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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2015-002054
Case No. 2007-CP-40-0576

In re: Tony Megna, Respondent,

James A. Anasti, Appellant,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, and Richland County Clerk of Court, Defendants.

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**ORDER GRANTING PARTIAL SUMMARY JUDGEMENT IN FAVOR OF PLAINTIFF**
LANCE WILSON,	)	
WILLIS GOODWIN,	)	
GINA L. ANASTI LEE,	)	
RICHLAND COUNTY	)	
CLEKR OF COURT,	)	
	)	
Defendants.	)	

2007 OCT 25 P 10:1
RICHLAND COUNTY
FILED

THIS MATTER CAME BEFORE ME on September 19, 2007 pursuant to Plaintiff's Motion for Summary Judgment, as well as two separate Motions to Compel Discovery filed by Plaintiff June 4, 2007 and July 12, 2007.[1] Plaintiff was represented by Douglas N. Truslow; Defendants Wilson and Goodwin were represented by Thomas Earle and Defendant Lee was represented by Tony Megna. The Richland County Clerk of Court is merely a stake holder of funds received from the South Carolina Department of Transportation in a related condemnation action (2000-CP-40-/filed December 16, 2002) and consequently it did not need to appear.

In support of his Motion for Summary Judgment, Plaintiff submitted Affidavits, pleadings, portions of significant depositions and requested that the Court take Judicial Notice of other documents that are of record. Defendants Wilson and Goodwin submitted no Affidavits, pleadings, depositions, or other documents and made no argument in Plaintiff's Motion for Summary Judgment. Defended Lee submitted an affidavit that was consistent with the format

[1] Plaintiff suggested that his Motions to Compel Discovery should be heard, if necessary, subsequent to the resolution of Summary Judgment in the interests of judicial economy, and hence they were not addressed at this time.

required by SCRCP 56(e)[2], yet lacked the content necessary to establish specific facts showing that there is a genuine issue for trial.

From a careful review of all the evidence presented, as well as arguments of counsel, it appears that Plaintiff is entitled to partial Summary Judgment as a matter of law in that there is no genuine issue of material fact and that Plaintiff is entitled to judgment as a matter of law.

FACTS

According to the records before the Court, the following are uncontested facts:

I. The property in question in this lawsuit is commercial property located at 2325 Two Notch Road, Columbia, SC. The property has been used as commercial property since it was built in the 1960's.

II. On November 17, 1978 Laura Corvi deeded real estate located at 2325 Two Notch Rd. in Richland County, South Carolina (hereinafter the "Two Notch real property") to Albert Anasti and his son James Anasti (Plaintiff herein) as tenants in common with right of survivorship (See Deed Book 482, pages 756 and 757)

III. On October 24, 1995 Albert Anasti died leaving as survivors his son, Plaintiff James Anasti and Defendant Gina Anasti Lee.

IV. On November 7, 1996 Defendant Lee filed and recorded a deed of distribution purportedly giving herself individually the entire Two Notch real property (see Deed Book 1347, page 0991).

[2] Plaintiff has objected that the affidavit submitted by Defendant Lee was in a format inconsistent with SCRCP 56(e). This objection has no merit. Under Rule 56(e) the affiant must be competent to testify to the matters contained in the affidavit and the court may at its discretion allow affidavits submitted with a Motion for Summary Judgment "to be opposed by... further affidavits." SCRCP 56(e). In this instance Defendant Lee submitted an affidavit at the request of the court in response to Plaintiff Anasti's affidavit in support of his Motion for Summary Judgment. Defendant Lee's affidavit was properly sworn, served to the parties, and it is not disputed that defendant Lee was competent to testify. Thus, the objection to the format of Defendant Lee's affidavit is overruled.

V. On January 6, 2000, Defendant Lee in ostensible reliance on her deed of distribution and will of Albert Anasti purported to sell and deed the Two Notch real property to Plaintiff's Lance Wilson and/or Willis Goodwin by way of "owner financing." That deed is recorded at Deed Book 00373, pages 0223 through 0225.

VI. On November 12, 2004 Defendant Wilson filed action(s) (04-CP-40-5333/5334) in which she alleged, inter alia, that Defendant Lee did not have sufficient title so as to be able to convey fee simple marketable title of the Two Notch real property to either he or Defendant Goodwin. In turn Defendant Lee filed a Third Party Action on March 25th, 2005 (Cross Claim) alleging that, inter alia, the attorney attending to her Two Notch real property real estate closing with Defendant Wilson and/or Goodwin had deviated from acceptable standards by certifying that she had good marketable fee simple title. Significantly, Plaintiff herein was not made a party to any of those lawsuits, which were dismissed under SCRCP 40(j) and later reinstated (yet to be heard).

VII. On January 26, 2007 Plaintiff filed within action seeking, inter alia, quieting of title to the within Two Notch real property.

VIII. In her deposition of June 26, 2007, Defendant Lee swore under oath the following:

a. She had not been on the premises since the mid 1980's (TR29, L4-13)

b. She wanted to be honest and not take something that was not hers (TR 41, L 12-18)

c. That Plaintiff now owns one half of the Two Notch real property in dispute herein (TR 68, L 24 and 25),

d. Her claim to the Two Notch real property is predicated on Albert Anasti's will (TR 68, L24 and 25)

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e. Her deed of distribution relative to the Two Notch real property was acknowledged by her to be defective (TR 77, L 2-14 and TR 63, L 11-17),

f. She relinquished and sold her complete interest e.g. any interest she may have had in the Two Notch real property in 2000 and after that she didn't own it anymore (TR 83, L 16-25),

g. She did not own the Two Notch real property for ten years and at most only owned it for four years and a couple of months (TR 84, L 9-14),

h. She does not rely on any facts in alleging Laches and does not know what Estoppel means (TR 89, L 2-11),

i. Her whole case would be based on the deed of distribution and will of her father (TR 89, L 23-25) (whose interest the Court finds ended at his death),

j. Plaintiff was never Ousted from the Two Notch real property (TR 90, L 12-21, TR 91, L 7-9, and TR 92, L 1-7) and Plaintiff and his father Albert Anasti enjoyed a very good relationship until he died (TR 91, L 10-13),

k. Defendant Lee does not know of any facts to support her claim of a Presumption of Grant (TR 923, L 14-24),

l. Defendant Lee has claimed damages and attempted to foreclose against Defendant Wilson relative to Two Notch real property, to which she apparently now asserts she had no title (and hence could not sell).

IX. In early January, 2000, the Dallis Law Firm, P.A., a real estate law firm located in Columbia, SC, certified that the Defendant Lee had legal title to the Two Notch Property. The Defendant Lee signed a general warranty deed to the property that was prepared by

the Dallis Law Firm. The Defendant Lee retained a mortgage on the property. (See deposition of Willis Goodwin, page 10, lines 3-8).

X. On January 28, 2007, the Plaintiff filed the current lawsuit against the Defendant Lee asking this Court to declare him the legal title owner of the Two Notch Property.

XI. In her supplemental Affidavit, dated October 5, 2007, Defendant Lee has asserted:

a. Following her father's death on October 24, 1995, Defendant Lee continued to lease the property as commercial property and leased it to the same tenants who had been leasing it while her father was alive. (Paragraph 1 of Defendant Lees supplemental affidavit)

b. Defendant Lee is asserting her claim to title to the Two Notch property by adverse possession under Color of Title. The filed Deed of Distribution establishes at the minimum Defendant Lee's intent to assert her claim of adverse possession to the property against the world, including her brother by color of title. In addition, her brother also had constructive notice of her claim to the Two Notch property as a result in his participation in Probate Court proceedings that were initiated immediately following her father's death in 1995. (Paragraph 2 of Defendant Lees affidavit)

c. Defendant Lee's brother is barred from recovering any properly improperly distributed to her by virtue of S.C. Code Section 62-3-1006 that bars any such claim "at the later of three years after the decedent's death or one year after the time of distribution thereof." (Paragraph 3 of Defendant Lees affidavit)

d. Defendant Lee's husband and defendant Lee replaced the roof on the building that is located on the Two Notch property in the early 1990's and made certain that the

lessees performed other general maintenance on the property. (Paragraph 5d of Defendant Lees affidavit)

e. Defendant Lee continuously made certain the lessees maintained the property in good repair and collected the rent. (Paragraph 5(k) of Defendant Lees supplemental affidavit)

f. Defendant Lee maintained insurance on the property. (Paragraph 5(l) of Defendant Lees supplemental affidavit)

g. On January 2, 2000, the Dallis law firm conducted the closing where defendant lee signed a deed to sell the property. (Paragraph 5i).

LAW/ANALYSIS

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. In determining whether any triable issues of fact exists for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002); Conner v. City of Forest Acres, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).

Defendant Lee claims superior title by means of adverse possession under color of title. In order to assert a claim of adverse possession, the party must hold the premises adversely to the legal title for ten years before the commencement of the action. *See* S.C. Code § 15-67-210 (1976); S.C. Code 15-67-220(1976). If the party makes a claim under color of title, the party must also continuously occupy and possess the premises described in the title for ten years. *See*

S.C Code 15-67-220(1976). A party occupies and possesses the property adversely if the party uses the property for the ordinary use for which the land is fitted. *See S.C. Code* 15-67-230(3)(1976); Bardin v. Commercial Ins. & Trust Co. 82 S.C. 358, 64 S.E. 165 (1909) (Under this section [former Code 1962 § 10-2423], possession is adverse and continuous where land, though not cultivated or enclosed, is continuously used for the supply of fuel and timber, the ordinary use for which the land is fitted.); Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61, 65-66 (1961) ("Acts of adverse possession with regard to open, wild, unfenced lands not capable of cultivation, are only required to be exercised in such manner as is consistent with the use to which the lands may be put and the situation of the property admits of without actual residence or occupancy.").

According to the undisputed facts of the case, Defendant Lee claim of title was made November 7, 1996, when she filed and recorded a deed of distribution purportedly giving herself individually the entire Two Notch real property. Defendant Lee leased the property to tenants, who paid her rent. Defendant Lee made sure the tenants maintained the property. On January 2, 2000, the Dallis law firm conducted the closing where Defendant Lee signed a deed to sell the property. In the light most favorable to the non-moving party, Defendant Lee adversely possessed the property from November 7, 1996 to January 2, 2000, a period of four years, one month and 26 days.

