	MICHAEL DANHOUR DEPOSITION
H.	ANDREW K. EPTING, JR., ESQ. DEPOSITION
I.	LINDA A. GIBSON DEPOSITION
J.	GEDNEY M. HOWE, III, ESQUIRE DEPOSITION
K.	GEORGE J. KEFALOS, ESQUIRE DEPOSITION
L.	JOHN S. WEST, ESQUIRE DEPOSITION
M.	DESA BALLARD SUPPLEMENTAL AFFIDAVIT
N.	HARRY SWAGART AFFIDAVIT
O.	MICHAEL DANHOUR AFFIDAVIT
P.	EMAIL 10/19/10 McVEY EMAILS TO EPTING
Q.	EMAIL 12/2/09 FROM PAPA EPTING
R.	EMAIL 10/22/10 FROM EPTING TO McVEY
S.	EMAIL 10/29/10 FROM KEFALOS TO TECKLENBURG

Sheri Towne

From: Epting Office
Sent: Thursday, February 04, 2010 5:04 PM
To: papa@britelecom.net
Cc: George J. Kefalos; Andrew K. Epting; Sheri Towne; Oana Johnson
Subject: Linda Gibson

Sensitivity: Confidential

Categories: ADM

SENT ON BEHALF OF DREW EPTING:

Rob,

George and I have talked about how to move this forward with Linda. It seems we have agreed that, as to the litigation with all others than Ameris, it will be handled on a contingency of:

1. 33%;
2. 40% - if the case is not settled before it is placed on the active trial roster; or
3. 50% if an appeal is filed.

As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris). However, as to Ameris, George and I agree that our past work and work for the next 60 days, including filing the litigation, will be on an hourly basis so that if an early resolution with Ameris by discounting their debt can be achieved, our fee would be limited. I think we will know in two weeks if this is likely, but I have used 60 days as this can accommodate practical considerations.

In the event she pays an hourly fee and achieves a settlement as to any Defendant, the hourly fee will be deducted from the contingency.

In all events, she will pay our cost (depositions, filing fees, etc.) on an interim basis. Please consider this.

With kindest regards,
Drew

Roni Burk
Legal Assistant to Drew Epting
3 State Street, Charleston, SC 29401
p: 843.377.1871
f: 843.377.1310
office@epting-law.com

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this in error, or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

ANDREW K. EPTING, JR.

ATTORNEY AT LAW

April 7, 2010

Linda Gibson
133 Horse Trail Road
St. George, SC 29477

Re: Gibson, Linda - Matter #2042-001

Dear Linda,

So, let's supplement our fee agreement with this writing. You have asked that George and I help with the larger work out of your financial problems:

1. Return of the Richter fee;
2. Save your home and farm in St. George;
3. Keep creditors at bay on Daniel Island;
4. Ditto the shopping center;
5. The beach house: try to work you out of this without losing other assets. I am not, at this time, taking on defending this suit.

We agree that George and I will charge you \$400.00 per hour. I will use Rhonda McCraw, together with our paralegals, where necessary. We do not bill in increments of less than .2 of an hour, and do not bill cost except those billed to me by a third party or for travel. You agree to send a check every month for \$2,500.00, beginning at the time of the execution of this letter agreement, to be applied to these services. George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010.

Linda, as I told you, you have some serious problems here. I guarantee no results, but I will give you my best.

With kindest regards,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.

AKE:rb

AGREED: Linda Gibson

DATE: 4/26/10

Linda Gibson

ANDREW K. EPTING, JR., LLC

3 STATE STREET - CHARLESTON, SC - 29401

PHONE: (843) 377-1871 - FAX: (843) 377-1310 - E-MAIL: AKE@EPTING-LAW.COM

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ATTORNEY-CLIENT CONTRACT

This attorney-client contract made this 18 day of November 2010, by and between Linda Gibson, hereinafter referred to as "CLIENT", and George J. Kefalos, Esq., Andrew K. Epting, Jr. Esq., Gedney Howe, III, Esq., and John West, Esq., hereinafter referred to as "LAW FIRM".

CLIENT hereby hires LAW FIRM to represent CLIENT in the defense of and pursuit of a counterclaim in a foreclosure action brought by Ameris Bank presently pending in Berkeley County, South Carolina, Case No. 2010-CP-08-2134. In that action, Ameris seeks to foreclose on a loan of approximately \$3,000,000.00 and seeks a deficiency judgment against CLIENT. Two parcels of land are subject to a mortgage and are valued at approximately \$1,300,000.00, leaving a potential deficiency judgment of \$1,700,000.00.

For their services, LAW FIRM shall receive a fee based upon the total recovery according to the following schedules:

- a. One-third (1/3) of all sums saved CLIENT from the deficiency amount claimed by Ameris, in the amount of \$1,700,000.00.

In addition to the fees above, CLIENT will be responsible for paying the costs and expenses reasonably necessary and incurred by LAW FIRM. LAW FIRM will advance these costs during the prosecution of the case but will deduct them at the conclusion of the case from CLIENT'S portion of the proceeds following the payment of attorney's fees.

This obligation of CLIENT under this Contract shall be secured by a Mortgage to Gedney Howe III and John West on that certain real estate in Berkeley County, identified on Exhibit A attached hereto. LAW FIRM shall be entitled to enforce the obligations under

this Contract by foreclosure of the Mortgage only after the expiration of twelve (12) months from the later of (i) the date of final judgment (including final appeal) entered in a case pending in Charleston County Court of Common Pleas, captioned *Linda A. Gibson, et al v. Rolando V. Villavicencio, et al.*, Case No. 2008-CP-10-4282, or (ii) the date of final judgment (including final appeal) entered in a case pending in Berkeley County Court of Common Pleas, captioned *Galt Valley, LLC v. Linda A. Gibson, et al*, Case No. 2010-CP-08-2134.

Charleston, S. C.

CLIENT

Linda Gibson
Linda Gibson

Charleston, S. C.

LAW FIRM

BY: George J. Kefalos
George J. Kefalos

Charleston, S. C.

BY: Andrew K. Epting, Jr.
Andrew K. Epting, Jr.

Charleston, S. C.

BY: Gedney Howe, III
Gedney Howe, III

Mounds Corner, S. C.

BY: John West
John West

From: Ian McVey [mailto:IanMcVey@callisontighe.com]

Sent: Tuesday, October 19, 2010 9:51 AM

To: rwatson@berkeleycountysc.gov

Cc: Andrew K. Epting; George J. Kefalos; Amy Hill

Subject: Galt Valley v. Heritage Seven

Judge Watson, I have discussed the Defendants' theory of "deed in reduction" with my clients and have made a proposal to Mr. Epting regarding this matter. With that in mind, would it be possible to have some additional time to work with Defendants' counsel to try to resolve the matter before we submit briefs on this issue? As I understand it, the briefs would be due Monday, October 25th. Perhaps an additional twenty (20) days would suffice to figure out whether we can resolve the matter. By my math, that would make the briefs due by Monday November 15th.

I have drafted the Order regarding payments of the rent for the Berkeley County property and should be able to provide your honor with an order shortly. I will, of course, copy opposing counsel.

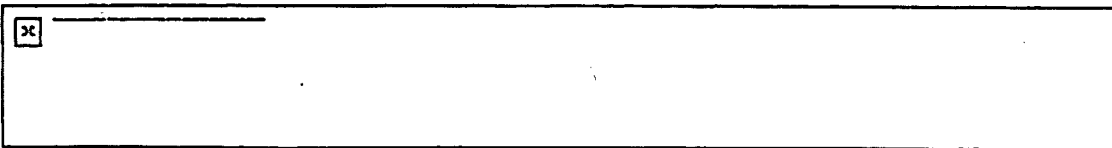
I hope this request meets with your approval.

Thank you for your consideration of this request.

With kind regards, I am

Yours truly,

Ian McVey



Ian D. McVey

Callison Tighe & Robinson, LLC

1812 Lincoln Street

P.O. Box 1390

P: 803.404.6900 F: 803.404.6901

Email: IanMcVey@callisontighe.com

Columbia, SC 29202-1390

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IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to

Jamekia Hunter

From: Andrew K. Epting <AKE@epting-law.com>
Sent: Thursday, October 21, 2010 2:17 PM
To: Ian Mcvey
Subject: Re: Galt Valley v. Heritage Seven

friday pm?

-----Original Message-----

From: "Ian Mcvey" <lanMcvey@callisontighe.com>
Subj: Re: Galt Valley v. Heritage Seven
Date: Thu Oct 21, 2010 12:57 pm
Size: 2K
To: "Andrew K. Epting" <AKE@epting-law.com>

Drew, that is what we want to talk about. Are y'all available?

From: Andrew K. Epting <AKE@epting-law.com>
To: Ian Mcvey
Cc: Sheri Towne <VST@epting-law.com>; Epting Office <office@epting-law.com>
Sent: Thu Oct 21 12:55:57 2010
Subject: RE: Galt Valley v. Heritage Seven

Ian, where is the proposal for a deed in reduction?

From: Ian Mcvey [<mailto:lanMcvey@callisontighe.com>]
Sent: Tuesday, October 19, 2010 9:51 AM
To: rwatson@berkeleycountysc.gov
Cc: Andrew K. Epting; George J. Kefalos; Amy Hill
Subject: Galt Valley v. Heritage Seven

Judge Watson, I have discussed the Defendants' theory of "deed in reduction" with my clients and have made a proposal to Mr. Epting regarding this matter. With that in mind, would it be possible to have some additional time to work with Defendants' counsel to try to resolve the matter before we submit briefs on this issue? As I understand it, the briefs would be due Monday, October 25th. Perhaps an additional twenty (20) days would suffice to figure out whether we can resolve the matter. By my math, that would make the briefs due by Monday November 15th.

Tamekia Hunter

From: Sheri Towne <VST@epting-law.com> on behalf of Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
Drew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [<mailto:IanMcvey@callisontighe.com>]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>
Sent: Thu Oct 21 15:57:44 2010
Subject: Gibson-Berkeley County

Mr. McVey,

With regard to the above-subject matter, are you available for a call with Drew Epting and George Kefalos tomorrow afternoon (10/22) at either 1:00 or 2:00 p.m.? I also left a voicemail message for you, as both you and your assistant were out when I called. Thank you.

Best regards,
Roni

Roni Burk
Legal Assistant to Andrew K. Epting, Jr.
and Michelle N. Endemann

Amekia Hunter

From: Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 4:23 PM
To: Ian Mcvey; Epting Office
Cc: George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne; Oana Johnson
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian, she is being sued, has just lost in foreclosure certain property, and there is nothing to talk about unless you want the property. Remember the insurance will expire on 10-31.

Could I suggest we talk about the deed in reduction. If you want the property voluntarily ok and if not then let's submit orders.

Sheri, send to Gedney and John as I could not find their email addresses.

Andrew K. Epting, Jr
Andrew K. Epting, Jr., LLC
3 State Street
Charleston, SC 29401
ake@epting-law.com
Phone: 843-377-1871
Fax: 843-377-1310

From: Ian Mcvey [<mailto:IanMcvey@callisontighe.com>]
Sent: Friday, October 22, 2010 10:52 AM
To: Andrew K. Epting; Epting Office
Cc: George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Drew, perhaps you misunderstand. I am suggesting a settlement conference between the parties under the supervision of counsel. Does that interest you? Ian.

From: Sheri Towne [<mailto:VST@epting-law.com>] On Behalf Of Andrew K. Epting
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
rew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [mailto:IanMcvey@callisontighe.com]
Sent: Friday, October 22, 2010 4:56 AM
To: mdanhour@griffoncapital.com; Michael Danhour
Subject: FW: Gibson-Berkeley County
Sensitivity: Confidential

, this is going to be a waste of time. Please provide the figures we discussed yesterday. It is time to put a firm offer on the table and see what he does with it.

From: Sheri Towne [mailto:VST@epting-law.com] On Behalf Of Andrew K. Epting
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

My client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.

Andrew

Andrew K. Epting, Jr
Tel: 843-377-1871 x302; Fax: 843-377-1310
Mail: ake@epting-law.com

 Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [mailto:IanMcvey@callisontighe.com]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>

FILE COPY

Ian D. McVey - Attorney
803-404-6900
ianMcVey@callisontighe.com

CALLISON  TIGHE

FOR SETTLEMENT PURPOSES ONLY

November 8, 2010

VIA FACSIMILE AND US MAIL

Andrew K. Epting, Jr.
Andrew K. Epting, LLC
3 State Street
Charleston, South Carolina 29401

Re: **Galt Valley, LLC v. Linda A Gibson, et al.**
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

I have had a chance to discuss the issue of a deed in reduction with my client further. Please be advised that my client has authorized me to make the following settlement offer:

1. Your clients will execute deeds in favor of Galt Valley, LLC or a related entity for all properties subject to Galt Valley, LLC's liens. In the event that a title update indicates further liens, your clients will consent to foreclosure with no deficiency judgment being rendered against your clients;
2. Your clients will execute such documents as are necessary to assign any and all leases currently in place on the properties to Galt Valley, LLC or a related entity;
3. Your clients will execute a bill of sale for any and all remaining furniture, fixtures, equipment, and the like located on both properties;
4. My client will forgive the remainder of the debt and waive any right to a deficiency judgment against your clients;
5. My client will refrain from issuing a 1099 as to the remainder of the debt to your clients;
6. Our clients will execute a consent order of dismissal with prejudice as to the claims in this action solely as they apply to Galt Valley, LLC, Heritage Seven, LLC, Linda A. Gibson, and the Paul William Gibson Family Trust; and
7. The parties will execute a mutual release as to all claims, known and unknown, past, present and future, that arose or should have arisen out of this litigation, the loan transaction, etc.

Andrew K. Epting, Jr.
November 8, 2010
Page 2

Nothing herein is to be interpreted as a bar to any claims you may have against any other party to this litigation.

Please be advised that this is a final settlement offer made by my client, and it will expire at noon on Monday, November 15, 2010.

If this proposal is acceptable to your client, please indicate by signing below and having your client execute below. I will then prepare the necessary paperwork to memorialize the settlement.

This correspondence is for settlement purposes only. Nothing herein shall be interpreted to be a waiver of any claim, defense, cause of action or remedy available to my client.

I look forward to hearing from you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC



Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile and US Mail)
John S. West, Esquire (via facsimile and US Mail)
Gedney M. Howe, III, Esquire (via facsimile and US Mail)

I accept and consent to the settlement proposed above on behalf of my clients Heritage Seven, LLC; Linda A. Gibson, Individually and as Trustee of the Paul William Gibson Family Trust.

Andrew K. Epting
Attorney for the Defendants

Andrew K. Epting, Jr.
November 8, 2010
Page 3

I accept the settlement proposal above.

Linda A. Gibson
Individually

Linda A. Gibson
*As Trustee of the Paul William
Gibson Family Trust*

Linda A. Gibson
*As Managing Member of Heritage
Seven, LLC*

Andrew K. Epting, Jr., Esquire
November 8, 2010
Page 4

bcc: Jeremiah A. Henderson, III, President and Operating Manager
Galt Valley, LLC (via email)
Michael Danhour (via email)

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

P.O. Box 893
CHARLESTON, SOUTH CAROLINA 29402
PHONE (843) 572-6726
FAX (843) 724-8036
www.rshlawfirm.com

Attorney-Client Communications/Confidential

[REDACTED]
Griffon Capital Ltd.
3540 W. Sahara Ave # 729
Las Vegas NV 89102

Page: 1
December 06, 2010
Account No: 9135-000I
Statement No: 2

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

**PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT**

PAYMENT DUE: NET 15

			Hours
11/11/2010	AFP	Telephone conference with [REDACTED] and [REDACTED] [REDACTED] of [REDACTED] review of summary provided by [REDACTED]	0.60
11/12/2010	AFP	Telephone conference with [REDACTED]; Review of email from [REDACTED] about settlement offer; review of letter to [REDACTED] proposing settlement; review of motion to appoint receiver	0.80
11/16/2010	AFP	E-mails to and from [REDACTED] and [REDACTED] re: [REDACTED]	0.20
11/22/2010	AFP	Telephone conference with [REDACTED] [REDACTED] emails with [REDACTED] and [REDACTED] re: settlement and going forward; review of correspondence re: settlement	0.40
11/23/2010	AFP	Telephone conference with [REDACTED] [REDACTED] emails with clients; telephone conference with [REDACTED] telephone conference with [REDACTED] [REDACTED]; email to [REDACTED] about settlement agreement; review of files from [REDACTED]; conference call with [REDACTED] re: settlement	3.75

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

			Hours	
11/24/2010	AFP	E-mail from [REDACTED]; email to clients about [REDACTED] email; email from [REDACTED]	0.20	
11/26/2010	AFP	Review and revise settlement agreement and release from [REDACTED]; emails to and from clients and [REDACTED] re: settlement agreement	1.50	
11/28/2010	AFP	Review and revise settlement agreement; review of emails from clients and John Rosen; email to [REDACTED]; review of deeds	1.00	
11/29/2010	AFP	Review agreement with Ameris Bank and emails with John Rosen	0.40	
11/30/2010	AFP	Review of revisions to agreement; emails from [REDACTED]; emails to clients re: revisions; conference with John Rosen	0.50	
		Alice F. Paylor	9.35	2,778.75
11/27/2010	JER	Work on edits to deeds for TMS No.'s 485-03-00-114 and 271-00-01-129; Review proposed settlement agreement.	2.10	
11/28/2010	JER	Work on deeds to Galt Valley and Bill of Sale; Discuss same with Alice Paylor.	1.80	
11/29/2010	JER	Review Mortgage Loan Sale Agreement [REDACTED]	1.80	
11/30/2010	JER	Review loan documents, consumer protection code, mortgage purchase agreement, settlement agreement and pleadings.	4.10	
		John E. Rosen	9.80	2,205.00
		For Current Services Rendered	19.15	4,983.75
11/29/2010		Harbor National Bank wire transfer fee on 11/23/10 per Robert Hodges		10.00
		Total Advances		10.00
		Total Amount Due This Invoice		4,993.75

[REDACTED]

Page: 3
December 06, 2010
Account No: 9135-0001
Statement No: 2

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

Total Balance Due

\$4,993.75

Your trust account #10 balance is

	Opening Balance	\$0.00
11/23/2010	Retainer	<u>7,500.00</u>
	Closing Balance	<u>\$7,500.00</u>

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feel free to contact Theresa Bolchoz directly at
843-266-8101 or by email at tbolchoz@rrhlawfirm.com

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Tax ID 57-1066137

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ROSEN, ROSEN & HAGOOD, LLC

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PHONE (843) 577-6726
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Page: 1
January 04, 2011
Account No: 9135-0001
Statement No: 3

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

PAYMENTS RECEIVED AFTER THE LAST BUSINESS DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT

PAYMENT DUE: NET 15

			Hours
12/01/2010	AFP	E-mails from John Rosen and to and from [REDACTED] email to clients	0.30
12/02/2010	AFP	E-mails with clients and John Rosen re: settlement and Ameris issue; revision of agreement; emails with [REDACTED]	0.50
12/03/2010	AFP	E-mails with clients and with [REDACTED] and his office; telephone conference with [REDACTED] telephone conference with [REDACTED]; review of executed documents	0.80
12/06/2010	AFP	E-mail to [REDACTED]	0.10
12/10/2010	AFP	E-mails with [REDACTED] re: recording deeds and who should sign off on the settlement	0.20
12/13/2010	AFP	E-mails with [REDACTED]; telephone conference with [REDACTED] and [REDACTED]	0.40
12/14/2010	AFP	Conference with John Rosen; prepare stipulation of dismissal	0.40
12/28/2010	AFP	Review of emails and documents; emails to and from [REDACTED] re: dismissal; letter to [REDACTED] re:	

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

			Hours	
	dismissal		0.50	
	Alice F. Paylor		3.20	1,040.00
12/01/2010	JER	Review references in settlement agreement; Find recorded mortgages and assignments of leases and rents for verification; Review legal descriptions in deeds for accuracy.	3.60	
12/02/2010	JER	Telephone call with [REDACTED] [REDACTED] [REDACTED] Review emailed executed version of same from [REDACTED] Email with Alice; Call Doreen Larimer to conduct title search on Charleston parcel; Locate title searcher for Berkeley County property; Evaluate and conduct legal research [REDACTED] [REDACTED] [REDACTED] Email with AFP re: deeds, settlement, [REDACTED] issue, title search.	5.80	
12/03/2010	JER	Call with Mark Jolly regarding Berkeley County property title search; Discuss Charleston County property search with Doreen Larimer; Review executed settlement documents and title work; Email with Alice; Review emails from working group; Discuss matter with Debbie Hill and Debbie Croxton; Review legal research.	3.20	
12/06/2010	JER	Email with [REDACTED] [REDACTED] Review email from [REDACTED] and Alice Paylor.	0.20	
12/13/2010	JER	Review e-mails regarding settlement and recordation of deeds.	0.30	
12/22/2010	JER	E-mail and discuss recordation of deeds with DLH.	0.20	
12/23/2010	JER	Conference with DLH re: recordation of deeds; E-mail re: same with DLH and [REDACTED].	0.40	
12/28/2010	JER	E-mail with AFP re: Stipulation of Dismissal; Meet briefly re same. John E. Rosen	0.20 13.90	3,127.50
		For Current Services Rendered	17.10	4,167.50

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

In house photocopies/scans to date 20.02
Total Expenses Thru 12/31/2010 20.02

12/03/2010	Doreen Larimer update and outside copy charges per John E. Rosen	95.00
~~12/03/2010~~	~~Live Oak Title, LLC invoice no. 393320-professional services per JER~~	~~103.15~~
12/22/2010	Berkeley County Register of Deeds filing fee per Debbie L. Hill	10.00
12/22/2010	RMC Office of Charleston County filing fee per Debbie L. Hill	10.00
12/23/2010	Sally Graham reimbursement for mileage to and from Berkely County for filing on 12/23/10	32.15
12/28/2010	Federal Express, inv # 7-333-63591, package sent by Alice Paylor to [REDACTED] on 12/03/10	20.24
	Total Advances	270.54
	Total Amount Due This Invoice	4,458.06
	Balance Due From Previous Unpaid Invoices	\$4,993.75
12/21/2010	Payment for Services Rendered -- Thank you!	-4,993.75
	Total Balance Due	<u>\$4,458.06</u>

Your trust account #10 balance is

	Opening Balance	\$7,500.00
01/04/2011	Payment for Services Rendered	
	PAYEE: Rosen, Rosen & Hagood, LLC	-4,458.06
01/04/2011	Refund Retainer	
	PAYEE: Galt Valley, LLC	-3,041.94
	Closing Balance	\$0.00

[REDACTED]

Page: 4
January 04, 2011
Account No: 9135-000I
Statement No: 3

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

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ROSEN, ROSEN & HAGOOD, LLC

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CHARLESTON, SOUTH CAROLINA 29402
PHONE (843) 577-6726
FAX (843) 724-8036
www.rhlawfirm.com

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Las Vegas NV 89102

Page: 1
February 03, 2011
Account No: 9135-0001
Statement No: 4

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT

PAYMENT DUE: NET 15

			Hours	
01/05/2011	JER	(Re: Heritage Seven deed to Galt Valley in Berkeley County. Do corrective deed; Discuss with Linda at Real Property Records, Berkeley County; Research title work.	1.70	n/c
01/06/2011	JER	Work on corrective deed for Klister Lane property; Email re; same.	1.60	n/c
01/17/2011	JER	E-mail with [REDACTED] and AFP re: Mortgage Loan Sale Agreement; Review executed agreement.	0.30	n/c
		John E. Rosen	0.00	0.00
		Total Non-Billable Hours	3.60	
		In house photocopies/scans to date		3.96
		Total Expenses Thru 01/31/2011		3.96
01/12/2011		West Payment Center invoice no. 822028712 computer research charges for December 2010 per Robert Hodges		138.69

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

01/21/2011	Berkeley County Register of Deeds recording general warranty deed per Debbie L. Hill	n/c
01/27/2011	Sally Graham reimbursement for mileage to Magistrate Court on 01/11/11	n/c
01/28/2011	Sally Graham reimbursement for mileage to Berkeley County for filing on 01/21/11	n/c
	Total Advances	138.69

Total Amount Due This Invoice	142.65

Balance Due From Previous Unpaid Invoices	\$4,458.06

01/05/2011	Payment for Services Rendered -- Thank you!	-4,458.06

Total Balance Due	<u>\$142.65</u>

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feel free to contact Theresa Bolchoz directly at
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Griffon Capital Ltd.
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Las Vegas NV 89102

Page: 1
March 02, 2011
Account No: 9135-0001
Statement No: 5

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

**PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT**

PAYMENT DUE: NET 15

	Balance Due From Previous Unpaid Invoices	\$142.65
02/11/2011	Payment for Services Rendered -- Thank you!	-142.65
	Total Balance Due	<u>\$0.00</u>

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JRD R45 ROSEN 00515

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Page: 1
April 14, 2011
Account No: 9135-000I
Statement No: 6

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT

PAYMENT DUE: NET 15

			Hours	
03/09/2011	AFP	Telephone conference with [REDACTED]; email and review of documents from [REDACTED] email to [REDACTED] review of old emails for chronology; conference with John Rosen; emails with [REDACTED]	0.80	
		Alice F. Paylor	0.80	260.00
03/08/2011	JER	Review settlement agreement per question from AFP re satisfaction of mortgages; Email.	0.30	
03/09/2011	JER	Call from [REDACTED]; Review settlement agreement; Research situation in which Linda Gibson mortgaged Berkeley County property after execution of Settlement Agreement and prior to filing of deed; Working conferences with AFP; Email with [REDACTED] AFP, [REDACTED] and company.	1.20	
03/11/2011	JER	E-mail abstractor.	0.20	
03/14/2011	JER	E-mails with AFP, [REDACTED] George Kefalos and [REDACTED]	0.30	
03/15/2011	JER	Review title update and settlement agreement and email from [REDACTED]	0.60	
03/16/2011	JER	Review and evaluate proper method of mortgage		

April 14, 2011

Account No: 9135-0001

Statement No: 6

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

			Hours	
		satisfaction to comply with Settlement Agreement	0.20	
03/21/2011	JER	Work on Release of Charleston County and Berkeley County Properties; Review Settlement Agreement and mortgages in connection with same.	1.70	
03/22/2011	JER	E-mail to/from [REDACTED]	0.20	
03/23/2011	JER	E-mail with [REDACTED] Email with George and [REDACTED] re: release of liens and recordation.	0.30	
03/26/2011	JER	E-mail with group re First Citizens.	0.20	
03/28/2011	JER	E-mail	0.10	
		John E. Rosen	5.30	1,192.50
		For Current Services Rendered	6.10	1,452.50
		Total Amount Due This Invoice		1,452.50
		Total Balance Due		<u>\$1,452.50</u>

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JRD R45 ROSEN 00517

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

P.O. Box 893
CHARLESTON, SOUTH CAROLINA 29402
PHONE (843) 577-6726
FAX (843) 724-8036
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3540 W. Sahara Ave # 729
Las Vegas, NV 89102

Page: 1
May 04, 2011
Account No: 9135-0001
Statement No: 7

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

**PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT**

PAYMENT DUE: NET 15

			Hours		
04/01/2011	JER	Review release of Howe and West Mortgage; Email with [REDACTED]	0.30		
04/04/2011	JER	Review correspondence and email from George Kefalos; Email.	0.50		
04/05/2011	JER	Work on partial release of Gibson property; Emails with group for/re: comments; Review legal.	1.50		
04/06/2011	JER	E-mail.	0.20		
04/07/2011	JER	E-mail	0.10		
04/08/2011	JER	Telephone calls with [REDACTED]; Review emails from [REDACTED]	0.80		
04/11/2011	JER	Review plat, lien release, UCC-3 and quit claim deed from [REDACTED], counsel for First Citizens	1.90		
04/14/2011	JER	Review metes and bounds quit claim and compare with original version from [REDACTED]; Email regarding same.	0.60		
	John E. Rosen		5.90	1,327.50	

Account No: 9135-0001
Statement No: 7

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

	Hours	
For Current Services Rendered	5.90	1,327.50
Total Amount Due This Invoice		1,327.50
Balance Due From Previous Unpaid Invoices		\$1,452.50

05/03/2011	Payment for Services Rendered -- Thank you!	-1,452.20

Total Balance Due	<u>\$1,327.80</u>

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Page: 1
June 03, 2011
Account No: 9135-0001
Statement No: 8

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

**PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT**

PAYMENT DUE: NET 15

05/04/2011	Doreen Larimer statement 03/14/11 update per John B. Rosen	75.00
	Total Advances	75.00
	Total Amount Due This Invoice	75.00
	Balance Due From Previous Unpaid Invoices	\$1,327.80
05/16/2011	Payment for Services Rendered -- Thank you!	-1,327.80
	Total Balance Due	<u>\$75.00</u>

[REDACTED]

Page: 2

June 03, 2011

Account No: 9135-000I

Statement No: 8

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

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Page: 1
July 05, 2011
Account No: 9135-0001
Statement No: 9

Galt Valley v. Linda Gibson, Paul Gibson Trust & H

PAYMENTS RECEIVED AFTER THE LAST BUSINESS
DAY OF THE MONTH ARE NOT REFLECTED ON THIS STATEMENT

PAYMENT DUE: NET 15

	Balance Due From Previous Unpaid Invoices	\$75.00
06/16/2011	Payment for Services Rendered -- Thank you!	-75.00
	Total Balance Due	<u>\$0.00</u>

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DOREEN LARIMER
P O BOX 1311
CHARLESTON, SC 29401
843 814-1300

December 3, 2010

John E. Rosen
Rosen, Rosen and Hagood LLC

Tracts A & B
Northwoods Garden Apartments

485-03-00-114

Heritage Seven LLC

Update	\$ 75
Copies	20
Total	\$ 95

9135.000
OK to pay
per JER

12-3-10

39352U

STATEMENT

DATE

12/8/10

TERMS

TO

John E. Rosen - Rosen, Rosen & Haged, LLC

IN ACCOUNT WITH

Live Oak Title, LLC

124 Jolly Lane

Myrtle Beach, SC 29561

12/3

Trinda Ann Kline

"wedding" fund on 11/1-8/10

TR #271-00-01-129 + 037

Klitter Lane

Up from Policy

9 copies

Total \$ 103.15

CURRENT

OVER 30 DAYS

OVER 60 DAYS

TOTAL AMOUNT

Handwritten signature

OK to pay 0135.00
Per TLR
12-3-10

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

Page: 1
January 21, 2011
File No: 5565-002M
Statement No: 157576

Attn: [REDACTED]

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

	<u>Previous Balance</u>	\$1,523.38
12/27/2010	Payment - Thank You - Ck# 5015 Invoice # 156860	-1,523.38
	<u>Balance Due</u>	<u>\$0.00</u>

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Gall Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

Page: 1
August 17, 2010
File No: 5565-002M
Statement No: 155393

Attn: [REDACTED]

Foreclosure of Mortgages formerly owned by Ameri
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours
07/14/2010	IDM Telephone call from [REDACTED]	0:20
07/15/2010	IDM Receipt and review of Title Update.	0:20
KAM Follow up email to abstractor in regard to request for title update. Telephone call from abstractor in regard to request. Receipt and review of email from Angela Hulen at Indigo Title attaching title update on property. Print and review title update. Forward to IDM via email.	0:30	
07/26/2010	KAM Search, view and obtain copy of recorded Assignment of Mortgage from Lexington County online Register of Deeds website. Print and send via email to IDM.	0:10
07/28/2010	IDM Telephone call from [REDACTED]	0:20
IDM Telephone call to Drew Epling re: status of suit.	0:20	
IDM Review new title.	0:50	
07/29/2010	IDM Telephone call to Ben Miller re: substitution of plaintiff and counsel.	0:20
IDM E-mails to/from [REDACTED]	0:20	
IDM Review (continued review) of file from Ben Miller.	1:30	
IDM Receipt and review of Affidavits to Notes.	0:20	
IDM Telephone call from Ben Miller re: status of foreclosure and answer to pleadings.	0:30	
IDM Telephone call from Drew Epling re: status of matter and		

Gall Valley LLC

Page: 2

August 17, 2010

File No: 5565-002M

Statement No: 155333

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	answer.	0:20	
KAM	Conference with IDM re: title updates from 2 abstractors and request that they certify title to us. File review. Telephone call to Salle Avic du Bussor (abstractor); Prepare memo containing request and instructions for title update to abstractor. Prepare email containing request and instructions to Edisto Title Services for title update for Berkeley County property. Reply email from Edisto Title Services.	0:60	
07/30/2010	IDM	Telephone call to [REDACTED]	0:20
	IDM	Receipt and review of Answer and Counterclaim, Quit-claim Deed and Tax Notice.	0:30
	KAM	Telephone conference with Salle Avic du Bussor (abstractor) in regard to our title request and instructions. Telephone conference with Todd at Edisto Title Services in regard to title request. Conference with IDM re: status of title work with abstractors in Berkeley and Charleston Counties. Email to Salle Avic du Bussor (abstractor) in regard to certify title search. Email to Todd at Edisto Title Services forwarding our request for title update and certification.	0:50
08/02/2010	IDM	Telephone call from [REDACTED]	0:20
08/03/2010	IDM	E-mails to/from [REDACTED]	0:10 No Charge
	IDM	E-mails to/from Bobby Stepp re: Ameris Counterclaims.	0:10 No Charge
	IDM	Telephone call to Bobby Stepp re: Ameris Counterclaims.	0:10 No Charge
	IDM	Telephone call from Bobby Stepp re: Ameris Counterclaims.	0:20 No Charge
	IDM	E-mails to/from Bobby Stepp re: subpoena for records and amended complaint in collateral litigation.	0:20
08/04/2010	IDM	Receipt and review of E-mails to/from Bobby Stepp and Max Mahaffee re: subpoena of documents.	0:20
08/09/2010	IDM	Receipt and review of Answer and Crossclaim from Ben Miller and related correspondence.	0:20
	IDM	Receipt and review of correspondence from Bobby Stepp, counsel for Ameris Bank, re: return to subpoena.	0:10
	IDM	Telephone call to Drew Eppling re: deed in lieu.	0:20
	IDM	Telephone call to [REDACTED]	

Golf Valley LLC

Page: 3
August 17, 2010
File No: 5565-002M
Statement No: 135333

Foreclosure of Mortgages formerly owned by Ameri-
bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours	
		0.30	
KAM	Receipt and review of email with title update attachment from abstractor (dated 8-4-2010). Print copy for file. Save title update to directory.	0.20	
KAM	Email from Sallie Ayco du Buisson (abstractor) in regard to her title update and certification request. Prepare email reply to Sallie Ayco du Buisson attaching our written request for a 40 year title search as requested by abstractor for certification statement. Revise memo to abstractor in regard to our title search request pursuant to abstractor's instructions.	0.30	
08/10/2010			
IDM	Telephone call from Drew Eppling re: substitution of parties, etc.	0.40	
IDM	Telephone call to Bobby Stepp re: production of documents pursuant to subpoena.	0.20	
IDM	Office conference with LHL re: resolution and subpoena of documents.	0.30	
IDM	Online research re: assignment of mortgage in Charleston County.	0.30	
IDM	Telephone call from [REDACTED]	0.40	
IDM	Letter to Drew Eppling re: payment of rents and demand for entry.	0.30	
KAM	Receipt and review of facsimile and title update from Sallie Ayco du Buisson (abstractor) in connection with the Charleston County property. Telephone call to Sallie Ayco du Buisson in regard to her facsimile and update.	0.20	
	For Current Legal Services Rendered:	9.70	1,725.00
	Total Non-Billable Hours:	0.50	

Timekeeper	Hours	Rate	Total
IAN D. MCVEY	0.40	\$185.00	\$74.00
IAN D. MCVEY	7.10	200.00	1,420.00
Katie A. Milton	2.20	105.00	231.00

Copies	8.80
Long Distance	59.65
Facsimile	7.00
Postage	10.44
<u>Total Expenses</u>	<u>75.89</u>

Golf Valley LLC

Page: 4
August 17, 2010
File No: 5565-002M
Statement No: 155533

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

Title Search, Examination of Update	85.50
<u>Total Advances</u>	<u>85.50</u>
Total Current Work	1,886.39
<u>Balance Due</u>	<u>\$1,886.39</u>

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Gall Valley LLC
3540 W. Sahara Avenue #729
Las Vegas, NV 89102

Page: 1
September 15, 2010
File No: 5565-002M
Statement No: 155640

Attn: [REDACTED]

Fareclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours	
08/11/2010	IDM	Draft Consent Order of substitution and reference.	1.10
	IDM	Draft Consent Order Appointing Receiver.	2.20
	IDM	Review and revise Consent Order Appointing Receiver.	0.40
	IDM	Review and revise Demand Letter to Drew Epling for Leases, etc.	0.50
08/12/2010	IDM	Telephone call from [REDACTED]	0.20
	IDM	Telephone call to George Kefalos re: receiver.	0.20
	IDM	Receipt and review of e-mail from [REDACTED]	0.10
	IDM	Letter to Drew Epling re: demand for insurance, rents, and lease.	0.20
	IDM	Review, revise and finalize Letter to Drew Epling re: demand for rents and entry.	0.20
08/16/2010	KAM	Prepare email to Sallie Ayice du Bulson (abstractor) to inquire as to status of completing title search/update.	0.10
08/18/2010	KAM	Review title update and summary from Sallie Ayice du Bulson. Scan and save to directory. Email to IDM.	0.10
08/19/2010	IDM	Draft Expedited Motion for Receiver.	0.60
	IDM	Review, revise and finalize letter to Judge Dennis re: consent order.	0.10
	IDM	Review, revise and finalize Motion for Receiver.	0.50
	IDM	Letter to Judge Wilson re: Motion for Receiver.	0.20
	IDM	Review Documents from client for production to Bobby.	