Defendant Lee claims that her actions following the January 2nd, 2000 sale of the property are sufficient to establish a claim for adverse possession. I disagree. After January 2nd, 2000 the defendant did not assert ownership of the property; the defendant did not collect rent from the tenants, the defendant did not maintain the property, and the defendant did not claim that she possessed a deed to the property. The defendant maintained owner financing on the

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property, essentially a mortgage, and kept insurance on the property. The defendant did not use the property for the ordinary use for which the land is fitted following January 2, 2000. Further the last tax record which specifically mentions the Two Notch Road property is in 2001. *See* Supplemental Income and Loss Form 2001 attached to Defendant Lee's supplemental affidavit. There is no specific reference to the Two Notch road property in any of the post 2001 tax records. The mere fact that the defendant had a mortgage on the property and kept insurance on the property is insufficient to establish a claim of adverse possession. Therefore, I find that the Defendant did not adversely possess the property for a period of ten years as required by statute.

Since I have decided Defendant Lee did not meet the statutory minimum period required for adverse possession, I do not need to discuss the effect of any notice by Plaintiff Anasti.

It is undisputed that in 1978 Laura Corvi deeded the Two Notch real property to Albert Anasti and his son James Anasti as tenants in common with a right of survivorship. Further, it is undisputed that shortly after October 24, 1995 a South Carolina probate court directed that in accordance with Albert Anasti's will, Defendant Lee inherited the Two Notch Road Property. Future interest created by tenancy in common with right of survivorship vest on the death of the other party. Smith v. Cutler, 366 S.C. 546, 623 S.E.2d 644. Upon the death of Albert Anasti the property passed immediately to his son, Plaintiff Anasti, as tenant in common with right of survivorship. Albert Anasti's act of leaving the property to his daughter did not destroy the tenancy in common with right of survivorship. *See* Id. ("Future interests created by a tenancy in common with a right of survivorship are indestructible, i.e. not subject to defeat by the unilateral act of one cotenant"). Therefore, I find the Two Notch Road property was not part of the probate estate of Albert Anasti, but property of Plaintiff Anasti, when the probate court made its ruling.

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Does the circuit court have jurisdiction to overturn a distribution by the probate court when the probate court lacked subject matter jurisdiction to make the distribution? Defendant Lee claims that Plaintiff Anasti is barred from recovering any property improperly distributed to Defendant Lee by virtue of S.C. Code Section 62-3-1006 that bars any such claim "at the later of three years after the decedent's death or one year after the time of distribution thereof.[3]" This matter does not come before the court as an appeal from the probate court's decision, so this court is not deciding the case on the basis of its appellate jurisdiction, but rather under its general jurisdiction. The circuit court has the authority under its general jurisdiction to determine the ownership of real property. Therefore, I find the circuit court sitting in equity is within its general subject matter jurisdiction to make a determination about the ownership of the property, if the probate court lacks subject matter jurisdiction to make a distribution of the property.

Did the probate court have subject matter jurisdiction to distribute the Two Notch road property or did the probate court act outside its jurisdiction when it distributed the Two Notch Road Property? According to section 62-1-302, "the probate court has exclusive subject matter jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons." The probate court does not have subject matter jurisdiction to distribute property, which is not part of the estate of the decedent. Therefore, the probate court wrongfully distributed property that did not belong to a decedent, and the probate court's ruling is void for lack of subject matter jurisdiction.

---

[3] Section 62-3-1006. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent's death and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent's death or one year after the distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

Now therefore it is Ordered: (a) Plaintiff is granted Summary Judgment as to Defendant Lee's defenses, (b) Plaintiff is granted Summary Judgment as to his claims against Defendants Wilson and Goodwin, (c) Title to the within Two Notch real property is certified and found to be the exclusive real property of Plaintiff and Plaintiff is granted title to the within property located at 2325 Two Notch Road, Columbia, South Carolina and described in Deed Book 782, page 756 is Confirmed and Ordered as belonging solely to the Plaintiff, (d) Plaintiff shall be and is hereby entitled to such sums as are being held by the Richland County Clerk of Court, and (e) the case shall proceed to trial to the issue of damages to be awarded to Plaintiff.

AND IT IS SO ORDERED.

John Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit
Court of Common Pleas

Columbia, South Carolina

10/26, 2007

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4000576

James A Anasti — *vs.* — Lance Wilson

Plaintiff — Defendant

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☑ Statement of Judgment by the Court:

Stayed pending appeal of partial Summary Judgment.

Dated at Columbia, South Carolina, this 8th day of January, 2008.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2007, and a copy mailed first class this 9th day of Jan, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow
ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas George Earle
Tony Ray Megna
ATTORNEY(S) FOR THE DEFENDANT(S)

s/BARBARA A. SCOTT
Clerk of Court

SCRCP APP-24/FORM 4

The South Carolina Court of Appeals

James A. Anasti, Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court, Defendants,

Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are Respondents

And Gina L. Anasti Lee is the Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2007-CP-40-00576

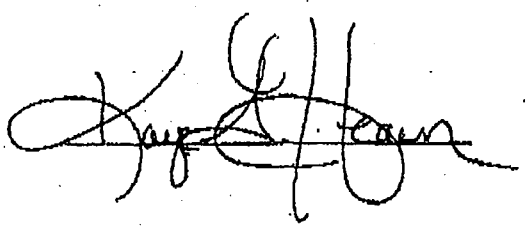
ORDER

Appellant appeals from an order of the trial court granting summary judgment in favor of the Respondent. Respondent filed a motion to dismiss the appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a return. In the return, counsel for Appellant, Tony Megna, claims his Rule 59(e) motion was filed within ten days after he actually received the trial court's order. Megna also accuses Respondent's counsel, Douglas Truslow, of filing a frivolous motion and acting inappropriately. Megna requests we admonish Truslow and award attorneys' fees and costs.

After careful consideration of the motion to dismiss, return, and reply, the matter is remanded to the circuit court for an evidentiary hearing to determine when Megna received the order granting summary judgment.

Because we find Respondent's motion to dismiss raises a bona fide question about the timing of Appellant's Rule 59(e) motion, Appellant's requests for an admonishment of Truslow and an award of attorney's fees and costs are denied.

AND IT IS SO ORDERED.



Columbia, South Carolina

3/18, 2008

cc: Tony Ray Megna, Esquire
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED
3/18/08 dlp

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
JAMES A. ANASTI,)	Docket Number: 2007-CP-40-0576
)	
Plaintiff/Respondent,)	
)	
vs.)	**ORDER**
)	
LANCE WILSON,)	
WILLIS GOODWIN,)	
GINA L. ANASTI LEE,)	
And RICHLAND COUNTY)	
CLERK OF COURT,)	
)	
Defendants,)	
)	
OF WHOM GINA L. ANASTI LEE)	
Is Appellant.)	
)	

FILED
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BARBARA A. SCOTT
C.C.C. & G.S.

THIS MATTER CAME BEFORE ME on April 3, 2008 pursuant to an Order of the South Carolina Court of Appeals dated March 18, 2008 requiring an evidentiary hearing as to when Appellant Gina Lee's counsel (Megna) received the Order granting Summary Judgment herein. Present representing the Plaintiff James A. Anasti (Respondent) was Douglas N. Truslow. As well, Thomas Earle was present representing Wilson and Goodwin. Neither the Appellant nor her attorney (Megna) were present, and in that regard, the Court was presented with documentary proof that Megna was put on specific notice of the date and time of the within hearing on March 28, 2008. Regardless of Appellant's and Megna's absence however, I have considered all previous submissions to the Court by or on behalf of Appellant, including pleadings, affidavits, evidence and memoranda presented to the South Carolina Court of Appeals.[1]

Having considered the record, including the pleadings, affidavits, memoranda and evidence presented, as well as the representations and arguments of counsel who were present, I find and conclude as follows:

[1] The Clerk of Court was merely the holder of certain funds deposited pursuant to a South Carolina Department of Transportation Condemnation (case 2002-CP-40-6062) and its presence was not required.

1. The Honorable Ernest Kinard issued an Order granting James Anasti (hereinafter Anasti) Summary Judgment on Friday, October 26, 2007.
2. The Order granting Summary Judgment was promptly and properly filed and entered into the Richland County Clerk of Court's records on October 26, 2007, then mailed to respective counsel by the Richland County Clerk on Monday, October 29, 2007 and received by Anasti's and Goodwin and Wilson's attorneys on November 1, 2007 and October 31, 2007 respectively. The said Order was likewise received by Megna on or about the same date as received by other counsel of record, but pursuant to S.C.R.C.P. 6(e), and giving Megna the benefit of the doubt, receipt of written notice of the Order granting Summary Judgment shall be and is deemed effective as of November 3, 2007.
3. A closely related case involving issues pertaining to the same real estate at issue herein e.g. "companion case" in which Megna was involved as counsel for Lee (Wilson and Goodwin v. Lee, 04-CP-40-5333) was set for trial on October 29, 2007; Megna has represented in writing that he appeared in Court at that time and that he checked on the status of the instant case on that date. I find and conclude that, if he did as he represented, he was on further notice of the Order granting Summary Judgment being issued on October 26, 2007.
4. On or about November 7, 2007, Anasti's counsel provided Megna with additional written notice that the Court had previously issued an Order granting Summary Judgment by virtue of a letter and Motion for Rule 11 sanctions that was duly served.
5. On November 20, 2007, Megna filed a Motion for Reconsideration of the October 26, 2007 Order granting Summary Judgment to Anasti, which was received by Anasti's counsel on November 26, 2007 and received by Judge Kinard on December 3, 2007.
6. Relative to receipt of the written notice of the Court's Order granting Summary Judgment that was mailed by the Richland County Clerk of Court on October 29, 2007, there is a rebuttable presumption of fact of

prompt receipt of properly addressed mail with postage attached, Bakala v. Bakala, 576 SE2d 156, 352 SC 612 (2003); Weir V. Citicorp National Services, 435 SE2d 864, 312 SC 54 (1993) e.g. the "mailbox rule", and Megna has not contested that the Court's Order granting Summary Judgment was properly mailed, nor has he denied actual receipt. Therefore, it is beyond dispute that the Court's Order was both mailed and received by Megna. However, Megna appears to argue that the written notice was not mailed on the date represented by the Clerk of Court, or that it was not delivered in a prompt manner. The Court may take Judicial Notice of the usual course of the mails CJS Evidence §43. Also, it is noted that failure to acknowledge receipt, ignorance of delivery or failure to read one's mail does not nullify the fact or presumption of receipt to be afforded under the circumstances. See CJS Evidence §155, et seq.

7. Megna is not engaged in the full time practice of law. Rather, he practices sporadically from his home in Blythewood, S.C. (Richland County), where he receives his mail, prepares his own pleadings and correspondence and personally undertakes responsibility for calendaring significant dates and deadlines. Further, Megna is engaged in employment outside of the Richland County area and he regularly travels out of the area during normal week days.