No Charge

No Charge

Galt Valley, LLC

Page: 2
September 13, 2010
File No: 5565-002M
Statement No: 155640

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	Stepp:	1.00	
08/23/2010	IDM Telephone call to [REDACTED]	0.20	
08/25/2010	IDM Receipt and review of Answer from Ameris Bank		
	IDM telephone call to Bobby Stepp re: same.	0.20	
	IDM E-mails to/from [REDACTED]	0.10	No Charge
08/30/2010	KAM Receipt and review abstract report from Sallie Krawcheck	0.20	
08/31/2010	IDM Telephone call from [REDACTED]		
	IDM E-mails to/from same re: [REDACTED] review of file re:	0.20	
	IDM same.	0.20	
	IDM Telephone call to [REDACTED]	0.40	
	IDM E-mails to/from [REDACTED]	4.20	
	IDM Draft Requests to Admit; review of file re: same.		
09/01/2010	IDM Telephone call from John Grinland re: settlement.	0.20	
	IDM Review and revise Requests to Admit.	1.00	
	IDM Review and revise Requests to Admit.	0.40	
	For Current Legal Services Rendered.	15.10	2,982.00
	Total Non-billable Hours	0.30	

Recapitulation

Timekeeper	Hours	Rate	Total
Mary Darnieron, S. Milliken	0.40	\$200.00	\$80.00
IAN D. MCVEY	14.30	200.00	2,860.00
Katia A. Minton	0.40	105.00	42.00

Copies	24.40
Long Distance	52.32
Facsimile	13.00
Postage	13.08
<u>Total Expenses</u>	<u>102.80</u>

Walt Valley LLC

Page: 3
September 15, 2010
File No: 5565-002M
Statement No: 155640

Foreclosure of Mortgages formerly owned by Ameri-
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

Title Search, Examination or Update	312.00
Master In-Equity	125.00
Clerk of Court	50.00
<u>Total Advances</u>	<u>487.00</u>
Total Current Work	3,571.80
<u>Previous Balance</u>	<u>1,886.09</u>
09/13/2010 Payment - Thank You - Jeremiah Henderson C2# 3020 Invoice: # 155333	-1,886.39
<u>Balance Due</u>	<u>\$3,571.80</u>

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

Page: 1
October 14, 2010
File No: 5565-002M
Statement No: 156021

Attn: [REDACTED]

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between:
Borrower, Guarantors, and Possible Adverse Parties

		Hours
09/14/2010	IDM Review and revise Discovery Requests	2:00
09/16/2010	IDM Receipt and review of Appraisal and pictures	0:40
	IDM Telephone call to [REDACTED]	0:20
	IDM Telephone call to Drew Eppling and George Kefalos re: receiver	0:20
09/17/2010	IDM Telephone call to Geoff Southard re: affidavit	0:30
	IDM Draft Motion for Receiver for Berkeley County Property; review and revise same; review of file re: same	2:00
	IDM Telephone call from Geoff Southard re: subpoena	0:20
	IDM Review, revise and finalize Motions for Receiver	0:30
09/21/2010	IDM Telephonic call to Ton Rehm re: receiver	0:30
	IDM Telephone call to George Kefalos re: receiver	0:20
09/22/2010	IDM E-mails to/from [REDACTED]	0:10
	IDM Telephone call to George Kefalos re: receiver	0:30
09/23/2010	IDM Receipt and review of Document Production from Bobby Slepp, Counsel for Ameris Bank, to Max Mahaffee in collateral litigation	0:20
	IDM Receipt and review of correspondence from Drew Eppling re: continuance of hearing	0:20
	IDM Letter to Judge Watson objecting to Continuance request	0:30
	IDM Telephone call from [REDACTED]	

Gall Valley LLC

Page: 2
October 14, 2010
File No: 5565-002M
Statement No: 156021

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours	
		0.30	
09/24/2010	IDM		
	Receipt and review of Insurance Binder for Heritage Seven LLC; e-mails to/from Dana Johnson in Drew Epfling's office re: same; e-mail to client re: same.	0.20	
	IDM	0.40	
	Review and revise Discovery requests.		
09/27/2010	IDM		
	Review, revise and finalize Discovery Requests and Exhibits thereto.	0.50	
09/29/2010	IDM		
	Letter to Drew Epfling re: adding client as additional insured on policy.	0.20	
	For Current Legal Services Rendered	8.80	1,760.00

Timekeeper	Recapitulation	Hours	Rate	Total
IAN D. MCVEY		8.80	\$200.00	\$1,760.00

Copies	204.55
Long Distance	72.31
Facsimile	11.00
Postage	36.63
<u>Total Expenses</u>	<u>324.49</u>

Witness Fee	40.77
Clerk of Court	25.00
<u>Total Advances</u>	<u>65.77</u>

Total Current Work	2,150.26

<u>Previous Balance</u>	<u>\$3,571.80</u>

09/27/2010	Payment - Thank You - CK# 5003 Invoice # 155640	-3,571.80

<u>Balance Due</u>	<u>\$2,150.26</u>

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1890
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

Page: 1
November 11, 2010
File No: 5565-002M
Statement No: 156460

Attn: [REDACTED]

Foreclosure of Mortgages formerly owned by Ameri
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours	
10/12/2010	IDM Telephone call to Tom Rehm re: hearing.	0:20	
	IDM Telephone call to Geoff Southerd re: hearing preparation.	0:20	
	IDM Prepare for hearing on motion for receiver.	0:60	
10/13/2010	IDM Travel to/from Moncks Corner for Hearing on Motions to appoint receiver; meet with Geoff Southerd re: same; meet with Tom Rehm re: same; prepare for hearing; attend hearing.	7:30	
	IDM E-mails to/from client re: [REDACTED]	0:10	No Charge
10/14/2010	IDM Telephone call from [REDACTED]	0:30	
	IDM Telephone call from [REDACTED]	0:20	
10/15/2010	IDM Letter to Drew Epling re: settlement.	0:20	
10/18/2010	IDM Review, revise and finalize letter to Drew Epling re: deed in reduction.	0:20	
	IDM Draft Order re: rent.	0:40	
10/19/2010	IDM Review, revise and finalize Order re: rent.	0:60	
	IDM E-mails to/from Judge Watson re: proposed order regarding rent for Berkeley County property; e-mails to/from Judge Watson re: briefs on "Deed in Reduction" concept for Charleston County Property.	0:20	

Galt Valley LLC

Page: 2
November 11, 2010
File No: 5545-002M
Statement No: 156460

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

	Hours	
10/20/2010 IDM E-mails to/from [REDACTED]	0.20	
10/21/2010 IDM Telephone call to [REDACTED]	0.20	
IDM E-mails to/from Drew Epling and clients re: settlement conference.	0.20	
IDM Telephone call to Drew Epling re: order on rent.	0.20	
10/22/2010 IDM E-mails to/from Drew Epling re: settlement conference; e-mails to/from [REDACTED]	0.20	
IDM Telephone call from clients re: settlement offers, etc.	1.10	
IDM Draft Settlement letter; e-mails to/from Drew Epling and client re: [REDACTED]	0.50	
10/25/2010 IDM Legal Research re: Deed in Reduction.	0.40	
IDM E-mails to/from clients re: [REDACTED]	0.20	
IDM Review and revise Settlement Correspondence.	1.30	
10/27/2010 IDM Receipt and review of Responses to Requests to Admit.	0.20	
10/29/2010 IDM E-mail from [REDACTED]; e-mail to Drew Epling and George Kafalas re: same.	0.10	No Charge
11/04/2010 IDM Receipt and review of E-mail correspondence and proposed order from Drew Epling.	0.20	
IDM Letter to Drew Epling re: no consent to amend.	0.20	
IDM Legal Research re: holder in due course defense.	1.20	
IDM Telephone call to [REDACTED] Drew Epling.	0.20	
IDM Telephone call from [REDACTED] [REDACTED] re: [REDACTED]	0.50	
11/05/2010 IDM Telephone call from clients re: [REDACTED]	0.80	
IDM Letter to Drew Epling re: settlement offer.	0.20	
11/08/2010 IDM Telephone call to [REDACTED]	0.20	No Charge
IDM Telephone call to [REDACTED]		

Galt Valley, LLC

Page: 3
November 11, 2010
File No: 5565-002M
Statement No: 156460

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

	Hours	No Charge
IDM [REDACTED] Telephone call to Frank Knowlton re possible representation of client.	0.20	
IDM Telephone call to [REDACTED]	0.20	
IDM Letter to Clients re [REDACTED]	0.30	
IDM Letter to Ameris Bank re [REDACTED]	0.20	
IDM Review and revise settlement offer	0.30	
11/09/2010		
IDM Telephone call from Bobby Stepp re amendment of pleadings.	0.20	
For Current Legal Services Rendered	19.80	3,960.00
Total Non-billable Hours	0.60	

Timekeeper	Recapitulation	Hours	Rate	Total
IAN D. MCVEY		19.80	\$200.00	\$3,960.00

Mileage	110.00
Court Reporter	465.20
Total Advances	575.20

Total Current Work	4,535.20

Previous Balance	\$2,150.26

11/01/2010 Payment - Thank You - Ck# 5007 Invoice # 156021	-2,150.26

Balance Due	\$4,535.20

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas, NV 89102

Page: 1
December 14, 2010
File No.: 5565-002M
Statement No.: 156860

Attn: [REDACTED]

Foreclosure of Mortgages formerly owned by Ameris
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

		Hours:
11/10/2010	IDM Telephone call to [REDACTED]	0:20 No Charge
11/12/2010	IDM Telephone call to Alice Paylor re: transition of counsel.	0:30
	IDM E-mail to clients re: [REDACTED]	0:20
	IDM Telephone call to Drew Epling re: settlement.	0:20
	IDM Telephone call from Drew Epling re: settlement.	0:20
	IDM Telephone call from clients re: [REDACTED]	0:30
	IDM Telephone call to Drew Epling re: settlement.	0:20
11/15/2010	IDM Telephone call to Drew Epling re: settlement.	0:20
	IDM Receipt and review of response to settlement proposal.	0:20
	IDM E-mails to/from client re: [REDACTED]	0:20
	IDM Telephone call to Will Jordan re: lease.	0:20
	IDM Review Titlework re: memorandum of lease and amendments thereto.	0:30
	IDM E-mails to/from client re: [REDACTED]	0:40
11/16/2010	IDM Telephone call from [REDACTED]	0:20
	IDM Telephone call to LHL re: [REDACTED]	0:20
	IDM Telephone call to [REDACTED]	0:20
	IDM Telephone call to [REDACTED] Ameris Bank re: [REDACTED]	0:20
	IDM E-mails to/from client re: [REDACTED]	0:20

Gall Valley LLC

Page: 2
 December 14, 2010
 File No: 5565-002M
 Statement No: 156860

Foreclosure of Mortgages formerly owned by Ameris
 Bank and Possible Collateral Litigation between
 Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	[REDACTED]	0:10	
IDM	Letter to clients and [REDACTED]	0:20	
IDM	Telephone call from [REDACTED]	0:20	
IDM	Telephone call to Drew Epling re: settlement.	0:20	
11/17/2010			
IDM	E-mail to Drew Epling re: settlement and leases.	0:20	
IDM	Telephone call to [REDACTED]	0:20	
11/18/2010			
IDM	Telephone call from Drew Epling re: settlement and cell tower lease.	0:20	
IDM	E-mails to/from client re: [REDACTED]	0:20	
11/19/2010			
IDM	Receipt and review of Lease from Drew Epling.	0:30	
IDM	Legal Research Right of First Refusal.	0:20	
11/22/2010			
IDM	Telephone call to Alice Paylor re: transition of file.	0:20	
	For Current Legal Services Rendered	5:90	1,180.00
	Total Non-billable Hours:	0:20	

Timekeeper	Recapitulation	Hours	Rate	Total
IAN D. McVEY		5:90	\$200.00	\$1,180.00

Copies	92.80
Long Distance	77.80
Facsimile	36.00
Postage	6.77
<u>Total Expenses</u>	<u>213.37</u>

Federal Express	38.00
Westlaw (Legal Research)	92.00
<u>Total Advances</u>	<u>130.00</u>

Total Current Work	1,523.38

<u>Previous Balance</u>	<u>\$4,535.20</u>

12/07/2010	Payment Thank You - CK# 5017 Invoice # 156460	-4,535.20

Galt Valley LLC

Page: 3
December 14, 2010
File No: 5565-002M
Statement No: 156860

Foreclosure of Mortgages formerly owned by Ameri
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties:

Balance Due

\$1,523.38

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

Page: 1
January 21, 2011
File No: 5565-002M
Statement No: 157576

Attn: [REDACTED]

Foreclosure of Mortgage formerly owned by Ameri
Bank and Possible Collateral Litigation between
Borrower, Guarantors, and Possible Adverse Parties

	<u>Previous Balance</u>	\$1,523.38
12/27/2010	Payment - Thank You - Ck# 5015 Invoice # 156860	-1,523.38
	<u>Balance Due</u>	<u>\$0.00</u>

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, individually, and in
capacity as TRUSTEE OF THE PAUL WILLIAMS
GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC;
SEVEN OAKS APARTMENTS, LLC; and 3205
PALM BOULEVARD, LLC,

Plaintiffs,

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K.
EPTING, JR.; GEORGE J. KEFALOS, P.A.;
GEORGE J. KEFALOS; GEDNEY M. HOWE, III,
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST,
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,

Defendants.

STATE OF FLORIDA)
COUNTY OF DUVAL)

DEPOSITION OF

MICHAEL DANHOUR

DATE TAKEN: Wednesday, September 9, 2015
TIME: 10:00 a.m. - 3:25 p.m.
PLACE: 233 East Bay Street, Suite 1010
Jacksonville, Florida 32202

CERTIFIED COPY

Examination of the witness taken before:

CHINA COCHRAN, RPR
FIRST COAST COURT REPORTERS
2442 ATLANTIC BOULEVARD
JACKSONVILLE, FLORIDA 32207 (904) 396-1050

1 up the sale more like a call for offers. So you
2 had this big pool and multiple groups were making
3 offers either on the whole pool or specific
4 assets, and then Ameris would kind of choose who
5 they wanted to do business with or who they
6 wanted to sell to.

7 Q Uh-huh.

8 A In our -- in all of our offers, the
9 three that we were the closest to Ameris came
10 back and said, If you can get to this number, you
11 know, we have a deal.

12 Q Okay. And of the three borrower/debtors
13 that you mentioned -- I think Florida, Columbia
14 and North Charleston -- did Ameris Bank sell that
15 debt as one portfolio or as three separate
16 portfolios to Ameris Bank -- excuse me -- to Galt
17 Valley?

18 A They sold it to us in a single
19 transaction. So I guess that's maybe the better
20 way to answer. It -- we bought three -- three
21 different what I call assets -- again, even
22 though they're multiple assets -- in a single
23 transaction, a single note sale agreement.

24 Q Okay. So walk me through the process if
25 you would. You acquire this -- this acquisition

FIRST COAST COURT REPORTERS

1 of this debt portfolio.

2 A Uh-huh.

3 Q And then what does Galt Valley do?

4 A The first step is to substitute, you
5 know, plaintiff and evaluate Ameris' counsel,
6 whether or not we want to continue using them or
7 not. And probably the -- the first week or two
8 we're just getting up to speed with where
9 litigation is. And our focus on that is to
10 say -- again, thinking back about our business
11 model, we -- we don't make any money until we get
12 fee simple control of the property, improve the
13 property and then sell.

14 Q Uh-huh.

15 A So at each point there's two kinks.
16 It's how much do we have to spend, and how long
17 is it going to take.

18 Q Uh-huh.

19 A And we go in making assumptions on that.
20 And once we have conversation with counsel and we
21 can review all the documents, we make a decision
22 as to what's the best course to get fee simple
23 control of the asset as soon as possible so that
24 we can stop the asset from deteriorating and
25 reposition or turn the asset around.

FIRST COAST COURT REPORTERS

1 Q So what's the quickest way for Galt
2 Valley to get fee simple control of the property?

3 A A deed in lieu of foreclosure.

4 Q And did Galt Valley typically seek a
5 deed in lieu of foreclosure with the
6 borrower/debtors of the -- of the --

7 A We did. We did a deed in lieu of
8 foreclosure with the -- with the Florida
9 oceanfront condo. And, in fact, we paid off -- I
10 don't know if junior liens in the right word but
11 -- but the homeowners association, a contractor.
12 So we -- not only did we do a deed in lieu of
13 foreclosure, but then we went to go make other
14 debts go away.

15 Q So Galt Valley might actually not only
16 offer deed in lieu of foreclosure, but they would
17 offer deed in lieu of foreclosure, and then even
18 bring money to the table to pay off some junior
19 creditors or lienholders so that Galt could reach
20 its ultimate goal of fee simple control of the
21 property. Would that be a fair statement?

22 A Correct. And I'll go a step further to
23 say that outside of Galt Valley, the other
24 entities that we owned that did similar
25 transactions, this concept of cash for keys was

FIRST COAST COURT REPORTERS

1 something that really made the process go fast.
2 So we call somebody who's in litigation, and we
3 say to them -- assuming their counsel let's us
4 have a conversation with them -- Look, we'll give
5 you a thousand dollars. Just sign it over to us.
6 Give us the keys. Don't destroy the property.
7 Let us take over from there.

8 So we did that several times.

9 Q Okay. And when you say you did that
10 several times, did you do that with the Florida
11 condo?

12 A I don't know if we paid her or not. I
13 don't recall. I can probably look back and see
14 if we paid her, but I know that we agreed to, you
15 know, pay off other debts.

16 Q So with respect to the Florida
17 oceanfront condo, essentially, Galt acquired the
18 debt as part of the Ameris debt portfolio.

19 A Correct.

20 Q And then did Galt reach out to the
21 borrower directly or borrower's counsel with
22 respect to --

23 A Borrower -- borrower's counsel agreed to
24 a settlement conference, in my recollection, at
25 that point. During the settlement conference we

FIRST COAST COURT REPORTERS

1 said, Here's our goal, let's do it.

2 Q Okay. So would you -- was it Galt's
3 ordinary and usual practice to reach out to the
4 borrower to seek a -- I think you called it a
5 settlement conference?

6 A Yeah.

7 Q And can you explain to me a little bit
8 about what the nature of a settlement conference
9 might be between Galt and a prospective borrower
10 or debtor.

1 A Well, so it's -- it's the qualitative
2 side of -- of litigation, which is sometimes hard
3 to -- to get to. But, you know, I look at a
4 bunch of papers. Ameris is doing this. The
5 other guy is doing that. Like, who is the
6 person? What is their situation really?
7 Sometimes it's hard to figure that out.

8 Q Uh-huh.

9 A And I think that drives a lot of motive.
10 I mean, that's why they do things that they do.

1 So in a settlement conference, it's
2 really a chance to break down the -- the barriers
3 that are put up through litigation and try to
4 reach something amicably, explain to them what
5 our desire is, see what their desire is. If they

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1 want to hold onto the property and they want to
2 fight then that's fine. If they've had enough
3 and they just don't want to get taken for, you
4 know, the deficiency, that's fine as well. But
5 really the settlement conference is a place
6 where, under supervision of counsel, the two
7 sides can try to, you know, see eye to eye and --
8 and have a human conversation.

9 Q Did Galt Valley seek a deficiency as
10 against the Florida oceanfront condo --

1 A No.

2 Q -- borrower/debtor?

3 A No.

4 Q Did Galt Valley seek a deficiency as
5 against the Columbia warehouse --

6 A No.

7 Q -- borrower/debtor?

8 A No. In the Columbia situation, it was a
9 little convoluted. There were -- again, I
10 believe there were six or seven borrowers. Three
11 of them wanted out, and we settled with them, I
12 think, to the tune of \$30,000 that they would pay
13 in settlement. And some of it -- some of it was
14 over two or three years, you know, based on their
15 capabilities, et cetera. And I believe the other

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1 four were continuing to use it as a business, you
2 know, and not paying rent. So they were using
3 that to fund their lifestyle, did not want to
4 consent to friendly foreclosure, and we had to
5 foreclose them out. However, after that we did
6 not seek deficiency against them.

7 Q After you foreclosed on the Columbia
8 property, you didn't seek a deficiency?

9 A Correct.

10 Q And after you foreclosed on the Florida
11 condo property, you did not seek a deficiency?

12 A Correct. I mean, we did a deed in lieu
13 of foreclosure on the -- on the Florida condo,
14 wiped out the other liens against the property,
15 and did not seek a deficiency for that full
16 amount.

17 Q Okay. And I think you testified a few
18 minutes ago that -- and correct me if I'm wrong
19 -- that how long it takes for Galt to acquire fee
20 simple control of the property is a material
21 factor in your decision --

22 A Absolutely.

23 Q -- as to whether or not Galt will do a
24 deed in lieu of foreclosure and waive the
25 deficiency; is that correct?

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1 A Absolutely. Absolutely.

2 Q And why is that?

3 A Well, so these properties are
4 distressed. If the borrower had the wherewithal
5 either financially or skill set wise to turn them
6 around, they would have done so by now. And so
7 it's -- it -- just as a -- as a general guideline
8 going in, we don't have faith that the borrower
9 is going to be able to protect this asset and
10 stop it from further deterioration.

11 So the biggest timeline -- you know,
12 legal cost is part of it. The longer litigation
13 drags out the more expense there is. But our
14 biggest concern is further deterioration of the
15 asset. And the faster we get control of it, the
16 faster we can put a stopgap measure in and start
17 curing those deficiencies.

18 Q Okay. And so --

19 A Or defects I should say.

20 Q You testified that you didn't take a --
21 or assert a deficiency claim against the Florida
22 condo, and you didn't assert a deficiency claim
23 against the Columbia property. Did Galt Valley
24 assert a deficiency claim against the North
25 Charleston property?

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A Did we assert a deficiency claim? What do you mean by that? Did we come after her for a deficiency at some point?

Q Well, when did -- when did you acquire the debt portfolio from Ameris, if you recall?

A I think it was the middle of June. It might have been July. Middle of June or middle of July.

Q Well, let me --

A If you can refresh me, that would --

Q Yeah. Let me hand you a document that might refresh your recollection. It's Exhibit No. 91, and it's entitled Assignment of Mortgage. And why don't you take a look at that, and see if that refreshes your recollection as to when Galt Valley acquired the Ameris mortgage having the Florida condo, the Columbia warehouse and the North Charleston Gibson property.

A Yeah. The 14th of July. That's -- I'm pretty sure that's right.

Q Okay. And you recognize that document?

A I do.

Q And what do you recognize the document to be?

A It's an assignment of the mortgage, the

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existing recorded mortgage, from Ameris Bank to Galt Valley.

Q Does this document evidence Ameris Bank's conveyance and assignment of the note and mortgage from Ameris Bank to Galt Valley?

A It does. And the assignment of rents and leases or leases and rents.

Q And that's for the Gibson property; is that correct?

A That's correct.

Q Okay. So in July of 2010, when Galt Valley acquired this property by way of this assignment, Exhibit No. 91, did Galt Valley -- or was Galt Valley seeking a deficiency or seeking to get a deficiency against Ms. Gibson?

A No. That's not our general business practice. Our -- we would have been the most happy with the next day executing a deed in lieu of foreclosure and being able to get fee simple control of the real estate.

Q Okay. And did -- was Galt Valley aware -- or is Galt Valley aware -- strike, please.

In July of 2010, when Galt Valley acquired the note and mortgage on the Gibson properties, was Galt Valley aware that Galt

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Valley could just approach Ms. Gibson directly instead of going through attorneys?

A I don't think so. I think that was not the advice of our counsel. I'm not -- I don't know a hundred percent that that was actually written to us in an email, but as a general process, you know, we meet reasonable attorneys who are -- who say, Yeah, let's have a talk. So that's generally the avenue we went.

Q So when you say you meet reasonable attorneys who generally connect you to the borrower -- I guess I just need to you explain that a little bit. That's not clear.

A In our experience --

Q I mean, what is the typical process? Galt Valley acquires the debt and -- and then what's the next step? You pick up the phone and you call who?

A Well, we call counsel, plaintiff's counsel, which would be our counsel, that's currently, you know, representing the lender in front of a judge or whatever through the process. The first process is to vet them, you know, whether or not we want to continue using them or not.

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Q Uh-huh.

A If we decide not, we substitute plaintiff's counsel, substitute plaintiff at the same time. If we do want to keep them, we make a motion to substitute plaintiff. And after that's done, we try to -- try to have some conversation with the borrower. Again, one, to see what their intent is with the property 'cause not everybody wants to get rid of the property. Some people, you know, are collecting money on it, and they're -- they're using that to pay other expenses, and you're not going to get assignment of rents and lease, et cetera. Some people have, you know, emotional attachment to it, and they want to fight just to fight. And some people say, I don't -- I don't want this anymore, can't manage it, just take it.

And so, again, that -- that conference is not about anything other than what does the borrower really want to do. And we've had success with that process because I don't -- I don't think during that time period banks really took that mentality.

Q And did Galt Valley hire an attorney in this Ameris portfolio with respect to the Gibson

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A All right. So I'm looking at this letter.

Q The October 18th, 2010 letter.

A Yes.

Q Did Galt Valley instruct Mr. McVey to seek Ms. Gibson's proposed dissolution?

A Yes.

Q And redirecting your attention to the October 21st email where it states, "Ian, where is the proposal for a deed in reduction?" And my question is: Why would, if you know, Mr. Epting be asking your attorney to propose a deed in reduction when a few days earlier your attorney was asking Mr. Epting to propose a solution, if you know?

MR. BOWERS: Object to the form.

A I don't know. I don't recall if I -- if Ian had a conversation with me about some agreement or some conversation they had. I -- I just don't recall.

Q Okay. Let's --

A I don't recall why in three days it changed.

Q Let's look at the third and remaining lines of this email chain. The third reply is

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also dated on October 21st from Mr. McVey to Mr. Epting. Drew, comma, that is what we want to talk about. Are ya'll available?

Did I read that correct?

A You did.

Q And Mr. Epting replies Friday at 4:00 p.m.; is that correct?

A Uh-huh (affirmative response).

Q Turning to the next page --

A One second. So in the email to Judge Watson, our attorney, Ian McVey, is -- discussed the defendants' theory of deed in reduction and made a proposal to Mr. Epting regarding that matter. Does that -- does everybody agree that that's probably this October 18th letter; that Ian McVey's proposal is proposing defendants to come up with a resolution?

Q I think that's a fair inference, but certainly we'll let the trier of fact make that determination.

A Okay. All right. Sorry. Go ahead. I guess my question is -- is Drew is saying where is the proposal. In the previous email, Ian is saying, I have made a proposal. So I don't know if they're --

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Q Does it appear anywhere in these first two emails that Galt Valley is seeking a deficiency judgment -- or excuse me -- a deficiency against Ms. Gibson?

A In the emails, no.

Q Okay. And turning to --

A I want to point out the -- again, our understanding of deed in reduction is that it does not wipe out the loan amount; it reduces the loan amount.

Q Uh-huh.

A Right. Okay.

Q Okay. So --

A 'Cause the defendant has said, Here's our proposal; we're going to reduce the amount owed and you take the properties.

Q Well, let's let the documents speak for themselves and -- and the trier of fact will sort through what the fair inferences can be from the -- from the text in these emails. Let me get to a question.

Turning to page 3, in the middle of the page, there's an email from Mr. McVey dated October 21st, 2010. The email is from Mr. McVey to Mr. Epting, and it says, quote, I am provided

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your client is available.

My question is, is this another attempt by Galt to set up a settlement conference with --

A Yeah. This is an attempt by Galt --

MR. BOYER: Object to the form.

A This is -- this is an attempt by Galt to get Linda on the phone.

MS. GIBSON: What date is that?

MR. DAVIS: October 21st of 2010.

BY MR. DAVIS:

Q So had there been a settlement conference between Galt Valley and Ms. Gibson and her attorneys prior to October 21st of 2010?

A Had there been a settlement conference? No.

Q So is it correct to say that Galt Valley acquired this property on July 14th of 2010, acquired the note and mortgage on July 14th of 2010, and it's now October 21st of 2010, and there's been no meeting between Galt Valley and Ms. Gibson and her lawyers?

A That's correct.

MR. BOWERS: Object to the form.

BY MR. DAVIS:

Q Was Galt Valley seeking a meeting

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between the members of Galt Valley and Ms. Gibson and her attorneys?

MR. BOWERS: Object to the form.

A Yes.

MR. DAVIS: What is your objection?

MR. BOWERS: No time frame.

MR. DAVIS: The record -- it's been established that the time -- the relevant period is July 14th of 2010.

MR. BOWERS: It was not part of the question.

MR. DAVIS: Well, let me --let's break this down bit by bit by bit so that we are very crystal clear right now as to what Galt Valley's intentions were from the date they acquired the note on July 14th of 2010 through -- continuously and uninterrupted to October 21st of 2010. I'll submit for the record that's the relevant time period in which I'm asking a very specific question.

BY MR. DAVIS:

Q During that time frame, July 14th of 2010 to October 21st of 2010, did Galt Valley seek to set up a settlement conference with Ms. Gibson and her lawyers?

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MR. BOWERS: Object to the form.

MR. DAVIS: What is your objection?

MR. BOWERS: Leading.

MR. DAVIS: How is that leading, the question? How is that a leading question?

MR. BOWERS: It implies the answer.

BY MR. DAVIS:

Q Did Galt Valley seek to set up a meeting with Ms. Gibson?

MR. BOWERS: Object to the form.

BY MR. DAVIS:

Q You can answer the question.

A Yes.

Q And did Galt Valley have a meeting with Ms. Gibson and her lawyers?

A No.

Q Why not?

A Well, from what we saw is that -- now, clearly, Drew Epting said that their client is not going to be involved with you, and then I think there was another email about, yeah, that there's nothing to talk about unless you want the property.

Q Did Galt Valley instruct or ask its attorney, Mr. McVey, to set up a settlement

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1 conference?

2 **A Yes.**

3 **Q** When did Galt Valley ask Mr. McVey to
4 set up a settlement conference with Ms. Gibson
5 and the attorneys, if you know?

6 **A I mean, I don't know the exact day.**

7 **Q** When you read this email chain,
8 Plaintiffs' Exhibit No. 99 -- and why don't you
9 take a minute to read through the entire email
10 chain.

11 **A All right.**

12 **Q** But when you read this email
13 correspondence in October 2010, can you form any
14 opinion whatsoever as to what your attorney and
15 Mr. Epting are talking about?

16 MR. BOWERS: Object to the form.

17 **A It's clear to me. In Ian's email of
18 October 22nd, at 10:52 a.m. he states, "I am
19 suggesting a settlement conference between the
20 parties under the supervision of counsel. Does
21 that interest you?"**

22 **Q** And what is Mr. Epting's response, if
23 you know?

24 MR. BOWERS: Object to the form.

25 **A "Ian, she is being sued, has just lost,
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1 **in foreclosure, certain property, and there is
2 nothing to talk about unless you want the
3 property. Remember, the insurance will expire on
4 10/31. Could I suggest we talk about the deed in
5 reduction? If you want the property voluntarily
6 okay, and if not, then let's submit orders."**

7 **Q** Did you know that your attorney,
8 Mr. McVey, was seeking a settlement conference
9 with Ms. Gibson with respect to the mortgage?

10 **A I do. I did.**

11 **Q** Did Galt Valley and its members or
12 principals talk about what a settlement
13 conference -- or what the terms of a settlement
14 conference would look like?

15 **A Yeah. Yeah. I mean, even though --**

16 **Q** And what was the result? What was Galt
17 Valley looking for? I think you already
18 testified to it, but Mr. Bowers is continually
19 objecting to my question. So, for clarity, what --

20 MR. BOWERS: Object to that one. It's
21 been asked and answered five times, but I
22 will object to this one though.

23 BY MR. DAVIS:

24 **Q** For clarity, what was the dialogue among
25 Galt Valley and its members at this time frame?

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON

3 LINDA A GIBSON, INDIVIDUALLY, AND IN CAPACITY
4 AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY
TRUST, AND HERITAGE SEVEN, LLC, AND SEVEN OAKS
5 APARTMENTS, LLC, AND 3205 PALM BOULEVARD, LLC,

6 Plaintiffs,

7 vs. CASE NO. 2013-CP-10-4450

8 ANDREW K. EPTING, JR. LLC, and, GEORGE J.
9 KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A.,
and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

10 Defendants.

11 DEPOSITION OF: ANDREW K. EPTING, JR., ESQUIRE

12 DATE: SEPTEMBER 10, 2014

13 TIME: 10:10 AM

14 LOCATION A. William Roberts, Jr.
15 & Associates
234 Seven Farms Drive
16 Charleston, SC

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: Laura J. Bash, RPR

19
20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 2

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

3 LINDA A GIBSON, et al.:

4 JAMES DAVIS LAW FIRM

5 BY: JAMES DAVIS

6 STEPHANIE E. KEBLER

7 234 Seven Farms Drive, Suite 211B

8 Charleston, SC 29492

9 (800) 983-0455

10 jim@jdvaispc.com

11 stephanie@jdvaispc.com

12

13 ATTORNEYS FOR DEFENDANTS

14 ANDREW K. EPTING, JR. LLC, and, GEORGE

15 J. KEPALOS, P.A. and, GEDNEY M. HOWE,

16 III, P.A., and JOHN H. WEST,

17 ATTORNEY-AT-LAW, LLC:

18 BARNWELL, WHALEY, PATTERSON & HELMS

19 BY: M. DAWES COOKE, JR.

20 288 Meeting Street, Suite 200

21 Charleston, SC 29401

22 (843) 577-7700

23 MDC@barnwell-whaley.com

24

25 ALSO PRESENT:

Linda Gibson

John S. West, Esquire

Gedney M. Howe, III, Esquire

(INDEX AT REAR OF TRANSCRIPT)

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1 MR. COOKE: Let me put that on the

2 record, that we agree that the South Carolina Rules

3 of Civil Procedure apply; that all objections are

4 reserved, except as to the form of question.

5 I would also like agreement that by

6 asking the question, Ms. Gibson is waiving

7 attorney-client privilege, or any privilege, for

8 that matter, as to that question, so that we don't

9 have to assert privilege and that we can answer it

10 without --

11 MR. DAVIS: Agreed. Agreed.

12 MR. COOKE: -- fears of violating

13 privilege.

14 ANDREW K. EPTING, JR, ESQUIRE,

15 being first duly sworn, testified as follows:

16 EXAMINATION

17 BY MR. DAVIS:

18 Q. Good morning, Mr. Epting.

19 A. Good morning.

20 Q. Would you agree with me that contingent

21 fees, just like any other fees, are subject to the

22 reasonableness standard?

23 A. I do not know.

24 Q. Are you familiar with Rule 1.5?

25 A. I've not read it.

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1 Q. How long have you been practicing law,

2 Mr. Epting?

3 A. 38 years.

4 Q. In the course of 38 years that you've

5 been practicing law, have you had the occasion to

6 enter into fee agreements with your clients?

7 A. I have.

8 Q. And have you had the occasion to look

9 at Rule 1.5?

10 A. Not that I have done for this

11 deposition, no.

12 Q. Have you looked at it in the past year,

13 since you've been practicing law?

14 A. I have not.

15 Q. As you know, Mr. Epting, Linda Gibson

16 engaged me to conduct a sort of archeological dig

17 into the layer of lawyer fees that have been

18 charged in the matter of Galt v. Gibson.

19 Are you familiar with the case

20 Galt v. Gibson?

21 A. I am.

22 Q. Linda feels like you took advantage of

23 her by charging excessive fees. Linda feels like a

24 566,000 fee to transact what she feels is a deed in

25 lieu of transaction is an excessive fee.

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1 Now, I don't know if a half million

2 dollars is a lot of money or not for a routine deed

3 in lieu of foreclosure, but it sounds like a lot of

4 money to me.

5 In any event, I'm going to ask you some

6 questions and hope you give us some insight into

7 how you determined the reasonableness of charging a

8 half a million dollars plus for the work you did in

9 the matter of Galt v. Gibson.

10 Now, there's no right or wrong answer

11 today. This is an opportunity for you to tell your

12 story as to the work product that you did in that

13 case, the work product that your co-counsel or

14 associate counsel did in that case, and this is an

15 opportunity for you to enlighten us as to why that

16 fee is reasonable and not excessive.

17 A. Mr. Davis, I'm here to answer your

18 questions.

19 Q. I'm going to give you some topic

20 headlines from time to time, so that you know where

21 my line of questioning is going. You'll then

22 presumably understand the context in which I'm

23 asking the question.

24 If you don't understand the context of

25 the question or the question itself, just say so

Page 22	Page 24
1 A. I want to say she had 15- or \$20,000 a 2 month coming in from the rental of certain 3 properties. 4 Q. Did Ms. Gibson tell you that she owned 5 some property? 6 A. She did. 7 Q. In fact, she told you that she owned 8 quite a bit of property, did she not? 9 A. She told me what properties she owned. 10 And there were some properties that were her home 11 and farm, and some properties that she owned on 12 Daniel Island, and a shopping center and a beach 13 house. 14 Q. Did you form an opinion as to the value 15 of her real estate holdings when you met Linda? 16 A. Not when I met her, no. 17 Q. Did you come to form an opinion as to 18 the value of her real estate holdings? 19 A. Over time, yes. 20 Q. And what was your opinion as to the 21 value of her real estate holdings globally? 22 A. I sought and received an appraisal for 23 the home, and I want to say 50 to 60, 70 acres in 24 St. George. I don't remember what that value was. 25 She retained Tommy Hartnett to give her	1 A. Some of them, I think that's true, yes. 2 Q. And what did you think these real 3 estate holdings were worth? 4 A. I believe the cell phone tower, in and 5 about the time that I came to understand what its 6 value was, was somewhere between 200- and \$350,000. 7 I believe the apartment complex was 8 worth somewhere between 500- and a million dollars. 9 I believe the shopping center was 10 marginally worth what the debt was, which I don't 11 remember. 12 I believe that the farm and her house 13 were worth something short of \$300,000. 14 I believe that the beach house, because 15 of the offers that were being made, were worth 16 about a million dollars. 17 I believe that the land on Daniel 18 Island was worth a substantial amount of money, to 19 the point that it would serve as sufficient 20 collateral to the lenders who were seeking to be 21 repaid their debt. 22 Q. Would you agree with me that Linda's 23 real estate holdings were worth somewhere between 24 2-and-a-half to \$4 million, in 2009 when she came 25 to see you?
Page 23	Page 25
1 sort of a quick appraisal of what the beach house 2 was worth. I don't remember what that appraisal 3 was, but I do know that I -- I believe the highest 4 offer that she ever got on it was around a million 5 dollars, if it was that. 6 Q. But my question is, Mr. Epting, did you 7 form an opinion as to Linda's real estate holdings 8 when you met her, or shortly thereafter? 9 A. No. 10 And when you say "shortly thereafter," 11 I'm assuming a month or two, because, yes, I formed 12 an opinion of what her -- the value of her house 13 and farm were sometime in April, May, June; and 14 later on, in October, of the beach house; and 15 probably in and about the same time what the value 16 of the apartments and the cell phone tower were. 17 Q. In the course of your representation of 18 Ms. Gibson did you or your firm put together a 19 schedule of values outlining her various real 20 estate holdings and the values and liabilities as 21 against those holdings? 22 A. No. But I didn't know of any 23 liabilities on the Daniel Island property. 24 Q. Did you learn that Linda inherited 25 these real estate holdings from her father?	1 A. Are you asking me irrespective of the 2 debt that was against them, or are you saying that 3 she had equity of 2- to \$4 million over and beyond 4 the debt? 5 Q. Do you -- did you form an opinion that 6 she had approximately \$3 million in equity, over 7 and above any debt on the real estate holdings? 8 A. I didn't form an opinion that it was 9 3 million. I formed an opinion that it was 10 substantial and that it would be a problem in 11 dealing with the lenders to whom she owed money 12 because they would want that as collateral or they 13 would want to seize it after judgment, and that the 14 amount of money that it was worth was substantial. 15 Q. Would you agree -- would you agree with 16 me that Linda is not an expert in contracts? 17 A. I agree with you, she's not an expert 18 in contracts. 19 Q. Would you agree with me that Linda is 20 not an expert in complex business transactions? 21 A. I would agree with you that she is not 22 as knowledgeable as many, but I would not agree 23 that Linda is not a fairly savvy woman when it 24 comes to business. 25 Q. Are you aware of any prior business

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1 Papa for the purposes of this First Citizens
2 litigation; is that correct?
3 A. And other things.
4 Q. When Linda came to see you in early
5 2010, did you discuss your fee arrangement with
6 Linda?
7 A. I did.
8 Q. Do you recall what you told her?
9 A. I told her at that time that we should
10 start out with her paying me by the hour. And I
11 told her that because in my experience, from time
12 to time, given the general time frame and the
13 difficulty of bank's collecting and the pressure of
14 the regulators to resolve what their actual
15 nonperforming assets were, that there was some
16 prospect that a deal could be struck with the bank
17 pretty quickly, and that if that were the case, it
18 would be in her best interest to pay me by the
19 hour; and if, on the other hand, that did not turn
20 out to be the case, that I would suggest that we
21 convert it into a contingency.
22 And there were any number of
23 discussions about that, and they're in and about or
24 before slightly the various e-mails and
25 communications that I had with Rob Papa and Linda.

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1 Q. Did you give Linda a fee agreement to
2 sign in January of 2009 when she came to see you?
3 A. The record will speak for itself in
4 terms of what I gave Linda to sign and when. But
5 most of the communications, because she was
6 represented by Rob Papa, about the original fees,
7 were done through her lawyer, Rob Papa.
8 Now, I had all the same conversations
9 with Linda, but I wanted Rob Papa's involvement and
10 wanted to make sure that he was on board with
11 anything and everything that George and I were
12 doing.
13 Q. What was the nature of the claim that
14 you were most concerned about with Ameris Bank?
15 A. That she had signed a note, a guaranty,
16 and had not paid them. And there didn't seem to be
17 a lot of dispute about that.
18 Q. What was the dollar amount of the note,
19 if you recall?
20 A. I don't recall specifically.
21 I know that by the time the
22 negotiations began, trying to resolve it, I think
23 they were claiming that it was fairly close to
24 \$3 million. But I don't know what -- the original
25 face amount of the note, I don't remember.

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1 If you have a document, I'll answer
2 your question.
3 Q. Did you talk with Linda about a
4 contingency fee for your services?
5 A. I did.
6 Q. Were you representing Linda in some
7 other matters at this time?
8 A. There -- you'll have to look at the
9 record or show me the documents and I can answer
10 you when and over what period of time these things
11 happened. But I did undertake to do other things
12 for Linda.
13 For example, I undertook to work with
14 Rob Papa to resolve the First Citizens litigation.
15 Linda had a lot of other issues going
16 on that I agreed to look into and to advise her on.
17 When that happened, I'm not exactly sure.
18 Q. Okay. You testified a few minutes ago
19 that when you prepare a contract document for a
20 client, the client has the right to rely on your
21 opinion; is that correct?
22 A. The record will speak for what I said.
23 Q. Do you have a duty to make sure your
24 client understands the terms of a contract that you
25 have with the client?

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1 A. It depends on what I'm being asked to
2 do. But generally speaking, yes, I think if I
3 prepare a contract that the client has a right to
4 rely on it.
5 That assumes that the client is not
6 also represented by other counsel who's serving in
7 certain specific roles.
8 Q. Is it your testimony that if you draft
9 a contract and a client is represented by other
10 counsel, that that client does not have a right to
11 rely on the terms of your contract?
12 A. I'm testifying, Mr. Davis, that I wrote
13 and sent everything to Rob Papa.
14 Rob Papa was representing Ms. Gibson.
15 Ms. Gibson was not relying on me with regard to
16 that contingency fee contract. She was relying on
17 Mr. Papa, because he was negotiating it on her
18 behalf.
19 Q. Mr. Epting, my question is: If you
20 prepare a contract, does the client have the right
21 to rely on the terms of the contract that you
22 draft?
23 MR. COOKE: Object to the form of the
24 question.
25 THE WITNESS: I would answer the

1 total control of every piece of that contract that
2 he is drafting for the client and there are no
3 others involved and that he's assigned that entire
4 responsibility, I would say that the lawyer has an
5 obligation to the best of his ability to explain
6 the contract to the client.

7 But to explain it to the client so that
8 the client understands each and every aspect of it,
9 no, I don't think that he has that duty, because
10 there are things that clients do not understand.

11 Q. Is it your testimony that if a client
12 has more than one attorney that the duties owed to
13 client are somehow partitioned between the two
14 attorneys?

15 A. Could be --

16 Q. One attorney could have a diminished
17 duty as to the other attorney?

18 A. Sure. I could be a lawyer handling a
19 real estate transaction and the client could have a
20 bankruptcy lawyer and the two of them could be
21 collaborating on an agreement that is a workout.

22 And my obligation would be in my
23 example, the real estate piece, and a bankruptcy
24 lawyer would have the other piece. And that
25 happens all the time.

1 A. I, as a previous letter, e-mailed some
2 terms that were worked out with Mr. Papa, and I
3 think it's embodied in a previous e-mail and
4 agreement, maybe more than one.

5 Q. Mr. Epting, I didn't understand the
6 answer to your question.

7 In the letter dated April 7th that you
8 wrote to Ms. Gibson, the first sentence says, and I
9 quote: "So, let's supplement our fee agreement
10 with this writing."

11 What fee agreement are you referring
12 to?

13 A. There are several previous
14 communications between Mr. Kefalos, myself,
15 Mr. Papa, and Ms. Gibson.

16 MR. DAVIS: I would like to introduce
17 this document as an exhibit.

18 (PLF. EXH. 1, 4/7/2010, Epting to
19 Gibson letter, Epting 15, was marked for
20 identification.)

21 MR. COOKE: Is that Number 1?

22 THE REPORTER: Yes.

23 BY MR. DAVIS:

24 Q. Did you have a fee agreement with
25 Ms. Gibson on April 7th, 2010?

1 Q. And in a fee agreement?

2 A. That wasn't the question you asked me,
3 Mr. Davis.

4 I've already explained to you in the
5 fee agreement and in this case Mr. Papa was
6 representing Ms. Gibson in negotiating the fee
7 agreement. But I undertook the responsibility of
8 explaining to Ms. Gibson what it was we were doing,
9 and I can tell you she absolutely understood it.

10 Q. Mr. Epting, I'm handing you a document
11 that appears to be a letter you wrote to Ms. Gibson
12 on April 7th.

13 Do you recognize that document?

14 A. Yes.

15 Q. What is it?

16 A. It's a letter I wrote to Linda Gibson
17 on April 7th.

18 Q. I would like to direct your attention
19 to the first sentence of the letter.

20 It says: "Dear Linda, so, let's
21 supplement our fee agreement with this writing."

22 Is that correct?

23 A. That's what it says.

24 Q. Mr. Epting, what fee agreement are you
25 referring to?

1 A. As to the terms addressed here in this
2 April 7th letter, I believe that these were
3 probably agreed upon prior to April 7th in
4 discussions with Linda, but she didn't sign it
5 until April 26th.

6 Q. Did you have a fee agreement with
7 Ms. Gibson on April 7th, 2010?

8 A. I would say yes.

9 Q. Was that agreement in writing?

10 A. I would say yes.

11 Q. Did Ms. Gibson sign that fee agreement?

12 A. When you say "that fee agreement," I
13 take it you're talking about the one that is
14 embodied here in the April 7th letter, and the
15 answer is she signed it on April 26th.

16 Q. Is this the fee agreement with Linda
17 Gibson in the matter of Ameris v. Gibson?

18 A. It and a previous one or two
19 communications with her are, yes.

20 Q. Mr. Epting, you keep referring to
21 previous communications.

22 What previous communications are you
23 referring to?

24 A. If you'll show them to me, I will
25 identify them for you.

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1 A. I do not know.
2 Q. But you did have some meetings with
3 Linda after February 4th, 2010; would that be
4 correct?
5 A. I had meetings with Linda from the time
6 I started working with her until, I think, sometime
7 in 2013.
8 Q. At your meetings subsequent to
9 February 4th, 2010, that you had with Linda, did
10 you give her any writings showing her the essential
11 material terms of your fee arrangement with her as
12 set forth in this February 4th e-mail?
13 A. Yes.
14 Q. You did?
15 A. Yes.
16 Q. Do you recall the form of those
17 writings?
18 A. There are several different forms.
19 Q. E-mails?
20 A. Letters. There are e-mails. There's
21 an agreement signed by her in which she was
22 represented by Mr. Tecklenburg. There are e-mails
23 between Mr. Kefalos and Mr. Papa, as well.
24 Q. Did Mr. Papa reply to this e-mail?
25 A. My file would reveal whether he did or

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1 not.
2 Q. You don't recall whether Mr. Papa
3 replied to this e-mail?
4 A. As I sit here without my file, no. But
5 if you have the documents there, to your left, I'm
6 sure you can give them to me and it will refresh my
7 recollection and I'll answer your question.
8 Q. Well, on Exhibit 1, the April 7th
9 letter, you state, and I quote: "So, let's
10 supplement our fee agreement with this writing."
11 And I'm trying to understand,
12 Mr. Epting, what fee agreement that you're
13 supplementing.
14 A. Well, I've done my best to explain that
15 to you, Mr. Davis, and I don't know that I can add
16 anything more than what I've said.
17 Q. I'd like to direct your attention to
18 the last sentence in the April 7th letter,
19 Exhibit 1.
20 "George and I will continue to handle
21 the existing case against RE/MAX, Rolando, Moore,
22 and Ameris on a contingency, as set forth in our
23 agreement of February 4th, 2010."
24 Would you agree with me, Mr. Epting,
25 that you were representing to Ms. Gibson in this

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1 April 7th letter that this February 4th e-mail is,
2 in fact, what you consider to be your agreement
3 with Ms. Gibson, your fee agreement with
4 Ms. Gibson?
5 A. It's a confirmation of what we had
6 agreed to previously, if that's your question.
7 Q. Is this February 4th e-mail the
8 agreement you had with Ms. Gibson?
9 A. That, and I believe there are others,
10 confirmations of it.
11 Q. Did you send this letter to Ms. Gibson
12 for her signature?
13 A. My guess is, is that Linda was in the
14 office, we went over it, and she signed it in my
15 presence.
16 Q. Do you recall if Linda was in your
17 office when she signed this agreement?
18 A. No. But in and about this period of
19 time, Ms. Gibson was in my office often.
20 Ms. Gibson was not very facile with
21 e-mail, certainly not scanning of documents, and
22 sending her things and having her send them back
23 didn't generally work.
24 And so, just in -- as a course of
25 practice, what I came to understand was the most

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1 effective way to deal with Linda was to have her in
2 my office. And so based on a course of dealings, I
3 assume that is what happened, because that's
4 normally how this was done.
5 Q. When Linda came to your office to sign
6 this April 7th document, do you recall if you gave
7 her a copy of the February 4th document, to which
8 you refer as the agreement of February 4th?
9 A. Without regard to the characterization
10 of it, no, I do not remember if I gave her a copy
11 of the February 4th e-mail.
12 Q. Did you explain to Linda when she came
13 to see you to sign this April document how you were
14 going to compute your fee in the matter of
15 Ameris v. Galt -- pardon me -- Ameris v. Gibson?
16 A. On multiple occasions, Mr. Davis,
17 starting out in the beginning and running right on
18 through, after the trial of the case against
19 Ameris, multiple times I explained it to her.
20 Multiple times I talked to her, to Mr. Papa, and to
21 Mr. Tecklenburg.
22 Q. You talked to Ms. Gibson multiple times
23 about this fee arrangement on April 7th; is that
24 your testimony?
25 A. It is.

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1 A. -- that predated --
2 Q. I'm sorry to interrupt.
3 A. -- predated our involvement.
4 Q. Did you assert lender claims against
5 Ameris Bank on behalf of Linda?
6 A. They were asserted in the summer of
7 2010.
8 Q. Did you have a fee agreement with
9 Linda --
10 A. Yes.
11 Q. -- to assert those lender claims for
12 that work product?
13 A. Yes.
14 Q. What was that fee arrangement?
15 A. All of the documents that were turned
16 over in my file, some of which we've been
17 discussing today.
18 Q. Do you recall whether your fee
19 arrangement with Linda in prosecuting the lender
20 liability claims against Ameris were to be based on
21 a flat fee or a contingent fee or an hourly fee?
22 A. They were set forth in the agreement,
23 saying it was a contingency fee.
24 Q. Well, Mr. Epting, you continually refer
25 to agreements, and I would represent to you that

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1 the only agreements or documents that we have
2 received from you in our discovery is the
3 April 7th, 2010 letter that's Exhibit 1, and the
4 February 4th e-mail identified as Exhibit 2.
5 Is there some other fee agreement that
6 I'm not aware of?
7 A. Yes. There are other communications
8 involving other people, confirming these same
9 terms.
10 Q. Mr. Epting, I didn't ask you if there
11 was other communications with other people about
12 terms.
13 I'm asking you whether or not there is
14 a fee agreement, other than this April 7th document
15 and this February 4th e-mail?
16 A. There's --
17 MR. COOKE: Objection.
18 THE WITNESS: There's only one fee
19 agreement. It's a contingency fee agreement.
20 There are any number of writings that
21 evidence that agreement.
22 BY MR. DAVIS:
23 Q. Is it your testimony that the April 7th
24 document is one of the writings that evidence the
25 contingent fee agreement in the Ameris matter?

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1 A. Yes.
2 Q. Is it your testimony that the
3 February 4th e-mail to Mr. Papa, identified as
4 Exhibit 2, is one of those writings that evidence
5 the fee agreement?
6 A. Yes.
7 Q. Is it your testimony that there are
8 other documents --
9 A. Yes.
10 Q. -- that reference the fee agreement?
11 A. Yes.
12 Q. When you say you represented Ms. Gibson
13 on a contingency in the Ameris matter, what does
14 that mean to you? What do you mean by "on a
15 contingency"?
16 A. It's stated in the February 4th letter;
17 33 percent, 40 percent, 50 percent, as to Ameris.
18 The same percentage will apply for any recovery or
19 savings defined as a settlement at less than the
20 amount due to Ameris, the definition of savings.
21 Q. On the February 4th e-mail when you say
22 "recovery or any savings," are you saying "recovery
23 and/or any savings," or are you saying "recovery or
24 any savings"?
25 A. Both.

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1 Q. What do you mean by "recovery"?
2 A. In the event that we brought a claim
3 and washed the deficiency out, and there were other
4 tort liabilities on the bank's part, and we got a
5 verdict, in addition to having saved her money off
6 the face amount of debt, such as happened in this
7 case.
8 Q. Is it your testimony, then, that by the
9 word "recovery" you mean any recovery in the lender
10 claim; and by "any savings" you mean any amount you
11 save Linda as against the deficiency claim?
12 A. That's what was discussed with Mr. Papa
13 and that's what is confirmed here.
14 Q. So you had essentially two contingency
15 fees in this fee arrangement; would that be
16 correct?
17 A. In the event that Ms. Gibson was
18 fortunate enough to get the deficiency forgiven and
19 in the event that she was fortunate enough to wind
20 up with a substantial recovery against the bank, a
21 punitive award, for example, the fee would apply as
22 to the deficiency and the fee would apply as to the
23 recovery. And it would be a contingency fee of a
24 third, 40 percent, or 50 percent.
25 That's what this says.

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1 Q. So the contingency -- the contingency
2 fee as to the recovery would be, for example,
3 33 percent of whatever cash recovery you get for
4 Linda prosecuting the lender liability claims?
5 A. If we settled the case under the
6 verdict that we were fortunate to get with Judge
7 Watson, and we settled it before trial, we would
8 get 33 percent. And if we settled it now, after
9 trial, we would get 40 percent.
10 And so, if we settled that case now for
11 a million dollars after the trial and the verdict,
12 we're not handling the appeal, we would get
13 \$400,000 of that million dollar settlement and
14 Ms. Gibson would get \$600,000.
15 Q. You withdrew from representing
16 Ms. Gibson in this matter; is that correct?
17 A. Ms. Gibson terminated us. And pursuant
18 to that, we withdrew.
19 Q. When did Ms. Gibson terminate you, if
20 you recall?
21 A. I don't. It was handled through
22 Mr. Cooke's office.
23 Q. Would it surprise you to know that
24 Ms. Gibson doesn't think she terminated you?
25 A. I don't know what Ms. Gibson thinks,

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1 Mr. Davis, so I wouldn't be surprised one way or
2 the other.
3 Q. So to be clear, the fee arrangement as
4 you interpret the February 4th document and the
5 April 7th document, purports a percent fee award to
6 you out of any recovery that you get for the
7 client, and a percent fee award to you out of any
8 money you saved the client on the deficiency claim;
9 is that correct?
10 A. With one exception. I don't think I'm
11 interpreting anything. I'm just reading what the
12 document says.
13 Q. You're not interpreting these
14 documents, Mr. Epting --
15 A. I'm not --
16 Q. -- when you read them?
17 I would like to direct your attention
18 back to Exhibit 1, the last sentence, and I quote:
19 "George and I will handle the existing case against
20 RE/MAX, Rolando, Moore, and Ameris on a
21 contingency, as set forth in our February -- as set
22 forth in our agreement of February 4th, 2010."
23 Did I read that correct?
24 A. You did.
25 Q. So you were representing Ms. Gibson in

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1 the RE/MAX matter; is that correct?
2 A. Yes.
3 Q. And were you representing Ms. Gibson in
4 the Rolando matter?
5 A. They're one and the same, as far as I'm
6 concerned.
7 Q. And did you represent Ms. Gibson in the
8 Moore matter?
9 A. Yes.
10 Q. And did you represent Ms. Gibson in the
11 Ameris matter?
12 A. Yes.
13 Q. And in each of these matters, the
14 RE/MAX, Rolando, Moore, and Ameris matters, your
15 fee arrangement with Ms. Gibson was on a
16 contingency of whatever you recover Ms. Gibson; is
17 that correct?
18 A. Or save.
19 Q. Can you show me on this document where
20 it says "or save"?
21 And again, I'm referring to the exhibit
22 identified 1.
23 A. You see it says, "As set forth in our
24 agreement of February the 4th, 2010," Mr. Davis?
25 Q. My question, Mr. Epting, is: Does it

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1 say on this agreement -- strike that.
2 My question, Mr. Epting, is: On this
3 document, where does it say that you would be
4 entitled to a third of whatever you save Linda in
5 the deficiency claim?
6 A. "As set forth in our agreement of
7 February 4th, 2010."
8 Q. Are you expecting Ms. Gibson to go back
9 to February 4th, 2010, to go find an e-mail that
10 she never got back in 2010?
11 A. I'm expecting that Ms. Gibson is having
12 conversations with Mr. Papa about the agreements
13 that are reached. And I know for a fact, in my own
14 conversations with Ms. Gibson, that she's quite
15 well-informed and understands all of this.
16 Q. Do you know if Mr. Papa told Ms. Gibson
17 about this February 4th e-mail?
18 A. I don't know what Mr. Papa told
19 Ms. Gibson about any specific document.
20 I do know that Mr. Papa said to me that
21 Linda was okay with the agreements that we entered
22 into and that we should proceed, and we did.
23 Q. Is it your testimony that you relied on
24 Mr. Papa's representation to you that he told Linda
25 the substantive terms of your fee arrangement when

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1 Q. And Mr. Epting, I'm going to hand you a
2 document that is titled Attorney-Client Contract,
3 and ask that this be entered into evidence as well.

4 (PLF. EXH. 3, Attorney-Client Contract,
5 Epting 1 through 2, was marked for identification.)
6 BY MR. DAVIS:

7 Q. Do you recognize this document?

8 A. I do.

9 Q. We marked this document as Exhibit 3.

10 What is this document, Mr. Epting?

11 A. It's a document prepared, I think, by
12 Paul Tecklenburg. And it had to do with
13 liquidating the amount saved on the deficiency and
14 preserving our fee agreement.

15 Q. Is this document a fee agreement?

16 A. It's entitled: Attorney-Client
17 Contract.

18 Q. I didn't ask you what it was entitled,
19 Mr. Epting. I asked you if it was a fee agreement
20 with your client, Linda?

21 A. I would say it's a memorialization of a
22 portion of the fee agreement.

23 Q. Is your testimony -- is it your
24 testimony that this attorney-client contract is a
25 memorialization of a fee agreement that you have

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1 We had a contingency fee agreement on
2 the deficiency and recovery in the Galt and Ameris
3 litigation.

4 And I had an hourly fee agreement with
5 Ms. Gibson on various and sundry miscellaneous
6 matters that I helped her with.

7 Q. And I believe you testified earlier
8 that each of these fee agreements were contingent
9 fee agreements; is that correct?

10 A. I don't think I said that. I just got
11 through saying one of them was an hourly.

12 Q. Did you draft this document, this
13 attorney-client contract identified as Exhibit 3?

14 A. I did not.

15 Q. Who drafted it?

16 A. I think Paul Tecklenburg did.

17 Q. Did you review this attorney-client
18 contract with your client before she signed it?

19 A. I'm not sure that I reviewed the
20 document with her. I think Paul Tecklenburg did
21 that.

22 I did review some of the terms, because
23 after we realized that Galt was going to walk away
24 with us returning the property, I had some
25 telephone calls and meetings with Ms. Gibson after

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1 with your client?

2 A. This document's set out to accomplish
3 those things that are set forth herein. What you
4 call it, I'm not sure. It's entitled:
5 Attorney-Client Contract. I don't know why Paul
6 Tecklenburg used those words.

7 Q. Is this a contingent fee
8 attorney-client contract?

9 A. It's providing for a one-third amount,
10 and in this case on a deficiency, and an agreement
11 on what that deficiency is.

12 Q. That was not my question, Mr. Epting.

13 My question is: Is this a contingent
14 fee contract?

15 A. I would say it's a memorialization in
16 order to allow mortgages to be prepared and
17 providing for security for a fee agreement that was
18 previously reached.

19 Q. A memorialization of what?

20 A. A portion of the fee agreement that was
21 entered into by Ms. Gibson with us.

22 Q. How many fee agreements did you have
23 with Ms. Gibson?

24 A. Well, we had a contingency fee
25 agreement for the RE/MAX, Rolando, and appraiser.

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1 that date and before November 18th. But my primary
2 purpose was to describe the nature of the
3 settlement offer that was being offered by Galt.

4 This was primarily handled by
5 Mr. Tecklenburg with Mr. Kefalos.

6 Q. Did you retain Mr. Tecklenburg to
7 represent you with respect to your fee with Linda?

8 A. I told Linda that she owed us money on
9 the basis of her savings. I told Linda that there
10 could be some disagreement about what the savings
11 might be. And at the time these conversations are
12 first happening, there's no definitive agreement
13 with Galt. But I told her I didn't think it was
14 advisable that I represent her in terms of what is
15 the potential amount of the deficiency because one
16 could argue that the apartment was worth 500; you
17 could argue it was worth a million. You could
18 argue that the cell phone tower was worth 200; you
19 could argue it was worth 300. And because there
20 was a range of values of what the property was
21 worth, then it would affect the savings.

22 And I told her that I thought she
23 needed separate representation, and she chose Paul
24 Tecklenburg.

25 Q. Do you know -- do you know Paul

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1 representing Ms. Gibson in the Ameris/Galt v.
2 Gibson matter?
3 A. I probably would have kept
4 contemporaneous time records for so long as this
5 was a hourly case. After which, I probably didn't.
6 Q. Mr. Epting, I'm handing you a document
7 which is apparently a statement of services
8 rendered by your firm between June 14th of 2010
9 through February of 2012.
10 MR. DAVIS: Can we mark that as an
11 exhibit?
12 (PLF. EXH. 4, Epting Invoice 20081065,
13 Epting 3066 through 3077, was marked for
14 identification.)
15 BY MR. DAVIS:
16 Q. Do you recognize this document,
17 Mr. Epting?
18 A. Let's wait on Mr. Cooke to come back.
19 (Off-the-record discussion.)
20 BY MR. DAVIS:
21 Q. Mr. Epting, I just handed you a
22 document that appears to be a statement of services
23 rendered, or a schedule of values of services
24 rendered by your firm.
25 Do you recognize this document?

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1 A. I do.
2 Q. And what is it?
3 A. It is the file that was opened in June,
4 relative to the Ameris/Berkeley litigation.
5 Q. And when you look at this document, do
6 you have any reason to believe that this document
7 wouldn't be an accurate reflection of the time and
8 expenses incurred by your firm in the
9 Gibson/Ameris/Berkeley foreclosure matter?
10 A. It's not.
11 Q. Why is it not?
12 A. Two reasons.
13 The first part of this work was done
14 under another file, 2042001, and I don't know what
15 the dates of that are because, remember, it wasn't
16 exactly certain how we're going to proceed in the
17 first month or two, hourly or contingency, on one
18 piece of litigation.
19 And so to get the full scope of the
20 representation of Ms. Gibson, and a lot of these
21 entries, some of it related to Rolando and to the
22 Ameris litigation, I mean, reviewing Ameris's files
23 related to both cases. And so there's a lot of
24 ambiguity about where would you bill something for
25 reviewing documents and the like.

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1 But in any event, there's another bill,
2 001.
3 Number two, if you look at this bill,
4 you will see that I have 35 hours in.
5 I just didn't record my time. And I
6 routinely don't record time in a contingency fee
7 case. And so it's not accurate in that way.
8 Where it is accurate is that the cost
9 advance, which is what I do keep up with carefully,
10 that part of this bill is accurate.
11 But no, this is not an accurate
12 reflection of the time spent by me and my office
13 from the time I represented Ms. Gibson until the
14 time the matter was concluded.
15 It's not to say, for example, if I look
16 at this, and I did rely on this bill for this; I
17 knew I met with Ms. Gibson and talked to her
18 immediately after getting Mr. McVey's letter.
19 There's an entry on the 11th of
20 November about talking with Ms. Gibson. I remember
21 that phone call, but I would not have remembered
22 the date was the 11th.
23 I remember I met with the client
24 shortly thereafter, and that's recorded on the
25 15th.

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1 So to the extent things are recorded
2 here, I believe they are accurate.
3 Much of what occurred in this case,
4 because we're not being paid by the hour, is not
5 recorded here.
6 Q. Would you have records in your office
7 or your possession that would reflect time spent
8 and expenses incurred, not in this record, that
9 would complete the record of how much time you
10 spent on the Ameris/Gibson matter?
11 A. No.
12 Q. Why not?
13 A. Because I don't keep time in
14 contingency fee cases. And it's not to say that if
15 I don't think -- if I think there's something that
16 I need to memorialize in conversation that I won't
17 write down an entry that says, Ian McVey called,
18 settlement offer coming. I might think that that
19 was an important event and I might record it, even
20 though it has nothing to do with billing, but it's
21 just a diary entry, if you will, because I'm not a
22 big notetaker and don't take notes of conversations
23 that I have with lawyers or clients.
24 So oftentimes, if I want to record
25 something, I use a billing system to do it.

1 Q. And do you recall Mr. Kefalos appearing
2 at that meeting?

3 A. I don't think -- if George appeared, it
4 was only for a brief period of time, because most
5 of the client contact was with me.

6 Q. When you said -- strike, please.
7 Did you say, you know the miracle
8 you've been waiting for, this is it?

9 A. I don't know what the characterization
10 is, Mr. Davis. I think miracle got in there
11 somewhere. And where it originated, I don't know.

12 I just know it was a very emotional --

13 Q. Did George say anything at this
14 meeting?

15 A. I told you, I don't think George was
16 there.

17 Q. Did George say, yeah, they just threw
18 in the towel, I was shocked, at this meeting?

19 A. I think George maybe wrote an e-mail or
20 something to me that said something to that effect.
21 I think it actually said, holy shit, does this mean
22 what I think it means, they're throwing in the
23 towel.

24 I don't know. But in any event,
25 something like that, because we were both

1 Mr. McVey to get sort of a deed reduction
2 arrangement with the Otranto Apartments before
3 November 8th, and then on November 8th you received
4 this letter from Galt saying we're just going to
5 waive the whole deficiency?

6 A. No. What happened was simultaneously
7 with this, we're negotiating with Jay Davis, who is
8 not cutting us a lot of slack in terms of time.

9 Q. Who is Jay Davis representing?

10 A. First Citizens.

11 And Jay Davis is interested in making
12 some deal, and he is taking the beach house from
13 her -- and he wants it. And he's putting a lot of
14 pressure on us to make the deal.

15 Well, what we realized is the only
16 security that we as lawyers have, because Linda is
17 not going to have the money to pay us on a savings
18 case, is the property she has. And we also
19 understand that Jay Davis is going to want a
20 mortgage on everything for the deal that we're
21 negotiating with him on the beach house.

22 And so the way this whole thing got
23 started, had absolutely nothing to do with the way
24 it ultimately wound up, because we just assumed we
25 were going to be in litigation with Galt for some

1 surprised.

2 Q. You were surprised that Galt decided to
3 waive the deficiency; is that correct?

4 A. Yes.

5 I also knew at this meeting on the 15th
6 that Ms. Gibson had contacted Mr. Tecklenburg.

7 Q. How did you know that?

8 A. She told me.

9 Q. Ms. Gibson told you she had contacted
10 Mr. Tecklenburg?

11 A. Yes.

12 Q. With regard to assessing what a
13 reasonable fee should be as to the deficiency
14 claim?

15 A. When -- when I asked her to go and get
16 another lawyer, it was not known that this was
17 going to come through. And the question was more
18 just securing any fee for a deficiency of whatever
19 amount it might be.

20 And so she had some other business,
21 which I came to understand from Mr. Tecklenburg in
22 the one call that I remember, and so she went to
23 him. And a couple days after me meeting with her
24 is when Mr. Tecklenburg called me.

25 Q. So you were, in fact, working with

1 period of time.

2 It was rather, we wanted to get a
3 mortgage securing our services. And I also had the
4 view that if we got a mortgage securing our
5 services that it might help Linda at a subsequent
6 date in a subsequent negotiation with First
7 Citizens, because at least as to certain assets she
8 would have those who were loyal to her, and we
9 were, her lawyers, in front of First Citizens;
10 which would mean for First Citizens, and we knew at
11 the time that the debt that First Citizens wanted
12 her to sign or re-up for was around 4- or \$500,000,
13 so that when they sought to foreclose,
14 subsequently, if Linda couldn't pay them the
15 reduced amount, that our fee would be in between
16 them and First Citizens and that would help Linda
17 in a second negotiation with First Citizens.

18 And I, again, was not going to make
19 that determination for Linda, because that
20 certainly would have been in our best interest, but
21 it is another reason that I told Linda, that you
22 need to go and talk to another lawyer.

23 And so the way this started had nothing
24 to do with this. We just thought we were
25 negotiating, generally, some kind of deficiency and

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1 me -- I don't know how many thousands of dollars to
2 help Linda organize all of the records. And
3 dealing with the tenants and vendors and city
4 authorities was not helping her. So she had a lot
5 to do with this.
6 Q. But Mr. Epting, from your testimony so
7 far, and from the documents, it appears to me that
8 the lawyers, yourself, Mr. Howe, Mr. West, and
9 Mr. Kefalos appeared at an appointment of receiver
10 hearing, filed a three-count counterclaim, had some
11 dialogue amongst themselves as to some
12 jurisdictional concerns, and met with the client.
13 It sounds to me like a routine
14 foreclosure proceeding.
15 Was there anything else that you guys
16 did with respect to the defense of the claims that
17 Galt has brought against Linda?
18 A. I don't think there's a thing routine
19 about this, Mr. Davis.
20 Q. What's not routine about it,
21 Mr. Epting?
22 A. What's routine in a foreclosure
23 proceeding is that the client gets slammed at the
24 hearing, the property gets taken away from them,
25 and they wind up with a deficiency judgment; the

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1 property is sold on the courthouse steps. That's a
2 routine foreclosure.
3 This is a foreclosure in which a lender
4 and its assignee, or whoever, had a \$3 million
5 mortgage, a piece of property, six of the buildings
6 were condemned, and a cell phone tower with a
7 troubled lease in which the client walked away from
8 the debt by assigning the property.
9 There's nothing routine about that.
10 You don't find any of those cases standing in the
11 courthouse records.
12 And it was achieved because we worked
13 hard, we're good at what we did, and we gave her
14 everything we had, and it worked.
15 Q. Mr. Epting, we know the result. I'm
16 trying to understand what work product the lawyers
17 did --
18 A. A lot of work product, Mr. Davis. A
19 lot of work product.
20 Q. Well, the work product that you've
21 shown me is a five-page complaint containing three
22 counts and you appeared at a hearing.
23 You had some conversations about some
24 jurisdictional concerns. You met with the client.
25 MR. COOKE: Objection to the form.

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1 BY MR. DAVIS:
2 Q. And you apparently received a letter
3 from Galt Valley.
4 Is there anything else that you guys
5 did with respect to the claims that Galt brought
6 against Ms. Gibson?
7 A. We did all the things that I have
8 described to you that we did.
9 Q. Did we cover everything that you guys
10 probably did?
11 A. I think I said, in my testimony, most
12 of what it is that we did.
13 Q. And how much did you get paid for that
14 work product we just discussed?
15 A. 560-some-odd thousand dollars.
16 Q. Do you think \$566,000 is an excessive
17 fee for drafting a five-page complaint,
18 communicating with your client, your associate
19 counsel, and appearing at an appointment of
20 receiver hearing?
21 A. I disagree with the characterization of
22 what we did. But given what we did and the result
23 that we achieved and the agreement that we struck
24 with the client before we undertook to do what we
25 did, yes, we earned the fee that we contracted for.

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1 Q. Well, I will -- I would concede that
2 you got the result you wanted. What I'm trying to
3 do is understand the "earned the fee" part.
4 Do you believe you earned \$566,000 for
5 the work product that we just discussed a few
6 minutes ago?
7 A. Yes.
8 Q. Why do you believe that?
9 A. For all the reasons I have been
10 testifying to here this morning; that it's the
11 agreement she made with the assistance of counsel.
12 Q. With assistance of multiple counsel,
13 correct?
14 A. Her choice.
15 Q. It's your client's choice as to who
16 she's going to meet with to discuss the fee that
17 she's ultimately going to pay you?
18 A. In this case, it was her choice, yes.
19 Q. Why wouldn't you just negotiate your
20 fee with your client?
21 A. I, in part, did, Mr. Davis. But as an
22 added layer of protection for this client, she had
23 other lawyers involved. I was happy to have them
24 involved in it. There were some issues that I felt
25 like she needed independent advise on, like the

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 DEPOSITION OF LINDA A. GIBSON

5 LINDA A. GIBSON, Individually, and in capacity as
6 TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST;
7 HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
8 and 3205 PALM BOULEVARD, LLC,

9 Plaintiff,

10 vs. CASE NO. 2013-CP-10-4450

11 ANDREW K. EPTING, JR., LLC; GEORGE J. KEFALOS,
12 P.A.; GEDNEY M. HOWE, III, P.A.; and JOHN S.
13 WEST, ATTORNEY-AT-LAW, LLC,

14 Defendants,

15 DEPONENT: LINDA A. GIBSON

16 DATE: MAY 7, 2015

17 TIME: 10:00 AM

18 LOCATION: BARNWELL WHALEY
19 CHARLESTON, SOUTH CAROLINA

20 REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
21 NCRA CERTIFIED MERIT REPORTER
22 CLARK & ASSOCIATES, INC.
23 CHARLESTON, SC 29415
24 843-762-6294
25 WWW.CLARK-ASSOCIATES.COM
 Lynn@clark-associates.com

1 2009?

2 A. I didn't even know about it then. I had
3 not seen this and I don't remember Rob discussing
4 it with me. And I don't remember George or Drew
5 saying anything to me about that.

6 Q. How did you expect to pay George or
7 Drew?

8 A. Well, I guess just like I had done with
9 the other lawyers. I mean I've gone through
10 several lawyers now, and I would pay Rob -- I
11 paid -- I did a small retainer and then he billed
12 me each month. Larry Richter was a retainer and
13 he never billed me anything.

14 Q. Larry Richter was going to be on a
15 contingent fee as well because he was suing
16 Rolando and Re/Max.

17 A. That's right, uh-huh.

18 Q. But do you understand that the goal was
19 to get money to have Rolando and Re/Max actually
20 pay you money, correct?

21 A. Yes, to reimburse me for -- yes.

22 Q. So there would be a fund of money or a
23 corpus, as it's referred to here, from which a
24 fee could be -- an attorney's fee could be taken.
25 Do you understand that?

1 A. Yes. Yes.

2 Q. But then do you understand what he says
3 here, which is that, the most significant benefit
4 to be had from the case might be limited to a
5 forgiveness of the loan.

6 Do you know what he means by that?

7 MR. DAVIS: Object to the form.

8 A. Yeah. I mean I -- you know, I
9 understand all of this from having listened to
10 all of this many times now.

11 Q. Right. But I want to try to take you
12 back to 2009 and figure out what you were capable
13 of understanding then. And I know you've
14 explained you did not get this e-mail, but did
15 you understand that the end goal of retaining a
16 lawyer to help you with the Ameris situation
17 would be to reduce the debt or eliminate the debt
18 that you owed to Ameris, not to -- not to get
19 money from Ameris like you did with Re/Max -- or
20 were trying to do from Rolando or Re/Max. Did
21 you understand that difference?

22 A. Well, what I understood was that Re/Max
23 and this agent had done a lot of things wrong and
24 that -- and had gotten me into this deal and the
25 bank went along with it. So I felt that the

1 bank -- all of them were at fault. All of them
2 made money off of me. All of them profited from
3 my decision to buy these apartments. And I felt
4 they were in the wrong and that -- it didn't even
5 enter my mind that I would have to come up with
6 money. So you're saying -- I'm not quite -- when
7 I went -- when I talked to a lawyer, it was like
8 I was expecting to get money back from what
9 people had taken from me and overcharged me and I
10 had been paying monthly interest from all avenues
11 that I had income. And this -- it was wrong what
12 these people had done to me.

13 So, no, it never entered my mind that I
14 was going to have to come up with money other
15 than paying either like an hourly wage or a
16 contingency, as I know contingency is like a
17 lawyer takes a case and if he recovers something,
18 then I pay -- you know, he takes a third of it.
19 That's my conception of contingency. That's how
20 I -- I mean I have never been in a situation like
21 this. So I've never had to have a lawyer to do
22 that. The only other case it was was -- correct
23 me -- on my house, just prior to this it was
24 after my husband's death there was a problem with
25 the foundation. And that ended up where I got a

1 A. And I was confused when I learned
2 that -- when I saw these e-mails in the
3 deposition, why they always talked all of this
4 over with Rob Papa. It was like -- I didn't
5 understand why they were talking with Rob Papa
6 about my, you know, fees.

7 Q. Why shouldn't they be talking to Rob
8 Papa about that?

9 A. Well, what did Rob Papa have to do with
10 my paying them for their services to me? I
11 didn't understand why they sent e-mails to Rob
12 Papa.

13 Q. I don't understand what you're saying.
14 Could you explain what you're trying to say?

15 A. Well, it looks like they were discussing
16 with Rob Papa how to bill me and Rob Papa was
17 answering them. And I didn't understand why they
18 needed to talk to Rob Papa -- I mean I've never
19 had a lawyer -- in all my other dealings with
20 lawyers, I had never had another lawyer talking
21 to a lawyer about my bills or how, you know, I
22 would pay.

23 Q. Well, if -- if on the 11th of December
24 Rob wrote to them and said he had talked to you
25 and -- about your options and this was your

1 proposal for retaining them, might that explain
2 why they were communicating with him?

3 MR. DAVIS: Object to the form.

4 A. I don't know. I mean I didn't know why
5 they were -- when I kept seeing all these e-mails
6 between Rob Papa and them, I didn't understand
7 why they would -- why they were always contacting
8 Rob Papa instead of me.

9 Q. Well, because Rob Papa -- you hired Rob
10 Papa, Rob Papa recommended that you retain them.
11 Rob Papa facilitated the meeting with them. Rob
12 Papa communicated to them what your proposal was
13 for retaining them. Correct?

14 MR. DAVIS: Objection to the form.

15 Q. Based on what I've shown you today?

16 A. Well, I mean the same thing happened
17 with my friend -- the Realtor friend, Dexter
18 Rumsey, he introduced me to Rob Papa, but Rob
19 Papa didn't go through Dexter Rumsey to ask for a
20 retainer fee and all of that through Dexter. So
21 to me, you know, I asked Rob to give me a
22 referral, just like I asked Dexter, my friend
23 Realtor.

24 Q. What did you think Rob was doing sitting
25 in the meeting with you on the 10th of December?

1 A. Well, he offered to go -- I mean he
2 offered to go and sit in with Larry Richter
3 and -- you know, he said, any time you have a
4 meeting with Larry Richter, you know, I'd be
5 happy to go with you. And so I -- I took that
6 as --

7 Q. You paid him to go.

8 MR. DAVIS: Objection to the form.

9 Q. Didn't you pay him to go?

10 A. Well --

11 MR. DAVIS: Object to the form.

12 A. Well, not to Larry Richter, I didn't,
13 but after I asked him to talk to him about the
14 bank, with Karl Zerbst, I asked him to go to that
15 meeting, and that's I guess when he started
16 billing me.

17 Q. Well, according to his billing records,
18 which he says you paid, he charged you \$450 to
19 attend the meeting on the 10th with Drew Epting
20 and George Kefalos.

21 A. Well, I didn't -- I assumed that he was
22 going to charge me since he's a lawyer, then he
23 wanted to go. But if I'd have known all of that,
24 I wouldn't have -- I could have gone and met with
25 George and Drew myself. He just offered to go --

1 I don't know whether that's what -- how he -- I
2 thought he was doing it as a courtesy to me. I
3 didn't know he was going to be charging me \$450
4 to introduce me to another lawyer.

5 Q. And it's your testimony, looking back at
6 Exhibit 62, that you were not aware that Mr. Papa
7 on your behalf had on December 11 written to
8 George and Drew and Oana and proposed terms for
9 your retaining them?

10 A. No. I was not aware of that at all.

11 Q. Well, seeing this now, this Exhibit 62,
12 does that help explain to you why Mr. Epting and
13 Mr. Kefalos were communicating with Mr. Papa
14 about the terms of your retention?

15 MR. DAVIS: Objection to the form.

16 A. Well, I did not hire Rob Papa to
17 negotiate any kind of a deal with other lawyers.
18 I did not hire him to do that.

19 Q. Well, if you were Drew Epting and George
20 Kefalos and you received this e-mail, which is
21 Exhibit 62, would you believe that Mr. Papa had
22 in fact been authorized to make this proposal on
23 your behalf?