8. Taking into consideration the fact of the filing of Megna's Motion for Reconsideration, it is beyond a doubt that he received the Court's Order granting Summary Judgment but, in the Motion for Reconsideration, Megna did not set forth any date of receipt, irregular or otherwise, of the Court's Order granting Summary Judgment, nor has he ever produced the envelope in which said Order was delivered to him, nor has he produced any document time stamping the date of receipt of the Order, nor has he provided any other evidence supporting his claim of late receipt of the Order (such as documentation from the United Stated Post Office, or a letter to the Court or opposing counsel notifying them of late receipt), excepting his Affidavit(s), pleadings and written memoranda (subsequent

to his Notice of Appeal) that I have considered. In fact, the first time Megna raised any issue regarding a late receipt of the Court's Order was at the time he filed the Notice of Appeal (that was out of time).[2]

9. The Court denied Lee's Motion for Reconsideration *sua sponte* on December 5, 2007.

10. On January 4, 2008, Lee filed the Notice of Intent to Appeal.

11. I find and conclude that Megna received written notice of the Court's Order much more than ten days prior to the filing of his Motion for Reconsideration, even when all "grace periods" are factored in pursuant to S.C.R.C.P. 6(e).

12. Perhaps most compelling, in the closely related case that was litigated on December 5, 2007 e.g. the "companion case", Megna represented to the Court and opposing counsel that:

> **"within a week after he (Judge Kinard) filed the Order, a week to ten days after he filed the Order... the Motion to Reconsider was filed".**

Thus, by his own words, Megna acknowledged and admitted that he received the Order dated October 26, 2007 within a week to ten days after it was issued, (but he seriously misrepresented the time when he filed his Motion for Reconsideration). And just as egregious if not more so, in the instant case Megna now makes representations relative to the date he received the Order granting Summary Judgment inconsistent with his prior adamant and strident representations made to the trier of fact (Judge Thomas W. Cooper) and opposing counsel in the trial of the "companion case".[3]

13. I find and conclude that Megna is not at all credible as to any contested issue, specifically including the date he now (in this case) alleges he received the Court's Order granting Summary Judgment, and he is and

[2] On December 5, 2007 opposing counsel in the "companion case" alerted Megna that his Motion for Reconsideration was too late.

[3] I have considered in full context all appropriate pages of the transcript in the "companion case" that is of record as Exhibit 10 to Respondent's Memorandum in Support of the Motion to Dismiss.

should be equitably, judicially and legally estopped to deny timely receipt of the Court's Order dated October 26, 2007 within a week to ten days after the Order was filed e.g. receipt by November 6, 2007 at the latest. In essence, I do not believe the assertions of Megna relative to any contested issue and find that Megna had written notice of Court's Order granting Summary Judgment on November 1, 2007, on November 3, 2007 and by November 6, 2007 and on November 12, 2007 factoring in all possible "grace periods" in a light most favorable to him and without regard to his claim of having personally checked with the Clerk of Court on the status of the case on October 29, 2007. In making these findings and conclusions, I have considered Megna's serious and repeated inattention to detail, which is well documented and of record, as well as his repeated and gross misrepresentations to the Court, as well as his unwarranted, unjustified and untrue attacks on opposing counsel who clearly appears to have been remarkably restrained and professional in the representation of his client and in dealing with Megna under the circumstances.

AND IT IS SO ORDERED.

Casey L. Manning
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
April 3, 2008

The South Carolina Court of Appeals

James A. Anasti, Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court, Defendants,

Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are Respondents

And Gina L. Anasti Lee is the Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2007-CP-40-00576

ORDER

Respondent filed a motion to dismiss the above-captioned appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a Return, claiming his Rule 59(e) motion was timely and accusing Respondent's counsel of filing a frivolous motion and acting inappropriately.

By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After conducting a hearing, the circuit court found "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order "much more than ten days prior to the filing of his Motion for Reconsideration." This Court received the circuit court's

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order on April 4, 2008, and Appellant's appeal was dismissed as untimely on April 17, 2008. However, unbeknownst to this Court, the attorney for Appellant filed a Rule 59(e) motion on April 7, 2008, arguing he never received notice of the evidentiary hearing.

Appellant has now filed a motion for rehearing, requesting this Court reconsider our order dismissing the appeal. We once again remand the case to the circuit court for a hearing on Appellant's pending Rule 59(e) motion. The Richland County Clerk of Court is responsible for notifying the parties when the hearing is scheduled. After the circuit court rules on the pending Rule 59(e) motion, this Court will consider Appellant's motion for rehearing.

AND IT IS SO ORDERED.

Jasper M. Cureton, A.J.
The Honorable Jasper M. Cureton

FOR THE COURT
Hearn, C.J., Thomas, J., and Cureton, A.J.

Columbia, South Carolina

June 19, 2008

cc: Tony Ray Megna, Esquire
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED
6/20/08 dhp

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Lance Wilson and Willis Goodwin, Plaintiffs,	)	Docket No.: 2004-CP-40-5333
v.	)	
Gina L. Anasti Lee	)	
Defendant/ Third-Party Plaintiff	)	**AWARD**
v.	)	
Dallis Law Firm, P.A.,	)	
Defendant/ Fourth-Party Plaintiff,	)	
v.	)	
Sandra Michelsen d/b/a Abstract Title, Fourth-Party Defendant, Defendants.	)	
	)	

Lance Wilson and Willis Goodwin, Plaintiffs,	)	Docket No.: 2004-CP-40-5334
v.	)	
Dallis Law Firm, P.A.,	)	
Defendant/ Third-Party Plaintiff,	)	**AWARD**
v.	)	
Sandra Michelsen d/b/a Abstract Title, Third-Party Defendant, Defendants.	)	
	)	

This matter comes before me pursuant to binding arbitration agreed to by three of the four parties to these matters: (1) Lance Wilson and Willis Goodwin ("Wilson" and "Goodwin"); (2) Gina L. Anasti Lee ("Lee"); and (3) the Dallis Law Firm, P.A ("Dallis Law Firm" or "Dallis"). This arbitration was agreed to pursuant to a consent Order dated November 9, 2007. This award finally determines, without appeal, the rights of the three parties to this arbitration in Case Nos. 04-CP-40-5333 and 04-CP-40-5334.

A fourth party is Sandra Michelsen d/b/a Abstract Title ("Michelsen"). Michelsen has never appeared in either of these cases and is in default. Michelsen was sued by the Dallis Law Firm, which sought a recovery only in the event the Dallis Law Firm was found liable to Wilson and Goodwin and/or Lee. Michelsen is not a party to this binding arbitration but, by virtue of being in default, is bound to indemnify the Dallis Law Firm for any award against the Dallis Law Firm.

STATEMENT OF THE CASE

This case revolves around a parcel of property, the "Two Notch property," that is the source of the dispute between the parties. With regard to these cases, the first relevant owner of the property was Albert Anasti who owned the property in fee simple. On November 17, 1978, he deeded the property to a third party who, on the same day, deeded it back to Albert Anasti and his son James Anasti as joint tenants with right of survivorship. Albert died testate on October 24, 1995. At his death the "Two Notch property" became the exclusive property of James Anasti pursuant to the survivorship deed noted above.

Complicating matters, Albert Anasti's Will bequeathed the property to his daughter, Gina Lee. When Albert Anasti died in 1995, James Anasti was out of the country. Gina Lee served as personal representative and in that capacity, Gina Lee deeded the property to herself in fee simple in a deed of distribution on October 24, 1996, pursuant to Albert's Will..

While Albert Anasti was still alive, he had rented the Two Notch property to Lance Wilson who operated a club on the property. After Anasti's death, Wilson continued to pay rent and other sums to Gina Lee, who he believed, at least for a time, to

be the rightful successor owner of the property. Eventually Lee and Wilson worked out a deal for the sale of the property to Wilson, but due to financing issues, Wilson enlisted his friend Willis Goodwin to help financially.

Wilson and Goodwin together were able to strike a deal with Lee to buy the parcel in 2000. However, still in 2000, Wilson and Goodwin became aware of title problems with the property when they became interested in using it as collateral for a loan. In February of 2002, Lee herself became aware of title problems with the property. Eventually, in a different civil action, James Anasti was able to obtain a judgment that he was the rightful owner of the parcel.

Wilson and Goodwin sued Lee and all three sued the Dallis Law Firm, the firm that handled the real estate closing. The Dallis Law Firm was sued by Wilson and Goodwin on November 12, 2004 but was not sued by Lee until March 24, 2005. Dallis, in turn, sued Sandra Michelsen d/b/a Abstract Title, who has defaulted and never appeared.

FINDINGS OF FACT

1. Prior to 1978, Albert Anasti came into fee simple ownership of the Two Notch property.

2. On November 17, 1978, Albert Anasti deeded the Two Notch property to a third party who, on the same day, deeded it back to Albert Anasti and his son, James Anasti, to hold as joint tenants with right of survivorship.

3. Albert Anasti died on October 24, 1995, and at his death the Two Notch property became the exclusive property of James Anasti pursuant to the survivorship deed in Finding Number Two.

4. Albert Anasti's daughter, Gina Lee, served as personal representative of her father's estate.

5. Albert Anasti's Will attempted to bequeath the Two Notch property to Gina Lee. On November 7, 1996, a deed of distribution appeared to transfer ownership of the property to Lee. This deed of distribution was prepared by the Probate Court with jurisdiction over the Albert Anasti estate.

6. Wilson was a renter of the property both before Albert Anasti's death and after.

7. Wilson paid rent to Lee after Albert Anasti's death.

8. Wilson and Goodwin together paid the following sums relating to the Two Notch property: (1) $61,250 (rent collected the 49 months from November 1995 to November 1999; rent was $1,250 per month); (2) $3,000 (rent collected the 2 months from December 1999 to January 2000; rent was $1,500 per month); (3) $50,000 (a down payment on the purchase of the property); (4) $51,646.68 (mortgage payments collected the 34 months from February 2000 to December 2002; mortgage payments were $1,519.02 per month). All of these monies were paid to Lee by Wilson and/or Goodwin.

9. Wilson and/or Goodwin also paid property taxes for the parcel totaling $18,657.24.

10. Wilson learned of problems with the title to the disputed property in 2000. Shortly after the closing of the sale of the disputed property in January 2000, Wilson went to the Bank of America to see about getting a loan with the property as collateral. Wilson Depo. p. 48 ll. 11-13 ("Q. When did you go to the Bank of America to get a loan?

Wilson. That was in—I believe around 2000."). Wilson learned that neither he nor Goodwin were the actual owners of the property. Wilson Depo. p. 49 ll. 7-25.

Q. Now, when you went to the Bank of America in whenever it was to get a loan, what were you told?
Wilson. My name was not on the building or the property.
Q. And that was it. Since you were not the owner of the property, you couldn't get a loan?
Wilson. Yes.
Q. Did you ask Mr. Goodwin, since his name was on there, did you ask him if he could get another loan?
Wilson. His name was not on the property.
Q. All right, so you're saying whenever you went to Bank of America, you were aware then that there was some problem with the title or did they tell you? Did you know before?
Wilson. No, I didn't know before.
Q. So Bank of America is the one that told you? Was this before there was a condemnation action?
Wilson. (Nods head affirmatively}.
Q. You're shaking your head yes?
Wilson. Yes.

Id. Wilson then went to his attorney regarding this matter. Id. at p. 50 ll. 1-9.

Q. What did you do at that time, since Bank of America is telling you that Mr. Goodwin didn't own the property? You know you didn't own the property? What did you do at that point to try to figure out what was going on?
Wilson. That's about when I went to Mr. Earle.
Q. Did you go to Mr. Earle before the condemnation action?
Wilson. I believe so.

Id.

Wilson's live testimony offered at the arbitration hearing was punctuated by serious gaps in memory. Wilson suffered a stroke and brain damage in August of 2000 and has attendant memory problems. Due to his memory problems, Wilson offered no reliable testimony as a live witness regarding whether or not he approached a bank in 2000 and learned that neither he nor Goodwin were the actual owners of the disputed property.

Because of his inability to recall the events of 2000, counsel for the Dallis Law Firm introduced into evidence portions of his deposition testimony cited above without objection. Tr. at p. 55 et seq. The portions of Wilson's deposition in the record establish that Wilson approached a bank for a loan in 2000 but the bank advised Wilson he could not borrow against the property because neither he nor Goodwin owned it. Wilson then proceeded to speak to a lawyer about the matter.

A preponderance of the evidence supports the finding that Wilson learned in 2000 that there were problems with the title to the disputed property due to his dealings with a bank in an effort to secure a loan on the property. Wilson's memory problems during the hearing of this matter made his live testimony unhelpful on this question, but his deposition testimony, tips the scales toward Wilson's learning about title problems to the disputed property in 2000. Further, because Wilson suffered a stroke in mid-August of 2000 that debilitated him for approximately 18 months, Wilson's activities with regard to the property (seeking a loan, finding out that neither he nor Goodwin owned the property, and seeking advice of counsel) must have taken place between January and August of 2000.

11. Wilson and Goodwin went in together with regard to the purchase of the Two Notch property.

12. Lee learned of the problems with the title to the disputed property on February 27, 2002. The testimony is undisputed on this point. In late 2001 and early 2002, the State of South Carolina became interested in exercising eminent domain to take a sliver of the disputed property for a road widening project. Link Aff. Exhibit A (Plaintiff's Exhibit 11). John Link was an agent of the State of South Carolina involved

in this project. Link Aff. On February 27, 2002, Link communicated to Lee that there were title problems with the disputed property and that it appeared that James Anasti owned the disputed property. Link Aff. ¶¶ 9-10 ("[O]n February 27, 2002 I spoke to Gina L. Anasti Lee regarding the [Two Notch property]. . . . [D]uring this February 27, 2002 conversation, I explained to Ms. Lee that there were problems with the title to the parcel and that her brother had an interest in the property."); Tr. p. 162 l. 25 – p. 164 l. 7 ("[T]here was a fellow that just called the shop where I worked at that said . . . something about the property that . . . I inherited was supposedly my brother's.").

13. On September 27, 1999, Wilson and Lee, without the benefit of an attorney, entered into a contract for sale of the Two Notch property that Lee represented she owned. However, that contract was renegotiated later in the year and Dallis was retained to prepare the Contract documents and protect Goodwin's interest also. By the terms of the Lee-Goodwin Contract, Goodwin agreed to purchase the Two Notch property from Lee for the sum of $177,000.00, paying $50,000.00 down with "owner financing" by Lee, as evidenced by a note and mortgage in the sum of $127,000.00, payable at the rate of $1,519.02 per month commencing February 6, 2000 (Plaintiffs' Exhibit 3). At or about the same time, Goodwin and Wilson entered into an "Installment Sale Contract," also prepared by Dallis, by the terms of which Wilson would purchase the identical Two Notch property from Goodwin (Plaintiff's Exhibit 4). This installment sales contract was a material component of the contract and was specifically approved of and consented to by Lee. In other words, she gave written permission for Wilson to assume Goodwin's promissory note and mortgage obligations (Plaintiff's Exhibit 5) so

that he would be the ultimate owner of the Two Notch property which she erroneously represented that she owned.

14. In conjunction with the aforesaid transactions, Wilson and Goodwin engaged Dallis for purposes of a real estate closing, to include preparing all necessary documents and performing a title search to ensure that Lee had proper/"good", marketable, fee simple title to the Two Notch property to be deeded to Goodwin and then ultimately to Wilson. Dallis in turn has alleged that it engaged Abstract to perform a title search.

15. Based upon Abstract's real estate title report, Dallis subsequently represented or certified to Wilson and Goodwin that Lee had proper/"good", marketable, fee simple title to the Two Notch property, a closing took place as evidenced by Lee's general warranty deed (Plaintiffs' Exhibit 9) and the settlement statement (Plaintiffs' Exhibit 2). Thereafter, Wilson paid Goodwin most all of the sums due under his Installment Sale Contract, as well as paying to Lee all sums ostensibly due her under the note and mortgage with Goodwin e.g. $1,519.02 per month. In addition, Wilson asserts that he paid all real estate taxes on the Two Notch property from 2000 through 2006, and he presented receipts for the period of 1994 – 2004 (Plaintiffs' Exhibit 6).

From the records produced, I find that Wilson has paid taxes relative to the Two Notch property in reliance on the deed from Lee to Goodwin and in conjunction with his installment sales contract with Goodwin as follows:[1]

Year	Amount	With Prejudgment Interest
2000	$3,346.75	$5,536.03

[1] From the real estate closing statement, it appears that Lee had not paid property taxes on the Two Notch property for 1998 or 1999, such that they were deducted from her settlement at closing on January 6, 2000.

2001	$3,120.34	$5,161.49
2002	$3,362.23	$5,114.16
2003	$4,389.92	$6,140.08
2004	$4,438.00	$5,707.89
TOTALS	$18,657.24	$27,659.65

Although Wilson testified that he paid applicable real estate taxes through 2006, no documentary evidence of payments for 2005 and 2006 (and more importantly no evidence as to amounts paid) was presented and, therefore, I am not able to speculate as to what sums were in fact paid (or by whom).

16. In August, 2000, Wilson suffered a stroke, has suffered significant permanent memory loss and was not able to work for approximately 18 months. During that time Goodwin and Mrs. Robin Wilson (wife of Lance Wilson) operated Dave's. Nonetheless all monthly mortgage payments of $1,519.02 each were paid to Lee until December, 2002 for a total of 34 payments and a total amount paid of $51,646.68.

17. Wilson and Goodwin were, in essence, the buyers of the Two Notch property from Lee, and the business known as Dave's (owned and operated by the corporation known as Pedaro, Inc.) was a separate entity. All repairs and improvements were asserted by Wilson to have been made and/or paid for by him. However, having recited that testimony, it is not dispositive because Wilson presented no documentation nor other evidence relative to the amount(s) of repairs and improvements and hence any award for same would be speculative and must

therefore be denied. Furthermore, any damages to the corporation known as Pedaro and/or Dave's are not compensable in that (a) they are not parties to the within action and (b) such claims, if any, would be too speculative upon which to base any award.

18. Wilson has asserted that he has paid and maintained insurance on the Two Notch property, but he has provided no proof of the costs of same such that no award can properly be made.

19. From January, 2000 until being served with an action by S.C.D.O.T. in December, 2002 (case # 02-CP-40-6062) Wilson paid Lee $1,519.02 per month relative to Goodwin's note and mortgage. Thereafter, all payments to Lee stopped.

20. I have taken judicial notice of the terms of the Court's Order dated October 26, 2007 in action 07-CP-40-0576 and I adopt the terms, findings and conclusions as my own. Thus, it is clear that title to the Two Notch property is now in the name of James A. Anasti (since the death of Albert A. Anasti).

21. I find and conclude that Lee never at any stage had any ownership in the Two Notch property and that she obtained funds from Goodwin and/or Wilson to which she was not entitled, as follows:

January 6, 2000 = $50,000.00 at closing

February, 2000 through November, 2002 -- $1,519.02 per month

34 months x $1,519.02 = $51,646.68

Total $101,646.68

22. Wilson has continued to operate Dave's at the Two Notch property but has paid no sums as rent or otherwise since his November 2002 payment to Lee.

23. As reflected in Plaintiff's Exhibit 2, Lee did not pay real estate taxes on the Two Notch property in 1998 or 1999 (or since that time); she presented no documentary evidence that she has ever paid any real estate taxes on it, and no documentary evidence (or amounts) was presented that she has ever paid any sums for insurance on the Two Notch property. Thus, I find and conclude that she has never paid real estate taxes or insurance on the Two Notch property, excepting taxes paid or advanced by Wilson and/or Goodwin which were deducted at the closing January 6, 2000 for 1999, and Wilson paid the real estate taxes in 1998.

24. When Lee "sold" the Two Notch property to Goodwin, she testified that she thought in good faith that she had good, marketable title and that she took pursuant to a "deed of distribution" prepared by the Probate Court. Further, she testified that she would want to do what was honest and would not have attempted to sell it if she did not own it.

25. No competent evidence was advanced in support of Lee's foreclosure and debt claims, which claims I would have found to have been totally without merit in any event since she would have been seeking to foreclose on property she clearly never owned and on a debt that was clearly not owed to her.

26. In Wilson and Goodwin's complaint, they allege that Dallis was negligent and that they were damaged as a proximate result. They presented no expert testimony but instead rely upon the common knowledge exception to the general requirement that expert witness is required in a professional malpractice or negligence action. Their premise simply stated is that Dallis was retained to represent

them in a real estate closing to ensure that they (Goodwin, initially, and Wilson, ultimately) receive good, marketable fee simple title to the property.

27. Plaintiffs have shown that Dallis Law Firm was retained to represent them in a two stage real estate transaction in which:

a. Dallis Law Firm was given the earlier "store bought" contract

b. Dallis Law Firm was to draft the contracts (1) contract between Gina L. Anasti Lee and Willis Goodwin and (2) secondary contract to protect Lance Wilson in this now 3 party transaction.

c. Dallis Law Firm was to conduct a title examination to make sure Mrs. Lee did in fact own the property and thus could convey good marketable fee simple title to Willis Goodwin who in turn could obligate himself to Lance Wilson in the secondary contract.

d. Prior to closing Dallis Law Firm advised Goodwin and Wilson that title was good; that the closing would occur at their office on 6 January 2000 and that Willis Goodwin would need to bring $45,000.00 to closing in order with Mrs. Lee and that Wilson would also need to be at closing so he and Goodwin could execute the Installment Sale Contract.

e. It is not clear who contacted Mrs. Lee but she was a necessary party for the closing and she along with Goodwin and Wilson were at Dallis Law Firm for the closing conferences.