24 MR. DAVIS: Objection to the form.

25 A. I don't know whether -- I can't answer

1 for Drew what he -- I did not hire him to do
2 that.

3 Q. Well --

4 A. And I didn't -- you know, there has
5 been --

6 Q. Well, for the moment, I'd like you to
7 put yourself in Drew Epting and George Kefalos'
8 position and assume that they received, after
9 meeting with you and Mr. Papa on the 10th, the
10 following afternoon, at 12:32, they received an
11 e-mail from him in which he says, as you know, I
12 stayed for a while in your conference room and
13 discussed Linda's options. I gave her some input
14 and let her sleep on it. I spoke to her this
15 morning and confirmed the following plan or
16 should I say proposal.

17 Do you think that they -- if they
18 received that e-mail, that they could reasonably
19 have believed that he was authorized to act on
20 your behalf to make that proposal?

21 MR. DAVIS: Objection to the form.

22 A. I guess they could -- you know, I
23 suppose they could, but that is not what -- those
24 were not my instructions to Rob Papa. I did not
25 give him any kind of an -- ask him to do that

1 to because I signed it. You know, I just would
2 go in and meet with Drew and talk with him, and
3 he would kind of update if there was anything to
4 update. And, you know, if he asked me to sign
5 something, I signed it. So --

6 Q. You said he often talked about fees?

7 A. Yeah, and, you know, this is another --
8 I mean -- another thing about the fee --
9 different fee thing, but --

10 Q. Well, let's go through it piece by
11 piece. Dear Linda, so let's supplement our fee
12 agreement with this writing.

13 What did you understand him to mean by
14 let's supplement our fee agreement?

15 A. I mean I didn't take it apart sentence
16 by sentence. I just -- I guess I sort of read
17 over it, and it was talking about the fees again.
18 So I just -- you know, he asked me to sign it and
19 I signed it, so I --

20 Q. Well, when he says, let's supplement our
21 fee agreement, does that suggest to you that
22 there's already a fee agreement in place?

23 MR. DAVIS: Objection to the form.

24 A. Well, I had the fee agreement with the
25 Re/Max, so I -- I mean I don't even remember

1 A. Yes. That was the \$2,500 that I told
2 you he asked me to -- yes.

3 Q. George and I will handle the existing
4 case against Re/Max, Rolando and Moore and Ameris
5 on a contingency as set forth in our agreement
6 February 4, 2010.

7 What did you think he meant by that?

8 A. I did not -- I did not pick that apart.
9 I didn't -- I guess I really didn't question
10 that. I don't remember asking him about that. I
11 trusted Drew and George, and I did probably
12 everything that they asked me to do, I did.
13 Every suggestion. And if they told me to sign
14 something, I signed it, and I didn't really
15 question -- I left a lot of things to their
16 judgment because I felt like they knew what they
17 were doing as lawyers in a lawsuit where I
18 didn't. So if they told me to sign something, I
19 signed it. So I didn't really question any of
20 this.

21 Q. Did you wonder what he meant by the
22 agreement of February 4, 2010?

23 A. No, I didn't. I didn't -- I didn't. I
24 don't even know if I -- if that really, you know,
25 weighed on me, when I looked over this.

1 That's why I pay the contingency, the percentage
2 like I did with the Paul Moore. That's what I
3 understand the contingency is is that you --

4 Q. Well, except that in this case you
5 actually owed Ameris, you had borrowed money from
6 Ameris.

7 A: Right. Right.

8 Q. So I mean did you -- did you not
9 understand that a possible outcome of hiring
10 these lawyers would be that you would reduce the
11 amount that you were owed to Ameris Bank -- the
12 amount that you owed to Ameris Bank. Excuse me.

13 A. Well, again, I guess going back I always
14 focused on the recovery part of it. So I just --
15 I don't -- you know, I didn't pick this apart to
16 find out what that meant.

17 Q. Let me --

18 A. And I didn't -- you know, Drew said that
19 he was going to talk with the bank but he never
20 did, so I -- you know, how do you -- I don't
21 understand how you can say -- I don't
22 understand -- I'm -- I guess I'm confused about
23 in the beginning with it, but now -- like I said,
24 after having listened to five lawyers explain it,
25 you know, I understand the concept of it.

1 sure what all that involved there, but he -- what
2 he did tell me was that George did a tremendous
3 job at this hearing. So I said great. All
4 right.

5 Then the next thing I know is we got a
6 proposal from Galt Valley that they want my
7 apartments, the cell tower and they're going to
8 forgive me the debt. I had always told Drew -- I
9 said, I'm always praying for a miracle with this
10 thing. Well, Drew -- that day that I went to
11 their office, Drew was sitting here, George was
12 sitting here, I sat here, between the two of
13 them. And Drew said, you know that miracle you
14 wanted? Well, this is it. And I looked at
15 George, and he said, yeah, he said, they threw in
16 the towel. I was shocked.

17 And I said, praise God. And so in my
18 way of looking at this, Galt Valley finally
19 delivered to me what my lawyers for these seven
20 or eight months never did do. They forgave me
21 the deficiency, the debt, the deficiency as you
22 call it, they forgave me the debt.

23 Now, when I -- and then after they have
24 forgiven me this, then my lawyers tell me,
25 because we saved you this amount of money, you

1 understand what you're trying to get me to -- how
2 to answer that. Because that's not what
3 happened. And so I cannot say whether or not I
4 would have gone through 2,000 hours of doing -- I
5 don't know that I would have gone that, that way.
6 But that's not what happened.

7 Q. No. What happened was that they -- you
8 signed an agreement saying that you would pay
9 them a third of whatever they saved you off of
10 the debt.

11 MR. DAVIS: Objection to the form.

12 Q. And they saved you \$1.7 million off the
13 debt, didn't they?

14 MR. DAVIS: Objection to the form.

15 A. I don't see it as they saved me. I see
16 it where Galt Valley didn't pursue it.

17 Q. Well, by the same token, Re/Max just
18 decided to give you \$800,000, didn't they?

19 MR. DAVIS: Objection to the form.

20 Q. How is it any different? How is what
21 Galt did any different than what Re/Max did?
22 Re/Max didn't give you \$800,000 because they
23 loved you, did they, or because they were
24 gracious and kind? Didn't they give it to you
25 because they were being sued and they were trying

1 identification.)

2 Q. Linda, I've handed you Exhibit Number
3 72, which purports to be a series of e-mails
4 between Mr. Tecklenburg and Mr. Kefalos' office.
5 Have you seen these e-mails before?

6 A. No.

7 Q. Were you copied on those e-mails?

8 A. I don't think so.

9 Q. I'd like to direct your attention to the
10 e-mail Bates stamped Epting 505.

11 A. Where is the number?

12 Q. It's down at the bottom. I'm not sure
13 we've got 505. Yours is Bates stamped Epting
14 493, but in any event, let's do it by the date
15 and time.

16 The e-mail to which I'm referring is
17 from Paul Tecklenburg. It was sent Monday
18 November 1st, 2010, at 11:19 AM, and it was sent
19 to Mr. Kefalos. Could you read the e-mail for me
20 starting here?

21 A. Drew, I did not get the February
22 contingency agreement. Since it needs to be
23 amended, sending it in Word would be helpful.

24 Q. Have you seen this e-mail before?

25 A. No.

1 Q. Did Mr. Epting talk to you about
2 amending the purported February agreement when
3 you met with him in November of 2010?

4 A. No. I don't recall him mentioning that.

5 MR. DAVIS: I have no further
6 questions.

7 MR. COOKE: That's all for me.

8 (The deposition was concluded at
9 5:53 PM.)

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Page 6

1 A. I don't know the date. I would have to
2 look at the document.
3 Q. I'm going to hand you a document
4 identified as Exhibit Number 3.
5 Do you recognize that document?
6 A. I recognize my signature on that
7 document. I do not recognize the document. Which
8 is another way of saying I agree I signed it, but
9 don't -- don't remember the circumstances.
10 Q. Have you met Ms. Gibson about six
11 months ago -- strike that, please.
12 You testified you met Ms. Gibson about
13 six months ago; is that correct?
14 A. I said six to eight.
15 Q. Six to eight months ago.
16 And this document is dated
17 November 18th, 2010, this Exhibit 3 document; is
18 that right?
19 A. That's what it says.
20 Q. When you signed this agreement, this
21 fee share or attorney-client contract, as it's so
22 designated, you hadn't yet met Ms. Gibson; is that
23 correct?
24 A. That's correct.
25 Q. Did you ever discuss a fee arrangement

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1 with Ms. Gibson for your services?
2 A. No.
3 Q. Do you know if Drew ever discussed a
4 fee arrangement with Ms. Gibson for your services?
5 A. I understand he did.
6 Q. Now, do you know the nature of the
7 claims in the Ameris Bank v. Linda Gibson action
8 that were asserted against Linda?
9 A. You have to be more specific what you
10 mean.
11 Q. Did you ever read the complaint that
12 Ameris Bank brought against Linda?
13 A. I don't remember one way or the other.
14 Q. You don't recall?
15 A. I don't recall.
16 Q. I'm going to hand you a document. The
17 first page of the document says it's a summons.
18 Do you recognize that document?
19 A. No.
20 Q. Have you ever seen that document
21 before?
22 A. Not that I know of.
23 (PLF. EXH. 13, Summons, was marked for
24 identification.)
25 BY MR. DAVIS:

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1 Q. Well, this document, in the title
2 caption, and I'll read, on the right side, says:
3 Summons, quote "Nonjury Foreclosure," end quote.
4 Did I read that correct?
5 A. Yes, sir.
6 Q. And the document is dated June 15th,
7 2010, entered in the court, or filed by Mary P.
8 Brown, Clerk of Court.
9 I'll represent to you that this is the
10 Summons and Complaint that was filed in the
11 foreclosure action.
12 Would you agree with me, that this was
13 the Summons and Complaint that was filed in the
14 foreclosure action?
15 A. I don't know.
16 Q. You don't know if this is the document
17 that was filed in the summons and foreclosure
18 action?
19 A. Do not know.
20 Q. Did you collect a fee in this
21 foreclosure action?
22 A. Yes, sir.
23 Q. How much was your fee?
24 A. 90-some thousand dollars.
25 Q. What did you do, Mr. Howe, to earn

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1 90-some-odd thousand dollars in the matter of
2 Galt v. Gibson?
3 A. I agreed to join a team of lawyers
4 representing this lady to use our best efforts to
5 extricate her from a very bad situation that she
6 put herself in, and use our best efforts to save
7 her from financial ruin. And I would now add to
8 that, successfully.
9 Q. We know the result, Mr. Howe.
10 A. Doesn't mean I can't tout a little bit.
11 Q. I'm sorry?
12 A. Just because you know it, doesn't mean
13 I can't tout a little bit.
14 Q. We know the result, Mr. Howe.
15 The question is: What did you do,
16 besides join a team of competent attorneys, to
17 assist extricating Ms. Gibson from the claims that
18 Ameris brought against her?
19 A. Well, Drew put together a team of
20 lawyers that he thought would each bring something
21 to the table, so as he would have a -- so they
22 would be a formidable force.
23 He was doing the best he could to bring
24 about a good result for this lady and enlisted my
25 help. I considered it and agreed to participate.

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1 mitigation?
2 A. You mean -- at the time, we talked
3 about it a lot. And West and I talked about it a
4 lot, and with -- from time to time a little
5 skepticism, saying this was Drew's idea, this is
6 new, and, you know, started hoping we were going to
7 win it, but there wasn't any sure thing to it at
8 all. To the contrary, we thought it was a real
9 tough sale.
10 Q. What was new, the deed in mitigation --
11 A. Yeah.
12 Q. -- theory?
13 A. Yes. That's my recollection.
14 Q. And I think -- is it true that
15 Mr. Epting sometimes referred to this deed in
16 mitigation as a deed in reduction?
17 A. I don't know that. I wouldn't remember
18 that.
19 Q. Do you know what a deed in reduction
20 is?
21 A. No.
22 Q. Do you know what a deed in mitigation
23 is?
24 A. I think it's what we did in this case,
25 but I don't know it.

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1 Q. Do you know what a deed in lieu of
2 foreclosure is?
3 A. Uh-huh.
4 Q. Could you distinguish for me a deed in
5 lieu of foreclosure from a deed in reduction?
6 A. No.
7 Q. I believe Mr. West testified that
8 Mr. Epting did some research and came across this
9 deed in mitigation theory in his research.
10 Do you recall that testimony?
11 A. Yes, I recall the testimony.
12 Q. And I think Mr. West testified that
13 Mr. Epting found this deed in reduction theory in a
14 Florida Law Review article; is that correct?
15 A. That's what he testified to. I don't
16 know that.
17 Q. Did you have a chance to read that
18 Florida Law Review article?
19 A. No. Not my role in the case.
20 Q. What was your role in the case?
21 A. To try to steer the right course in
22 strategy and decision making for the case
23 through -- as the questions came up.
24 Q. You just testified that the strategy
25 that ultimately was employed was to present a deed

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1 in reduction to the master in equity, did you not?
2 MR. COOKE: Object -- objection to the
3 form of the question.
4 THE WITNESS: I don't think I did.
5 BY MR. DAVIS:
6 Q. Well, did you have anything to do with
7 coming up with this idea of a deed in reduction?
8 A. Not a thing in the world.
9 My job was how to package -- once Drew
10 had the idea, was to strategically how to package
11 it, to increase -- you know, take it from a
12 10 percent winner to a 20 percent winner, or from a
13 40 percent winner to 50 percent winner. It wasn't
14 to create the vehicle. It was try to get the
15 maximum amount of -- increase our chances of
16 winning. And that might be something simple, might
17 be something complex, but I was a part of the team
18 that made these decisions.
19 Q. Did Mr. West adopt Mr. Epting's deed in
20 reduction theory?
21 MR. COOKE: Objection to the form.
22 THE WITNESS: My recollection is there
23 was some discussion among everybody as Drew sort of
24 told us his theory and told us why he thought it
25 would work and told us, you know, how he thought it

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1 ought to be presented.
2 And then John and I, along with Drew,
3 tried to figure out how if we had this theory
4 available, what would make it the most attractive
5 presentation of it, what could we do to increase
6 Watson's chances of going along with it.
7 BY MR. DAVIS:
8 Q. Did the team adopt the theory of a deed
9 in reduction --
10 A. Grab my coat.
11 Q. -- as the strategy to present to
12 Mr. Watson?
13 A. I told you, I don't know exactly what
14 the title was, but my best recollection would be
15 yes.
16 Q. And ultimately, Mr. West and Mr. Epting
17 presented this theory of a deed in reduction to the
18 master in equity as a basis to defeat the
19 deficiency claims; would you agree with that?
20 MR. COOKE: Object to the form.
21 THE WITNESS: I don't -- I don't know.
22 BY MR. DAVIS:
23 Q. Did the team adopt a theory of a deed
24 in reduction as a strategy to defeat the deficiency
25 claim?

Page 22

1 says: Deed in Reduction - A New Paradigm for the
2 21st Century.
3 Have you read this --
4 A. No.
5 Q. -- before?
6 A. No.
7 Q. I would like to direct your attention
8 to the third sentence in this paragraph, and I
9 quote: "In some circumstances, the borrower should
10 look to minimize and mitigate their exposure to
11 such damages. Lenders should likewise be motivated
12 to reduce the accruing loss in the value of its
13 collateral. Barring viable defenses to the
14 enforceability of the note and mortgage, one
15 solution is for the borrower to tender an
16 unconditional fee simple to the lender."
17 Did I read that correct?
18 MR. COOKE: No. But...
19 MR. DAVIS: Let me read it again.
20 BY MR. DAVIS:
21 Q. And I quote, the third sentence:
22 "Barring viable defenses to the
23 enforceability of the mortgage and/or note, one
24 solution is for the borrower to tender an
25 unconditional fee simple deed to the lender,"

Page 23

1 period, close quote.
2 Did I read that correct?
3 A. I wasn't following along with you. You
4 didn't ask me to follow along.
5 Q. Would you like to follow along?
6 A. I wouldn't like to hear it for a third
7 time, so I'll agree you're probably correct.
8 Q. Well, did Ms. Gibson have viable
9 defenses to the enforceability of the note and
10 mortgage in her defense of the claims that Galt
11 brought against her?
12 A. I don't know that one way or the other.
13 Q. Mr. Howe, you were on a team of
14 attorneys and collected \$94,000 for your services?
15 A. Sure did.
16 Q. Is it your testimony you don't fully
17 understand the claims in a mortgage foreclosure
18 action that were brought against your client,
19 Ms. Gibson?
20 A. I'm testifying that wasn't my role in
21 the case. That isn't what I did to earn my keep.
22 Q. I'd like to direct your attention to
23 Page 5 of the document. I'm starting at the second
24 sentence.
25 It starts, quote: "Unlike a deed in

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1 lieu of foreclosure that requires the lender to
2 waive and relinquish all claims against the
3 borrower, the tender of an unconditional fee simple
4 deed is provided to the lender without any
5 conditions or restrictions. The lender accepts the
6 deed, but retains all rights and remedies that the
7 lender may have against the borrower for the
8 deficiency," period, close quote.
9 Did I read that right?
10 A. I didn't follow along, but I assume so.
11 Q. Is this the theory that -- the deed in
12 reduction theory that the lawyers presented to
13 Mr. Watson --
14 A. I don't know --
15 Q. -- in Berkeley County?
16 A. -- whether this is a part of it or the
17 genesis of it or how it was changed to be
18 suitable -- to be more receptive in South Carolina
19 law. I don't know.
20 Q. Did you read the pleadings in this case
21 that were brought against your client Ms. Gibson?
22 A. No.
23 Q. Did you attend the appointment of
24 receiver in this case?
25 A. No.

Page 25

1 Q. Did you serve any discovery in this
2 case?
3 A. No.
4 Q. Attend any depositions?
5 A. No.
6 Q. Did you subpoena any documents?
7 A. No.
8 Q. Did you read the note and mortgage
9 against which the lender Ameris asserted claims
10 against your client Ms. Gibson?
11 A. Nope.
12 Q. Did you ever have the occasion to talk
13 with Ameris' counsel regarding this matter?
14 A. No.
15 Q. Did you talk to Galt's counsel
16 regarding this matter?
17 A. No.
18 Q. Were you involved in the strategic
19 decisions as to what was the best way to defeat the
20 deficiency claims that were brought against
21 Ms. Gibson?
22 A. Yes.
23 Q. And I believe you testified earlier
24 that there was some novel issues in this case.
25 A. Yes.

1 tortious and wrongful conduct in the Ameris action,
2 did you?
3 A. Did not.
4 Q. You've never had any communications
5 with the court in the Galt matter; is that correct?
6 A. That's correct.
7 Q. You didn't attend any hearings and did
8 not appear before the court in the Galt matter; is
9 that correct?
10 A. That's correct.
11 Q. Did you draft the settlement agreements
12 in the Galt v. Gibson matter?
13 A. No.
14 Q. Do you know who did?
15 A. No.
16 Q. I'll represent to you that Rosen, Rosen
17 & Hagood did.
18 Do you know Rosen, Rosen & Hagood?
19 A. Yes.
20 Q. From your testimony today, would it be
21 a fair statement to say that your work product in
22 representing Ms. Gibson in the defense of the
23 deficiency claims brought against her were limited
24 to case strategy and discussions with counsel?
25 MR. COOKE: Objection to the form.

1 **Q. Do you think \$566,000 is a lot of**
2 **money?**
3 **A. Depends on what you're buying for it.**
4 **What she bought -- it was a very reasonable amount**
5 **for what she bought.**
6 **(Cell phone interruption.)**
7 **MR. EPTING:** You learn a lot about
8 people from their cell phone music. I never knew
9 you were such a hip fellow.
10 **MR. COOKE:** And that phone is a
11 collector's item, too.
12 **THE WITNESS:** Don't you worry about my
13 phone. My phone is just fine. The fact that the
14 Smithsonian wants it...
15 **MR. DAVIS:** I have no further
16 questions, Mr. Howe. Thank you for your time.
17 Dawes, do you have any questions?
18 **MR. COOKE:** No questions.
19 Thank you.
20 **MR. DAVIS:** I'm concluding my exam.
21 **(The deposition concluded at 2:30 p.m.)**

1 THE WITNESS: I'm going to give you a
2 little bit of a long answer. Okay?
3 **BY MR. DAVIS:**
4 **Q. Yes, sir.**
5 A. The acute thing they used to say in
6 real estate, three things that affect the value of
7 real estate: Location, location, and location.
8 There are three things that affect the
9 value of legal services, contingency services:
10 Results, results, and results.
11 My product, which I participated in,
12 not single-handedly -- my product saved this lady's
13 behind, saved her life, her financial life. And
14 that's the result that I was hired for and that's
15 the result she got.
16 **Q. Do you think \$566,000 is an excessive**
17 **fee?**
18 A. Absolutely not.
19 **Q. Mr. Howe, would you pay \$566,000 --**
20 **A. To get out of the trouble she was in?**
21 To get out of the trouble she had single-handedly
22 put herself in? Because my daddy would say, she is
23 the author of her own dilemma.
24 Yes, I would -- I would pay it, and I
25 have been paid that on many occasions.

1 SIGNATURE OF DEPONENT

2 DEPONENT: GEDNEY M. HOWE, III, ESQUIRE

3 DEPOSITION DATE: SEPTEMBER 11, 2014

4 REPORTER: LAURA J. BASH

5 CASE CAPTION: GIBSON vs. EPTING

6 (Please return both Signature of Deponent pages)

7 I, the undersigned, GEDNEY M. HOWE, III,

8 ESQUIRE, do hereby certify that I have read the

9 foregoing deposition and find it to be a true and

10 accurate transcription of my testimony, with the

11 following corrections, if any:

12	13	14	15	16
PAGE	LINE	CHANGE	REASON	
17				
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25				

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1 written an e-mail earlier, maybe in February, to
2 Rob, confirming that this is the stage, this is the
3 way the fee will be handled. And Rob had agreed.
4 And, of course, Linda had agreed orally, but it was
5 confirmed in writing with her attorney, Rob, at the
6 time.
7 **Q. Did Rob Papa ever reply to that e-mail,**
8 **if you know?**
9 A. I don't know if he had a written
10 response, but I know that it was acknowledged and
11 accepted.
12 **Q. How do you know it was acknowledged and**
13 **accepted?**
14 A. Because we continued to talk with him
15 throughout that time and talked to Linda.
16 **Q. And did -- or do you know if Linda was**
17 **copied on that February 4th e-mail?**
18 A. I don't know.
19 So anyway, Drew and I talked about the
20 case was now going to switch to a contingency and
21 it was going to be a fight.
22 **Q. And what time frame is this? This must**
23 **have been -- if I'm correct -- and my question**
24 **is: Would it have been around April?**
25 A. Around April. I don't remember exactly

Page 23

1 when it was.
2 **Q. February to April is roughly 60 days.**
3 **April approaches. There's no settlement with -- or**
4 **no attraction toward any mitigating Ameris's**
5 **claims.**
6 **And at roughly the April time frame,**
7 **whatever the fee arrangement, hourly as to the**
8 **deficiency claim, converts to contingency; would**
9 **that be correct?**
10 A. That's right.
11 And so Drew wrote the letter to Linda.
12 There's an April letter, saying we're now -- we're
13 now changing, it's going to go in to a contingency
14 because it's going to be looking like a fight.
15 And Linda came in -- I wasn't there for
16 the entire meeting when Linda came in. But I was
17 there and I spoke with Linda, acknowledging that
18 there was a change in the fee, we've now gone into
19 the contingency. And that was important to me,
20 because my job was to develop the facts that would
21 allow us to try to either avoid or mitigate the
22 amount of the claim, possibly make a recovery
23 against the bank.
24 But the problem with making a recovery
25 against the bank is that any recovery we would have

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1 against the bank, we -- the bank automatically had
2 about a \$3 million offset, so we'd have to recover
3 more than \$3 million just to get to ground zero
4 against the bank. And that was --
5 **Q. I understand.**
6 A. -- in my view, at that time, pretty
7 unlikely.
8 **Q. I'm handing you a document that is**
9 **dated April 7th. It's a letter from -- it purports**
10 **to be a letter from Mr. Epting to Linda.**
11 **Do you recognize this document?**
12 A. Yes.
13 **MR. DAVIS:** Introduce this document as
14 an exhibit.
15 (PLF. EXH. 15, 4/7/2010, Epting to
16 Gibson letter, Epting 15, was marked for
17 identification.)
18 **BY MR. DAVIS:**
19 **Q. Mr. Kefalos, do you recognize this**
20 **document?**
21 A. Yes.
22 **Q. Is this the document, in your opinion,**
23 **that memorialized the transition from an hourly fee**
24 **in the defense of the deficiency claim to a**
25 **contingent fee arrangement with Ms. Gibson?**

Page 25

1 A. This memorialized the change.
2 The original agreement had been made
3 already back in February, in Drew's letter to Rob
4 in writing, and in our conversations with Rob.
5 **Q. That would have been the February 4th**
6 **e-mail, correct?**
7 A. That's right.
8 **Q. Okay.**
9 A. So you want to know why I think it's
10 reasonable?
11 **Q. Yes, sir. That's the question.**
12 A. Because we negotiated it. We went
13 through the process. We reached the point -- Linda
14 did not want to pay on an hourly basis at that
15 point.
16 We discussed, you know, you want to go
17 forward on an hourly basis, we don't know where
18 it's going to go. You're going to be paying a lot
19 of money -- you could be paying a lot of money on
20 an hourly basis and we might not have any success.
21 On the other hand, where -- if we
22 don't have -- we're willing to handle it on a
23 contingency, which is what I wanted in the first
24 place, and if we make no recovery or we don't
25 offset anything for you, you don't owe us anything.

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1 Well, she was thrilled with that idea, 2 because she owed \$3 million anyway. Anything she 3 would have to pay to us represented a savings to 4 her. 5 Q. So would you agree with me that on the 6 April 7th letter that it's dated and signed by 7 Linda Gibson on April 26, 2010? 8 A. Yes. 9 Q. So is it your testimony that as of 10 April 26, 2010, the lawyers -- and at this point it 11 would have just been you and Mr. Epting -- the 12 lawyers, you and Mr. Epting, believed that you were 13 in a contingent fee arrangement with Ms. Gibson as 14 to defense of the deficiency claim; is that 15 correct? 16 A. Yes. But not just the lawyers, because 17 Rob Papa was involved in it and so was Linda. And 18 we were all in agreement at that time, this is the 19 way it was going to go. 20 Q. What was Rob Papa's role in this 21 arrangement? 22 A. Rob was negotiating the fee on behalf 23 of Linda. He was the one with whom we made the 24 first agreement and he was the one -- he was there 25 throughout this thing to counsel her.	1 Alcoa. I don't have to go back and check to see 2 whether you've explained it properly to Alcoa. 3 That's not my job. 4 You represent Alcoa. You come to me. 5 You made an agreement. I can rely and trust on you 6 that you've done it -- you've explained it 7 properly. 8 In this case, I, in fact, did explain 9 to Linda, as if it was Alcoa -- I would have gone 10 to them and said, now, you know, did Jim Davis tell 11 you this is the way it goes, because this is what 12 we're going to do? And she acknowledged it. 13 But your role as counsel for the client 14 that you refer to me, you stay involved in the 15 thing. 16 Q. Linda Gibson's not a multinational 17 corporation, is she? 18 A. No. 19 Q. In fact, she's a private citizen, an 20 individual residing in Berkeley County, correct? 21 A. The last I saw, she was in Berkeley 22 County and she was an individual. 23 Q. So after April 26th, when the hourly 24 fee arrangement went to a contingent fee 25 arrangement with respect to the deficiency claim,
Page 27	Page 29
1 If she had any questions about what we 2 were doing, Rob was there, as her independent 3 counsel, to tell her this is what you should do, 4 this is what you shouldn't do. 5 Q. Why would Linda need Rob Papa if she 6 had you and Mr. Epting representing her in the 7 Ameris matter? 8 I mean, I'm just asking a simple 9 question. Why wouldn't -- why wouldn't -- 10 A. Say you represent Alcoa Aluminum and 11 you're representing them in some transaction, and 12 you realize that they need tort -- lawyers that 13 will handle some tort litigation. And you tell 14 your client, this is not my field, I think you 15 ought to go to Kefalos and Epting because they can 16 handle it. 17 And you contact us. And we say, okay, 18 we'll handle it on this basis. And you agree. You 19 say, so let me check with my client. And you go 20 back to Alcoa and you say, they'll handle it on 21 this contingency. And Alcoa says yes. And you 22 come back to us and we say yes. 23 And so you would stay in as counsel for 24 Alcoa, just to monitor what it is that we were 25 doing. You've made the arrangement on behalf of	1 do you recall what you did for work product to 2 defend that deficiency claim? 3 A. You're -- you're mixing some different 4 ideas. 5 The work product that Linda hired me 6 for was to get a result. If Linda had hired me to 7 spend my time and she says, I want you to -- I'm 8 willing to -- I'm -- you're -- what I'm hiring you 9 for is your time and your effort, if she had done 10 that, we'd be talking about what work product did I 11 contribute. But she didn't to that. 12 She said, I'm hiring you for this 13 result. And the result I obtained, with Drew and 14 Gedney and John, was getting her out of the 15 deficiency. 16 Now, if you're asking me what specific 17 efforts I did or what work I did to contribute to 18 that ultimate work product, that ultimate result 19 that she hired me for, there was an enormous amount 20 that I did, my office. 21 My office was in charge of marshaling 22 the facts, to figure out exactly how we can link 23 Ameris with Rolando's misconduct, and to figure out 24 how Ameris itself had independent culpability for 25 misrepresentation and fraud.

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1 A. Yes.
2 Q. It had been three business days.
3 A. I don't know.
4 Q. Well, I'll represent to you that
5 between November 3rd and November 8th, there are a
6 total of five days, two of which are a weekend. So
7 there's three business days between November 3rd
8 and November 8th.
9 So my question, Mr. Kefalos, is: What
10 did the attorneys do, if anything, between
11 October 25th, when Galt made its \$1.5 million
12 offer, till 10 days later, when Galt waived the
13 offer?
14 A. What attorneys are you talking about?
15 Q. Well, what did you do, Mr. Kefalos,
16 that may have motivated Galt to waive their
17 deficiency between October 25th and November 8th?
18 A. I don't think I had any communication
19 with them. I did continue to work on the case. We
20 were immersed in it at that time.
21 Q. Well, there's a total of 10 business
22 days between November 3rd -- excuse me.
23 There's a total of 10 business days
24 between October 25th and November 3rd.
25 A. Uh-huh. If you want to know why they

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1 changed their position, I have no idea. If you
2 want to know if I did anything to change their
3 position, I don't know. Did Drew do anything? I
4 don't know.
5 I got this letter and I was stunned.
6 Q. Why were you surprised that they
7 changed their position?
8 A. Why was I surprised they changed their
9 position? That should be self-evident.
10 Q. I'm asking --
11 A. I'm surprised they changed their
12 position. Five days before, they said they wanted
13 \$1.5 million, and suddenly they say they'll -- they
14 don't want anything.
15 I'm surprised. You'd be surprised.
16 Linda was surprised. We were all surprised.
17 Q. Well, if you're Galt Valley and you're
18 facing lender liability -- let me rephrase that.
19 If you're a buyer of distressed paper,
20 if you're Galt Valley and you've acquired a note
21 and you've learned that that note was subject to
22 the borrower's setoff for claims being brought
23 against the note, are you not, as Galt Valley, now
24 in a position where you would have to essentially
25 sit on the sidelines and wait until the resolution

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1 and termination of the outcome of the lender
2 liability claims, before you could assert your
3 deficiency claim?
4 A. I have no idea what went through Galt's
5 mind.
6 Q. Is it possible that Galt --
7 A. Anything's possible.
8 Q. -- just unilaterally waived the
9 deficiency on their own?
10 A. I have no idea. I don't know what
11 motivated them.
12 I can tell you what we did up until
13 that point, and I've already told you. I have no
14 idea why they did a 180 at that point.
15 The best thing that ever happened to
16 Linda. Allowed her to walk away from that claim
17 and preserve her claim against Ameris.
18 Q. Well, I --
19 A. See, up until that point, we thought
20 the best that was going to happen was we'll be able
21 to get out of the claim, out of the deficiency.
22 Suddenly Drew negotiated it so that not
23 only did we get out of deficiency, but we preserved
24 the right to sue Ameris.
25 And then my question at that time --

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1 there's somewhere in the file -- can we do that,
2 can we -- are we -- do we have damages that we can
3 pursue over and above this \$1.8 million that they
4 were claiming?
5 Because I wasn't sure that we even had
6 any cognizable damages. I thought that the --
7 cognizable damages in addition to what we had
8 against Rolando. Because we were going to get
9 something from Rolando, I was sure. And I thought
10 they would subsume anything that we would get
11 against Ameris.
12 And I -- I -- it was a remarkable
13 result, an absolutely stunning result.
14 Q. Do you think the result was -- the
15 result I would assume you're referring to is Galt's
16 complete waiver of any deficiency claims against
17 Linda?
18 A. That's part of it. But the idea that
19 we got Linda out of the Galt deficiency and
20 preserved a claim for \$3 million against Ameris is
21 nothing short of miraculous. And I'm telling you,
22 miraculous. It is astonishing.
23 Q. Mr. Kefalos, you have a fee agreement
24 to get paid for your work in prosecuting the lender
25 claim; is that correct?

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON

3 LINDA A GIBSON, INDIVIDUALLY, AND IN CAPACITY
4 AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY
5 TRUST, AND HERITAGE SEVEN, LLC, AND SEVEN OAKS
6 APARTMENTS, LLC, AND 3205 PALM BOULEVARD, LLC,

7 Plaintiffs,

8 vs.

9 CASE NO. 2013-CP-10-4450

10 ANDREW K. EPTING, JR. LLC, and, GEORGE J.
11 KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A.,
12 and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

13 Defendants.

14 DEPOSITION OF: JOHN S. WEST, ESQUIRE

15 DATE: SEPTEMBER 11, 2014

16 TIME: 10:12 AM

17 LOCATION A. William Roberts, Jr.
18 & Associates
19 234 Seven Farms Drive
20 Charleston, SC 29492

21 TAKEN BY: Counsel for the Plaintiff

22 REPORTED BY: Laura J. Bash, RPR

23 A. WILLIAM ROBERTS, JR., & ASSOCIATES

24 Fast, Accurate & Friendly

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Page 2	Page 4
1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR PLAINTIFF 3 LINDA A GIBSON, et al.: 4 JAMES DAVIS LAW FIRM 5 BY: JAMES DAVIS 6 STEPHANIE E. KEBLER 7 234 Seven Farms Drive, STE 211B 8 Charleston, SC 29492 9 (800) 983-0455 10 jim@davispc.com 11 stephanie@davispc.com 12 13 ATTORNEYS FOR DEFENDANTS 14 ANDREW K. EPTING, JR. LLC, and, GEORGE 15 J. KEPALOS, P.A. and, GEDNEY M. HOWE, 16 III, P.A., and JOHN H. WEST, 17 ATTORNEY-AT-LAW, LLC: 18 BARNWELL, WHALEY, PATTERSON & HELMS 19 BY: JEREMY E. BOWERS 20 288 Meeting Street, Suite 200 21 Charleston, SC 29401 22 (843) 577-7700 23 jbw@barnwell-whaley.com 24 25 ALSO PRESENT: Linda Gibson Gedney M. Howe, III, Esq. Andrew K. Epting, Jr., Esq. (INDEX AT REAR OF TRANSCRIPT)	1 A. I did. 2 Q. Did you learn anything new about the 3 fee arrangement that you had with your client, 4 Linda Gibson, in the matter of Galt v. Gibson? 5 A. I did not have a fee agreement with 6 Ms. Gibson. 7 Q. Did you have a fee share agreement with 8 Mr. Epting in the Gibson -- Galt v. Gibson matter? 9 A. I did. 10 Q. What was the nature of that fee share 11 agreement with Mr. Epting, if you recall? 12 A. The agreement was that Gedney Howe and 13 I would split one-third, one-half each, of the 14 amount saved in the Galt Valley matter. 15 Q. Now, are you a trial attorney, 16 Mr. West? 17 A. I'm a practicing attorney, yes. 18 Q. And where do you typically engage in 19 the practice of law? 20 A. The majority of my practice is in 21 Berkeley County, South Carolina. 22 Q. You have the occasion to practice in 23 Dorchester County from time to time? 24 A. Yes. 25 Q. And do you have the occasion to
Page 3	Page 5
1 JOHN WEST, ESQUIRE, 2 being first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. DAVIS: 5 Q. Good morning, Mr. West. 6 A. Good morning. 7 Q. Would you agree with me that contingent 8 fees, just like any other fees, are subject to a 9 reasonableness standard? 10 MR. BOWERS: Object to the form. 11 BY MR. DAVIS: 12 Q. Would you agree with me that fees in 13 South Carolina are subject to a reasonableness 14 standard? 15 A. Yes. 16 Q. What would that standard be, if you 17 know? 18 A. Whatever the rule requires. 19 Q. Do you know what rule would set forth a 20 guideline against which we could determine the 21 reasonableness of a fee? 22 A. If you will show me the rule, I'll be 23 glad to take a look at it. I do not know the rule. 24 Q. You attended Mr. Epting's deposition 25 yesterday; is that correct?	1 practice in Charleston County from time to time? 2 A. Yes. 3 Q. And do you conduct trial work in these 4 counties? 5 A. Yes. 6 Q. And do you typically or routinely 7 associate with Mr. Epting in the practice of trial 8 work? 9 A. No. 10 Q. Have you ever, before this matter, the 11 Galt v. Gibson matter, worked with Mr. Epting in 12 a -- as associate counsel or associated with him in 13 a trial? 14 A. Yes. 15 Q. When would that have been, the last 16 time before Ms. Gibson's matter? 17 A. It would have probably been in the late 18 '80s or early '90s. 19 Q. So since the late '80s and the early 20 '90s, have you had the occasion to appear in court 21 with Mr. Epting? 22 A. Not that I recall. 23 Q. Do you appear in court with Mr. Epting 24 where he's opposing counsel to you in a trial? 25 A. I don't recall.

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1 do?
2 A. I do foreclosure work for some lenders,
3 but primarily for the landowner, the borrower.
4 Q. Is your commercial -- is your
5 foreclosure work typically in the field of
6 commercial foreclosures or residential
7 foreclosures?
8 A. Residential.
9 Q. Do you do any commercial real estate
10 workout work?
11 A. Very little now.
12 In my former employment with South
13 Carolina Public Service Authority, which I was
14 employed for about 15 years, I did a substantial
15 amount of commercial work.
16 Q. Have you read the pleadings in the
17 action that has been brought against the lawyers in
18 this matter regarding the excessive fee?
19 MR. BOWERS: Object to the form.
20 THE WITNESS: Yeah, I think I looked at
21 the pleadings when I was served.
22 BY MR. DAVIS:
23 Q. Are you familiar with the -- with the
24 claim that's been brought in this Gibson matter?
25 A. Generally, yes.