28. The crux of this litigation from the plaintiffs' point of view is that Dallis Law Firm was retained by them to assure them that they would get good marketable fee simple title to the property subject only to the Goodwin to Lee purchase money

mortgage to be given by Goodwin to secure the deferred portion of the purchase price.

29. The order of the Honorable J. Ernest Kinard, Jr. (Lee's Exhibit 9) in the case of James A. Anasti vs. Goodwin, Wilson, Lee and Barbara Scott as Clerk of Court (2007CP40-576) conclusively established that James A. Anasti is the sole owner of the real property. The Dallis Law Firm certified to Willis S. Goodwin, to Lance Wilson (and from the testimony of Gina L. Anasti Lee to her also) that Gina L. Lee was the owner of and that Willis S. Goodwin, once the closing was completed and the deed recorded, would own fee simple marketable title to the property subject to the Purchase Money Mortgage back to Mrs. Lee as provided for in the Contact of Sale (which Dallis Law Firm prepared for Goodwin and Wilson).

30. Lance Wilson in reliance upon the representations of Dallis Law Firm that Willis S. Goodwin had good marketable fee simple title to the property (subject to the Goodwin to Lee promissory note secured by said Purchase Money Mortgage) then entered into the Installment Sale Contract with Willis S. Goodwin. Goodwin then entered into the agreement with Wilson.

31. The evidence is irrefutable that Mrs. Lee never had any title to the property.

32. The Dallis Firm asserts that the claims of professional negligence of Wilson, Goodwin, and Mrs. Lee, fail, in part, because no expert testimony has been offered on the issues of the standard of care, the breach of care, and the proximate cause of any damages.

33. This case clearly comes within the "common knowledge" exception to the requirement of expert testimony in cases of this sort. The Dallis Firm recognized its need for a title examination to determine the true owner of the property. It retained its own abstractor to conduct that examination and to satisfy the Dallis Firm itself as to the true ownership. Unfortunately for all parties concerned, the abstractor hired by Dallis failed to discover and/or report the true ownership of the property as being in Mr. James Anasti pursuant to the survivorship terms of the deed referred to in Finding Number Two above. That negligent oversight is imputed to Dallis, the firm which hired the abstractor to conduct the examination. No expert is required to explain a survivorship deed; by its very terms, the ownership is apparent.

34. It is not necessary to know how to examine a title to reach that finding. If the issues of whether or not liens existed against the property or whether or not there was some esoteric rule of property law (the Rule against Perpuities, for example) then clearly expert testimony may be necessary. However, in this case, the question is a simple one of true ownership. The Dallis Firm reported the true owner was Gina L. Anasti Lee. The clear wording of the survivorship deed indicated the true ownership in James Anasti.

35. Therefore, the claims of Wilson, Goodwin and Gina Lee against the Dallis Firm do not fail for the lack of expert testimony. They fail because their respective suits were not filed within the three year period allowed by the Statute of Limitations. (See paragraphs ten and twelve above and Conclusions five and six below.)

CONCLUSIONS OF LAW[2]

[2] To the extent any conclusions of law may be, in whole or in part, findings of fact, they are to be construed as such.

1. Albert Anasti and James Anasti held the Two Notch property as joint tenants with right of survivorship prior to Albert Anasti's death. At Albert Anasti's death, James Anasti came into ownership of the entirety of the Two Notch property in fee simple. Accordingly, the language in Albert Anasti's Will indicating the Two Notch property was bequeathed to Gina Lee never operated. Since Albert Anasti's death, James Anasti has held title to the Two Notch property.

2. Therefore, neither Lee nor anyone else other than James Anasti has held title to the Two Notch property since Albert Anasti's death.

3. Lee never had the legal right to sell the Two Notch property.

4. The attempted sale of the property was invalid because Lee could not sell the property.

5. The statute of limitations is a bar to Lee recovering against the Dallis Law Firm. The statute of limitations defense is an affirmative defense. Arant v. Kressler, 327 S.C. 225, 227, 489 S.E.2d 206, 208 n.1 (1997). For the defendant to prevail, the defendant must show by a preponderance of the evidence that the plaintiff was on notice that a claim might exist more than three years prior to the filing of the lawsuit. Cole v. South Carolina Electric and Gas, Inc., 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003); Epstein v. Brown, 363 S.C. 372, 380, 610 S.E.2d 816, 820 (2005).

"[The South Carolina Supreme Court] has recognized that, under the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist. The fact that the injured party may not comprehend the full extent of the damage is immaterial." Epstein v. Brown, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005) (citing,

inter alia, Dean v. Ruscon Corp., 321 S.C. 360, 363-364, 468 S.E.2d 645, 647 (1996)). "[An] injured party must act with some promptness where [the] facts and circumstances of injury would put [a] person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; [the] statute of limitations begins to run from this point and not when advice of counsel is sought or [a] full-blown theory of recovery is developed." Id. (describing the holding of Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994)).

The undisputed facts of the case are that Lee learned about title problems regarding the disputed property on February 27, 2002. Lee's testimony and the stipulated testimony of John Link both establish, without question, that Link notified Lee of title problems and, in fact, told Lee that it appeared her brother owned the disputed property. Link Aff. ¶¶ 9-10 ("[O]n February 27, 2002 I spoke to Gina L. Anasti Lee regarding the [Two Notch property]. . . . [D]uring this February 27, 2002 conversation, I explained to Ms. Lee that there were problems with the title to the parcel and that her brother had an interest in the property."); Tr p. 162 l. 25 – p. 164 l. 7 ("[T]here was a fellow that just called the shop where I worked at that said . . . something about the property that . . . I inherited was supposedly my brother's.").

When Lee was told on February 27, 2002 that her brother James Anasti owned the disputed property rather than Lee or the putative buyers, Wilson and Goodwin, she was put on notice that there was a title problem regarding the property. Lee's statute of limitation against the Dallis Law Firm began to run on February 27, 2002, because a reasonable person of common knowledge and experience would have been put on notice that she might have a claim at that point in time.

Lee did not file suit against the Dallis Law Firm until March 24 of 2005, more than three years after the statute of limitations began running as to any claims against the Dallis Law Firm. The applicable statute of limitations in this matter is three years. Epstein v. Brown, 363 S.C. 372, 380, 610 S.E.2d 816, 820 (2005). Accordingly, Lee's claims against the Dallis Law Firm are time-barred and the Dallis Law Firm is entitled to a defense award with respect to all claims leveled by Lee.

6. The statute of limitations is also a bar to Wilson and Goodwin recovering against the Dallis Law Firm. The statute of limitations defense is an affirmative defense. (See paragraph five above.)

In the instant case, Wilson learned of problems with the title to the disputed property in 2000. Finding of Fact 10, supra. The segments of Wilson's deposition entered into the record in this case reveal that he learned about problems with the title to the disputed property sometime in 2000. Further, no other evidence in the case points to a different date of discovery. Neither counsel for Wilson nor any other party elicited any testimony or adduced any evidence that would point to a different discovery date. It is true that Wilson himself had no reliable memory regarding when he discovered problems with the title to the property, but the portions of his deposition testimony entered into the record are incontroverted: Wilson learned of problems with the title to the disputed property in 2000.

Wilson's knowledge that neither he nor Goodwin owned the property in 2000 after the closing was sufficient to put a reasonable person of common knowledge and experience on notice that he might have a claim. While it was not necessary for Wilson to consult with a lawyer before triggering the running of the statute, Wilson nonetheless

did consult with an attorney in 2000 regarding the disputed property. Because of Wilson's stroke in mid-August of 2000, this consultation must have occurred sometime between January and August of 2000. Therefore, the statute of limitations began running as to Wilson no later than August of 2000.

It is well-settled law that the knowledge of one co-adventurer is imputed to all members of the joint venture. E.g., In re Parmalat Securities Litigation, 501 F.Supp.2d 560 (S.D.N.Y. 2007) (citing Mallis v. Bankers Trust Co., 717 F.2d 683, 689 n. 9 (2d Cir. 1983)) ("Knowledge of a joint adventurer is imputed to its co-adventurers."). Because Wilson and Goodwin were engaged in a joint venture with respect to the purchase of the disputed property, Wilson's knowledge of problems with the title in 2000 is imputed to Goodwin. Accordingly, the statute of limitations began running as to Goodwin the same time it began running as to Wilson: no later than August of 2000.

The preponderance of the evidence then indicates that Wilson (and, vicariously, Goodwin) learned of problems with the title to the disputed property in 2000. Wilson and Goodwin did not file suit against the Dallis Law Firm until November of 2004, more than four years after the statute of limitations began running as to any claims against the Dallis Law Firm. The applicable statute of limitations in this matter is three years. Epstein v. Brown, 363 S.C. 372, 380, 610 S.E.2d 816, 820 (2005). Accordingly, Wilson and Goodwin's claims against the Dallis Law Firm are time-barred and the Dallis Law Firm is entitled to a defense award with respect to all claims leveled by Wilson and Goodwin.

CONCLUSION

Based on the findings of fact and conclusions of law set forth above, it is accordingly ordered:

1. The Wilson-Goodwin joint venture be awarded the sum of $216,337.70 in actual damages against Gina L. Anasti Lee. That amount is derived from the following calculations:

a.) $50,000.00 paid at closing plus prejudgment interest at 8.75% per annum through January 6, 2008, which equals $97,814.70;

b.) 34 monthly mortgage payments of $1,519.12 each for a total of $57,646.68, plus prejudgment interest as above totaling $90,863.35;

c.) Real estate taxes for the years 2000 through 2004 total $18,657.24, plus prejudgment interest as above, totaling $27,659.65.

2. Wilson and Goodwin's claim against The Dallis Law Firm must be denied because it was filed after the statute of limitations had expired for the filing of such a claim.

3. Gina Anasti Lee's claim against The Dallis Law Firm must also be denied because it was filed after the statute of limitations has expired for the filing of such a claim. Further, Ms. Lee failed to prove that she suffered any damages proximately caused by the actions of The Dallis Law Firm.

4. This court has not awarded punitive damages in this case because the actions of Ms. Lee were not willful actions in that she had a good faith belief that she was the owner of the subject property as a result of Albert Anasti's Will. However, a good faith belief does not afford any protection against Wilson and Goodwin's claim for actual damages awarded above.

5. Lee's claim for foreclosure against Wilson and Goodwin is denied because Lee never owned the Two Notch property and therefore cannot foreclose.