Page 11

1 Q. And from your perspective, what is the
2 nature of the claim that's been brought?
3 A. It appears that Ms. Gibson is saying
4 that the fee that was charged in the Galt matter
5 was excessive.
6 Q. I would represent to you that that is
7 the gravamen of the complaint that's been brought,
8 that Ms. Gibson feels like her lawyers took
9 advantage of her by charging over half-a-million
10 dollar fee for work product she feels is
11 essentially a deed in lieu of foreclosure.
12 A. That -- that's what I gathered.
13 Q. Do you think this was a routine deed in
14 lieu of foreclosure?
15 A. No.
16 Q. Why not?
17 A. Because Ms. Gibson, as was represented
18 to me when I was first contacted about this matter,
19 was in a dire situation and she was at risk of
20 losing substantial assets, and her life was in
21 peril at the time and --
22 Q. Ms. Gibson's life was in peril at the
23 time?
24 A. That's the way I understood it.
25 Q. Did you actually meet with

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1 Ms. Gibson --
2 A. No.
3 Q. -- during the course of your
4 representation?
5 A. I did not meet with Ms. Gibson and was
6 not in her presence at any time except in hearings
7 where she was in attendance.
8 Q. How many hearings did you have in the
9 Galt matter?
10 A. I don't recall.
11 Q. Would it have been at least one
12 hearing?
13 A. There was at least one hearing, yes.
14 Q. Was there two hearings?
15 A. I don't recall.
16 Q. I'll represent that there was one
17 hearing and it was an appointment of receiver
18 hearing.
19 Does that refresh your recollection?
20 MR. BOWERS: Object to the form.
21 THE WITNESS: Well, I -- you can
22 represent all you want to represent.
23 I told you I don't recall how many
24 hearings I attended. I know I attended a motion
25 for a receiver hearing. And there may have been

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1 other procedural hearings, but I don't recall.
2 BY MR. DAVIS:
3 Q. In your experience in Berkeley County,
4 does the Berkeley County Court keep an index of
5 hearings and papers and pleadings filed with the
6 court?
7 A. Yes.
8 Q. What do we call that index?
9 A. The public index.
10 Q. Sometimes referred to as a docket;
11 would that be correct?
12 A. I don't know.
13 Q. Well, this public index -- would you
14 agree with me that the public index reflects the
15 papers and pleadings and hearings that were
16 presented or held before the court?
17 A. Generally.
18 MR. DAVIS: Could I have Exhibit 8 from
19 yesterday for Mr. Epting?
20 Do you have another Exhibit 8? This
21 one's --
22 COURT REPORTER: No.
23 MR. DAVIS: No? Okay.
24 BY MR. DAVIS:
25 Q. Mr. West, I'm going to hand you a

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1 the Ameris litigation.

2 A. It was also a key piece of the
3 presentation to Judge Watson in the matter of the
4 motion for receivership, because -- and this was
5 part of the overall strategy that was ongoing for
6 weeks in advance of this hearing; and that is we
7 wanted to make sure that the judge understood that
8 there was some rottenness going on with Ameris.

9 Q. When you signed the November 18th
10 contract in which Ms. Gibson paid you \$94,000 and
11 the lawyers \$566,000 ultimately, did you give or
12 think to give Ms. Gibson a credit for this overlap
13 or crossover work product?

14 A. Never entered my mind.

15 Q. Do you think that it would be
16 appropriate to give Ms. Gibson a credit for work
17 product that constitutes both the prosecution of
18 the lender claim and the defense of the deficiency
19 claim?

20 A. No.

21 Q. Why not?

22 A. I see them as, for purposes of
23 calculation of a fee, unrelated.

24 Q. But for the risk undertaking in
25 prosecuting the lender fee and the defense of the

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1 the moral component in dealing with people is
2 evidenced by the extraordinary efforts that Drew
3 Epting made in taking care of Ms. Gibson, over and
4 beyond the call of duty.

5 So I believe some of this was motivated
6 by a moral component, to give you an example of a
7 moral component. But at the end of the day, what's
8 going to determine the reasonableness and
9 the -- and whether or not you have a viable claim
10 here, is going to be based on the law.

11 Q. It's going to be based on the
12 reasonableness of the fee, correct?

13 A. It's going to be based on the law.

14 Q. Did you take any extraordinary efforts
15 in defending the deficiency claim between the
16 summer of 2010 and January 6th of 2011?

17 A. Well, I don't know what you mean by
18 "extraordinary."

19 Help me understand what you mean by
20 that.

21 Q. Do you know what "extraordinary" means?

22 A. Well, I think I've got a pretty good
23 idea of a general sense, but you asked me a
24 specific question and I'd like a little better
25 understanding of what you mean by your question.

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1 deficiency, they would be wholly related, correct?

2 A. I don't understand the question.

3 Q. Well, the work product used to
4 prosecute the lender claim, I believe you testified
5 in part overlapped or crosscovered into some of the
6 work product to defend the deficiency claim?

7 A. I did. I said that I couldn't quantify
8 that, but there was overlap.

9 Q. And I believe you testified that
10 regardless of the overlap for the purposes of
11 computing a fee, you didn't see fit to consider a
12 credit to Ms. Gibson?

13 A. Well, I take issue with the
14 characterization of "seeing fit," because that
15 implies some sort of moral component to this, in my
16 mind.

17 I will tell you that I did not
18 consider --

19 Q. Is there a moral component to this?

20 A. It sounded like it from the part of --
21 from the tone of your question.

22 Q. Well, I'm asking you, do you think
23 there's a moral component to this?

24 A. I believe that there's always a moral
25 component in our dealings with people. And I think

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1 Q. Did you -- I mean, did you need to
2 produce any extraordinary work in the defense of
3 the deficiency claim?

4 A. If the question --

5 Q. "Extraordinary" meaning beyond any
6 other --

7 A. If the question goes to --

8 Q. -- foreclosure actions.

9 A. If the question -- finished?

10 If the question is directed to any
11 extraordinary or exceptional document preparation,
12 then the answer is no.

13 If the question is directed to, did I
14 bring my absolute best efforts, along with the
15 other lawyers who were working so hard for Linda
16 Gibson to bring about the desired result, then in
17 that sense I suppose it was extraordinary.

18 Q. I'm just trying to find out what work
19 product you did in defending the deficiency claim
20 that would support the \$94,000 fee.

21 A. And I've already answered that.

22 Q. Did you file any pleadings in Berkeley
23 County?

24 A. I've answered that question already.

25 Q. And you testified earlier you didn't do

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-40-4450

Linda A. Gibson, individually and in capacity)
As Trustee of the Paul William Gibson)
Family Trust; Heritage Seven, LLC;)
Seven Oaks Apartments, LLC and 3205)
Palm Boulevard, LLC,)

Plaintiffs,)

Vs.)

Andrew K. Epting., Jr., LLC, George J.)
Kefalos, P.A.; Gedney M. Howe III, P.A.)
And John S. West, Attorney at Law, LLC)

**SUPPLEMENTAL AFFIDAVIT
OF
DESA BALLARD**

Personally appeared before me, Desa Ballard, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except as to those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am an active member in good standing of the South Carolina Bar, having been admitted to practice law in 1983. I am also a member of numerous other Bars, including the United States District Court for South Carolina, the Fourth Circuit Court of Appeals, and the United States Supreme Court. I previously provided an affidavit in this action which was filed on November 18, 2013. In that prior affidavit, I set forth my credentials as an expert witness in the field of attorney-client and fiduciary relationships, and I incorporate that background information herein.



3. I have been asked to render an expert opinion as to whether the attorney fees charged by the defendant attorneys for defense of a foreclosure action was reasonable.
4. A short summary of the facts which I have gleaned from my review of the discovery in this case follows:
 - A. Linda Gibson, in her individual capacity and representative capacities (hereafter "Linda"), was obligated on a series of mortgage loans which she was unable to pay. She had personally guaranteed the loans.
 - B. Linda consulted with attorney Rob Papa concerning the matter. Papa referred Linda to attorney Drew Epting (hereafter "Epting"), who agreed to undertake Linda's representation in association with attorney George Kefalos (hereafter "Kefalos").
 - C. Epting sent an email to Papa dated February 4, 2010 in which he set forth his fees to "move forward with Linda."
 - D. In the email, Epting stated "we have agreed that, as to the litigation with all others than Ameris. . ." there would be a graduated contingency fee based on the state of the litigation. He also stated "As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement as less than the amount due to Ameris)." However, he agreed that he and his associated counsel, George Kefalos, would bill the Ameris matter hourly for the first 60 days.
 - E. Linda did not see the February 2010 until this litigation began.
 - F. The first fee agreement between Linda and any of the defendants was signed on April 26, 2010, wherein fees were discussed for "George and I." This document



constitutes a fee agreement. However, it is prefaced with "So, let's supplement our fee agreement with this writing."

- G. In part, the agreement stated "George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010." The email dated February 4, 2010 was not attached to the agreement. Linda was unaware of the substance of the February 4, 2010 email when the April 7, 2010 fee agreement was presented to her.
- H. At the time of the April 7, 2010 fee agreement, there was no claim filed by Ameris to foreclose on the mortgage debt. Linda was in default on the mortgage and was anticipating a foreclosure action. The "existing case" is not defined in the April 26, 2010 agreement.
- I. Ameris filed a foreclosure action against Linda in Berkeley County on June 15, 2010. The foreclosure action sought a deficiency against Linda in an unspecified amount.
- J. No new fee agreement was executed after Ameris filed suit against Linda. However, on July 9, 2010, "Epting office" sent an email to Linda advising that a counterclaim could not yet be filed on Linda's behalf against Ameris nor could a deed be tendered to Ameris because Epting "cannot understand from your records" who owned the real property which secured the mortgages. Epting also requested permission to associate attorneys Gedney Howe and John West. This email was the first time Epting explained that the attorney fee for the Ameris matter "is on the . . . savings but you have no money coming in to pay it." Epting suggested that the proceeds from the "Charleston county suit" may generate funds

to pay the fee that would be due to Epting et al. on the foreclosure if the result of the Ameris suit against Linda resulted in "savings."

- K. Linda did not consent to the association of Howe and West, but she did not object to it either.
- L. On July 20, 2010, Ameris sold three non-performing assets to Galt Valley LLC (hereafter "Galt Valley"), an entity which was created for purchase of these three non-performing assets. Linda's mortgage was one of the three. The Assignment of Linda's Mortgage was recorded in Berkley County at Book 8549, Page 114-115 on July 30, 2010.
- M. Epting and Kefalos filed an answer and counterclaim against Ameris on or about August 18, 2010.
- N. Galt Valley was substituted for Ameris as the plaintiff in the foreclosure action by consent order dated August 24, 2010. Ameris remained a party for purposes of defending the counterclaims. The parties were realigned by order issued in July, 2011.
- O. No new fee agreement was executed in connection with the answer and counterclaim or the substitution of Galt Valley LLC as the foreclosure plaintiff. However, the substitution of Galt Valley as a plaintiff in the foreclosure constituted a division of the "Ameris" claim into two different cases.
- P. Officials of Galt Valley report that they requested meetings with Linda and her counsel on numerous occasions, but her attorneys refused to permit meetings to discuss the matter. They further report they never intended to seek a deficiency from Linda, and that a quick deed-in-lieu was their standard business model.

- Q. Galt Valley filed a motion for appointment of a receiver on or about September 30, 2010.
- R. On October 18, 2010, Counsel for Galt Valley advised Epting via faxed letter that the amount of deficiency being sought against Linda was estimated at \$1,697,678.10.
- S. On October 25, 2010, Counsel for Galt Valley again reiterated in a letter to Epting the amount of deficiency being sought by Galt Valley against Linda.
- T. Two weeks later, by faxed letter dated November 8, 2010, Counsel for Galt Valley offered to accept a deed-in-lieu of foreclosure from Linda for both secured properties and not pursue any deficiency.
- U. Epting related to Galt Valley's counsel that he needed some time into respond to the offer. In fact, Epting used the time to prepare documentation for Linda's signature to reinforce his (and his co-counsel's) claim for a contingency fee on the deficiency claim. The earlier agreements were sketchy at best, vague, and certainly had to be construed against the drafter, i.e., in favor of Linda.
- V. On November 18, 2010, Epting, on behalf of himself, Kefalos, Howe and West, presented Linda with a new fee agreement, which included several significant misrepresentations of fact. Most specifically, the fee agreement stated that Ameris was seeking a deficiency judgment against Linda. That was no longer true. First, Ameris no longer owned the mortgages, and Epting knew that. Also, the holder of the mortgages, Galt Valley had agreed in writing ten (10) days earlier to waive its deficiency claim. The fee agreement also valued the deficiency



judgment that was being sought against Linda at \$1,700,000.00, when in fact there was no deficiency being sought (by either Ameris or Galt Valley).

W. Epting did not tell Linda that Ameris no longer owned the mortgage, nor did he tell her that the successor, Galt Valley, was a non-Holder-in-due-course, whose rights to enforce the deficiency were subject to her set off claims against Ameris Bank, the result being that Counsels' \$1.7 million dollar basis to compute their one third fee (\$566,666.00) is not realistic. Linda signed the fee agreement without knowing that Ameris no longer had any right to seek a deficiency against her, and without full disclosure that Galt Valley, which did own the mortgages, held a very weak deficiency claim, for which they were not even seeking against Linda. Epting also did not disclose to Linda that the deed-in-lieu transaction was being held off while Epting entered into a NEW fee agreement with Linda to obtain a contingency fee on the basis of a deficiency agreement that was no longer being sought. Not only was the presentation of this fee agreement a deviation from the standard of care, it was an actual misrepresentation of facts.

X. Nonetheless, in addition to having Linda sign a fee agreement to pay a contingency fee of one-third of all sums saved from the deficiency amount claimed by Ameris, Linda was asked to secure these fees by mortgages of real property owned by her to Howe and West. This business arrangement was entered into without full disclosure of the Galt's anemic deficiency claim, on a fee agreement based on non-disclosure of the real nature of Linda's claims in litigation.

ce

5. Among the duties incumbent upon a lawyer, beyond providing services that fall within the applicable standard of care, is the obligation not to charge an unreasonable fee. It is my professional opinion, to a reasonable degree of certainty, that the defendants deviated from the standard of care applicable to attorneys in South Carolina in negotiating and obtaining from Linda a fee agreement which charged an unreasonable fee for the services rendered in connection with the mere possibility of a deficiency, if even enforceable against Linda. It is further my opinion that the defendants deviated from the applicable standard of care by misleading Linda into signing a new fee agreement, allegedly to reinforce an existing (yet very unclear and largely ambiguous) fee agreement to insure for themselves that any ambiguities in the prior documentation would be cleared up in their favor, after they knew no deficiency judgment was being sought against Linda. It was a deviation from the standard of care to renegotiate a fee agreement to increase the fee due to them when they knew Galt Valley had waived any claim it might have had for a deficiency against Linda. The request for mortgages to secure the fees to be charged was especially offensive, since the lawyers who requested and obtained the mortgages knew, at the time of the request, that no deficiency was being sought.
6. The reasonableness of a contingency (or reverse contingency) fee is determined at the time the fee is paid, not at the commencement of the representation.
7. It is also my opinion that the actions of the individual lawyers, as set forth in the verified complaint, are imputed to their respective corporate entities, and that liability lies against both the individual lawyers as well as their respective corporate entities.



8. In my professional opinion, Linda's damages (loss of \$566,666.00) are most probably the direct result of the defendants knowing, or reckless, misrepresentation and non-disclosure of material facts bearing on the fee arrangement.

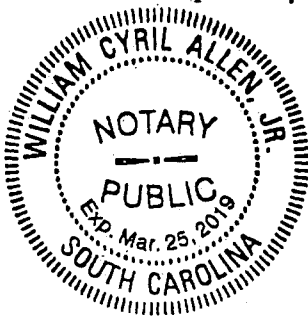
FURTHER deponent sayeth not.

Desa Ballard

Desa Ballard

Sworn to before me this
14th day of October, 2015

William Cyril Allen, Jr.
Notary public for South Carolina
My commission expires: 3/25/2019



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-10-4450

LINDA A. GIBSON, Individually, and in)
capacity as TRUSTEE OF THE PAUL)
WILLIAM GIBSON FAMILY TRUST;)
HERITAGE SEVEN, LLC; SEVEN)
OAKS APARTMENTS, LLC; and 3205)
PALM BOULEVARD, LLC,)

Plaintiffs,)

v.)

ANDREW K. EPTING, JR., LLC;)
GEORGE J. KEFALOS, P.A.; GEDNEY)
M. HOWE, III, P.A.; and JOHN S. WEST,)
ATTORNEY-AT-LAW, LLC,)

Defendants.)

AFFIDAVIT OF
HARRY A. SWAGART, III

1. It is my understanding that I have been retained as an expert in order to testify with respect to the following issues:

- a. whether the alleged fee and other agreements between Plaintiff and Defendant were valid and enforceable;
- b. whether the fees charged by Defendants were reasonable;
- c. whether Plaintiff signed the agreements with Defendants knowingly, freely, and voluntarily;
- d. whether defendants represented Plaintiff even though they were subject to a conflict of interest which had not been waived;
- e. whether this was an appropriate case for use of a reverse contingency fee agreement; and

f. whether Defendants committed malpractice or breached fiduciary duties owed to Plaintiff.

2. I have read Plaintiff's pleading and discovery files and historical documents relevant to this case.

3. I have read available depositions and exhibits thereto.

4. I have conducted exhaustive legal research regarding the issues in this case.

5. My resume is attached hereto as Exhibit A.

6. Based upon my evidentiary review and upon relevant legal precedent, I express the following opinions.

I. THERE WERE NO VALID ENFORCEABLE FEE AGREEMENTS BETWEEN PLAINTIFF AND THE DEFENDANTS.

7. The email of February 4, 2010, was the first writing which mentioned a contingency. It was unenforceable as a fee agreement because it contained virtually none of the information required by Rule of Professional Conduct ("RPC") 1.5(c), to include: it was not signed by the client, did not state clearly the method by which the fee was to be determined, did not list the litigation or other expenses Plaintiff could be expected to pay, did not state whether those expenses would be deducted before or after the contingency fee was to be deducted, and was simply an email and not a document which could be reasonably construed as a contract. Finally, there is no evidence that Plaintiff ever had an opportunity to read the email, and she testified in her deposition that she had not seen it prior to the commencement of this litigation.

8. The letter dated April 7, 2010, which was tendered by Defendants to Plaintiff for her signature, also did not constitute an enforceable fee agreement. On its face, the letter requested changes to the earlier purported email of February 4, 2010, to include setting an hourly fee of

\$400.00, added additional tasks to be performed by Defendants at that rate, and required additional payments. It was clearly a modification of earlier oral fee arrangements. As such, it was unenforceable because Plaintiff received no consideration for the modification, was not afforded an opportunity to seek independent counsel regarding the modification, and was not provided full disclosure of all information regarding the modification. *In the matter of Thayer*, 745 N.E. 2d 207, 211-12 (Ind. 2001); *see, also, Restatement (Third) of the Law Governing Lawyers/2000* § 18(1)(a), Amnt. e (“Restatement”) (client must be “adequately aware of the effect and any material disadvantages of the proposed contract, including, if applicable, circumstances concerning the need for modification.”) These omissions in my opinion violated Defendants’ standard of care as attorneys.

9. The “Attorney/Client Contract” of 11/18/2010 was void and unenforceable not only because of the circumstances under which Plaintiff was required to sign it but because it completely changed Defendants’ existing fee requirements in numerous ways. It is the first writing by which Plaintiff confirmed the hiring of all four attorneys. For the first time, it provided that the contingency percentage would be applied *against the deficiency* as opposed to *reduction of the debt*. In addition, it required Plaintiff to secure payment of the contingency fee with mortgages on debt-free properties, thereby removing any alleged contingency of payment. In this agreement, Defendants value the property based upon hearsay from a bank employee who had no expertise as an appraiser. Perhaps the most egregious circumstance surrounding the 11/18/10 agreement is the fact that Defendants knew before the fee agreement was signed that the lender, Galt, had agreed to accept a deed in lieu with no deficiency. Although Defendants magnanimously permitted Plaintiff to have this agreement reviewed by another attorney, the review actually performed by Mr. Tecklenburg was shallow and conclusory, evidencing his lack of awareness of the minimal

services performed by Defendants in the *Galt* litigation and of the prior relationship between Plaintiff and Defendants. More importantly, at the time Tecklenburg wrote his opinion letter to Plaintiff, he was unaware that Galt had capitulated weeks earlier. Plaintiff did not knowingly and voluntarily agree to the 11/18/2010 agreement or to any other agreement. Indeed, none of the documents which Defendants euphemistically characterize as fee agreements differentiate between the lender case in which Defendants sought a standard contingency fee and the foreclosure case and its reverse contingency fee. With litigation simultaneously taking place in two different courts and with constantly metamorphosing fee arrangements and given the lack of disclosure by Defendants, it would indeed have been surprising if Plaintiff had the same understanding of her fee obligations as did Defendants. As she testified, she did not share their understanding.

**II. DEFENDANTS DID NOT SATISFY THEIR
PROFESSIONAL AND FIDUCIARY OBLIGATIONS
TO PLAINTIFF BY SIMPLY BYADVISING HER TO
SEEK INDEPENDENT LEGAL ADVICE.**

10. Defendants appear to believe that because Plaintiff allegedly received independent legal advice regarding the reasonableness of the fees supposedly dictated by the 2/4/10 email and the 11/18/10 Attorney/Client Agreement and because Plaintiff allegedly relied on that advice, they were off the hook from liability relating to fees and their amounts. This argument ignores the fact that Defendants had a non-delegable duty of care to insure that the fee agreements complied with RPC 1.5(a), which they did not do. Defendants violated to non-delegable duties of care to provide to Plaintiff all material information regarding the case (something outside attorneys could not do) and the fee arrangement and to insure that the arrangement was fair to, and fully understood by, Plaintiff.

11. Defendants could not shift their responsibilities to Papa and Tecklenburg and continue to represent Plaintiff. Papa and Tecklenburg could not render improper unfair agreements fair and reasonable simply by opining that they were fair and reasonable. Indeed, they could not possibly have made all of the disclosures which needed to be made because they had very limited knowledge of the Galt case and the lender case and of Defendants' services and obligations in both cases. In fact, Defendants were subject to a duty of care to insure that Plaintiff was correctly advised by Papa and Tecklenburg, which was an impossibility given their limited knowledge.

12. That the involvement of Papa and Tecklenburg in no way relieves Defendants from liability for charging and seeking to collect an unreasonable attorney's fee is made clear in the South Carolina Supreme Court's very recent opinion in *Johnson v. Alexander*, ___ S.C. ___, 775 S.E.2d 677 (2015). In that case the defendant attempted to avoid liability for a defective title search by blaming the defect on another attorney he had associated to perform the search. In concluding that the first attorney was in fact liable for the defective search even though performed by another lawyer, the Court explained:

While an attorney may delegate certain tasks to other attorneys or staff, it does not follow that the attorney's professional decision to do so can change his liability to his client absent that client's clear, counseled consent. *See* Rule 1.8(h), RPC, RULE 407, SCACR ("A lawyer shall not . . . make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement.") Thus, Alexander owed Johnson a duty and absent her agreement otherwise, he was liable for that responsibility regardless of how he chose to have it carried out.

* * * *

[W]ithout an express limitation in representation, attorneys cannot delegate liability for tasks that are undertaken in carrying out the duty owed to the client” [I]f the first attorney does entrust to another the performance and

prosecution of matters entrusted to him or her, the first attorney becomes liable to the client for any negligence or wrongdoing on the part of the other attorney.” [7A C.J.S. *Attorney & Client* § 289.]

Id. at 700-701. Thus, based on the *Johnson* case, the mere fact that Defendants obtained an opinion from another lawyer that the “Attorney/Client Contract” of November 18, 2010, may have been reasonable, did not relieve them of their duty of care not to impose upon Plaintiff a fee arrangement which was, in fact, not reasonable. Subjective opinions by attorneys that unreasonable agreements are reasonable does not, *ipso facto*, make those agreements reasonable and enforceable. As a result, it is my opinion that Defendants are at fault, and that opinions of other attorneys do not and can not relieve them from liability.

III. THE REVERSE CONTINGENCY FEE OF \$567,000.00 WAS UNREASONABLE.

13. The reverse contingent fee was unreasonable because it was an inappropriate measure of Defendants’ work and risk and of the benefit, if any, derived from their services. *Restatement* § 35, cmt.d. Defendants did very little work in the case beyond attending two meaningless hearings. Indeed, attorneys West and Howe were paid \$94,000.00 each for attending one hearing. Defendants initiated no discovery, responded to no discovery requests, performed no factual investigation, and, in fact, never did anything other than to reject the bank’s first settlement offer. Ultimately, the bank offered a deed in lieu and waiver of deficiency without any prompting or pressure from the Defendants.

14. I have read in its entirety the deposition of Michael Danhour, COO of the lender, Galt Valley, LLC (“Galt”), and I was shocked at his testimony. Galt was in the business of buying distressed assets such as the apartment complex in this case, refurbishing them, and then re-selling them, hopefully for a profit. Galt’s business model required it to obtain fee simple ownership of

the distressed property as soon as possible in order to prevent further deterioration in the property and to reduce fix-up expenses. Pursuant to its model, it would seek to acquire title to the property by means of a deed in lieu of foreclosure and waiver of deficiency in order to avoid the delays caused by seeking deficiency judgments in foreclosure actions. In order to quickly obtain the deeds, it would sometimes satisfy other liens against the property.

15. Mr. Danhour testified that had Plaintiff's attorneys asked early on for a deed in lieu of foreclosure and waiver of deficiency, it would have been quickly granted. I am incredulous that Plaintiffs' attorneys *never* asked for such a resolution of the debt, even though under a duty of care to do so. In fact, Galt's attorney, Ian McVey, wrote to Epting unilaterally offering to settle the case for a simple deed in lieu with no deficiency. That offer was not solicited or demanded by Defendants, even though it was the best possible outcome for Plaintiff and even though foreclosures are often settled in the same manner. **These indisputable facts are of extreme relevance because they establish that Defendants did not satisfy the condition precedent to their earning the reverse contingency fee – that their services actually caused the elimination of the debt. As Mr. Danhour testified under oath, Galt was prepared at all times to waive the deficiency in return for the deed in lieu upon a simple request for the waiver, which request Defendants never made. Defendant's claim to fees is based upon the illogical contentions that they should get paid \$567,000.00 because Galt did what it was always willing to do with no prompting from Defendants. Galt waived the deficiency because waiver was necessary to its business model, not because it was scared of Defendants or because its motion for a receivership was not granted or because Defendants' lawyering left it no choice. Defendants did nothing which would have justified any fee.**

16. Also very disturbing is the fact that without having first offered to settle for the deed in lieu and waiver of deficiency, Defendants' first offer to Galt was for a "deed in reduction", whereby the property would be deeded over to Galt and then sold in reduction of the debt. That offer, had it been accepted, would have pretty much guaranteed that there would be a deficiency in some amount against which Defendants' fees would be assessed. In these circumstances, the deed in reduction offer violated Defendants' duty of care.

17. Mr. Danhour testified that Galt was so frustrated with Defendants' actions and delays that it felt that it was being jerked around. It reluctantly made a settlement offer seeking a deficiency and "deed in reduction" because that was the only concept raised by Epting. When Epting rejected that offer and made no counteroffer, Galt made a last ditch effort to resolve the case via the deed in lieu and waiver of deficiency. That was on November 8, 2011. Defendants did not notify Galt's attorney that the offer was accepted until November 23, 2010, which was 15 days after the offer was made and five days after Plaintiff was induced to sign the November 18, 2010, Attorney-Client Contract.

18. One possible, if not strong, inference from the above facts is that Defendants were purposefully delaying the settlement in order to draft what they mistakenly believed would be an enforceable reverse written contingency fee agreement and then to have it signed by Plaintiff.

19. In addition, the manner in which Defendants drafted the 11/18/10 Attorney/Client Contract eliminated virtually all risk of non-payment because payment of the fee was to be secured by mortgages on unencumbered properties belonging to the Plaintiff. Moreover, Defendants knew before Plaintiff signed the Agreement that the bank, Galt, would accept a deed-in-lieu in full settlement of its claim against Plaintiffs. As a result, there was no possibility that the case would be lost or that Defendants would not be paid. There was, in fact, no contingency. To demand a

contingency fee in these circumstances clearly renders the fee unreasonable. *Restatement* § 35 cmt.c, Rationale.

20. The Defendants did not keep contemporaneous time records and, resultantly, could not account for their time. I have been involved in cases where clients have been required to defend suits seeking to enforce their personal guaranties and have knowledge as to the types of lawyer services typically required for such suits. In this case, the only arguably meaningful service provided by Defendants was to oppose the bank's motion for a receiver. While Defendants disingenuously claim that losing such a motion scared the bank into settling, the fact is that that motion would never have been made or heard had Defendants simply requested a deed in lieu of foreclosure and waiver of deficiency. Time devoted to opposing Galt's motion was wasted and unnecessary. In addition, based upon Defendants' testimony and documents, I would find it very difficult to believe that Defendants had more than 40 hours in this case. At a reasonable hourly rate of \$500.00, Defendants would be entitled to no more than \$20,000.00 on a non-contingent hourly basis, even if they did have records showing 40 hours of work. Under Defendants' reverse contingency fee agreement, however, \$567,000.00 for 40 hours of work would work out to \$14,275.00/hour. Thus, measuring the requested fee on a non-contingent basis establishes that a fee of \$567,000.00 for 40 hours of work is clearly unreasonable. *Restatement* § 35. This is especially true given that the defense of actions to enforce guaranties and foreclosure actions are normally handled on a non-contingency, hourly basis.

21. It is of a high relevance to me that Mr. Danhour's business had been involved in many foreclosure actions. He stated that the highest fee they have ever paid in a foreclosure case was the \$32,000 to \$35,000 paid in this case. Danhour also stated that they are normally looking to pay less than \$20,000.00. Had Defendants simply requested a deed in lieu and waiver of

deficiency at their first opportunity, they could not have then had more than twenty hours in the case.

22. The fee is unreasonable, as well, because, before imposing the fee, Defendants did not comply with their duties to discuss with Plaintiff the general likelihood of recovery by the bank, even if they had a proper basis for believing that there probably would be a recovery; to disclose to her the likely size of the recovery; to disclose the availability of alternative fee arrangements and their implications. Indeed, they refused Plaintiff's request to pay on an hourly basis even though payment would be secured by the mortgage on unencumbered properties. *Id.* comment c.

23. The reverse contingency fee in this case violates RPC 1.5 in the following respects:

a. it does not itemize the type of litigation and other expenses to be deducted from the recovery (RPC 1.5(c));

b. it does not clearly notify Plaintiff as to the expenses she will be required to pay (*id.*);

c. the 11/18/10 agreement was not tendered to Plaintiff within a reasonable time after representation by Defendants began (RPC 1.5(b));

d. vastly insufficient time and labor to support the fee were performed (RPC 1.5(a)(1));

e. the questions involved in defending the suit on the guaranty were neither novel nor difficult (RPC 1.5(a)(2));

f. a high degree of skill is not required to defend against guaranty claims, and Defendants did not demonstrate a high degree of skill in the few services they did perform (*id.*);

g. the customary fee in this type of case is on an hourly basis, and reverse contingency fees are rare (RPC 1.5(a)(3)); and

h. Defendants were not pressed for time by Plaintiff or the circumstances, as the case was in its infancy when it settled, (RPC 1.5(a)(5)), and Galt would have settled much earlier if Defendants had only offered.

The Supreme Court of South Carolina has held that RPC 1.5 constitutes evidence of a lawyer's duty of care.

**IV. DEFENDANTS BREACHED FIDUCIARY/
PROFESSIONAL DUTIES OWED TO PLAINTIFF.**

24. Both RPC 1.3 and South Carolina common law require attorneys to act with reasonable diligence and promptness when representing a client.

25. Defendants were careless in their defense of the claim against Plaintiff on her guaranty, in that:

a. they made no effort to ascertain the actual fair market values of the properties which were subject to the Galt mortgages; and, notwithstanding the fact that it was in the interest of Galt, the lender, to understate the property values, they relied upon an estimate of value provided by Galt itself in order to speculatively project the amount of the deficiency against which the contingency percentage would be applied;

b. they conducted no discovery or investigation in the case;

c. they never asked Galt to accept a deed in lieu in return for a waiver of any deficiency and, in fact, actually inquired of Galt's attorney about how the balance due on any settlement would have to be paid;

d. Defendants were careless with Plaintiff's money. The 11/18/10 "agreement" gave her 12 months *interest free* to pay the fee; however, Defendants took it out of the Re-Max settlement as soon as it was received, costing Plaintiff months of use of the Re-Max settlement proceeds and tens of thousands of dollars in interest. In addition, Defendants *added* \$42,260 in costs to the amount of the Re-Max settlement and then applied the contingency percentage to it, costing Plaintiff \$14,086.00 ($\frac{1}{3}$ of \$42,260) in unearned attorney's fees.

26. Defendants repeatedly violated their duty of care by engaging in conduct which was selfishly designed to further their own interests at the expense of Plaintiff's interests in that:

a. they did not credit her with hourly fees she had already paid against the contingency fee;

b. they misrepresented the status of the case to her in the 11/18/10 agreement which showed the case to be on-going when Galt had already agreed to accept a deed-in-lieu; and they concealed Galt's concession from Tecklenburg;

c. they required Plaintiff to provide a mortgage on unencumbered property to secure payment of the fee in the foreclosure case, and then did not satisfy the mortgage of record when that fee was paid out of the Re-Max proceeds;

d. even though the mortgage had been paid in full and was of no further legal effect, they induced her to sign an agreement assigning the mortgage from West and Howe to Epting and Kefalos in order to secure payment of another fee, while misrepresenting the validity of the mortgage and the necessity of the assignment;

e. they did not advise her to have the mortgage assignment reviewed by another attorney;

f. even though they had a mortgage securing payment of a fee, they refused to allow her to convert to an hourly fee basis, most probably because they could not document their hours and the case had already settled; and

g. they never fully or correctly advised her of the routine nature of the case nor of the possibility of settlement for a deed-in-lieu.

**V. THERE IS NO BASIS FROM WHICH THE AMOUNT
OF A REASONABLE FEE COULD BE DETERMINED.**

27. As I explained above, a reverse contingency fee arrangement was not reasonable in this case, and violated Defendants' duty of care especially in view of the overbearing circumstances under which it was obtained. Plaintiff had continuously been frightened by Defendants about the prospects of a \$1,700,000.00 judgment (which amount was derived through pure speculation). Prior to the final fee agreement Defendants had represented Plaintiff for ten months, during which time their fee requirements were in a constant state of fluctuation. Finally, with the deed-in-lieu having become a fait accompli, they confronted her with a new fee arrangement under the guise that serious litigation was still on-going, and concealed from her outside attorney that the case was all but settled.

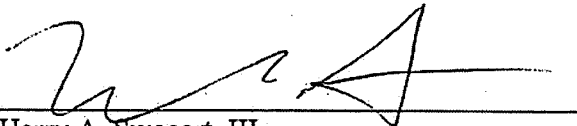
28. Given these facts, it is my opinion that the only reasonable basis for determining a fee for the little work Defendants did perform would be on an hourly basis. Unfortunately, there

are no contemporaneous time records reflecting Defendants' minimal services. It is therefore my opinion that there is no basis in law to support the payment of any fee to Defendants.

29. Based upon the facts and circumstances of this case, it is my opinion to a reasonable degree of certainty that Defendants' violations of their duty of care were the sole and indisputable causes of Plaintiff's losses in that they constituted the means by which Plaintiff was induced to pay an unreasonable exorbitant fee and excess unearned fees resulting from Defendants' error-filled fee calculations, as well as the losses of pre-judgment interest and other investment returns.

30. I state the above opinions with a reasonable degree of certainty based upon applicable law, my experience and training, and the factual information which I have reviewed.

Further, affiant saith naught.


Harry A. Swagart, III

Sworn to Before Me This 13th
Day of October, 2015.

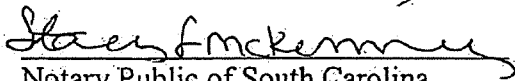

Notary Public of South Carolina
My Commission Expires: 9-23-2021

EXHIBIT A

RESUME

HARRY AUGUSTUS SWAGART, III

I. PERSONAL

- A. Residence (Permanent): 6125 Rutledge Hill Rd.
Columbia, SC 29209
Tel: 803-783-4319
- B. Cell Phone: 803-730-6302
- C. E-mail: harry@harryswagart.com
- D. Married to Aline Williamson Swagart of Columbia, South Carolina, for the past 36 years.
- E. Children: Heather (37) with HSBC in New York City
Russell (34) with Biotronik, in New York City
- F. Member: Forest Lake Club
Iron Dukes (Duke University)
Duke and USC Alumni Associations (Life Member)
- G. Born: Evanston, Illinois
April 27, 1945
- H. Military Service: United States Army, 1968-1970, Honorably Discharged

II. Education

- A. Landon School, Bethesda, Maryland – 1963
- B. Duke University, A.B., Economics – 1971
- C. University of South Carolina, School of Law, J.D., *cum laude*, 1976

Honors: Society of Wig and Robe
South Carolina Law Review, Managing Editor
Moot Court Bar
Legal Writing Instructor

III. ADMITTED TO PRACTICE

Supreme Court of the United States of America

United States Court of Appeals for the Eleventh Circuit

United States Court of Appeals for the Fourth Circuit

United States District Court for the District of South Carolina

United States District Court for the District of Maryland

South Carolina Supreme Court

IV. BAR MEMBERSHIP AND ACTIVITIES

South Carolina

V. PUBLICATIONS

H. A. Swagart, III, Lender Liability, South Carolina Bar CLE (1992)

H. A. Swagart, III, Franchises and Dealer Terminations: South Carolina Statutory Law, South Carolina Bar CLE (1987)

H. A. Swagart, III, Federal Criminal Antitrust Law: Violations and Defenses, South Carolina Bar - Continuing Legal Education 33-63 (1982)

H. A. Swagart, III, Basic Antitrust Law, South Carolina Bar-Continuing Legal Education (1981)

H. A. Swagart, III, The Fifth Amendment Privilege in Corporate Litigation, 7 The Journal of the Section of Litigation - ABA 23 (1981)

Survey, Criminal Law, 27 S.C.L. Rev. 363 (1975).

Comment, S.C. Law. Rev. 766 (1975)

VI. LAW-RELATED EMPLOYMENT

March 6, 1982-
Present

Harry A. Swagart, III, P.C.
1722 Main Street, Suite 220
Columbia, South Carolina 29201
Tel: (803) 779-0770
Fax: (803) 779-0771

May 1, 1979 -
March 5, 1982

Quinn, Smith, Brown & Staton
Columbia, South Carolina 29202

May 1, 1978- April 30, 1979

Assistant Dean and Lecturer in Law
School of Law
University of South Carolina
Columbia, South Carolina

August 30, 1976 -
April 21, 1978

Howrey & Simon
Washington, D.C.

VII. SERVICES AND PRACTICE AREAS

A. Services Provided:

- civil litigation in state and federal courts
- appellate practice
- arbitration
- mediation
- consultation
- drafting of contracts and other documents
- negotiation

B. Practice Areas

- Antitrust and Trade Regulation Law
- Unfair and Deceptive Trade Practices
- Trademark Litigation
- Unfair Competition Law
- Trade Secret Law
- Automobile Dealership Law
- Petroleum Marketing Practices
- Franchise Law
- Investment Litigation
- Securities Litigation
- Broker-Dealer Litigation
- Fraud and Misrepresentation
- Trust Litigation and Will Contests
- Fiduciary Duty Litigation
- Employment Contract Law
- Lender Liability Law
- Tort Law
- Real Estate Litigation
- Contract and UCC Law
- Shareholder and Close Corporation Disputes
- Corporate Litigation
- Professional Malpractice
- Hospital and Health Law

VIII. HONORS

- Fellow Litigation Counsel of America
- South Carolina Super Lawyers – 2012
- Martindale Hubbell Rating - av

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs

AFFIDAVIT

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants

AFFIDAVIT OF MICHAEL DANHOUR

I, Michael Danhour, do hereby depose and say the following:

1. At all relevant times, I was the Chief Operating Officer of Galt Valley, LLC, ("Galt") a duly organized Nevada limited liability company. In that capacity and in my capacity herewith, I am fully familiar with, and if called upon to testify, I would be competent to testify on my personal knowledge of the facts and circumstances set forth herein.
2. At all relevant times, Galt was in the business of acquiring and rehabilitating distressed real estate assets.
3. On or about July 15, 2010, Galt acquired from Ameris Bank ("Ameris") a loan portfolio ("Loan Portfolio") consisting of three (3) separate non-performing commercial paper loans having certain mortgage lien interests in distressed real estate assets in South Carolina and Florida.
4. When Galt acquired the non-performing commercial paper in mid-2010, Plaintiff, Heritage Seven, LLC's, ("Heritage"), note, mortgage and guaranty loan document(s) ("Loan Documents") was one of the three (3) loans, and therefore one of the loans in the Loan Portfolio.
5. Galt acquired the loan portfolio with an interest in rehabilitating, or otherwise selling,

the underlying distressed real estate assets in the usual and ordinary course of its business model.