6. All other claims by the parties are denied, except, however, for claims the Dallis Law Firm has against Sandra Michelsen d/b/a Abstract Title for any sums which Dallis becomes legally obligated to pay or reasonably chooses to pay as a result of this matter. These claims by Dallis against Michelsen are not resolved by this arbitration as Michelsen was not a party to this arbitration.

7. The fees for the arbitrator will be evenly divided among the three parties to this action.

AND IT IS SO AWARDED.

Thomas W. Cooper, Jr.
Arbitrator

August 15, 2008

Manning, South Carolina

BOOK RV PAGE 463

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
Plaintiff,	)	
vs.	)	
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT,	)	**ORDER**
Defendants.	)	

RICHLAND COUNTY FILED
2009 APR -1 PM 3:51
JEANETTE W. McBRIDE C.C.P. & G.S.

IN RE:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

James A. Anasti,.....Respondent,

v.

Lance Wilson, Willis Goodwin, Gina Anasti Lee, Richland County Clerk of Court,.....Defendants,

Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are.....Respondents,

And Gina L. Anasti Lee is the.....Appellant.

THIS MATTER CAME BEFORE ME on October 2, 2008, pursuant to the South Carolina Court of Appeals Order dated June 19, 2008, in which this Court was directed to conduct a hearing on Appellant Gina L. Anasti Lee's Motion to Alter or Amend this Court's Order dated April 3, 2008, said Motion being filed April 7, 2008 pursuant to SCRCP 59(e).[1] [2]

FINDINGS, CONCLUSIONS AND DISPOSITION

Having heard extensive arguments and carefully considered all supporting documents and pleadings, as well as all the asserted basis(s) for Appellant's pending 59(e) Motion, I find and conclude that it should be and is denied in that;

I. Appellant did in fact receive notice of the hearing held April 3, 2008 that was in writing, properly transmitted, reasonable under the circumstances and in compliance with due process.

II. Appellant did in fact timely receive the Order granting partial Summary Judgment dated October 26, 2007, as determined and set forth in this Court's Order dated April 3, 2008, but she failed to thereafter timely file a 59(e) Motion to Alter or Amend (eg. her untimely 59(e) Motion of November 20, 2007, relative to the Court's October 26, 2007 Order) and she failed to timely file a Notice of Appeal (untimely filed on January 4, 2008).

III. For the reasons set forth in the Order dated April 3, 2007, which are adopted by reference herein.

IV. For the reasons set forth in the Order herein.

---

[1] The pending 59(e) Motion filed April 7, 2008 was not previously considered because (a) the case was then on Appeal and had been remanded on March 18, 2008 for an evidentiary hearing only, (b) subsequent to this Court's Order dated April 3, 2008, the Appeal was dismissed by Order dated April 16, 2008, (c) Appellant filed a Motion pursuant to SCACR 221 on April 22, 2008, apparently confirming that she was taking the position that the matter was then exclusively before the Court of Appeals for a resolution, (d) Appellant had previously submitted (in writing) that this Court was without jurisdiction to hear her 59(e) Motion, (e) no copy of the 59(e) Motion was submitted to me by the moving party, as required by Rule 59(g), prior to dismissal of the Appeal and (f) for the reasons that are apparent for footnote 6.

[2] In Appellant's Rule 59(e) Motion, she seeks to have this Court set aside its April 3, 2008 Order as improvidently granted and to hold an evidentiary hearing as to when her counsel (Megna) received the Court's Order dated October 26, 2007, granting partial Summary Judgment.

PROCEDURAL HISTORY

For the purposes of the within Order, the pertinent procedural history of the case reflects that;

a) Partial Summary Judgment was granted to Respondent (Plaintiff herein) James Anasti by Order of the Honorable J. Ernest Kinard, Jr. dated October 26, 2007. That Order was filed on October 26, 2007 and mailed to respective counsel by the Richland County Clerk of Court on Monday, October 29, 2007.

b) On November 20, 2007, Appellant filed a Motion to Alter or Amend Judge Kinard's Order pursuant to SCRCP 59(e).[3]

c) On December 5, 2007, Judge Kinard denied Appellant's Rule 59(e) Motion, *sua sponte*.[4]

d) On January 4, 2008, Appellant filed a Notice of Intent to Appeal.

e) On January 22, 2008, Respondent Anasti filed a Motion to Dismiss Appellant's Appeal on the grounds that it was not timely filed.

f) On March 18, 2008, the South Carolina Court of Appeals remanded the matter, with written notice to all counsel, for an evidentiary hearing as to the date when Appellant Lee's counsel (Megna) received the Order granting partial Summary Judgment. The accompanying transmittal letter from the Clerk of Court of the Court of Appeals to respective counsel directed that Respondent's counsel was to schedule a hearing "as soon as possible". Thereafter, Respondent's counsel requested (in writing) a hearing, and Appellant's counsel was copied with that request.

g) On March 28, 2008 an evidentiary hearing date was set by this Court for April 3, 2008, and Respondent Anasti's counsel was directed to notify opposing counsel of the hearing date, which I have found and concluded

[3] Appellant's Motion did not set forth an irregular date of receipt of Judge Kinard's Order granting partial Summary Judgment (or any date of receipt whatsoever for that matter).

[4] Appellant's November 20, 2007 59(e) Motion was not received by Judge Kinard until December 3, 2007 because Appellant had addressed and mailed it to an incorrect address for Judge Kinard.

that he did, promptly and properly by the most reasonable means under the circumstances.[5]

h) On April 3, 2008, the said evidentiary hearing was held, an Order was issued by the undersigned and it was promptly filed with the South Carolina Court of Appeals on April 4, 2008.

i) On April 7, 2008, counsel for Appellant (Megna) filed yet another Motion with the Richland County Clerk of Court pursuant to SCRCP 59(e), requesting a rehearing of the evidentiary hearing of April 3, 2008, and representing that (a) he never received any notice of the said evidentiary hearing and (b) no notice had been sent.

j) On April 10, 2008 Appellant's counsel wrote to the Court, asserting that all motions were stayed pending the Appeal.

k) On April 16, 2008, the South Carolina Court of Appeals dismissed Appellant's Appeal.

l) On April 22, 2008, Appellant filed a Motion to Rehear, Alter or Amend pursuant to SCACR 221(a) and at that time did Appellant make the Court of Appeals aware that her 59(e) Motion of April 7, 2008 had been filed.

m) By Order dated June 19, 2008, the Court of Appeals again remanded the matter for a hearing on Appellant's pending (April 7, 2008) 59(e) Motion, and the within Order is issued pursuant to that Order of the South Carolina Court of Appeals.[6]

---

[5] Appellant's counsel (Megna) has asserted, *inter alia*, that at both his law office/home and at his non-law office business he was experiencing difficulty receiving mail from the U.S. Post Office in a timely manner (and relied on that assertion as a basis for his apparent late filing of Appellant's November 20, 2007 59(e) motion, as well as his apparent late filing of Appellant's Notice of Appeal), and he also asserted that he had purposely chosen to limit or avoid contact with Anasti's counsel. While rejecting that Megna had any reasonable basis for purposefully avoiding contact with opposing counsel, I have found that written notice to Megna of the evidentiary hearing ultimately held on April 3, 2008 by fax at the same fax number he had used for years, with proof of both a successful fax text confirmation and a sent/received fax receipt journal is and was clearly appropriate notice under the circumstances with which Respondent's counsel was faced, especially given the arguments, affidavits and documents previously submitted to the South Carolina Court of Appeals and this Court, and also given the written notice to Megna on March 18, 2008 that a hearing was to be held "as soon as possible".

[6] Subsequent to the Court's Order of April 3, 2008 and subsequent to dismissal of the Appeal on April 16, 2008, Ben Matthews was added as co-counsel with attorney Megna on Appellant's behalf and upon the matter being remanded on June 19, 2008 for another evidentiary hearing, Megna then requested protection from the Court (for vacations) for both he and Matthews for the period of June 27, 2008 through July 27, 2008. Then, the day before the matter was scheduled to be heard (July 22, 2008), Richard Harpootlian was

NOTICE OF THE APRIL 3, 2008 HEARING

As a basis(s) for Appellant's pending 59(e) Motion to Alter or Amend, Appellant's counsel (Megna) first asserted that no notice of the April 3, 2008 hearing was sent and that he did not receive any notice whatsoever for the hearing. Specifically, Megna asserted:

1. he "*completely denies the existence of any notice provided*" to him, "*by any means*" (emphasis added by the Court).

And;

2. "*Any assertion that the undersigned had any notice of a March 28, 2008 (sic) hearing before this Court is absolutely untrue and completely false.*" (emphasis added by the Court)

And;

3. "*...no such notice has been sent* (emphasis added by the Court) *to his office or home.*"[7]

I find each of those assertions by Megna to be untrue and in fact belied by overwhelming evidence to the contrary.

On March 28, 2008, this Court set the date of April 3, 2008 for the evidentiary hearing relative to when Megna received Judge Kinard's October 26, 2007 Order granting partial Summary Judgment (which Order Megna first claimed to have not timely received on January 4, 2008 – long after his November 20, 2007 Rule 59 (e) Motion was denied by Judge Kinard, long after misrepresenting to Judge Thomas W. Cooper, Jr. and opposing counsel on December 5, 2007 that he had in fact filed a 59(e) Motion within a week to ten days of the date the Summary Judgment Order was filed and only after being put on specific notice that his November 20, 2007 59(e) motion was untimely (see transcript in the "companion case"/Arbitration hearing of December 5, 2007, page 193 in conjunction with page 23), and directed Respondent Anasti's counsel to notify opposing

added as additional co-counsel for Appellant and he was permitted to set a time for the hearing that would allow him to be prepared and which would not conflict with other counsel(s)' schedules, with the result being that there were further delays in having the matter concluded. Matthews did not appear for the within hearing and no reason was given for his absence.

[7] At all pertinent times, Megna's only "law office" was his home at 1815 Fulmer Rd., Blythewood, SC.

counsel, which I find beyond a doubt that he promptly did in writing by fax dated March 28, 2008. I further find and conclude that the March 18, 2008 written notice from the Court of Appeals (which Megna does not deny timely receiving) that a hearing was to be set as soon as possible and also specifically the written, faxed notice of March 28, 2008 for the April 3, 2008 hearing that were provided to Megna were both proper and reasonable under the circumstances. Evidence proving both transmission to and receipt by Megna on March 28, 2008 of written notice for the April 3, 2008 hearing has clearly been established by successful fax text transmission confirmation to his published fax number (753-9004) and also by sent/received fax journal confirmation to the same number. The March 28, 2008 notice of hearing was in fact sent by fax on that day to the exact same fax number Megna had listed and published in the South Carolina Bar Directory, on his correspondence, on pleadings previously prepared by him and subsequently on his signed April 7, 2008 59(e) Motion Cover Sheet. Without a doubt, other faxes had previously and/or subsequently been transmitted to (and received by) Megna by Respondent's counsel and/or other members of the South Carolina Bar at the exact same fax number without any complaint, objection or attempt by Megna for correction, and there was no evidence presented reflecting that Megna had notified the Clerk(s) of Court, opposing counsel, counsel in other cases or the South Carolina Bar that notice should not be sent to that fax number (or that Megna was not using that fax number).

In a letter faxed to Respondent's counsel (by Megna from an undisclosed fax number) dated April 22, 2008, Megna clearly appears to have ultimately acknowledged that Respondent's counsel did in fact send him specific written notice on March 28, 2008 (for the April 3, 2008 evidentiary hearing) to his law office fax number (753-9004), and Megna cannot truthfully deny that notice of the April 3, 2008 evidentiary hearing was in fact sent to and received by him at the very same fax number he had listed and represented to be his law office fax number (753-9004). However, Megna then asserted in his April 22, 2008 letter, as the basis for non-appearance at the evidentiary hearing on April 3, 2008, that Respondent's counsel had utilized a fax number (753-9004) for Megna "***that is not in active use***" **and that "*the recent confusion over the April 3, 2008 Order entered by Judge Manning was apparently caused by your (Respondent's***

counsel) office faxing me notice on March 28, 2008 to a number that had not been in active use for a long while." (emphasis added by the Court). I stress that the fax number (753-9004) that Megna claims to have "not been in active use for a long while" prior to March 28, 2008 is in fact the identical fax number he had listed on his April 7, 2008 Motion Cover Sheet (signed by Megna) that accompanied his April 7, 2008 Motion pursuant to Rule 59(e). Respondent's counsel promptly responded to Megna's April 22, 2008 fax and again provided supporting evidence completely disproving Megna's claims and assertions that notice of the hearing had not been sent or received or that Megna had not used his fax number "for a long while". Further, Megna has presented no documentary evidence that his fax number (753-9004) listed with the South Carolina Bar and utilized by him in his Motion of April 7, 2008 and which clearly has been used by him for a number of years on various of his law office letterheads, correspondence, emails and pleadings had ever been out of service or not used "for a long while" (such as a cancellation of service, his sent/received fax journal records, a new fax listing, his payment records for his fax service, a notice to other counsel or Courts, etc.), despite being requested (in writing) to do so.

Based on the overwhelming evidence presented, as well as the lack of any believable documentary evidence or affidavits produced by Megna to the contrary, I find and conclude that Megna was and had been actively using fax number 753-9004 on March 28, 2008, prior to March 28, 2008 ("for a long while" -- more than three years) and in fact subsequent to March 28, 2008.

I have considered, in juxtaposition to Megna's assertions that he had no notice of the April 3, 2008 hearing, the entire record including but not limited to Respondent's Return with accompanying exhibits filed in the South Carolina Court of Appeals on April 29, 2008, as well the exhibits submitted in conjunction with Respondent's Motion to Dismiss the Appeal and all the pleadings, documentary evidence and affidavits before me, and I find them to provide overwhelming evidence of the lack of credibility of Megna as to all contested issues.

SERVICE PURSUANT TO SCRCP 5

As an excuse for non-appearance for the April 3, 2008 evidentiary hearing, Megna first claimed on April 7, 2008 that no notice of the hearing was sent to him by "any means", and he also claimed that no notice of the hearing was received by him at "his office or home". Once it was clearly established that in fact notice of the hearing had been both sent to and received by Megna on March 28, 2008, he then claimed on April 22, 2008 that notice of the hearing had been sent to him at a fax number (753-9004) that he had not used "in a long while". That claim has also clearly been proven to be false because he was using that same exact fax number for years prior to March 28, 2008, on March 28, 2008 and subsequent to March 28, 2008 (for at least approximately a month). Megna now claims that, even if he did in fact receive notice of the April 3, 2008 hearing on March 28, 2008, as well as prior written notice from the South Carolina Court of Appeals that a hearing was to be scheduled as soon as possible, those facts should be considered irrelevant because the notice of the hearing was not in strict compliance with the terms of SCRCP 5. [8]

In the context of Rule 5 and if it were applicable, an analysis of the facts as I find them to be establishes that Megna was at all pertinent times engaged in non-legal business activities, usually out of the Columbia area during normal work weeks, and he only practiced law (as a sole practitioner) on a limited basis (such as Court appointed cases) from his home/"law office". At all pertinent times, he represented on his legal stationary that his law office was at 1815 Fulmer Road, Blythewood, SC (his home) and that his law office fax number was 753-9004. He received his legal mail at his home/law office. He prepared his own correspondence and pleadings and he docketed his own calendar. Megna has sworn under oath that he was and had been purposefully avoiding contact with Respondent's counsel for some time, and he submitted evidence, though not believable, that Respondent's counsel was "stalking" him or his family at his home/law office by virtue of, *inter alia*, sending letters to Megna (at his published law office address) and by virtue of confirming for the Court that Megna's home was in fact his

[8] This last claim is the essence of the argument presented on behalf of Appellant by Mr. Harpootlian and he has made abundantly clear that he is representing Appellant only and not Mr. Megna.

"law office". Under these circumstances in which Megna already knew on or about March 18, 2008 that the evidentiary hearing was to be set as soon as possible, I find that prompt written notice to Megna of the April 3, 2008 evidentiary hearing date by fax on March 28, 2008 with both fax text confirmation and sent/received fax journal confirmation was certainly reasonable, proper and in compliance with due process, especially given Megna's claim that the U.S. Post Office was not promptly delivering his mail.

I find and conclude that Appellant had notice of the April 3, 2008 hearing by March 28, 2008 that was both express and implied. Further Appellant had constructive notice of the hearing, and her counsel should have had inquiry notice as well in that the circumstances reflect that Megna knew or should have known that an evidentiary hearing was imminent by virtue of the Court of Appeals' March 18, 2008 Order remanding the case for a hearing as "soon as possible" and by virtue of Respondent's subsequent written request for a hearing, yet Megna apparently did nothing to ever check on the status of the matter. In addition and perhaps more compelling, and given that Megna had in fact received written, specific notice of the April 3, 2008 hearing on March 28, 2008, he made no timely objection to the matter being heard on April 3, 2008, nor did he claim any irregularity, nor did he appear or timely assert that the notice given for the April 3, 2008 hearing was in anyway defective or prejudicial. Finally and most compelling, Appellant has not suffered any prejudice because I had previously considered and now have reconsidered all that has been submitted on Appellant's behalf, and I reiterate that on all contested issues I continue to find Appellant's claims to be totally without merit.

I find and conclude that Appellant's reliance on Dedes v. Strickland; 307 S.C. 152, 414 S.E.(2d) 132 (1992) is both misplaced and distinguishable in that, *inter alia*, in Dedes, all counsel in fact appeared for a Summary Judgment hearing; counsel timely objected to hearing the matter on short notice with no meaningful opportunity to present affidavits; counsel's request for an opportunity to submit opposing affidavits was denied and the rights of the party were in fact prejudiced thereby. Such distinguishing factors are compared to the instant case in which Appellant's counsel did not appear or raise any objection whatsoever until after the April 3, 2008 Order was issued; Appellant has been afforded a full and complete opportunity to submit (and did submit) affidavits, and

Appellant was encouraged to make a full and complete argument and record, which has been done, and which I have considered and reconsidered. Furthermore, Appellant was also allowed to set and schedule the within hearing for October 2, 2008, after having it continued from its original hearing date of July 22, 2008 and Appellant's counsel (Mr. Harpootlian) appeared to have been very well prepared. Therefore, Appellant has not suffered any prejudice under the circumstances.

TIMELY RECEIPT OF OCTOBER 26, 2007 ORDER

After providing Appellant with another full opportunity to be heard, nothing credible, believable or favorable to Appellant has been presented that would compel me to reverse the findings and conclusions set forth in my April 3, 2008 Order[9], and I reiterate and incorporate the terms of that Order herein by reference, with special emphasis on the transcript in the "companion" case in which, in diametrical opposition to what Megna has now represented to this Court and the South Carolina Court of Appeals relative to the critical date when he received the Court's October 26, 2007 Order (eg. his current claim that he only received the Order on Saturday, November 10, 2007), whereas Megna previously represented to the Court (Arbitrator Thomas W. Cooper, Jr. and opposing counsel at an Arbitration hearing on December 5, 2007) that he had in fact received written notice of the October 26, 2007 Order within a week or ten (10) days of that date (because he falsely claimed to have filed his 59(e) Motion within a week or ten days of the October 26, 2007 Order - see transcript of hearing TR 28, L 14-20). [10]

NOW, THEREFORE, IT IS ORDERED that Appellant's 59(e) Motion to Alter or Amend filed April 7, 2008 is denied in that;

[9] Despite being requested to do so (in writing), Megna has failed to produce the envelope in which the October 26, 2007 Order was mailed to him (which he has acknowledged to have received) by the Richland County Clerk of Court (which would have exhibited a US Mail date stamp), nor has he produced a date stamp or any other record establishing the date of actual receipt by him, nor has he produced any other calendar/time table docketing record(s) (reflecting when he received the Order) that he may have theoretically maintained as a component of his law practice.

[10] As well, I have taken notice of all of the content of the Arbitration award in the "companion case".

a) Appellant's counsel (Megna) clearly received reasonable notice of the April 3, 2008 hearing, to which he did not appear or timely object, and he has no legitimate excuse or basis for his non-appearance. Regardless, his client has suffered no prejudice by his initial non-appearance based on my review and reconsideration of this entire matter.

b) I have considered and reconsidered all submissions by or on behalf of Appellant in any event, and I remain convinced that my April 3, 2008 Order and all findings and conclusions of law were correct and proper as further expanded on and explained herein.

c) Appellant's counsel (Megna) received written notice of the October 26, 2007 Order granting partial Summary Judgment more than ten (10) days prior to his untimely 59(e) Motion filed November 20, 2007 and more than thirty (30) days prior to his untimely Notice of Appeal dated January 4, 2008.

AND IT IS SO ORDERED,

L. Casey Manning
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
April 1, 2008

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT,	)	
Defendants.	)	

RICHLAND COUNTY FILED
2009 APR -1 PM 3:51
JEANETTE W. McBRIDE C.C.P. & G.S.

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by hand delivery to the following address:

Richard Harpootlian, Esquire
PO Box 1090
Columbia, SC 29202-1090

DOCUMENT(S): 1. ***Proposed Order***

Amanda Douglas Hilley
Columbia, South Carolina

Dec 16, 2008

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4000576

James A Anasti *vs.* **Lance Wilson**

Plaintiff

Defendant

RICHLAND COUNTY FILED
2009 APR 1 PM 4:13
JEANETTE W. McBRIDE C.C.P. & G.S.