6. At all relevant times, Galt knew the Loan Portfolio consisted of non-performing loans; and, Galt knew Heritage's Loan Documents were non-performing. In fact, Galt was in the business of acquiring non-performing (distressed) commercial paper.

7. After acquiring the Loan Portfolio from Ameris, Galt forthwith attempted to contact each of the three (3) borrowing entities of the Loan Portfolio and attempted to reach a settlement to avoid foreclosure. Galt's (as well as other entities under similar control/ownership) most common method of settlement was to acquire the underlying real estate asset by a friendly foreclosure, or common deed-in-lieu of foreclosure, in consideration of Galt's forgiveness of the borrowers' loan debt, and/or subsequent deficiency, if any.

8. At all relevant times, Galt intended, and indeed sought out, a settlement to avoid foreclosure, and preferred a friendly deed-in-lieu of foreclosure and forgiveness of debt from each of the Ameris borrowers. At all relevant times, it was not Galt's desire to recover the debt, or deficiency, from the borrowers, or any guarantor. Galt only pursued these avenues when a deed-in-lieu of foreclosure could not be reached, and the legal expenses of ongoing litigation continued.

9. Of the three loans, Galt achieved expeditiously a friendly foreclosure by deed-in-lieu with one of the loan borrowers, including forgiveness of loan debt, and/or deficiency. The second loan consisted of multiple borrowers, and Galt attempted to settle via deed-in-lieu of foreclosure, however the some of the borrowers refused. Galt instead released several of the willing borrowers for nominal settlement amounts, and were forced to foreclose on the remaining borrowers. Galt did not pursue deficiencies on any of the loans. The third loan as Heritage.

10. Unfortunately, Heritage was represented by lawyers who forbid Galt from speaking directly with Ms. Gibson, Heritage's principal member. Galt made requests by and through its counsel, Mr. Ian McVey, of Callison and Tighe, to set up a settlement meeting between Galt and Ms. Gibson for the purpose to convince Ms. Gibson to accept a deed-in-lieu of foreclosure, as Galt did with all the other loans.

11. Notwithstanding Galt's attempts to expeditiously resolve Heritage's loan by deed-in-lieu of foreclosure, and forgiveness of debt, and/or deficiency, Heritage's lawyers seemed to be unreasonable and unwilling to accept attempts and offers presented by Galt to settle the debt.

12. I was advised that Heritage's lawyers would not timely return phone calls to our attorney, they then aggressively objected to Galt's attempts to protect the underlying asset (Otranto Apartments) by opposing Galt's request for the appointment of a receiver; and, then

Heritage's lawyers refused meet with Galt, or allow Galt to have a settlement conference with the borrower. Heritage's attorneys relayed to our attorney that Linda Gibson "*is not going to be involved in any discussion with you*" as a response to our request for a settlement conference.

13. Next, Heritage's lawyers started to propose alternative theories for foreclosure; and, different ways to handle the situation, all to no avail.

14. On or about November 7, 2010, Galt's principals became increasingly frustrated with Heritage's lawyers to the point of demanding that our attorney, Mr. McVey, make a final demand on Heritage that Heritage either accept our deed-in-lieu and debt forgiveness; or, otherwise, Galt would prosecute its rights under the Loan Documents against Heritage's guarantor, Ms. Gibson.

15. On or about November 8, 2010, Galt authorized Mr. McVey to make one last offer setting forth the terms for Heritage to accept Galt's offer of a deed-in-lieu, and debt forgiveness ("Galt Demand").

16. Even upon receipt of the Galt Demand, Heritage's lawyers told Mr. McVey that "[Ms. Gibson] was in California", and that they needed yet more time before they could accept Galt's offer. On hearing of yet another delay in what should have been a routine deed-in-lieu of foreclosure, the principals at Galt, and me, became even more frustrated with Heritage's lawyers, to the point the principals and I started discussing that Galt might need to come after Ms. Gibson for the full deficiency of Heritage's note, an option we'd not seriously considered prior, but we felt we might need to do to motivate Heritage to settle.

17. At all relevant times, Galt's managing members, its principals, and I would and did often consult together by telephone conference, or in person, regarding the direction and operations of Galt, inclusive of the Heritage Loan Documents; and, I was authorized to bind Galt in contract in carrying out its business operations, including Galt's acquisition and real estate workout of Heritage's North Charleston apartment complex.

18. On or about November 15, 2010, Heritage's lawyers seemed to finally understand Galt's demand that Heritage accept a deed-in-lieu and forgiveness of Heritage's debt/deficiency as it was really in Heritage's best interest, and Ms. Gibson.

19. Following Heritage's acceptance and settlement of Galt's offer, I met Linda Gibson at the property as we were prepared to take over operations. During our meeting we discussed Galt's attempts to establish a settlement conference call, and that Galt had attempted to reach Ms. Gibson to offer to Heritage the same deed-in-lieu terms, and debt/deficiency forgiveness, that Galt initially offered all other borrowers of the Ameris Loan Portfolio. I explained to Ms. Gibson that Galt had attempted to reach her and offer her the same; and, that her lawyers got in the way and obstructed our attempts with dilatory conduct and impractical legal theories,

and that her lawyers cost her a lot of money when she could have just cooperated with Galt in the deed-in-lieu process. I came to learn from Ms. Gibson that her lawyers charged her a contingency fee of \$566,666.00 for their work in accepting our (Galt's) offer of a deed-in-lieu. I found this conduct to be shocking, and contemptable given the scope and complexity of work performed.

20. For example, I believe Galt's legal bills with Callison and Tighe and Rosen Hagood were approximately \$30,000.00 in regard to the Heritage matter, but in all events less than \$50,000.00.

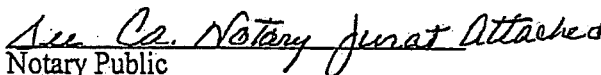
Signed under the pains and penalties of perjury this 21st day of August, 2015.



Michael Danhour, Chief Operating Officer
Galt Valley, LLC

NOTARY PUBLIC

Michael Danhour personally appeared, sworn and subscribed, before me (undersigned witness) under oath his signature attesting to the foregoing (attached) document before me this _____ day of August 2015.



Notary Public
My Commission Expires _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Barbara

Subscribed and sworn to (or affirmed) before me

on this 21 day of August, 2015
 by Date Month Year

(1) Michael Danhour

(and (2) _____),

Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature Diane K. Zamora
 Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit Document Date: 8-21-15
 Number of Pages: 4 Signer(s) Other Than Named Above: _____

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From: Ian McVey [mailto:IanMcVey@callisontighe.com]

Sent: Tuesday, October 19, 2010 9:51 AM

To: rwatson@berkeleycountysc.gov

Cc: Andrew K. Epting; George J. Kefalos; Amy Hill

Subject: Galt Valley v. Heritage Seven

Judge Watson, I have discussed the Defendants' theory of "deed in reduction" with my clients and have made a proposal to Mr. Epting regarding this matter. With that in mind, would it be possible to have some additional time to work with Defendants' counsel to try to resolve the matter before we submit briefs on this issue? As I understand it, the briefs would be due Monday, October 25th. Perhaps an additional twenty (20) days would suffice to figure out whether we can resolve the matter. By my math, that would make the briefs due by Monday November 15th.

I have drafted the Order regarding payments of the rent for the Berkeley County property and should be able to provide your honor with an order shortly. I will, of course, copy opposing counsel.

I hope this request meets with your approval.

Thank you for your consideration of this request.

With kind regards, I am

Yours truly,

Ian McVey



Ian D. McVey
Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390

P: 803.404.6900 F: 803.404.6901
Email: IanMcVey@callisontighe.com

Columbia, SC 29202-1390

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Tamekia Hunter

From: Sheri Towne <VST@epting-law.com> on behalf of Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
Drew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [<mailto:IanMcvey@callsonfighe.com>]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>
Sent: Thu Oct 21 15:57:44 2010
Subject: Gibson-Berkeley County

Mr. McVey,

With regard to the above-subject matter, are you available for a call with Drew Epting and George Kefalos tomorrow afternoon (10/22) at either 1:00 or 2:00 p.m.? I also left a voicemail message for you, as both you and your assistant were out when I called. Thank you.

Best regards,
Roni

Roni Burk
Legal Assistant to Andrew K. Epting, Jr.
and Michelle N. Endemann

Amekia Hunter

From: Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 4:23 PM
To: Ian Mcvey; Epting Office
Cc: George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne; Oana Johnson
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian, she is being sued, has just lost in foreclosure certain property, and there is nothing to talk about unless you want the property. Remember the insurance will expire on 10-31.

Could I suggest we talk about the deed in reduction. If you want the property voluntarily ok and if not then let's submit orders.

Sheri, send to Gedney and John as I could not find their email addresses.

Andrew K. Epting, Jr
Andrew K. Epting, Jr., LLC
3 State Street
Charleston, SC 29401
ake@epting-law.com
Phone: 843-377-1871
Fax: 843-377-1310

From: Ian Mcvey [<mailto:IanMcvey@callisontighe.com>]
Sent: Friday, October 22, 2010 10:52 AM
To: Andrew K. Epting; Epting Office
Cc: George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Drew, perhaps you misunderstand. I am suggesting a settlement conference between the parties under the supervision of counsel. Does that interest you? Ian.

From: Sheri Towne [<mailto:VST@epting-law.com>] On Behalf Of Andrew K. Epting
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
rew

Andrew K. Epting, Jr
Phone: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [mailto:IanMcvey@callisontighe.com]
Sent: Friday, October 22, 2010 4:56 AM
To: Michael Danhour [mailto:mdanhour@griffoncapital.com]; Michael Danhour
Subject: FW: Gibson-Berkeley County
Sensitivity: Confidential

OK, this is going to be a waste of time. Please provide the figures we discussed yesterday. It is time to put a firm offer on the table and see what he does with it.

From: Sheri Towne [mailto:VST@epting-law.com] On Behalf Of Andrew K. Epting
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
Drew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com

 Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [mailto:IanMcvey@callisontighe.com]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>

From: Robert Papa [mailto:papa@btitelecom.net]
Sent: Wednesday, December 02, 2009 2:39 PM
To: Andrew K. Epting
Subject: case referral

Drew,
Linda Gibson and I met with George to discuss George getting involved in a business case against realtor, ReMax, appraiser, and Ameris Bank. George indicated that he was interested in the case and that you would be associated on the banking issue. Larry Richter is atty of record but has a potential conflict re Ameris Bank and has sent Linda a letter indicating he is withdrawing. That is actually an extremely favorable development as he was in control of the most lucrative causes of action.
In any event, when is the earliest you can meet with Linda (and myself if I'm available). She needs some direction on the bank issue. Linda will be in a far better position if an aggressive offense can be set into motion re the bank. Time is of the essence as the local banker has indicated that Linda's loan has gone to the special assets department at Ameris in Columbia.
Thanks.
Rob Papa

Tamekia Hunter

From: Sheri Towne <VST@epting-law.com> on behalf of Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian,

Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.

Drew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [<mailto:IanMcvey@callsontheghe.com>]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>
Sent: Thu Oct 21 15:57:44 2010
Subject: Gibson-Berkeley County

Mr. McVey,

With regard to the above-subject matter, are you available for a call with Drew Epting and George Kefalos tomorrow afternoon (10/22) at either 1:00 or 2:00 p.m.? I also left a voicemail message for you, as both you and your assistant were out when I called. Thank you.

Best regards,
Roni

Roni Burk
Legal Assistant to Andrew K. Epting, Jr.
and Michelle N. Endemann

Iamelia Hunter

From: Andrew K. Epting <AKE@epting-law.com>
Sent: Thursday, October 21, 2010 2:17 PM
To: Ian Mcvey
Subject: Re: Galt Valley v. Heritage Seven

friday pm?

-----Original Message-----

From: "Ian Mcvey" <IanMcvey@callisontighe.com>
Subj: Re: Galt Valley v. Heritage Seven
Date: Thu Oct 21, 2010 12:57 pm
Size: 2K
To: "Andrew K. Epting" <AKE@epting-law.com>

Drew, that is what we want to talk about. Are y'all available?

From: Andrew K. Epting <AKE@epting-law.com>
To: Ian Mcvey
Cc: Sheri Towne <VST@epting-law.com>; Epting Office <office@epting-law.com>
Sent: Thu Oct 21 12:55:57 2010
Subject: RE: Galt Valley v. Heritage Seven

Ian, where is the proposal for a deed in reduction?

From: Ian Mcvey [mailto:IanMcvey@callisontighe.com]
Sent: Tuesday, October 19, 2010 9:51 AM
To: rwatson@berkeleycountysc.gov
Cc: Andrew K. Epting; George J. Kefalos; Amy Hill
Subject: Galt Valley v. Heritage Seven

Judge Watson, I have discussed the Defendants' theory of "deed in reduction" with my clients and have made a proposal to Mr. Epting regarding this matter. With that in mind, would it be possible to have some additional time to work with Defendants' counsel to try to resolve the matter before we submit briefs on this issue? As I understand it, the briefs would be due Monday, October 25th. Perhaps an additional twenty (20) days would suffice to figure out whether we can resolve the matter. By my math, that would make the briefs due by Monday November 15th.

From: George J. Kefalos [mailto:george@kefaloslaw.com]
Sent: Friday, October 29, 2010 9:46 AM
To: Annette Mixson; Paul Tecklenburg
Cc: Andrew K. Epting; Oana Johnson; Sheri Towne; lgibson827@yahoo.com
Subject: Linda Gibson

Paul,

I am writing to explain that I need a few minutes of your time to review a fee arrangement I have with Linda Gibson.

Drew Epting and I represent Linda Gibson in three different cases. In one of the cases, we have associated Gedney Howe and John West.

The first case is an action for negligence, fraud and misrepresentation brought by Linda against her former financial advisor and realtor for mishandling her investments. The Defendant is insured and this case is being handled on a standard contingency fee based on the amount of recovery.

The second action involves the defense of a foreclosure action brought against Linda Gibson by First Citizens Bank. This case is pending before Judge Scarborough and there are no defenses to it. This is being handled on an hourly basis and we are simply trying to work out a payment plan for the \$450,000 deficiency judgment. The payment plan contemplates postponing full repayment until after the completion of the 1st and 3rd pieces of litigation.

The third case involves the defense of a \$3.5 million foreclosure action brought against Linda Gibson by Ameris Bank. This case is pending before Judge Watson in Berkeley County and there are significant defenses to it as we have evidence Ameris was involved in considerable wrongdoing. We have associated Gedney Howe and John West to help on this case. The property is only worth \$750,000 and Ameris is claiming a \$2.8 million deficiency. We believe we have a good chance of reducing or eliminating any deficiency due Ameris.

We are handling this third case on a contingency fee, based on a percentage of what we can save Linda off the claimed deficiency. Linda lacks the cash resources to pay this fee, but has significant real estate holdings. We would like to secure the payment of this fee (if we can recover) with a first mortgage in favor of John & Gedney, on a piece of property Linda owns on Daniel Island. There is some urgency to this as we would like to put this mortgage in place before we finalize the settlement with First Citizens. First Citizens is likely to want a mortgage on the same property.

Would you be so kind as to review this fee arrangement with Linda and give her your opinion whether you believe it is fair and reasonable under the circumstances.

I enclose for your review, a copy of the proposed mortgage and fee agreement.

Thank you in advance for your time.

George
George J. Kefalos P.A.
3 State Street
Charleston SC 29401
(843) 722-6612 ph
(843) 377-1310 fax
george@kefaloslaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs

vs.

**PLAINTIFFS' SUPPLEMENTAL
INDENTIFICATION OF 702 WITNESS**

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants

PLAINTIFFS' NOTICE OF SUPPLEMENTAL 702 WITNESSES

TO: TO ALL COUNSEL OF RECORD AND THE CLERK OF COURT:

Plaintiffs' submit the following persons will appear at trial of this matter and testify as an expert witness on behalf of the Plaintiffs:

- (i) Harry A. Swagart, III, Esq., and,
- (ii) Desa A. Ballard, Esq

Plaintiffs' submit the following person previously disclosed as an expert witness to the parties and this Court will not be available to testify at trial:

- (a) David Pagliarini, Esq.

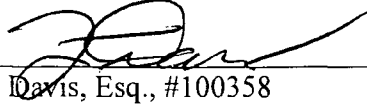
Respectfully Submitted,

LINDA A. GIBSON, Individually, and in capacity
as TRUSTEE of THE PAUL WILLIAM
GIBSON FAMILY TRUST, and, HERITAGE
SEVEN, LLC, and, SEVEN OAKS

FILED
2015 AUG 11 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

APARTMENTS, LLC, and, 3205 PALM
BOULEVARD, LLC,

By Their Counsel,



James R. Davis, Esq., #100358
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Daniel Island, SC 29492
800.983.0455 (office)
800.983.0153 (fax)
843.364.2218 (direct)
jim@jdavispc.com

Dated: August 10, 2015

Certificate of Mailing

I, James R. Davis, hereby certify and attest that I served a true and accurate copy of this document on August 10, 2015 upon all counsel of record, and parties appearing *pro se*, by email, U.S. Mail, Federal Express or other courier.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION AND TO
ALTER OR AMEND JUDGMENT**

(RULE 59(e) SCRCPP)

Hearing Requested

FILED
2016 JAN 15 PM 3:32
JULIE J. ARMSTRONG
CLERK OF COURT

TO: M. DAWES COOKE, JR., ESQ., ATTORNEY FOR THE DEFENDANTS

PLEASE TAKE NOTICE that the Plaintiffs will move the Court for a hearing, no sooner than ten (10) days after service hereof, to reconsider, and to alter or amend, the Court's Order granting the Defendants' Motion for Summary Judgment; and, to request a trial on the merits for the relief sought in the Plaintiffs' Second Amended Complaint, pursuant to Rule 59(e), SCRCPP.

This motion is based on the points and authorities set forth herein, and supported by the accompanying affidavits, hearing transcript, and incorporates the pleadings and papers before the Court, and any additional memoranda Plaintiffs file in support of the motion.

Summary

This is an excessive fee case. The matter before the Court is whether the Plaintiffs' met the applicable burden of a "mere scintilla" of evidence to survive summary judgment.

At issue is (i) whether the fee agreement is ambiguous; (ii) whether avoided costs, risks and impossibility of performance resulted in an excessive (contingent) fee; and, (iii) whether the lawyers' non-disclosure of nominal work, and the nature of the set-off value and the inchoate (deficiency) claim, is a breach of fiduciary duty.

The grounds for the motion are the Court (a) erred finding the fee agreement clear, constituting a *dual*-fee obligation; (b) didn't consider the circumstances surrounding the fee to determine \$566,666.00 reasonable; and, that (c) evidence exist the lawyers concealed the nature of their nominal work, Linda's set-off claim and Galt's inchoate deficiency that devalue the consideration paid, resulting in an excessive fee and a breach of fiduciary duty.

This motion is filed in good faith, supported by sworn testimony, and South Carolina law, within the period proscribed by Rule 59(e), SCRPC¹.

Standard of Review

a. Summary Judgment Standard

Rule 56(c), SCRPC provides summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and it is clear the moving party is entitled to judgment as a matter of law.

In determining whether any triable issues of fact exists, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1984). The South Carolina Supreme Court charges cases applying the preponderance of the evidence burden of proof, as here, require the non-moving party to submit only "a mere scintilla

¹ The Court enrolled the Judgment on January 5, 2016. The Plaintiffs' received notice of entry of the Judgment on January 6, 2016.

of evidence in order to withstand a motion for summary judgment.” Betty J. Hancock v. Mid-S Mgmt. Co., Inc., 381 S.C. 236, 673 S.E.2d 801 (2009). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions and inferences to be drawn from them, summary judgment should not be granted. Rice v. School Dist. of Fairfield, 317 S.C. 87, 452 S.E.2d 352, 96 Ed. Law Rep. 1210 (Ct. App. 1994); Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1984). To defeat a motion for summary judgment, the nonmoving party need not produce all of its evidence or prove its case but instead must only show the existence of a genuine factual dispute. 73 Am. Jur. 2d. Summary Judgment §29 (2015).

Summary judgment is a drastic remedy and should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. Hooper v. Ebenezer Senior Svcs. & Rehabilitation Ctr., 377 S.C. 217, 226-27, 659 S.E. 2d 213, 217 (Ct. App. 2008). The South Carolina Supreme Court charges cases applying the preponderance of the evidence burden of proof, as here, require the non-moving party to submit only “a mere scintilla of evidence in order to withstand a motion for summary judgment.” Betty J. Hancock v. Mid-S Mgmt. Co., Inc., 381 S.C. 236, 673 S.E.2d 801 (2009).

b. Lawyer Fees Standard

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee. Rule 1.5, RPC, Rule 407, SCACR. Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. cmt. [3], Rule 1.5, RPC, Rule 407, SCACR. For reverse contingent fees, reasonableness will is not so readily determinable. ABA Formal Opinion 93-373 admonishes that the fact straight contingent fees typically range from 25% to 35% does not necessarily mean that the same percentage is reasonably applied to the potential savings of a defendant. Even assuming a fair percentage could be set, reverse

contingent fees have the added complication of calculating the amount saved the client. A Plaintiff's demand may be overstated, not specifically enumerated, or as here, inchoate; and, thus, "the amount demanded cannot automatically be the number from which the savings resulting from a judgment or settlement can be reasonably calculated." See, e.g., ABA Formal Op. 93-373 (citations omitted).

In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Cmt. [3], Rule 1.5, RPC, Rule 407, SCACR.

The "'beneficial results' obtained factor to be considered in awarding attorney fees, merely aids in determining whether award is appropriate when considering whether services of lawyer facilitated favorable result and does not endorse percentage of award." Glasscock v. Glasscock, 304 S.C. 158 (1991).

All of the circumstances surrounding the attorney-client relationship must be considered when determining a reasonable fee to be paid by a client, and the failure to consider these circumstances is error. Weatherford v. Price, 340 S.C. 572, 532 S.E. 2d 310 (2000); Royal Crown Bottling Co. v. Chandler, 226 S.C. 94, 83 S.E. 2d 745 (1954).

Argument

I. Defendants' summary judgment motion should have been denied because evidence exists the fee documents are ambiguous.

a. The fee document terms are ambiguous.

The April and November fee documents expressly state "*George and I will handle the existing case against [] Ameris on a contingency... [for] the defense and pursuit a counterclaim... [and the] fee [will be] based upon the total recovery [of] One-third (1/3) of all sums saved CLIENT.*" (emphasis added). Exhibit A.

The fee term "*on a contingency [for] defense and pursuit of a counterclaim*" is capable of more than one meaning in determining the fee amount. The lawyers interpret the term "*on a contingency*" to mean a dual-fee constituting both a *reverse-and-straight* contingent fee resulting in \$566,666.00, plus 40% of the lender claim obligation Exhibit B (Epting Dep. 65:1-25). Conversely, Linda interprets "*on a contingency*" to mean 33% percent of "recovery", as commonly grasped by the public, "*...like a lawyer takes a case, and if he recovers something, then I pay.*" (Gibson Dep. 108:2; 109:8-25; 110:13-20).

Thus, the parties' sworn testimony shows they disagree about whether the terms mean a dual-fee (lawyers) or a single fee obligation. The two different interpretations of the term is evidence of an ambiguity in the terms of the fee document(s), of legal consequence about the fee amount, the subject of this action.

When a written contract is ambiguous in its terms, parole and other extrinsic evidence will be admitted to determine the intent of the parties; the intent of the parties is then a question of fact for the jury to determine. Ecclesiastes Production Ministries v. Outparcel Associates, LLC, 347 S.C. 483 (2007). Thus, Court should have denied defendants' summary judgment.

Further, the fee term "*for their services*" is capable of more than one meaning in determining the fee amount. The term "services" inherently means "scope of work". The lawyers see two separate "services" to be performed - *i.e.*, the defense of deficiency claim and the prosecution of a counterclaim, resulting in two contingent fees. Conversely, Linda sees one "service" to be performed - *i.e.*, legal representation.

Thus, the parties' sworn testimony shows they disagree about whether the term "*for their services*" means two jobs, or one. The two different interpretations of the term is evidence of ambiguity in the fee document(s).

Furthermore, the fee term “...*agreement of February 4, 2010*” is ambiguous given no February agreement existed, just an email Linda wasn’t copied. The April letter gathers and strings together four *straight*-contingent fee arrangements in one sentence, “*Re/Max, Rolando, Moore & Ameris on a contingency...*,” all a *straight*-contingent fee obligation paid from cash recovered, but omits the hypothetical fifth fee, the disputed *reverse*-contingent fee. Exhibit A.

Fatefully, this fifth *reverse*-contingent fee is of the greatest legal consequence to Linda as it obligates her to pay “out-of-pocket” several hundred thousands of dollars to her lawyers – yet the lawyers’ failed to disclose the *reverse* fee, how it would be calculated, and the consequences of over a half million dollar fee, versus a possible \$60,000.00, or so in hourly fees.

Linda never saw the February 4th email until this litigation, and thus aptly interpreted “...*agreement of February 4, 2010*” to mean hourly fees she’d been paying, modified in April by the April agreement; conversely, the lawyers interpret the term “...*agreement of February 4, 2010*” to mean a *dual*-fee obligation. The parties’ reasonable, but opposite, interpretations of the term “... *in our agreement of February 4, 2010*” is evidence of ambiguity.

Thus, the fee term “...*agreement of February 4, 2010*” is capable of more than one meaning as to the straight and reverse fee obligation, resulting in two opposite interpretations about the fee amount, the subject of this action; and, so, the defendants’ summary judgment should have been denied.

Furthermore, the next fee document (November) makes no reference, whatever, to two “contingency fees” or both a *straight* and *reverse* “contingent fee arrangement”, but rather unequivocally states a *fixed*-fee for all services. Counsel interprets their November document to entitle them to two contingent fees, both a *straight* and a *reverse* fee. Conversely, Linda interprets the November document as one fee.

Thus, the parties interpret the express terms of the November document to mean to different fee obligations; and, so evidence exists the document is ambiguous.

For the Court to adopt the lawyers' interpretation of the November document, the Court would need to add to, or vary, the November fee agreement term "...*Law Firm shall receive a fee based upon the total recovery [of] One-third (1/3)...*" adding "*plus 40% of any recovery in the lender claim.*" The November document does not say "*plus 40% of any recovery*"; and, adding these terms without extrinsic evidence of the parties' intent is judicial error.

The fee contract is ambiguous. If a contract is ambiguous, the jury must determine the intent of the parties, which is a question of fact. HK New Plan Exchange Prop. V. Coker, 375 S.C. 18, 649 S.E. 2d 181 (Ct. App. 2007). Here, the parties' closest to the fee document, and the transactions contemplated thereby, own sworn testimony show the meaning of "*on a contingency*", "*[for] defense and pursuit of a counterclaim*", "*for their services*" and "...*agreement of February 4, 2010*" is capable of more than one meaning, and thus, defendants' summary judgment should have been denied.

b. Ambiguous terms must be construed against the drafter.

Well settled contract law construes ambiguous terms against the drafter, particularly in the context of a tender fiduciary attorney-client relation. A question of fact exists whether the drafting lawyers had the better opportunity to see the dual-fee obligation, and a keener power of perception to appreciate the weight and consequences of the undisclosed dual-fee obligation.

Summary judgment is inappropriate even if the facts are undisputed, if the uncontested facts support different inferences. Koester v. Carolina Rental Ctr., 313 S.C. 490, 443 S.E. 2d 392 (1994). Here, the fee terms support different inferences to be drawn about fee amount. The undisputed evidence before the Court shows the parties' intentions at engagement, during representation, memorialized by November 18, 2010, secured by (several) mortgages in

December 2010, and at disbursement of the \$566,666.00 (April 11, 2012), was one fee, not 33% of a fictitious, inchoate, \$1.7M “dollar marker” plus 40% of a lender claim recovery.

Whereas evidence exists the fee documents are ambiguous, material questions of fact exist as to the parties’ intent at engagement. Thus, defendants’ summary judgment should have been denied.

II. Defendants’ summary judgment should be denied because evidence exists of circumstances surrounding the fee that result in an excessive fee.

The Court must consider “all of the circumstances surrounding the attorney-client relationship when determining a reasonable fee to be paid by a client, and the failure to consider these circumstances is error.” Weatherford v. Price, 340 S.C. 572, 532 S.E. 2d 310 (2000); Royal Crown Bottling Co. v. Chandler, 226 S.C. 94, 83 S.E. 2d 745 (1954).

The Court erred to give sufficient consideration to the following circumstances surrounding the fee:

a. Whether avoided costs, risk, and impossibility of performance results in excessive fee.

The parties’ bargained-for-consideration at engagement was the lawyers were to risk long hours and considerable work for 33% of “savings” for achieving a result. That’s not what happened. Here, Galt purchased Linda’s note thirty (30) days after Ameris filed suit. Galt testified they initially were not seeking a deficiency judgment against Linda at all, “...[n]o, that’s not our general business practice. Our — we would have been the most happy with the next day executing a deed in lieu of foreclosure and being able to get fee simple control of the real estate.” (Danhour Dep. 30:1-20). Unable to reach Linda’s lawyers for a settlement conference, Galt sought appointment of receiver.

Returning from Europe, Mr. Epting, on September 23, 2010, called on Mr. West and Mr. Howe to “assist” with the receiver hearing. The lawyers’ didn’t offer or negotiate a deed-in-lieu with Galt, but offered a risky deed-in-reduction, opposite Linda’s interest, but comporting with their (fee) terms “*less amount due Ameris*”. Exhibit E. Galt then became frustrated with the Linda’s lawyers’ unwillingness to meet for a settlement conference, awkward “deed-in-reduction” theories and general unreasonable posture; and, on November 8, 2010, made one last attempt to resolve the deficiency by deed-in-lieu-for-debt before retaining litigation counsel, out of frustration. (Danhour Dep. 140:1-25; 141:1-25; and, *generally*, Danhour Dep)².

Moreover, the parties’ didn’t contemplate at engagement that Galt, a non-adversarial buyer, would buy Linda’s note, wanting a deed-in-lieu result. Galt’s debt purchase fundamentally changed the lawyer-client fee arrangement given Linda bargained to pay her lawyers a 33% risk premium for long hours ended when Galt bought the note because Galt was non-adversarial— *i.e.*, both Galt and Linda desired the same result – a deed-in-lieu-for-debt. The lawyers counter Galt was “substituted for Ameris” in the Ameris foreclosure action, and assumed Ameris’ “aggressive” assault; but, mere party substitution does not equate to “hostile” substitution.

Thus, evidence exists of the (true) nature of Galt’s intentions and inchoate deficiency claim (between July 15, 2010 to November 18, 2010) bearing on whether avoided costs, risks and impossibility of performance resulted in an excessive fee; and, so defendants’ summary judgment should have been denied.

² Danhour states the word “frustration” in reference to the lawyers ten (10) times in his deposition.

b. Whether a straight and reverse contingent fee on the same loan transaction results in an excessive fee.

The lawyers' dual-contingent fee arises out of the same loan transaction. Linda avers the lawyers' work to defeat the deficiency claim is inherently embedded in the work to prosecute the lender claim, for which the lawyers are already being paid a contingency. Linda therefore seeks a credit for duplicative work product, arguing that otherwise, the lawyers are being paid twice for the same work. Evidence exists the lender and deficiency claim work product merge to defeat the deficiency – *to wit* - the measure of degree to which lawyers prosecute the lender claim is the same, or substantially the same, measure of degree to which they reduce, or defeat, the deficiency claim. Mr. Epting admitted so stating "*is there crossover?, Sure, there's crossover [of work product]*" (Dep. Epting 178:17-25). Exhibit B. Thus, evidence exists whether the lawyers' are paid twice for duplicative work resulting in an excessive fee, owing Linda a set-off credit for crossover work.

The reasonableness of a fee must be assessed based on all the facts and surrounding circumstances of the representation, as they exist both at the beginning and the end of the representation. See, Contingent Fees, ABA/BNA Lawyers' Manual on Professional Conduct, 41:901, at 18 (2004); A fee that looked to be reasonable at the outset of the representation may have become excessive as measured by the outcome of the client's case. Id.

Here, evidence exists of the inchoate, unliquidated, deficiency claim (from July 15, 2010 to November 18, 2010), and duplicative work that directly bears on whether avoided costs, risk, impossibility of performance and duplicative work occurred resulting in an excessive fee.

Thus, the defendants' summary judgment should have been denied.

III. Defendants' summary judgment should have been denied because evidence exists of defendants' breach of fiduciary duty / legal malpractice.

Evidence exist the lawyers' acts and omissions breached the South Carolina standard of care. Specifically, the lawyers' failed to give full disclosure of the nature of Linda's claims, set off, and defenses sufficient for Linda to give informed consent to the fee amount. The standard of care in South Carolina in an attorney malpractice action is that lawyers are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession; this standard is statewide. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275 (2010).

a. fiduciary duty / legal malpractice standard.

To prove breach of fiduciary duty, a plaintiff must prove three elements: (1) the existence of a fiduciary relationship; (2) a breach of the fiduciary duties owed; and, (3) damages proximately resulting from the wrongful conduct. RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 335-36, 732 S.E2d 166, 173 (2012). To prove legal malpractice, a plaintiff must prove four elements: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and, (4) proximate causation of the client's damages by the breach. Powell v. Potterfield, -- S.E.2d-- 2014 WL 2582765 (Ct. App. 2014). South Carolina law merges breach of fiduciary duty with legal malpractice where facts of each claim arise out of the same circumstances.

b. Evidence exists of breach of duty by lawyers.

It is undisputed the lawyers and Linda occupied an attorney-client relationship, and that South Carolina law attaches a fiduciary duty in attorney-client relations. Evidence exists the lawyers' breached their duty to Linda, and damages proximately flowed therefrom.

First, the lawyers knew, or should have known, Galt's purchase of Linda's note fundamentally change the attorney-fee arrangement as Galt shared Linda's interest to deed the property for debt; stated otherwise, Galt was non-adversarial to Linda. The lawyers had an affirmative obligation on learning in July 2010 when Galt purchased the note to call Galt's counsel, propose a deed-in-lieu-for-debt, and work toward that result for a reasonable fee; not, as they did here, misrepresent to Linda that Galt was an "aggressor" seeking a \$1.7 million deficiency from Linda, propose a (risky) deed-in-reduction; and collect \$566,666.00 on their misrepresentation. Even assuming the lawyers were unaware of Galt's non-adversarial posture to Linda, upon learning Galt desired a deed-in-lieu, the lawyers owed Linda a duty to disclose the nominal effort and time didn't warrant collecting a \$566,666.00 fee.

Furthermore, the lawyers owed Linda a duty to disclose Galt's deficiency claim was inchoate, unliquidated, subject to her set off claims; and, therefore \$1.7 million was an unreasonable "dollar marker" against which to compute their fee.

Thus, evidence exists of the breach of duty element.

c. Evidence exists of proximate cause resulting in damages.

In order to demonstrate proximate cause, a plaintiff must show he most probably would have been successful in the underlying suit if the attorney had not committed malpractice. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55,58 (1997). Here, evidence exists that Linda would have achieved the same result (debt forgiveness) for a reasonable fee, but for the lawyers' ambiguous fee documents, misrepresenting the \$1.7 million "savings", and their non-disclosure of Galt's inchoate deficiency, and refusal to credit Linda for duplicative work. Thus, evidence exists of the proximate cause (damages) element.

d. Evidence exists of damages.

The foregoing acts and omissions deviate from the standard of care a prudent South Carolina lawyer would exercise. South Carolina attorneys don't conceal information material to a client to assess the reasonableness of a fee, and collect the ill-gotten profits from their willful non-disclosure. Evidence exists the lawyers did not disclose to Linda (i) Galt's inchoate deficiency claim, (ii) the lawyers' "deed-in-reduction" versus "deed-in-lieu" strategy, (iii) the lawyers' unwillingness to meet with Galt; (iv) that Galt requested a lawyer-supervised settlement conference; (v) that the lawyer's rejected (on Linda's behalf) Galt's written request to meet with Linda by lawyer-supervised conference; (vi) that Linda's set off claims and the lawyers' duplicative work make \$1.7 million an unreasonable base line valuation to determine the fee; and, (vii) that the lawyers' didn't facilitate the (pre-existing) result. (Gibson Aff. at ¶ 2) Exhibit E.

Under well settled fiduciary law, Linda was entitled to all information concerning her claims and the lawyers' failure to disclose this material information misled Linda to believe the lawyers' long hours on complex litigation facilitated the "savings". (Gibson Aff. at ¶ 2) Exhibit E. There is evidence before this Court the lawyers' "good lawyering" didn't facilitate the result.

But for the lawyers' misconduct, Linda would have had the same result (Galt's debt forgiveness) without the \$566,666.00 fee, but a reasonable fee. The evidence reveals Galt paid its attorneys \$40,000.00 to be represented on the other side of this deed-in-lieu transaction, any number of well-established Charleston law firms would have adjusted their fee commensurate with the standard of care (Rule 1.5); or, otherwise reduced their fee accordingly.

Thus, evidence exists Linda suffered damages as a direct and proximate result of the lawyers' acts and omissions; and, so defendants' summary judgment should have been denied.

e. Evidence exist the \$566,666.00 fee is excessive in violation Rule 1.5, RPC, Rule 407, SCACR.

A violation of Rule 1.5, RPC, Rule 407, SCACR, is evidence of a breach of fiduciary duty and legal malpractice. The evidence shows the lawyers based their \$566,666.00 fee on a (maximum) \$1.7 million "dollar marker", the difference between the note principal and value of the collateral, without accounting for the value of Linda's set-off (lender) claims, and the inchoate nature of Galt's deficiency claim (unliquidated), nor the nominal work involved to do a deed-in-lieu transaction. Representing to Linda \$1.7M million "saved" as the basis to compute their fee is an egregious breach of the standard of care of disclosure of all facts material for the client to grant fully informed consent to the fee amount. (See, *generally*, Affidavits of Harry A. Swagart and Desa Ballard). Moreover, the lawyers neglected to disclosed to Linda at collecting the \$566,666.00 the division of the fee among lawyers (Mr. Howe and Mr. West), in violation of Rule 1.5 (See, e.g., cmt. [7]). If the lawyers had disclosed to Linda that Mr. Howe and Mr. West were to receive \$94,000.00 each for their involvement in the matter, Linda would have had the information she needed to inquire "*what did these lawyers do for me that they get \$188,000.00, in addition to Mr. Epting and Mr. Kefalos' \$408,000.00*". Without full disclosure of the division among lawyers, the lawyers failed to disclose to Linda's the excessiveness of the fee as to Mr. Howe and Mr. West. (Gibson Aff. at ¶ 3).

Furthermore, in April of 2012, the evidence shows Mr. Epting pressured Linda to pay the \$566,666.00 fee out of the Re/Max proceeds, against and modifying the express terms of the fee agreement, the lawyers were representing Linda in ongoing (lender) litigation on the same note and claim(s) under the same fee agreement. The lawyers did not disclose to Linda at disbursement of the \$566,666.00 that Linda would owe an additional 40% of any recovery in the

ongoing lender litigation. Had they disclosed their dual-fee intention at disbursement of the \$566,666.00, Linda would have been alerted then to the excessiveness of the fee, and not paid the fee. (Gibson Aff. at ¶ 4).

Thus, evidence exists the lawyers neglected to disclose the division among lawyers of the fee charged, the total fee due (after payment), how the fee would be calculated and the baseline value against which the fee would be determined. These specific acts and omissions are evidence of a violation of the South Carolina Rules of Professional Conduct, Rule 1.5, RPC, Rule 407, SCACR, *et. seq.*, and, so defendants' summary judgment should have been denied.

f. Plaintiffs' experts establish evidence of breach of the standard of care.

A plaintiff in a legal malpractice action must generally establish the standard of care by expert testimony. Smith v. Haynsworth, Marrion, McKay, & Geurard, 322 S.C. 433 472 S.E.2d 612 ((1996). The parameters of such testimony have, however, been the subject of much debate. Id.

Linda's two qualified expert witnesses' sworn testimony sets forth with specificity and detail the defendants' acts and omissions falling below the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession, including, inter alia, (i) charging a clearly excessive fee on the facts of this case; (ii) failing to make sure the client understood the fee arrangement; (iii) failing to pursue, or even offer, Galt a deed-in-lieu; (iv) neglecting to disclose the inchoate (unliquidated) nature of Galt's deficiency claim; (v) knowingly concealing Linda's set-off claims make \$1.7 million an unreasonable "dollar marker" to compute the fee; (vi) failing to disclose and give a credit for duplicative work; and, (vi) knowingly accepting an unearned (excessive) fee. (see, Aff. Swagart; Aff. Ballard). Exhibits G - H.

Here, Linda has met her burden to establish the standard of care with expert testimony, and submitted sufficient evidence of the lawyers' breach of the standard of care by expert deposition and affidavit testimony, corroborated by documents, witnesses and party testimony before the Court; and, so, defendants' summary judgment motion should have been denied.

IV. Evidence of genuine issues of material facts exist and therefore defendants' summary judgment should have been denied.

a. The Court erred finding the defendants' factual background undisputed.

Linda's Opposition and Cross Motion for Summary Judgment sets forth disputed facts inconsistent with the lawyers' "factual background" set forth in the Defendants' Memorandum. Despite the parties' agreement to exchange briefs prior to the hearing, lawyers' reneged and handed plaintiffs their motion just minutes before start of the dispositive hearing.³ Exhibit I.

The lawyers' "factual background" is the lawyers' story though statements of their counsel, not evidence. See, *e.g.*, Historical Charleston Found. V. Krawcheck, 313 S.C. 500, 443 S.E.2d 401 (Ct. App. 1994), (*stating* ...statements of counsel at summary judgment is not evidence); see also, Higgins v. Medical Univ. of S.C., 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (*stating* ...facts in order of court not evidence that supports motion for summary judgment).

The lawyers' attorney statements are but a mere characterization of facts and events; and, omit to provide any evidence to counter Linda's claims *sub judice* that the fee documents are ambiguous to determine the fee amount, that the lawyers failed to disclose the (true) inchoate nature of Galt's deficiency claim, and that the lawyers avoided costs and risks, resulting in an excessive fee.

³ Linda provided the defendants' a copy of Plaintiffs' memoranda a week in advance of the hearing.

By way of one example of disputed facts in the “factual background”, the lawyer’s write:

“On October 25, 2010, Mr. McVey sent a settlement letter demand to Attorney Epting. In the letter, he broke down the total outstanding debt alleging that Ms. Gibson owed over \$3 million on the loans and assigned value to the real properties of \$1,338,000.00, even though there was a dispute over the accuracy of the appraisals performed on the properties. He stated that this left a deficiency of \$1,697,678.10. He stated that his clients would accept a promissory note from Ms. Gibson for \$1.5 million with monthly payments of \$9,899.34 for twenty years to resolve the case.”

(Def’s. Memorandum in Support of Motion for Summary Judgment, p. 6, ¶ 2)

The lawyers present the October 25, 2010 letter as if its evidence of Galt’s “aggressive” litigation posture, it is not. The October 25, 2010 letter is not a “demand” for a \$1.7 million deficiency, as it might seem, but rather Galt’s reply to Mr. Epting’s October 21, 2010 email asking Galt to propose a “deed-in-reduction”⁴ Exhibit J. Galt had never even heard of the term “deed-in-reduction”. (Danhour Dep. 81: 14-24). A deed-in-reduction is recklessly opposite to Linda’s interests, nearly guaranteeing she would pay a deficiency. Galt purchased the note on July 15, 2010, and desired a deed-in-lieu-for-debt with the borrowers of the debt portfolio, and did waive deficiencies for all borrowers; but, with Linda, by October 21, 2010, as a result of the lawyers’ reckless conduct “*I mean, it’s tough to reach a settlement when you’re not getting anything from the other side...*”; “*at this point [in time], [I] I think we [Galt] were starting to think, you know – there’s – [I] I think that waiving the deficiency started to – become less likely a – a probable outcome. We’d still do it [deed-in-lieu] but I – I just think the [Galt’s] frustration was mounting at this point... [I]*”. (Danhour Dep. 116:1-25; 86:19-25; 87:1-4).

⁴ A “deed-in-reduction” is a form of deed-in-lieu wherein the lender takes the property, but retains all rights to collect on the deficiency.

The lawyers further mischaracterize the October 25, 2010 letter as purported evidence of Galt's "aggression" with a second mischaracterization of the November 3, 2010 letter, stating:

"On November 3, 2010, Attorney Epting wrote to Mr. McVey and rejected the October 25, 2010 settlement demand from Galt Valley on behalf of Ms. Gibson. The next day, Mr. McVey wrote "I must say that I am disappointed that your client does not want to attempt to negotiate a resolution in this matter. He continued on to say, "I will discuss the issue of a deed with my client; however, if you're client does not want to negotiate, I'm not sure why my client would accept a deed to the property."

(Def's. Memorandum in Support of Motion for Summary Judgment, p. 7, ¶ 3)

Linda never told her lawyers "not to negotiate" with Galt! Here, Mr. Epting, without disclosing to Linda Galt wants to negotiate, rejects his own (reckless) deed-in-reduction proposal, and doesn't even offer a deed-in-lieu solution. Evidence exists to show the lawyers never inquired if Galt would accept a deed-in-lieu-for-debt; but sought only a deed-in-reduction to comport with their "fee" terms of reducing (not eliminating) the debt.

These facts, and more, are inconsistent with the lawyers' factual background Galt was "aggressively" litigating a \$1.7 million deficiency against Linda; and, therefore, a fact question arises for trial whether Galt shared Linda's interest to expedite a deed-in-lieu-for-debt. If so, the lawyer's owed a duty to (i) promptly inquire of Galt's non-adversarial nature, (ii) disclosure to Linda to her options to offer a deed-in-lieu-for-debt; (iii) expeditiously negotiate the deed-in-lieu; and, (iv) for a reasonable fee.

The foregoing evidence directly contradicts the defendants' characterization of events and circumstances surrounding the fee, and directly supports Linda's claims in this action; and, so, the defendants' summary judgment should have been denied.

V. **Defendants' summary judgment motion should have been denied because the defendants failed to meet their initial burden to show no genuine issue of material fact exists for trial.**

a. The Court erred granting defendants' summary judgment because defendants' failed to meet their initial burden no evidence exists of Plaintiffs' claims.

Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank v. Schmauch, 354 S.C. 648, 659-60, 582 S.E.2d 432, 438 (Ct. App. 2003). There is no evidentiary support for the trial court's conclusion the lawyers met their initial burden of demonstrating the absence of a genuine issue of material fact. At the hearing, counsel for the lawyers set forth no evidence to counter Linda's excessive fee claim.

Here, the lawyers' failed to present any expert testimony, or evidence, in support of their defense the fee is reasonable; and, so plaintiffs' motion for summary judgment should have been granted.

On the points and authorities set forth above in the plaintiffs' motion for reconsideration, and the disputed evidence before the court, material to determine whether the fee reasonable, the defendants' summary judgment should have been denied.

**Plaintiffs' Cross Motion for
Summary Judgment Should Have Been Granted**

Plaintiffs respectfully request this Court reconsider its Order denying Plaintiffs' Motion for Summary Judgment on the grounds the Court erred in summarily dismissing consideration of the plaintiffs' summary judgment motion. Plaintiffs' base this motion on the grounds that (i) the fee documents are ambiguous; and, that (ii) any ambiguity in the fee documents must be construed against the lawyers who drafted the fee documents.

a. A clearly excessive fee contract is void ab initio.

Counsel has failed to produce any evidence the \$566,666.00 fee escapes excessiveness. Rule 1.5, RPC, Rule 407, SCACR, and South Carolina law clearly establishes the criteria to determine the reasonableness, or excessiveness, of a lawyer's fee. A lawyer cannot charge or collect a clearly excessive fee. This Court has authority to determine whether a lawyer's fee is excessive, or otherwise Order a jury trial the merits. If this Court finds Counsels' \$566,666.00 fee excessive, the fee contract(s) are void as a matter of public policy, and Linda is entitled to summary judgment on her cross-motion for summary judgment as a matter of law, inclusive of equitable restitution to restore Linda's losses. (Rule 1.5, RPC, Rule 407, SCACR; Swagart Aff. at ¶¶ 28-30).

The Court erred to consider the plaintiffs' summary judgment, stating:

THE COURT: "To me, if I deny the defendants' [summary judgment], there's no question it's a matter of I would deny the plaintiffs'. And I'm not going to grant the plaintiffs' motion for summary judgement because I think there are too many issues from that standpoint."

(Hearing Tr. p. 27, 21-25, Oct. 20, 2015)

Here, the Court erred summarily dismissing Linda's summary judgment motion. Rule 56, SCRCR, requires that the Court evaluate and decide each of two cross motions for summary judgment on their own merits, independent of each other dispositive motion. The Court "tied" its reason to deny the plaintiffs' summary judgement to whether it would grant or deny defendants' motion. Thus, Linda respectfully request the Court hear full argument, and extend full consideration, to the merits of her motion for summary judgment independent of defendants' motion.

b. No trier of fact could reasonably infer a “dual-fee” obligation under the “plain meaning” rule.

No trier of fact could reasonably interpret the plain meaning of the fee document(s) as constituting a *dual*-contingent fee arrangement because the documents, taken together, or individually, never once state, or even imply, two contingent fee obligations. The plain language of the April document states “*George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010.*” Exhibit A. Without disclosure of the “February 4th email”, the probative weight of the public’s common understanding of “contingency” as meaning “out of (actual) cash recovery far outweighs Counsels’ inwardly suggestion Linda agreed to pay \$566,666.00 out-of-pocket for “savings.” Conversely, if this Court finds the fee document(s) are unclear or ambiguous, this Court must Deny Counsels’ summary judgment and Order a trial on the merits.

c. Any ambiguity in the fee documents must be construed against the drafter(s).

An ambiguous contract must be construed against its drafter, particularly within the context of a tender fiduciary relation, as a matter of law. A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.” Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997).

Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.” *Id.* at

500 Myrtle Beach Lumber Co., Inc. v. Willoughby, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (quoting 17A C.J.S. Contracts § 324).

The Myrtle Beach Lumber Court noted further that “[t]he reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings.” Id. This is especially applicable to the attorney client relationship because an attorney owes his client fiduciary duties,” Spence v. Wingate, 395 S.C. 148, 160, 716 S.E.2d 920, 927 (2011), and he must “render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession.” Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (citation omitted).

Here, Counsel, occupying a fiduciary attorney-client relation, drafted and brought into existence the very the fee documents Counsel avers obligate Linda to pay a *dual*-contingent fee constituting both 33% of any “savings” or “recovery” in the Ameris matter. Exhibit A. Whereas Counsels’ fee documents are within the ambit of the law construing ambiguity against the drafter, this Court must construe any ambiguity as against Counsel.

d. If the court finds the fee document(s) ambiguous, the court must deny the defendants’ summary judgment and order a trial to determine the intent of the parties.

“A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.” Id. at 502-503 (citing Ellie at 94, 594 S.E.2d at 493; accord Bruce at 160, 127 S.E.2d at 441; Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 493 S.E.2d 875 (Ct.App.1997). “[A]n ambiguous contract is one capable of being understood in more senses

than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning.” Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 155–56, 161 S.E.2d 179, 181 (1968) (citation omitted). “Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.” Id. at 500 (citing Myrtle Beach Lumber Co., Inc. v. Willoughby, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (quoting 17A C.J.S. Contracts § 324)

“Whether a contract’s language is ambiguous is a question of law.” Id. at 503 (citing South Carolina Dep’t of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001); Southern Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77, 80–81, 562 S.E.2d 482, 484–85 (Ct.App.2002), *aff’d as modified*, 356 S.C. 444, 590 S.E.2d 27 (2003). Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. Id.; see also Charles v. B & B Theatres, Inc., 234 S.C. 15, 18, 106 S.E.2d 455, 456 (1959) (“[W]hen the written contract is ambiguous in its terms, ... parol and other extrinsic evidence will be admitted to determine the intent of the parties.”) (citation omitted). The determination of the parties’ intent is then a question of fact for the jury to determine. Id. at 503 (citing South Carolina Dep’t of Natural Resources, 345 S.C. at 623, 550 S.E.2d at 303.

If this Court determines that the language and wording of the fee documents at issue are ambiguous with regard to the question of whether Linda agree to a dual fee agreement as Counsel contends, then it should rule on the motions before it in accord with the principles of law stated above regarding contract language ambiguity.

First, there is no question that this Court has the option of ruling against Counsel because they drafted the fee documents and any ambiguity in their meaning with regard to the issue of dual fees should be resolved in favor of Linda and against Counsel because they "brought the agreement into existence" and should not benefit from their failure to draft a fee agreement that is clear and unambiguous. As noted above, the rules construing ambiguous provisions in a contract prepared by attorneys should be rigorously enforced because of well settled authority that an attorney owes a high level of care and judgment to his client to render professional services. Linda contends that the Lawyers breached their fiduciary duty to her by belatedly insisting that she owes them a second contingent fee for the lender claim.

The November document has no language or terms from which this Court, or any trier of fact, could infer or construe to mean both a *straight* and *reverse* contingent fee is due in the Ameris matter. To the contrary, the November document expressly states "...for their [lawyers] services, in the defense of and pursuit of a counterclaim... LAW FIRM shall receive a fee based upon the total recovery according to the following schedules: One-third (1/3) of all sums saved CLIENT from the deficiency amount claim by Ameris, in the amount of \$1,700,000.00." Exhibit A. Nothing in this document suggests that Linda will also be liable to pay, in addition to the above, another contingent fee of 40% of any recovery in the lender claim.

Since the issue of the fee documents' ambiguity is a question of law for this Court, that issue can only be resolved by denying Counsels' motion for summary judgment and sending this case to trial to permit the trier of fact to consider the evidence, and decide thereon. Only the introduction and consideration of such extrinsic evidence of the parties' intentions relating to the "contract" by a jury can resolve this question. Accordingly, this Court, should it determine that the fee documents are ambiguous, should deny the motions before it and mark the case for trial.

Relief Requested

Linda respectfully requests the Court reconsider, and alter or amend, its Order granting the defendants' summary judgment; and, grant a trial on all issues so triable. Linda requests this Court reconsider also its Order denying the plaintiffs' summary judgment, and grant a rehearing on plaintiffs' summary judgment motion on the merits. Linda request also the Court clarify its Order (dated January 4, 2016) setting forth findings of fact specially and state separately its conclusion of law thereon, pursuant to Rules 52 and 59(e), SCRCP, on the following issues raised for ruling:

- a. that the Ameris/Galt fee dispute encompasses both the lawyers' fee claims for a *straight-fee* of 40% of the lender claim (on appeal) and a *reverse-fee* of \$566,666.00 of the deficiency claim (paid), thereby declaring the rights of the parties under the Ameris/Galt fee arrangement entirely; and, finding sufficient evidence exists:
- b. that the lawyers' fee agreement ambiguous and unclear, and therefore for a jury to determine the parties' intent at execution of the agreement(s); and,
- c. that the lawyers' \$566,666.00 fee excessive in consideration of the surrounding circumstances; and,
- d. that the lawyers' \$566,666.00 fee excessive in consideration of the applicable standard of review Rule 1.5, RPC, Rule 407, SCACR; and,
- e. that the plaintiffs' set forth sufficient evidence to meet their applicable "mere scintilla of evidence" burden under the preponderance of the evidence standard; and,
- f. that the plaintiffs' set forth sufficient and competent expert testimony to establish the standard of care in the present case; and, that evidence exists the lawyers' breached the standard of care applicable to the plaintiffs' claims; and,

g. that the lawyers' are unjustly enriched by receipt of ill-gotten profits of the excessive fee; and,

h. that the plaintiffs' are entitled to a jury trial on their law claims; and,

i. that the lawyers' acts and omissions before the Court constitute a breach of fiduciary duty/legal malpractice; and,

j. that the plaintiffs' damages are a proximate result of the lawyers breach of fiduciary duty/legal malpractice; and,

k. that the plaintiffs' summary judgement motion should have been considered on its own merits, separate and apart from the defendants summary judgment motion; and, on the facts and law stated, should have been granted in favor of the plaintiffs; and,

l. that the burden of proof of whether a fee is reasonable is on the defendants, not the plaintiff; and,

m. that damages in favor of the plaintiffs in the amount of \$566,666.00, less the lawyers' quantum meruit value of services rendered, plus plaintiffs' reasonable attorney fees, costs and expenses prosecuting this excessive fee claim is a just; or, otherwise, mark the matter for trial.

Conclusion

The gravamen of Linda's complaint is her lawyers hijacked Galt's forgiveness of debt, the "beneficial result", as their "good lawyering". Linda has met the "mere scintilla" of evidence required to survive summary judgment, and therefore the defendants' summary judgment should have been denied.

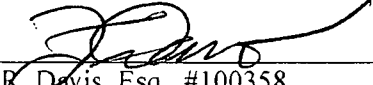
On the foregoing points and authorities, Linda requests the Court reconsider its decision to grant defendants' summary judgment; and, grant the plaintiffs' motion for summary judgment.

Linda request also the Court clarify its Order (dated January 4, 2016) setting forth findings of fact specially and state separately its conclusion of law thereon, pursuant to Rules 52 and 59(e), SCRCp.

Respectfully Submitted,

LINDA A. GIBSON, Individually, and in capacity
as TRUSTEE of THE PAUL WILLIAM
GIBSON FAMILY TRUST, and, HERITAGE
SEVEN, LLC, and, SEVEN OAKS
APARTMENTS, LLC, and, 3205 PALM
BOULEVARD, LLC,

By Their Counsel,

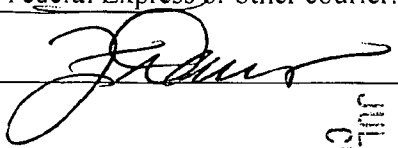

James R. Davis, Esq., #100358
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Daniel Island, SC 29492
843.642.8333 (office)
843.642.8784 (fax)
843.364.2218 (direct)
jim@jdavispc.com

Dated: January 14, 2016

CERTIFICATE OF SERVICE

13-4450

The undersigned hereby certifies that on January 15, 2016, a true copy of this document was served on all counsel of record and parties appearing pro se by email and by mailing a copy properly addressed with sufficient postage by U.S. Mail, Federal Express or other courier.



Mailing List:

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

2016 JAN 15 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs

vs.

EXHIBITS

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants

EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A.	Fee Documents
B.	Andrew Epting Deposition Excerpts
C.	Linda Gibson Deposition Excerpts
D.	Michael Danhour Deposition Excerpts
E.	September 23, 2010 Emails
F.	Linda Gibson Affidavit
G.	Harry Swagart Affidavit
H.	Desa Ballard Affidavit
I.	Davis letter to Cooke August 10, 2010
J.	Epting/McVey emails October 2010
K.	Hearing Transcript / Order (Summary Judgment)

EXHIBIT A

Sheri Towne

From: Epting Office
Sent: Thursday, February 04, 2010 5:04 PM
To: papa@btitelecom.net
Cc: George J. Kefalos; Andrew K. Epting; Sheri Towne; Oana Johnson
Subject: Linda Gibson

Sensitivity: Confidential

Categories: ADM

SENT ON BEHALF OF DREW EPTING:

Rob,

George and I have talked about how to move this forward with Linda. It seems we have agreed that, as to the litigation with all others than Ameris, it will be handled on a contingency of:

1. 33%;
2. 40% - if the case is not settled before it is placed on the active trial roster; or
3. 50% if an appeal is filed.

As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris). However, as to Ameris, George and I agree that our past work and work for the next 60 days, including filing the litigation, will be on an hourly basis so that if an early resolution with Ameris by discounting their debt can be achieved, our fee would be limited. I think we will know in two weeks if this is likely, but I have used 60 days as this can accommodate practical considerations.

In the event she pays an hourly fee and achieves a settlement as to any Defendant, the hourly fee will be deducted from the contingency.

In all events, she will pay our cost (depositions, filing fees, etc.) on an interim basis. Please consider this.

With kindest regards,
Drew

Roni Burk
Legal Assistant to Drew Epting
3 State Street, Charleston, SC 29401
p: 843.377.1871
f: 843.377.1310
office@epting-law.com

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this in error, or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

ANDREW K. EPTING, JR.
ATTORNEY AT LAW

April 7, 2010

Linda Gibson
133 Horse Trail Road
St. George, SC 29477

Re: Gibson, Linda – Matter #2042-001

Dear Linda,

So, let's supplement our fee agreement with this writing. You have asked that George and I help with the larger work out of your financial problems:

1. Return of the Richter fee;
2. Save your home and farm in St. George;
3. Keep creditors at bay on Daniel Island;
4. Ditto the shopping center;
5. The beach house: try to work you out of this without losing other assets. I am not, at this time, taking on defending this suit.

We agree that George and I will charge you \$400.00 per hour. I will use Rhonda McCraw, together with our paralegals, where necessary. We do not bill in increments of less than .2 of an hour, and do not bill cost except those billed to me by a third party or for travel. You agree to send a check every month for \$2,500.00, beginning at the time of the execution of this letter agreement, to be applied to these services. George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010.

Linda, as I told you, you have some serious problems here. I guarantee no results, but I will give you my best.

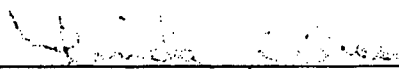
With kindest regards,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.

AKE:rb

AGREED:

 DATE: 4/26/10
Linda Gibson

ANDREW K. EPTING, JR., LLC

3 STATE STREET -- CHARLESTON, SC -- 29401

PHONE: (843) 377-1871 – FAX: (843) 377-1310 – E-MAIL: AKE@EPTING-LAW.COM

EPTING 74

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ATTORNEY-CLIENT CONTRACT

This attorney-client contract made this 18 day of November 2010, by and between Linda Gibson, hereinafter referred to as "CLIENT", and George J. Kefalos, Esq., Andrew K. Epling, Jr. Esq., Gedney Howe, III, Esq., and John West, Esq., hereinafter referred to as "LAW FIRM".

CLIENT hereby hires LAW FIRM to represent CLIENT in the defense of and pursuit of a counterclaim in a foreclosure action brought by Ameris Bank presently pending in Berkeley County, South Carolina, Case No. 2010-CP-08-2134. In that action, Ameris seeks to foreclose on a loan of approximately \$3,000,000.00 and seeks a deficiency judgment against CLIENT. Two parcels of land are subject to a mortgage and are valued at approximately \$1,300,000.00, leaving a potential deficiency judgment of \$1,700,000.00.

For their services, LAW FIRM shall receive a fee based upon the total recovery according to the following schedules:

- a. One-third (1/3) of all sums saved CLIENT from the deficiency amount claimed by Ameris, in the amount of \$1,700,000.00.

In addition to the fees above, CLIENT will be responsible for paying the costs and expenses reasonably necessary and incurred by LAW FIRM. LAW FIRM will advance these costs during the prosecution of the case but will deduct them at the conclusion of the case from CLIENT'S portion of the proceeds following the payment of attorney's fees.

This obligation of CLIENT under this Contract shall be secured by a Mortgage to Gedney Howe III and John West on that certain real estate in Berkeley County, identified on Exhibit A attached hereto. LAW FIRM shall be entitled to enforce the obligations under

this Contract by foreclosure of the Mortgage only after the expiration of twelve (12) months from the later of (i) the date of final judgment (including final appeal) entered in a case pending in Charleston County Court of Common Pleas, captioned *Linda A. Gibson, et al v. Rolando V. Villavicencio, et al.*, Case No. 2008-CP-10-4282, or (ii) the date of final judgment (including final appeal) entered in a case pending in Berkeley County Court of Common Pleas, captioned *Galt Valley, LLC v. Linda A. Gibson, et al*, Case No. 2010-CP-08-2134.

Charleston, S. C.

Charleston, S. C.

Charleston, S. C.

Charleston, S. C.

Moncks Corner, S. C.

CLIENT

Linda Gibson
Linda Gibson

LAW FIRM

BY: George J. Kafalos
George J. Kafalos

BY: Andrew K. Epting, Jr.
Andrew K. Epting, Jr.

BY: Gedney Howe, III
Gedney Howe, III

BY: John West
John West

EXHIBIT B

1 Q. What do you mean by "recovery"?

2 A. In the event that we brought a claim
3 and washed the deficiency out, and there were other
4 tort liabilities on the bank's part, and we got a
5 verdict, in addition to having saved her money off
6 the face amount of debt, such as happened in this
7 case.

8 Q. Is it your testimony, then, that by the
9 word "recovery" you mean any recovery in the lender
10 claim; and by "any savings" you mean any amount you
11 save Linda as against the deficiency claim?

12 A. That's what was discussed with Mr. Papa
13 and that's what is confirmed here.

14 Q. So you had essentially two contingency
15 fees in this fee arrangement; would that be
16 correct?

17 A. In the event that Ms. Gibson was
18 fortunate enough to get the deficiency forgiven and
19 in the event that she was fortunate enough to wind
20 up with a substantial recovery against the bank, a
21 punitive award, for example, the fee would apply as
22 to the deficiency and the fee would apply as to the
23 recovery. And it would be a contingency fee of a
24 third, 40 percent, or 50 percent.

25 That's what this says.

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1 You resolve cases by making people do
2 things they don't want to do; making them think
3 that you know something they don't know. And
4 indeed, we did know something they didn't know.
5 And we used that, the jurisdiction, the team
6 approach, our credibility, and that's how we
7 defeated the claim on the note.

8 Q. So it wasn't any particular work
9 product that was produced; rather, it was the
10 reputation of the attorneys involved and their
11 standing in the community?

12 A. All the above.

13 MR. COOKE: Object to the form of the
14 question.

15 THE WITNESS: All of the above.

16 BY MR. DAVIS:

17 Q. Well, I'm just trying to understand.

18 If you're producing work product to
19 defeat a deficiency claim and you're producing work
20 product to prosecute a lender claim, how is that
21 work product different on the same note, mortgage,
22 and property?

23 A. Well, I just explained how it was
24 different. But I will say, is there a crossover?
25 Sure, there's crossover.

EXHIBIT C

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 DEPOSITION OF LINDA A. GIBSON

5 LINDA A. GIBSON, Individually, and in capacity as
6 TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST;
7 HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
8 and 3205 PALM BOULEVARD, LLC,

9 Plaintiff,

10 vs. CASE NO. 2013-CP-10-4450

11 ANDREW K. EPTING, JR., LLC; GEORGE J. KEFALOS,
12 P.A.; GEDNEY M. HOWE, III, P.A.; and JOHN S.
13 WEST, ATTORNEY-AT-LAW, LLC,

14 Defendants,

15 DEPONENT: LINDA A. GIBSON

16 DATE: MAY 7, 2015

17 TIME: 10:00 AM

18 LOCATION: BARNWELL WHALEY
19 CHARLESTON, SOUTH CAROLINA

20 REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
21 NCRA CERTIFIED MERIT REPORTER
22 CLARK & ASSOCIATES, INC.
23 CHARLESTON, SC 29415
24 843-762-6294
25 WWW.CLARK-ASSOCIATES.COM
 Lynn@clark-associates.com

Gibson, et al vs. Epting, et al
Motions Hearing
October 20, 2015

1 THE COURT: I'm really not -- from the standpoint
2 -- let me just tell you this. I'm not so concerned
3 about whether or not work was done, whether or not they
4 did what they offered to do. I'm really focusing more
5 on what was the agreement, and, if so, is there a part
6 in there -- are there parts of the agreement, that are
7 not clear, that will require what was the meeting of the
8 minds for a contract suit? The part about earning the
9 fee, that's not a -- that's not a concern.

10 MR. COOKE: Right.

11 Your Honor, I would submit, too, that this issue
12 of fee that they're entitled to for the Ameris work,
13 that's not even before the Court --

14 THE COURT: No, I agree with you.

15 MR. COOKE: -- that hasn't even been affirmed yet.
16 They haven't claimed a fee yet.

17 THE COURT: I agree with you.

18 MR. COOKE: And so we're just talking about the
19 fees that they already earned.

20 THE COURT: Obviously, from the standpoint -- you
21 have cross-motions for summary judgment. To me, if I
22 deny the defendants', there's no question it's a matter
23 of I would deny the plaintiffs'. And I'm not going to
24 grant the plaintiffs' motion for summary judgment
25 because I think there are too many issues from that

1 2009?

2 A. I didn't even know about it then. I had
3 not seen this and I don't remember Rob discussing
4 it with me. And I don't remember George or Drew
5 saying anything to me about that.

6 Q. How did you expect to pay George or
7 Drew?

8 A. Well, I guess just like I had done with
9 the other lawyers. I mean I've gone through
10 several lawyers now, and I would pay Rob -- I
11 paid -- I did a small retainer and then he billed
12 me each month. Larry Richter was a retainer and
13 he never billed me anything.

14 Q. Larry Richter was going to be on a
15 contingent fee as well because he was suing
16 Rolando and Re/Max.

17 A. That's right, uh-huh.

18 Q. But do you understand that the goal was
19 to get money to have Rolando and Re/Max actually
20 pay you money, correct?

21 A. Yes, to reimburse me for -- yes.

22 Q. So there would be a fund of money or a
23 corpus, as it's referred to here, from which a
24 fee could be -- an attorney's fee could be taken.
25 Do you understand that?

1 A. Yes. Yes.

2 Q. But then do you understand what he says
3 here, which is that, the most significant benefit
4 to be had from the case might be limited to a
5 forgiveness of the loan.

6 Do you know what he means by that?

7 MR. DAVIS: Object to the form.

8 A. Yeah. I mean I -- you know, I
9 understand all of this from having listened to
10 all of this many times now.

11 Q. Right. But I want to try to take you
12 back to 2009 and figure out what you were capable
13 of understanding then. And I know you've
14 explained you did not get this e-mail, but did
15 you understand that the end goal of retaining a
16 lawyer to help you with the Ameris situation
17 would be to reduce the debt or eliminate the debt
18 that you owed to Ameris, not to -- not to get
19 money from Ameris like you did with Re/Max -- or
20 were trying to do from Rolando or Re/Max. Did
21 you understand that difference?

22 A. Well, what I understood was that Re/Max
23 and this agent had done a lot of things wrong and
24 that -- and had gotten me into this deal and the
25 bank went along with it. So I felt that the

1 bank -- all of them were at fault. All of them
2 made money off of me. All of them profited from
3 my decision to buy these apartments. And I felt
4 they were in the wrong and that -- it didn't even
5 enter my mind that I would have to come up with
6 money. So you're saying -- I'm not quite -- when
7 I went -- when I talked to a lawyer, it was like
8 I was expecting to get money back from what
9 people had taken from me and overcharged me and I
10 had been paying monthly interest from all avenues
11 that I had income. And this -- it was wrong what
12 these people had done to me.

13 So, no, it never entered my mind that I
14 was going to have to come up with money other
15 than paying either like an hourly wage or a
16 contingency, as I know contingency is like a
17 lawyer takes a case and if he recovers something,
18 then I pay -- you know, he takes a third of it.
19 That's my conception of contingency. That's how
20 I -- I mean I have never been in a situation like
21 this. So I've never had to have a lawyer to do
22 that. The only other case it was was -- correct
23 me -- on my house, just prior to this it was
24 after my husband's death there was a problem with
25 the foundation. And that ended up where I got a

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, individually, and in
capacity as TRUSTEE OF THE PAUL WILLIAMS
GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC;
SEVEN OAKS APARTMENTS, LLC; and 3205
PALM BOULEVARD, LLC,

Plaintiffs,

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K.
EPTING, JR.; GEORGE J. KEFALOS, P.A.;
GEORGE J. KEFALOS; GEDNEY M. HOWE, III,
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST,
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,

Defendants.

STATE OF FLORIDA)

COUNTY OF DUVAL)

DEPOSITION OF

MICHAEL DANHOUR

DATE TAKEN: Wednesday, September 9, 2015

TIME: 10:00 a.m. - 3:25 p.m.

PLACE: 233 East Bay Street, Suite 1010
Jacksonville, Florida 32202

Examination of the witness taken before:

CHINA COCHRAN, RPR
FIRST COAST COURT REPORTERS
2442 ATLANTIC BOULEVARD
JACKSONVILLE, FLORIDA 32207 (904) 396-1050

1 existing recorded mortgage, from Ameris Bank to
2 Galt Valley.

3 Q Does this document evidence Ameris
4 Bank's conveyance and assignment of the note and
5 mortgage from Ameris Bank to Galt Valley?

6 A It does. And the assignment of rents
7 and leases or leases and rents.

8 Q And that's for the Gibson property; is
9 that correct?

10 A That's correct.

11 Q Okay. So in July of 2010, when Galt
12 Valley acquired this property by way of this
13 assignment, Exhibit No. 91, did Galt Valley -- or
14 was Galt Valley seeking a deficiency or seeking
15 to get a deficiency against Ms. Gibson?

16 A No. That's not our general business
17 practice. Our -- we would have been the most
18 happy with the next day executing a deed in lieu
19 of foreclosure and being able to get fee simple
20 control of the real estate.

21 Q Okay. And did -- was Galt Valley aware
22 -- or is Galt Valley aware -- strike, please.

23 In July of 2010, when Galt Valley
24 acquired the note and mortgage on the Gibson
25 properties, was Galt Valley aware that Galt

1 front-to-back explanation of what we do.

2 Q Well, I'll represent to you that the
3 lawyers in this case, the defendants, have taken
4 the position that Galt Valley never would have
5 forgiven the deficiency for Ms. Gibson but for
6 their good lawyering. Would you agree with that
7 characterization of the lawyers?

8 MR. BOWERS: Object to the form.

9 A No.

10 Q Why not?

11 A Well, I mean, there's probably ten
12 different answers to that. I mean, if -- if it
13 was their good lawyering, what happened in
14 Florida, I mean -- you know what I mean? Like
15 other lawyers get achievable results all the time
16 on the other side of the table from us.

17 Q Well, you testified you didn't even know
18 Mr. Howe; is that correct?

19 A Mr. Who?

20 Q Mr. Howe. Mr. Gedney Howe.

21 A No. No, I didn't know him.

22 Q And did Galt Valley know Mr. John West?

23 A No.

24 Q In your opinion did the defendants in
25 this case, the lawyers, did their good lawyering

1 influence Galt's decision to waive the deficiency
2 in this case?

3 MR. BOWERS: Object to the form.

4 A No. No. I mean, I think the -- the --
5 I believe we could have reached a similar
6 settlement sooner. I think that some of the
7 frustrations that we had were certainly evidenced
8 in our first settlement offer that we made to
9 them with a 1.5 million dollar note and, I think,
10 even furthermore, the emails that you've seen and
11 the delay of waiting for a response on our final
12 settlement offer.

13 Q When you say you think that the parties
14 could have reached a settlement offer earlier,
15 can you explain to me again -- I'm sorry -- why
16 you don't think you were able to reach a
17 settlement offer earlier?

18 A I just think it's the people part of it.
19 I could never sit down -- or other members of
20 Galt Valley could never sit down and talk to
21 Linda.

22 Q Why?

23 A 'Cause she refused to do so.

24 MR. DAVIS: I'm going to suspend any
25 further questioning and ask you to answer

1 distressed paper and you know it's distressed.

2 Q Have you ever heard the term non-holder
3 in due course?

4 A Yeah.

5 Q Was Galt Valley a non-holder in due
6 course, if you know?

7 MR. BOWERS: Object to the form.

8 A Yeah. I think we were a holder in due
9 course, but I -- I don't recall.

- 10 Q It's a -- it's a legal technicality.
11 Did Galt Valley know when it acquired
12 the paper that the paper was nonperforming?

13 A Yes.

14 Q Have you ever heard the term deed in
15 reduction?

16 A I have now, yeah. Yeah, I've heard it.

17 Q Before this --

18 A Before this litigation I had not heard
19 of the term.

20 Q You had never heard of the term deed in
21 reduction before?

22 A No.

23 Q Do you know what a deed in reduction
24 purports to be?

25 A My understanding of it -- my

1 willingness or not to negotiate?

2 A Clearly, we didn't think she -- she
3 wanted to negotiate. I think -- I think the --
4 this was a point of big frustration for us,
5 because the deed-in-reduction concept was brought
6 up and we -- we pull out something and kind of
7 expect them to say, Well, here's where we're at,
8 which is kind of what we requested back in
9 October. And so, you know, it -- it's tough when
10 -- I mean, it's tough to reach a settlement when
11 you're not getting anything from the other side.
12 I mean, again -- and I think here in this letter
13 -- unless I'm incorrect, my recollection was, you
14 know, we're going to reissue the deed to the
15 apartment complex. And so at no point did they
16 kind of come off the position that said, We'll
17 give you the apartment complex and that's kind of
18 it.

19 Q In November -- the first week in
20 November of 2010, did you know who Mr. John West
21 was?

22 A Not to my knowledge, no.

23 Q And November 4th of 2010, did you know
24 Mr. Gedney M. Howe?

25 A Not to my knowledge, no.

1 A Yeah. Well, clearly, every day that we
2 couldn't execute our, you know, turnaround of the
3 property was we -- we weren't able to, one,
4 recoup our investment or, two, make a profit.

5 Q Would it be fair to say that Galt's
6 desired result was a deed in lieu to gain control
7 of the property by fee simple so that Galt could
8 proceed with its restoration or rehabilitation of
9 the property?

10 MR. BOWERS: Object to the form.

11 A Galt definitely wanted the properties
12 back, definitely wanted the properties back.
13 Deed in lieu of foreclosure is the easiest manner
14 to get it.

15 Q And when you say deed in lieu of
16 foreclosure, does that mean a deed in lieu of
17 foreclosure with a full deficiency or any
18 deficiency?

19 A At this point, October 21st, you know, I
20 think we were starting to think, you know,
21 there's -- there should be -- maybe should be
22 some -- I mean, I think that -- the waiving the
23 deficiency started to -- to become less likely a
24 -- a probable outcome. We'd still do it but I --
25 I just think the frustration was mounting at this

1 point, and the economics were changing where we
2 -- we started to, again, think that -- that maybe
3 that was, to protect our returns, a better
4 course, for what that's worth.

5 Q Were you aware that -- were you aware of
6 who Ms. Gibson's counsel was?

7 A Andrew -- or Drew Epting and George
8 Kefalos. Yeah.

9 Q Were you aware that Mr. Epting was in
10 France between the middle of August of 2010 and
11 September of 2010?

12 A I wasn't sure of the exact dates, but
13 yeah, I mean, I know he was in Europe for -- for
14 a period of time. That was close to a month or
15 somewhere thereabout.

16 Q Do you know when Mr. Epting returned
17 from France?

18 A I don't recall.

19 Q Okay. Reading the second -- the second
20 line in this email chain, it says -- and this is
21 an email from Mr. Epting replying to Mr. McVey.
22 It states, quote, Ian, comma, where is the
23 proposal for a deed in reduction?

24 Did I read that correct?

25 A Yes.

EXHIBIT E

George J. Kefalos P.A.

ATTORNEY AT LAW
September 23, 2010

VIA E-MAIL ONLY

John S. West, Esquire
Attention: Legal Department
207 Carolina Avenue
Moncks Corner, SC 29461

RE: Galt Valley, LLC v. Heritage Seven, LLC
Case No. 2010-CP-08-2134

Dear John,

Following up on our telephone conversation, Drew & I would like to associate you to assist us in defending a foreclosure and pursuing a counter claim against the bank.

I am enclosing for your review a copy of (1) the foreclosure complaint, (2) our answer and counter claim, (3) the bank reply to counter claim and (4) the bank's amended motion for the appointment of a receiver. The bank seeks the appointment of a receiver for two properties, an apartment complex and a parcel of land containing a cell tower.

Our client has tendered title of the apartment complex to the bank without condition. We have not asked the bank to accept the deed in lieu of foreclosure. Our position is simply that our client should not be required to pay the cost of a receiver as the bank has the right to step in and take over the management of the property and collect the rents.

We oppose the appointment of a receiver for the cell tower property (which is also collateral for the loan) because we have a legitimate claim against the bank for lender liability. We feel very strongly about this as we have bank documents whereby bank officers acknowledge the bank mismanaged the construction loan and allowed the property manager to steal from our client and resulted in the failure of the project.

It would be very helpful if you could obtain a postponement of the receiver hearing for about a week. During that time, Drew and I will have an opportunity to bring you up to speed on this most interesting file.

GEORGE J. KEFALOS, PA
Very truly yours,

s/George J. Kefalos

George J. Kefalos

3 State Street • Charleston, SC 29401
Tel: (843) 722-6612 • E: george@kefaloslaw.com • Fax: (843) 377-1310

EPTING 2506

ANDREW K. EPTING, JR., LLC
ATTORNEYS AT LAW

September 23, 2010

VIA FACSIMILE: (843) 719-4397 & FIRST CLASS MAIL

The Honorable Robert E. Watson
Master in Equity
PO Box 1163
Moncks Corner, SC 29461-1163

Re: Galt Valley, LLC v. Heritage Seven, LLC
Case No. 2010-CP-08-2134

Dear Judge Watson,

The Plaintiff has filed two motions to appoint a receiver for the properties the subject of this foreclosure action. I received Plaintiff's first motion on August 23, 2010 and the second was received by my office this Tuesday, September 20, 2010.

Last week, Plaintiff indicated that it would be requesting an expedited hearing and arranged for the motions to be heard by you on September 29, 2010.

Earlier this week, I consented to the expedited hearing, believing that George Kefalos, who is handling another case involving the real estate agent for one of the properties at issue and who is peripherally involved in this matter, would be able to attend the hearing on my behalf as I am currently out of the country. However, as Plaintiff has now filed a second motion and is subpoenaing witnesses to testify at the hearing, neither George nor I feel comfortable with the hearing going forward on the 29th as George's involvement in this matter has been very limited.

Therefore, I respectfully request that the hearing on Plaintiff's motions be postponed for a week to allow me to return to the States and attend the hearing myself.

With kindest regards,

ANDREW K. EPTING, JR., LLC

S/Drew Epting

Andrew K. Epting Jr.

AKEr:b

cc: George J. Kefalos, Esq.
Ian D. McVey, Esq.
John S. West, Esq.
Gedney M. Howe, III, Esq.
Robert E. Stepp, Esq.

ANDREW K. EPTING, JR., LLC

3 STATE STREET -- CHARLESTON, SC -- 29401

PHONE: (843) 377-1871 - FAX: (843) 377-1870 E-MAIL: MNE@EPTING-LAW.COM

EXHIBIT F

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs

: **AFFIDAVIT OF LINDA GIBSON**

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants

AFFIDAVIT OF LINDA A. GIBSON

I, Linda A. Gibson, do hereby depose and say the following:

1. I am the plaintiff in the above captioned action, and the sole member and party in interest of the above named plaintiff entities. In that capacity, and in capacity herewith, I am fully familiar with the facts and circumstances stated in the plaintiffs' Complaint, as amended, and as this motion for reconsideration. I am competent to testify as to the facts and circumstances stated therein and before this Court on personal knowledge.

2. The lawyers never disclosed to me (i) Galt's inchoate deficiency claim, (ii) the lawyers' "deed-in-reduction" versus "deed-in-lieu" strategy, (iii) the lawyers' unwillingness to meet with Galt; (iv) that Galt requested a lawyer-supervised settlement conference; (v) that the lawyer's rejected (on Linda's behalf) Galt's written request to meet with Linda by lawyer-supervised settlement conference; and, (vi) that Linda's set off claims and the lawyers' duplicative work make \$1.7 million an unreasonable base line valuation to determine the fee. Had I known all this information, I would never have agreed to pay my lawyers \$566,666.00. The lawyers presented to me that my case was a long shot, that I would lose my house in St.

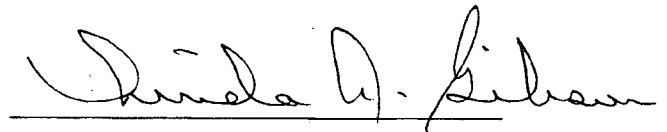
George, that I was in a financial storm facing losing everything. My lawyers told me that their "good lawyering" and the mere presence of these intimidating attorneys brought Galt Valley to waive the deficiency. I only learned after I paid the fee that in fact Galt Valley had been trying to reach me to settle my case, even that Galt "offers cash for keys" to expedite their desired deed-in-lieu for debt.

3. My lawyers didn't disclose to me that Mr. Howe and Mr. West were to receive \$94,000.00 each for their involvement in the matter. If I had known that, I would have asked some hard questions, like "*what did these lawyers do for me that they get \$188,000.00, in addition to your \$408,000.00*". Without knowing the extent of each lawyers' large fee, I didn't think to inquire further. I would have asked more questions, because at the time I had never met Mr. Howe, and only heard of Mr. West, and I was unaware of the extent of my involvement in their case. Turns out, Mr. Howe had very little involvement for his \$94,000.00, and Mr. West's involvement was appearing at an appointment of receiver hearing, for \$94,000.00 of my money. Had I known at the time I paid the fee that these lawyers were getting nearly \$200,000.00 for their limited involvement, I never would have agreed to pay the fee.

4. In April of 2012, when Mr. Epting pressured me to pay the \$566,666.00 fee out of the Re/Max proceeds, against my wishes, the lawyers were representing me still in my ongoing (lender). They told me that if I didn't pay the \$566,666.00, then Mr. Howe and Mr. West would lose interest in going further prosecuting my lender claim. So I paid the fee. Had I known when I paid the fee that I would owe an additional 40% of any recovery in the ongoing lender litigation, I would have realized the fee was excessive then, and I would never have paid them that \$566,666.00.

Affidavit of Linda Gibson 1/12/2015

Signed this _____ day of January, 2019.

A handwritten signature in cursive script, reading "Linda A. Gibson", written over a horizontal line.

Linda A. Gibson

EXHIBIT G

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-10-4450

LINDA A. GIBSON, Individually, and in)
capacity as TRUSTEE OF THE PAUL)
WILLIAM GIBSON FAMILY TRUST;)
HERITAGE SEVEN, LLC; SEVEN)
OAKS APARTMENTS, LLC; and 3205)
PALM BOULEVARD, LLC,)

Plaintiffs,)

v.)

ANDREW K. EPTING, JR., LLC;)
GEORGE J. KEFALOS, P.A.; GEDNEY)
M. HOWE, III, P.A.; and JOHN S. WEST,)
ATTORNEY-AT-LAW, LLC,)

Defendants.)

AFFIDAVIT NO. 2 OF
HARRY A. SWAGART, III

PERSONALLY APPEARED before me, HARRY A. SWAGART, III, who, first being
duly sworn, deposes and states as follows.

1. I am retained as Plaintiff's expert on professional malpractice and breach of
fiduciary duty.

2. I submit this affidavit in support of Plaintiff's Rule 59(e) Motion for
Reconsideration.

3. When I was informed that Defendants' Motion for Summary Judgment was granted
solely by a Form 4 Order with no written explanation of the grounds upon which the Court relied,
I was very surprised.

4. In *Porter v. Labor Depot*, 372 S.C. 260, 568, 643 S.E.2d 96, 100 (Ct.App. 2007),
the Court of Appeal articulated the issues which arise when a motion for summary judgment is
granted by a simple form order:

On appeal from the grant of summary judgment, an appellate court must determine whether the trial court's stated grounds for its decision are supported by the record. It is our duty to undertake a thorough and meaningful review of the trial court's order and the entire record on appeal. Where, as here, the trial court fails to articulate the reasons for its action on the record or enter a written order outlining its rationale, we simply cannot perform our designated function.

However, not all situations require a detailed order, and the trial court's form order may be sufficient if the appellate court can ascertain the basis for the trial court's ruling from the record on appeal. *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct.App. 2002). The *Porter* decision was more recently quoted approvingly by the South Carolina Supreme Court on *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 526, 753 S.E.2d 428, 433 (2014).

5. In this case there are a number of issues which, if decided against Plaintiff, may arguably have supported summary judgment. The problem is that there is nothing in the form order or in the trial record which even remotely suggests, or even allows an inference of, the trial court's grounds for summary judgment.

6. As is widely known, the *general* duty of care for attorneys in South Carolina is that "attorneys are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession." *Holy Lock Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 26, 531 S.E.2d 282, 285(2000). However, as court rules and case law, reflect, there are numerous specific standards of care which arise from this general standard. As I stated in my earlier affidavit, it is my opinion that Defendants in this case violated specific duties of care in numerous particulars, to include:

- a. violating their non-delegable duties of care by failing to insure that the fee arrangements complied with Rule of Professional Conduct 1.5(a);
- b. violating their non-delegable duty to disclose all material information regarding the fee arrangement and Plaintiff's case;

- c. charging a clearly unreasonable excessive, unearned fee;
- d. violating their duty to insure that the fee arrangement was fair, reasonable and clearly understood by Plaintiff;
- e. violating their duty to insure that Plaintiff was properly advised by Papa and Tecklenburg, which she was not;
- f. failing to obtain Plaintiff's clear counseled consent that they would not be legally responsible for failures by Tecklenburg and Papa to properly advise her;
- g. failing to pursue an early, deed-in-lieu resolution of the alleged debt;
- h. by failing to discuss with Plaintiff the general likelihood of recovery by Galt; to disclose to her the likely size of recovery, or to disclose the availability of alternative fee arrangements and their implications;
- i. charging a reverse contingency fee which violated RPC 1.5 in numerous respects as stated in ¶ 23 of my first affidavit;
- j. failing to act diligently in order to obtain an accurate appraisal of Plaintiff's properties;
- k. acting in their own self interests as stated in ¶ 26 of my First Affidavit; and
- l. charging fees based upon negligent computation errors.

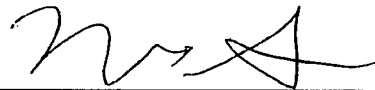
7. It must be remembered that in reality there are three separate claims supported by the pleadings and the record:

- a. professional negligence;
- b. breach of fiduciary duty (does not require a violation of the standard of care in order to be actionable); and

c. absence of an enforceable fee agreement requiring restitution of Plaintiff's funds.

I cannot determine from the Form IV whether each claim was addressed by the Court.

FURTHER AFFIANT SAITH NAUGHT.



Harry A. Swagart, III

Sworn to Before Me This 14th
Day of January, 2016.



Notary Public of South Carolina

My Commission Expires: 9-23-2021

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs :

vs. :

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants :

AMENDED¹
SUPPLEMENTAL AFFIDAVIT
OF DESA BALLARD

I, Desa Ballard, do hereby depose and say:

(1) Linda Gibson retained me to serve as an expert in this action. I have examined the pleadings, papers, affidavits, deposition transcripts and discovery supplied to me by the plaintiff, and examined the applicable law relevant to the case; and, therefore I am familiar with the facts and circumstances of this case, and applicable law, and if called upon to do so, I am competent to testify based on personal knowledge of the facts of this case, as gleaned from the file materials, applicable South Carolina law and the professional standard of care in the practice of law. I have previously submitted affidavits, and the opinions set forth in my previous affidavits is incorporated into this supplemental affidavit, including but not limited to my affidavit dated October 14, 2015.

(2) As I said previously, the standard of care in South Carolina in an attorney malpractice actions is that lawyers are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession; this standard is statewide.

(3) In my professional opinion, in addition to my prior affidavit testimony, the lawyers, each individually and severally, breached the South Carolina professional standard of care by their following acts and omissions:

(i) Defendants failed to prepare and obtain a clear and unambiguous contingent fee agreement as it related to the Galt Valley claim, and the Ameris counterclaim, in accordance with the Rule 1.5(c), RPC, rule 407, SCRAP, setting forth the method by which the fee was to be

¹ I believe my affidavit dated October 14, 2015 includes the opinions set forth herein and, to that extent, this affidavit does not contain additional opinions beyond those already expressed and is therefore not new evidence.

eb

determined, the percentage or percentages that shall accrue to the lawyer, in the event of settlement, trial or appeal, litigation or other expenses to be from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(ii) Specifically, the April 27th letter agreement does not specify the amount the method by which the fee is to be determined, the percentage or percentages that shall accrue to the lawyer, in the event of settlement, trial or appeal, litigation or other expenses to be from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(iii) While I understand the lawyers' testimony to be that they attempted to incorporate by reference a prior email (February 4th email), the lawyers should have made sure that Linda had a copy of this email, or its terms, at execution of the April agreement and to insure that she understood it and the new agreement they were asking her to sign. The lawyers' failure to give Linda a copy of the February 4th email at execution of the April agreement falls below degree of skill, care, knowledge, and judgment usually possessed and exercised by members of South Carolina bar standing in the lawyers' place at the time of execution of the April agreement. A lawyer exercising professional judgment commensurate with the standard of care would have made certain that Linda had a copy of the February 4th email, understood the terms of the fee agreement, including the method by which the fee is to be determined, the percentage or percentages that shall accrue to the lawyer, in the event of settlement, trial or appeal, litigation or other expenses to be from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated; and, therefore my opinion is the lawyers' breach the standard of care they owed to Linda. In short, an ambiguous fee agreement, of the nature of the April letter agreement falls below the standard of care of the practice of law in South Carolina.

(iv) The November 8, 2010 fee agreement was also a deviation from the standard of care. This was an attempt to enter into a fee agreement for the deficiency judgment when the only existing fee agreement that did exist was ambiguous at best, and would have to be construed in Linda's favor. They also failed to disclose to Linda that they were having her sign this fee agreement done after an agreement to waive the deficiency judgment had been made by counsel for Galt Valley.

(v) The defendants' computation of the \$566,666.00 fee based on the (maximum) \$1.7 million dollar "deficiency" is a breach of the standard of care because the lawyers knew that they did very little work for the large fee, and the lawyers knew, or should have known, that they didn't disclose to Linda the inchoate (unliquidated) nature of the deficiency. A lawyer exercising professional judgment commensurate with the standard of care would have made certain that Linda was aware of the inchoate (unliquidated) nature of the deficiency, and that therefore the base line value to compute the fee may have been something less than \$1.7 million dollars. The defendants neglect to fully disclose the nature of the deficiency falls substantially below the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of South Carolina bar standing in the lawyers' place at the time of non-disclosure, and therefore is a breach of the standard of care.

(vi) The lawyers' \$566,666.00 fee charged Ms. Gibson is a breach of the standard of care under the facts of paragraphs (ii) and (iii) above; specifically, a South Carolina lawyer exercising professional judgment commensurate with the standard of care would not have accepted a \$566,666.00 fee under the facts of this case, but rather reduced their fee to a reasonable level,



based on the time involved, as guided by Rule 1.5, RPC, Rule 407, SCRAP. When Mr. Epting got \$209,000.00, and Mr. Kefalos accepted another \$209,000.00, and Mr. West accepted another \$94,000.00, and Mr. Howe accepted another \$94,000.00, totaling a \$606,000.00 fee, each knowing Linda was paying this large fee, they each breached the standard of care which requires that they not charge a client an excessive fee. A South Carolina lawyer exercising professional judgment commensurate with the standard of care would not have charged an excessive fee. The defendants acceptance of an excessive fee falls substantially below the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of South Carolina bar standing in the lawyers' place at the time they accepted the \$566,666.00 fee, and therefore breached of the standard of care.

The foregoing is based on my professional expert opinion having reviewed the facts, evidence, applicable law, and my experience practicing law in South Carolina.

Sworn and signed under the pains and penalties of perjury this 14th day of January, 2016.


Desa Ballard

Sworn to before me
his 14th day of January, 2016


Notary public for South Carolina
My commission expires: 11-28-2017

EXHIBIT I

J. DAVIS LAW FIRM, P.C.

ATTORNEYS AT LAW

BB&T PLAZA, SUITE 211B
MAIL STOP BOX #16
234 SEVEN FARMS DRIVE
CHARLESTON, SC 29492

6 CANONICUS LANE
P.O. BOX 2052
NANTUCKET, MA 02554

(800) 983-0455

JAMES R. DAVIS, ESQ.
ADMITTED: SC, MA
AMPARO DEMORETA

FACSIMILE: (800) 983-0153

jim@jdavispc.com
DIRECT: 843.364.2218

BY EMAIL AND U.S. MAIL

August 10, 2015

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

Re: Linda A. Gibson, *et. al.* v. Andrew K. Epting, *et. al.*
Civil Action: 2013-CP-10-4450
Our File No.: 2013005

Dear Dawes,

This confirms our telephone conference on Friday, August 7, 2010, during which the parties agreed to exchange with each other and with the Court our respective memoranda of law in support and defense of our respective cross dispositive motions in the interest of illustrating with clarity the issues for the Court, and providing same to the Court, in advance of the dispositive motion hearing.

Plaintiffs' Notice of Motion and Motion in Opposition and Cross Motion for Summary Judgment is attached. Our office will forward to you our memorandum of law this week, and we look forward to receiving the lawyers' memorandum of law in support of their motion this week.

Separately, please advise whether you are able to consent to plaintiffs' Rule 15 Motion to Amend their Complaint; and, if not, kindly call me regarding same so that we may discuss the motion prior to our filing. As always Dawes, it has been an ongoing pleasure to work with you and Jeremy. Thank you in advance for your attention to this matter.

With kind regards,

Yours very truly,
James R. Davis
James R. Davis

JRD/jrd

cc: Jeremy Bowers, Esq., Barnwell Whaley Patterson & Helms, LLC
The Honorable R. Markley Dennis, Jr. Chief Administrative Justice

EXHIBIT J

From: Ian McVey [<mailto:IanMcVey@callisontighe.com>]
Sent: Tuesday, October 19, 2010 9:51 AM
To: rwatson@berkeleycountysc.gov
Cc: Andrew K. Epting; George J. Kefalos; Amy Hill
Subject: Galt Valley v. Heritage Seven

Judge Watson, I have discussed the Defendants' theory of "deed in reduction" with my clients and have made a proposal to Mr. Epting regarding this matter. With that in mind, would it be possible to have some additional time to work with Defendants' counsel to try to resolve the matter before we submit briefs on this issue? As I understand it, the briefs would be due Monday, October 25th. Perhaps an additional twenty (20) days would suffice to figure out whether we can resolve the matter. By my math, that would make the briefs due by Monday November 15th.

I have drafted the Order regarding payments of the rent for the Berkeley County property and should be able to provide your honor with an order shortly. I will, of course, copy opposing counsel.

I hope this request meets with your approval.

Thank you for your consideration of this request.

With kind regards, I am

Yours truly,

Ian McVey



Ian D. McVey
Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390

P: 803.404.6900 F: 803.404.6901
Email: IanMcVey@callisontighe.com

Columbia, SC 29202-1390

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IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to

Jamekia Hunter

From: Andrew K. Epting <AKE@epting-law.com>
Sent: Thursday, October 21, 2010 2:17 PM
To: Ian Mcvey
Subject: Re: Galt Valley v. Heritage Seven

friday pm?

-----Original Message-----

From: "Ian Mcvey" <IanMcvey@callisontighe.com>
Subj: Re: Galt Valley v. Heritage Seven
Date: Thu Oct 21, 2010 12:57 pm
Size: 2K
To: "Andrew K. Epting" <AKE@epting-law.com>

Drew, that is what we want to talk about. Are y'all available?

From: Andrew K. Epting <AKE@epting-law.com>
To: Ian Mcvey
Cc: Sheri Towne <VST@epting-law.com>; Epting Office <office@epting-law.com>
Sent: Thu Oct 21 12:55:57 2010
Subject: RE: Galt Valley v. Heritage Seven

Ian, where is the proposal for a deed in reduction?

From: Ian Mcvey [<mailto:IanMcvey@callisontighe.com>]
Sent: Tuesday, October 19, 2010 9:51 AM
To: rwatson@berkeleycountysc.gov
Cc: Andrew K. Epting; George J. Kefalos; Amy Hill
Subject: Galt Valley v. Heritage Seven

Judge Watson, I have discussed the Defendants' theory of "deed in reduction" with my clients and have made a proposal to Mr. Epting regarding this matter. With that in mind, would it be possible to have some additional time to work with Defendants' counsel to try to resolve the matter before we submit briefs on this issue? As I understand it, the briefs would be due Monday, October 25th. Perhaps an additional twenty (20) days would suffice to figure out whether we can resolve the matter. By my math, that would make the briefs due by Monday November 15th.

Tamekia Hunter

From: Sheri Towne <VST@epting-law.com> on behalf of Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
Drew

Andrew K. Epting, Jr.
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [<mailto:IanMcvey@callisonfighe.com>]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>
Sent: Thu Oct 21 15:57:44 2010
Subject: Gibson-Berkeley County

Mr. McVey,

With regard to the above-subject matter, are you available for a call with Drew Epting and George Kefalos tomorrow afternoon (10/22) at either 1:00 or 2:00 p.m.? I also left a voicemail message for you, as both you and your assistant were out when I called. Thank you.

Best regards,
Roni

Roni Burk
Legal Assistant to Andrew K. Epting, Jr.
and Michelle N. Endemann

Tamekia Hunter

From: Andrew K. Epting <AKE@epting-law.com>
Sent: Friday, October 22, 2010 4:23 PM
To: Ian Mcvey; Epting Office
Cc: George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne; Oana Johnson
Subject: RE: Gibson-Berkeley County

Sensitivity: Confidential

Ian, she is being sued, has just lost in foreclosure certain property, and there is nothing to talk about unless you want the property. Remember the Insurance will expire on 10-31.

Could I suggest we talk about the deed in reduction. If you want the property voluntarily ok and if not then let's submit orders.

Sheri, send to Gedney and John as I could not find their email addresses.

Andrew K. Epting, Jr
Andrew K. Epting, Jr., LLC
3 State Street
Charleston, SC 29401
ake@epting-law.com
Phone: 843-377-1871
Fax: 843-377-1310

From: Ian Mcvey [<mailto:IanMcvey@callisontighe.com>]
Sent: Friday, October 22, 2010 10:52 AM
To: Andrew K. Epting; Epting Office
Cc: George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Drew, perhaps you misunderstand. I am suggesting a settlement conference between the parties under the supervision of counsel. Does that interest you? Ian.

From: Sheri Towne [<mailto:VST@epting-law.com>] On Behalf Of Andrew K. Epting
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
rew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com



Save a tree. Please don't print this e-mail unless necessary.

rom: Ian Mcvey [<mailto:IanMcvey@callisoncliche.com>]
ent: Friday, October 22, 2010 4:56 AM
o: mdanhour@griffoncapital.com; Michael Danhour
Subject: FW: Gibson-Berkeley County
Sensitivity: Confidential

OK, this is going to be a waste of time. Please provide the figures we discussed yesterday. It is time to put a firm offer on the table and see what he does with it.

From: Sheri Towne [<mailto:VST@epting-law.com>] On Behalf Of Andrew K. Epting
Sent: Friday, October 22, 2010 10:50 AM
To: Ian Mcvey; Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Oana Johnson; Sheri Towne
Subject: RE: Gibson-Berkeley County
Sensitivity: Confidential

Ian,
Our client is not going to be involved in any discussion with you. If you want to talk with me and George this afternoon then please let us know what number to use to call you and what time.
Drew

Andrew K. Epting, Jr
Ph: 843-377-1871 x302; Fax: 843-377-1310
E-Mail: ake@epting-law.com

 Save a tree. Please don't print this e-mail unless necessary.

From: Ian Mcvey [<mailto:IanMcvey@callisoncliche.com>]
Sent: Thursday, October 21, 2010 5:38 PM
To: Epting Office
Cc: Andrew K. Epting; George J. Kefalos; Michelle Endemann; Sheri Towne; Oana Johnson
Subject: Re: Gibson-Berkeley County
Sensitivity: Confidential

I am provided your client is available

From: Epting Office <office@epting-law.com>
To: Ian Mcvey
Cc: Andrew K. Epting <AKE@epting-law.com>; George J. Kefalos <george@kefaloslaw.com>; Michelle Endemann <MNE@epting-law.com>; Sheri Towne <VST@epting-law.com>; Oana Johnson <oana@kefaloslaw.com>

STATE OF SOUTH CAROLINA

CHARLESTON, SS

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-4450

_____*
LINDA A. GIBSON, *Individually, and in capacity* *
as TRUSTEE of THE PAUL WILLIAM *
GIBSON FAMILY TRUST, *and,* *
HERITAGE SEVEN, LLC, *and,* *
SEVEN OAKS APARTMENTS, LLC, *and,* *
3205 PALM BOULEVARD, LLC, *

Plaintiffs *

vs. *

GIBSON AFFIDAVIT

ANDREW K. EPTING, JR., LLC, *and,* *
GEORGE J. KEFALOS, P.A., *and,* *
GEDNEY M. HOWE, III, P.A., *and,* *
JOHN H. WEST, ATTORNEY-AT-LAW, LLC, *

Defendants *

2013 JUL 30 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

AFFIDAVIT OF LINDA A. GIBSON

I, Linda A. Gibson, do hereby depose and say the following:

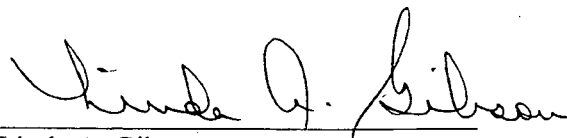
1. I am the plaintiff in the above captioned action, and the sole member and party in interest of the above named plaintiff entities. In that capacity, and in capacity herewith, I am fully familiar with, and if called upon to do so would be competent to testify as to the facts and circumstances set forth in the attendant Complaint.

2. On separate and several occasions, I asked Mr. Epting and Mr. Kefalos if I could pay the litigation costs on an hourly basis, instead of a contingent fee basis, to no avail. Mr. Epting and Mr. Kefalos advised me that Mr. Howe would "*never go for it*" and, that, "*he would not consider getting involved unless we took the case on contingency.*"
3. I did not understand the concept of a "reverse" contingent fee arrangement, nor did I acknowledge or accept or consent to Counsels' proposed *reverse* fee arrangement. I thought I had a contingency fee arrangement where I was supposed to pay 1/3 of any money my attorneys actually got for me, as in they would be paid out of the proceeds of funds recovered, not against my personal property, or otherwise. Mr. Epting told me to get a second opinion as to the reverse fee award, and I told him that I would see my late husband's attorney, Mr. Tecklenburg, to get a second opinion.
4. I have never met Mr. Howe, nor have I talked with him or received any documents from him or any person of his law firm. I am unaware as to his role in my litigation matters and I don't understand why he is being paid any money from my litigation, or the deficiency claim fee award.
5. I have met Mr. West on one occasion. Mr. West never talked with me concerning the Ameris Action, November Arrangement, Re/Max Action, RE/Max Settlement Proceeds disbursements, or otherwise. I am unaware as to his role in my litigation matters and I don't understand why he is being paid any money from the deficiency claim fee award.

6. I began to learn of the impropriety of the *reverse* fee Award, and the excessive fee, during a deposition exam during which deposition counsel (Deposition Counsel) examined my understanding of the *reverse* fee arrangement. Immediately following the deposition, I expressed my concern and dismay as to \$566,666.66 *reverse* fee Award to Mr. Kefalos, to no avail. Mr. Kefalos dismissed my inquiry of the fee as mere posturing by Deposition Counsel to discredit my Counsel. This made me very concerned.
7. Michael Danhour, ("Mr. Danhour"), of Galt, told to me that Galt intended to waive its Deficiency Claim in return for a deed-in-lieu of foreclosure shortly after execution of the November Arrangement when I met with him to transfer the keys to the Apartments. He told me also that Galt wished they could have just conveyed the Apartments earlier to me, but that my attorneys kept stalling the process.
8. Michael Danhour, of Galt, told me he didn't think my attorneys should have charged me anything with regard to the deficiency claim because Galt intended to waive its Deficiency Claim in return for a deed-in-lieu of foreclosure and no one did any litigating or discovery or anything with Galt. This made me very upset.
9. My Counsel did not, and has not, provide to me any financial accounting of the basis on which Counsel computed the \$1.7MM "dollar marker" Counsel utilized to calculate its one-third \$566,666.66 *reverse* fee Award.

10. On or about November 26, 2012, I met with met with my accountant and CPA regarding tax matters. During this meeting, my CPA inquired about the \$566,666.66 fee Award, which gave me great concern and deepened my resolve to discuss the \$566,666.66 fee arrangement again with my Counsel.
11. Based on these data points, I began to question the propriety of the \$566,666.66 fee Award I paid Counsel in connection with the Deficiency Claim.
12. On separate and several occasions, I communicated with my attorneys' my disagreement and dismay of having to pay the \$566,666.66 fee Award, to no avail. Mt attorneys rejected my inquiry as to the fee arrangement and constantly re-directed my inquiries away from the fee arrangement and onto other litigation matters.
13. On or about February 15, 2013, I met with Mr. Epting and Mr. Kefalos "one last time" for the specific purpose to discuss and resolve the \$566,666.66 fee Award. At this meeting, in response to my inquiry concerning the November Contract fee arrangement, Mr. Epting wouldn't directly answer my questions, but instead told me a story of sorts, of a skillful Columbia attorney who *"can get the job done with but a phone call"* and that *"I should be happy I got the result I wanted."* I left the meeting feeling terrible about this fee arrangement and I really felt my attorneys took advantage of me.

Signed under the pains and penalties of perjury this 25th day of JUNE 2013.

A handwritten signature in cursive script, reading "Linda A. Gibson". The signature is written in black ink and is positioned above a horizontal line.

Linda A. Gibson

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2013-CP-10-4450

Linda A. Gibson, individually and in capacity)
As Trustee of the Paul William Gibson)
Family Trust; Heritage Seven, LLC;)
Seven Oaks Apartments, LLC and 3205)
Palm Boulevard, LLC,)

Plaintiffs,)

Vs.)

Andrew K. Epting, Jr., LLC, George J.)
Kefalos, P.A.; Gedney M. Howe III, P.A.)
And John S. West, Attorney at Law, LLC)

BY
AFFIDAVIT OF
DESA BALLARD

JULIE J. ARMSTRONG
CLERK OF COURT

2013 NOV 18 PM 4:48

FILED

Personally appeared before me, Desa Ballard, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except as to those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am an active member in good standing of the South Carolina Bar, having been admitted to practice law in 1983. I am also a member of numerous other Bars, including the United States District Court for South Carolina, the Fourth Circuit Court of Appeals, and the United States Supreme Court.
3. I am an adjunct Professor at the University of South Carolina School of Law, where I teach Advanced Legal Profession to second and third year students.
4. Since I entered private practice in 1987 (after clerking in the South Carolina Judicial System) I have spent considerable time representing lawyers in disciplinary matters

and in handling matters related to lawyers and professional responsibility. I am a former chair of the Professional Responsibility Committee of the South Carolina Bar and a past member of the Ethics Advisory Committee. I currently serve as a member of the Unauthorized Practice of Law Committee. I am a member of the American Bar Association Center for Professional Responsibility, the Association of Professional Responsibility Lawyers and a founding member and current president of the South Carolina Association of Ethics Counsel.

5. I have been qualified as an expert on the standard of care for attorneys in the State courts of South Carolina. While the majority of my time is spent practicing law, for approximately twenty (20) years I have and do currently serve as an expert witness for both plaintiffs and defendants in legal malpractice matters. I present and lecture frequently on topics related to legal ethics and professionalism.
6. I have been retained by counsel for plaintiff(s) to provide a preliminary opinion regarding the causes of action asserted against the defendants herein, as set forth in the First Verified Complaint with reference to their representation of the plaintiff(s), and with reference to the proposed amended complaint which has presented to me for review.
7. In my opinion, the Verified Complaint and the proposed amended complaint, do, in fact state a viable claim for professional negligence, whether postured as breach of contract or other causes of action, against the defendants as it relates to their prior representation of the plaintiff(s).
8. I was asked to assume, and have assumed, the facts as set forth in the verified complaint and proposed amended complaint are accurate.

9. Based on that assumption, it is my professional opinion, to a reasonable degree of certainty, that the defendants deviated from the standard of care applicable to attorneys in South Carolina in negotiating and obtaining from the plaintiff(s) a fee agreement which charged an unreasonable fee for the services rendered and to be rendered, and also in renegotiating a fee agreement to increase the fee due to them when they knew Ameris Bank had withdrawn their claim against the plaintiff(s).
10. They further deviated from the standard of care which they owed the plaintiff(s) when they withheld from Paul Tecklenburg (the counsel retained to review the proposed agreement), the existence of the November 8, 2010 agreement with Ameris Bank to withdraw Ameris Bank's claims against the plaintiff(s). That fact was directly relevant to the reasonableness of the fee they were proposing and the failure to disclose that agreement compromised Mr. Tecklenburg's independent review of the proposed fee agreement between plaintiff(s) and the defendants.
11. It is also my opinion that the actions of the individual lawyers, as set forth in the verified complaint, are imputed to their respective corporate entities, and that liability lies against both the individual lawyers as well as their respective corporate entities.
12. This is a preliminary opinion, offered at a preliminary stage of the action based on my review of limited documents, coupled with the assumption of the accuracy of the facts set forth in the complaint. My opinion is subject to change should the discovery in this action not establish the factual predicate set forth in the complaint, and/or if I learn of additional information which alters the opinions so stated.

FURTHER deponent sayeth not.

Desa Ballard
Desa Ballard

Sworn to before me this
18th day of November, 2013.

HW Lawton
Notary public for South Carolina
My commission expires: 2-3-16

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity* :
as TRUSTEE OF THE PAUL WILLIAM GIBSON :
FAMILY TRUST; HERITAGE SEVEN, LLC; :
SEVEN OAKS APARTMENTS, LLC; and 3205 :
PALM BOULEVARD, LLC., :

Plaintiffs

vs.

AFFIDAVIT OF LINDA GIBSON

ANDREW K. EPTING, JR., LLC; ANDREW K. :
EPTING, JR.; GEORGE J. KEFALOS, P.A.; :
GEORGE J. KEFALOS; GEDNEY M. HOWE, III, :
P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, :
ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, :

Defendants

AFFIDAVIT OF LINDA A. GIBSON

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Linda A. Gibson, do hereby depose and say the following:

1. I am the plaintiff in the above captioned action, and the sole member and party in interest of the above named plaintiff entities. In that capacity, and in capacity herewith, I am fully familiar with the facts and circumstances stated in the plaintiffs' Complaint, as amended, and in the Memorandum of Law in Opposition to the Defendants' Motion for Summary Judgment, and Plaintiffs' Cross Motion for Summary Judgment filed herewith. I am competent to testify as to the facts and circumstances stated therein and before this Court on personal knowledge.

2. My father and my mother worked very hard with physical labor all their life, and the result of their hard work is that they were able to buy some real estate, back then worth pretty much nothing. I have inherited this real estate from my parents, which is their legacy to our family.

3. In late December 2009, I went to see Mr. Papa because I felt I might need some help, and someone recommended that I see a bankruptcy attorney. I believed Mr. Papa was a

bankruptcy attorney, so I went to see him. Mr. Papa said I need to see his friend George Kefalos; and he offered to go with me to meet with George, and he did. Together we went over to George's office. And George told me that he wanted to get Mr. Epting involved, and we did. And I trusted these lawyers were looking out for my best interest.

4. I've come to learn through this litigation that my lawyers think that I asked Mr. Papa to negotiate a fee arrangement on my behalf, or otherwise represent my interests to Mr. Epting. Nothing could be further from the truth. I never once asked Mr. Papa negotiate any fee with Mr. Epting, in fact Mr. Epting was always talking to me about his fees, his charging hourly and contingency, and so forth. Mr. Epting always seemed confused when he was talking to me about his fees, as if he didn't understand himself how he was going to charge me. So I paid him whenever he sent me a bill some money, \$2,500.00 a month or so. I figured that was my billing arrangement.

5. My lawyers did not tell me anything about the following, ever. I learned all the following through this fee litigation: (i) Galt's "deficiency" was subject to set-off claims; (ii) Galt's deficiency was inchoate, unperfected, and unliquidated without first a foreclosure sale to determine the debt; (iii) my lawyers didn't negotiate reduction of the "debt" with Mr. McVey, or Galt; (iv) my lawyers had no intention to offer a deed-in-lieu of foreclosure for debt forgiveness, which is what they should have just done; (v) my lawyers had nominal time and effort involved in the matter, which they knew when they took over a half million dollars; (vi) Galt's acquisition of my note and mortgage substantially changed the likelihood I would be liable for the maximum \$1.7 million (purported) debt; (vii) \$566,666.00 is not a customary fee charge for routine deed-in-lieu work; (viii) transaction deed-in-lieu work is customarily charged by the hour, not on a contingency; (ix) the \$1.7 million "dollar marker" was merely the difference between principal face of the note and value of the collateral, neither of which my lawyers negotiated a reduction; (x) Mr. Howe's involvement in her matter consisted of less than thirty hours, entirely; (xi) Mr. West's involvement consisted of less than thirty hours, entirely; (xii) Galt *unilaterally* waiver of its deficiency was not the result of my lawyers work; (xiii) my lawyers sought a *dual*-fee arrangement; and, inter alia, (xiv) my lawyers proposed "deed-in-reduction" strategy was directly against my interests, nearly guaranteeing I would pay a deficiency it turns out! - to the point of triggering Galt to seek a deficiency against me! My lawyers failed to disclose the foregoing material facts to me.

6. Had my lawyers fully disclosed the true nature of Galt's inchoate deficiency, my lawyers nominal time and effort, and the excessiveness of a \$566,666.00 fee for same, I would not have agreed to pay the \$566,666.00 fee. I first learned in late 2012, several months after I unknowingly paid my lawyers Counsel \$566,666.00, that my lawyers sought another fee (40% of any recovery in the lender claim), in addition to the \$566,666.00 I already paid. I learned this during a car ride with Drew, and he said – *"you know Linda, you're still going to owe us 33% of whatever we recover for you in the lender claim."* I was shocked. I was so upset I couldn't even talk. I felt physically ill on hearing from Mr. Epting he wanted more money, after I'd already paid them \$600,000.00, and still owed them \$280,000.00 for Re/Max, and they told me Galt waived the deficiency, so how could they be asking so much money from me.

7. I was unaware of the consequence of the having to pay a reverse fee of over a half-million dollars at execution of the April. I always assumed my lawyers would get some money back for me from the losses I sustained, not that I would have to pay more losses. Had I known that, I would have called Galt myself and tried to work something out with them directly. If I had understood then what I know now, that is, if my lawyers had told me Galt wasn't pursuing any deficiency against me, which they would have known if they had simply done their job and asked a simple question, I would not have agreed to pay them \$566,666.00. I had no idea in that Ameris could sell my note, nor did my lawyers tell about the true nature of Galt's unperfected deficiency claim, and I had no idea my lawyers wanted to charge me two fees in the Ameris action. That makes no sense to me. Counsels' global *dual*-fee intentions. Had I known all these items above, I would not have agreed to pay the \$566,666.00 to Counsel.

8. My attorneys never showed me the February 4th email. I didn't even know of that e-mail, or of their supported supposed fee arrangement (set forth in the email) until this litigation.

9. I did not understand the concept of a reverse contingent when I retained these lawyers. I only came to learn of what they mean by reverse fees much later into the litigation, came to fully understand it now in this fee dispute action.

10. I seem to recall I had signed some fee agreement with Mr. Kefalos, but I can't find the document, and it seems to me that my lawyers have not produced the document either. I think that was an hourly fee arrangement, to the best of my recollection.

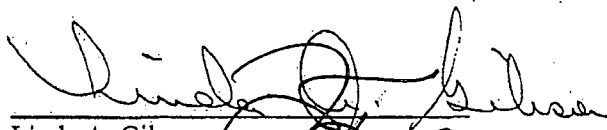
11. I was unaware of any reverse-fee arrangement when I signed the April document. Drew never showed me the February 4th email in April. I didn't learn of the February 4th email, and its contents, until this fee dispute litigation. I never once asked Mr. Papa to negotiate any fee with

Mr. Epting, in fact Mr. Epting was always talking to me about his fees, his charging hourly and contingency. I would not have paid Counsel \$566,666.00 if my lawyers had disclosed the true nature of Galt's unperfected deficiency claim, and my lawyers' global *dual*-fee intentions.

12. I find the fee these lawyers charged me to be excessive, outrageous. I feel like they took advantage of my unawareness of the foreclosure process, and my limited knowledge of legal matters in general.

13. The April 7th letter document is the first document that I signed with Mr. Epting.

Signed under the pains and penalties of perjury this _____ day of October, 2015.


Linda A. Gibson *up from me for original*