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*:
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2009.

_____
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2009, and a copy mailed first class this 2nd day of April, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow
Benjamin Rushton Matthews

ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas George Earle
Tony Ray Megna
Richard A Harpootlian

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

SCRCP APP-24/FORM 4

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 09-02854-JW
	Chapter 13
Gina Anasti Lee,	**JUDGMENT**
Debtor.	

Based upon the Findings of Fact and Conclusions of Law recited in the attached Order of the Court, the Amended Motion Seeking 11 U.S.C. § 362(d) Relief filed by James Anasti is granted.

Columbia, South Carolina
November 9, 2009

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 09-02854-JW
Gina Anasti Lee,	Chapter 13
Debtor.	**ORDER**

This matter comes before the Court on the Amended Motion Seeking 11 U.S.C. § 362(d) Relief ("Motion") filed by James Anasti ("Anasti"). This Court has jurisdiction pursuant to 28 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), and (O). Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014, the Court makes the following Findings of Fact and Conclusions of Law.[1]

FINDINGS OF FACT

1. On October 26, 2007, the Richland County Court of Common Pleas entered an order ("state court order") granting partial summary judgment to Anasti with respect to the ownership of real property at 2325 Two Notch Road, Columbia, SC, 29202 (the "Property").[2] Specifically, the court rejected Debtor's claim to the Property by adverse possession and found title to the Property belonged solely to Anasti.

2. Gina Anasti Lee ("Debtor") filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 16, 2009. On Schedule A, Debtor listed the Property as an asset with a value of $167,000. Debtor stated the nature of her interest was disputed: "Property the subject of litigation now pending in the SC Court of Appeals. The title was determined adversley [sic]

[1] To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

[2] At the hearing on Anasti's Motion, counsel for the parties indicated that the Property is commercial property, which is presently being used by a tenant as a night club.

to the Debtor in the Lower Court proceedings, and the matter is now on Appeal."

3. On April 22, 2009, the Court of Appeals filed an Order dismissing Debtor's appeal of the state court order. However, by order dated April 28, 2009, the Court of Appeals rescinded its April 22 order of dismissal, reinstated the appeal, and provided that the timelines for perfecting the appeal would be held in abeyance. Subsequently, on June 16, 2009, the Court of Appeals issued an order holding the appeal in abeyance pending a final decision in the bankruptcy proceedings.

4. On June 22, 2009, the Chapter 7 Trustee filed her Report of No Distribution, in which she stated no property was available for distribution from the estate.

5. This Court issued an order on August 14, 2009, granting Debtor's motion to convert her case to Chapter 13. The Chapter 13 Trustee does not oppose modification of the stay in this matter.

6. The Chapter 13 plan filed by Debtor does not contain any motions, but provides: "The Debtor has requested the Court to order the immediate sale of the [Property] with all interests being paid to the creditors."

7. On August 20, 2009, Debtor commenced an adversary proceeding against Anasti concerning the ownership of the Property.

CONCLUSIONS OF LAW

In the Motion, Anasti requests the Court to lift the automatic stay, pursuant to 11 U.S.C. § 362(d)(1) and (2), for the purpose of permitting completion of the appellate process with respect to the state court order. Section 362(d)(1) provides the Court shall grant relief "for cause, including the lack of adequate protection of an interest in property of such party in interest," and § 362(d)(2) provides for relief if "the debtor does not have equity in such property" and "such

property is not necessary to an effective reorganization."

For purposes of § 362(d)(1), a bankruptcy judge has "broad discretion to determine what constitutes 'cause' sufficient to warrant relief from stay." In re Breibart, C/A No. 03-07440-W, slip op. at 2 (Bankr. D.S.C. Feb. 17, 2004); see also Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992) (stating that "[b]ecause the Code provides no definition of what constitutes 'cause,' courts must determine when discretionary relief is appropriate on a case-by-case basis").

In determining whether to grant relief from stay to a creditor for the purpose of litigating an issue in state court, the court should consider the following factors:

> (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because the matter would have to be litigated in the bankruptcy court; and (3) whether the estate can be protected properly by a requirement that the creditor seek enforcement of any judgment through the bankruptcy court.

In re Katzburg, 326 B.R. 606, 610 (Bankr. D.S.C. 2004) (citing Robbins, 964 F.2d at 345); see also In re Charleston Affordable Housing, Inc., C/A No. 09-01020-dd, slip op. (Bankr. D.S.C. Jun. 9, 2009) (focusing on "whether judicial economy will be served by returning the parties to state court or whether litigation in the bankruptcy court would impair progress" in the bankruptcy case).

Furthermore, courts, including this one, have granted relief from the automatic stay based on a finding of cause to allow a movant to pursue a state court appeal. In re Moore, C/A No. 04-15363-B, slip op., 2005 WL 6267364, at *2 (Bankr. D.S.C. 2005) (finding cause existed to lift the automatic stay because the movant's state court appeal was the only method available for judicial review of the state court order); see also In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997)

(finding that cause, pursuant to § 362(d)(1), existed to permit potential judgment creditor proceed with her state court appeal); In re Metz, 165 B.R. 769, 771 (Bankr. E.D.N.Y. 1994) (granting relief from stay to allow state appellate proceedings to continue, reasoning that the bankruptcy court could not serve as an appellate court for the state court judgment and that a parallel proceeding in the bankruptcy court would lead to "a serious duplication of efforts"); In re Morris, 153 B.R. 588, 590-92 (M.D. Fla. 1993) (affirming the bankruptcy judge's decision that sufficient cause existed to lift the automatic stay for the purpose of allowing the state appellate proceedings to continue, and noting that "the state court appeal would help lead the bankruptcy case to a conclusion").

Legislative history to § 362(d)(1) also supports lifting the stay in such circumstances: ". . . a desire to permit an action to proceed to completion in another tribunal may provide another cause." H.R. Rep. No. 95-595, at 343-44 (1977).

In this case, Anasti asserts that cause exists to lift the automatic stay to permit the continuation and conclusion of the state appellate proceedings as they provide the only mechanism available to create finality with respect to title to the Property. To this end, Anasti argues the Rooker-Feldman doctrine prevents any action by this Court with regard to the Property which, prior to the filing of Debtor's bankruptcy case, was determined to be the property of Anasti. Further, Anasti argues that his interests are not being adequately protected because he continues to have a cloud on his title. Alternatively, Anasti asserts the Property and the related appeal are not subject to the automatic stay due to the Chapter 7 Trustee's abandonment of the Property.[3]

In her objection to Anasti's Motion, Debtor refutes that any order of abandonment was

[3] Anasti also notes he does not pursue any liability against Debtor beyond a determination of title to the Property since any such action is stayed.

entered by the Chapter 7 Trustee. Debtor also disputes the applicability of the Rooker-Feldman doctrine, arguing that no final state order was issued. Further, Debtor asserts there is no indication of finality of the state court order since the state appellate proceedings have been stayed and the pending appeal has not been briefed by the parties. Debtor also contends a modification of the stay is not warranted because the bankruptcy estate and its creditors were not parties to the lower court action. Finally, Debtor states Anasti has no security interest in the Property and the sale of the Property is necessary to an effective reorganization.

The Court agrees that cause exists pursuant to § 362(d)(1), and finds that in the interests of judicial economy and comity, the automatic stay is modified to allow for completion of the state court appellate proceedings.[4] Through her response to Anasti's Motion, the Chapter 13 plan, and the adversary proceeding, Debtor seeks to have this Court adjudicate the issue of title to the Property and make a conflicting ruling to that of the state court order. The Court finds that even if the Rooker-Feldman doctrine does not preclude the Court's jurisdiction as to this issue,[5]

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[4] Because the Court finds that relief is appropriate under § 362(d)(1), the Court need not address Anasti's claim for relief pursuant to § 362(d)(2) at this time.

[5] The Rooker-Feldman doctrine applies only to bar "the loser in state court" from filing a "suit in federal district court seeking redress for an injury allegedly caused by the state court's decision." Davani v. Va. Dep't of Transp., 434 F.3d 712, 713 (4th Cir. 2006) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291 (2005)); McGuffin v. Barman (In re BHB Enters.), Adv. Pro. No. 97-80201, slip op., 1997 WL 33344249, at *6 (Bankr. D.S.C. Aug. 27, 1997). The "pendency of an action in the state court is no bar to proceedings concerning the same matter" in a federal court with jurisdiction; nevertheless, "[c]omity or abstention doctrines" may permit or require a federal court to stay a federal action in favor of a proceeding in state court. Exxon Mobil, 544 U.S. at 292 (internal citation omitted).

Initially, the Court questions the applicability of Rooker-Feldman on the basis that Debtor's plan, response to Anasti's Motion, and adversary proceeding do not appear to seek redress for any injury caused by the state court's order in favor of Anasti; rather, Debtor seeks to commence parallel litigation regarding title to the Property in this Court. Secondly, courts have differed in their opinions as to what constitutes a final order for purposes of Rooker-Feldman. Compare Field Auto City, Inc. v. General Motors Corp., 476 F. Supp. 2d 545, 552-54 (E.D. Va. 2007) (finding the purpose of Rooker-Feldman is best served by applying the doctrine to state trial court judgments because "a federal suit is no less an appeal of the state trial court judgment simply because state appeals are not yet final"); Sinclair v. Bankers Trust Co. of Cal., N.A., C/A No. 5:05-CV-072, slip op., 2005 WL 3434827, at *3 (W.D. Mich. Dec. 13, 2005) (finding that "the state court proceeding that must reach judgment before a federal complaint is filed for Rooker-Feldman to be applicable is the appealable trial court's judgment"); and Moore, 2005 WL 6267364, at *2 (finding the Rooker-Feldman doctrine precluded the bankruptcy court's review of the appealable

relief from stay is still appropriate based on the Court's broad discretion in finding cause under § 362(d)(1).

The determination of title to the Property and the nature and extent of Debtor's interest is an issue of state law that has already been litigated in and addressed by the lower state court. Although the timing of the completion of the state appellate proceedings is uncertain, the Court of Appeals' series of orders indicates a readiness to handle the appeal upon modification of the stay. Moreover, Anasti has noted that he does not seek authority to pursue any action or liability against Debtor beyond a determination of title to the Property in the state court proceedings. Thus, a resolution of the issue in the pending state appellate proceedings would provide this Court with a final determination as to the dispute between Anasti and Debtor with respect to the Property and would avoid an unnecessary duplication of efforts and judicial resources in this Court.

Further, Debtor would not be prejudiced by the Court's refusal to adjudicate this issue; rather, Debtor's remedy is to pursue her appeal of the state court order, and if successful, she may return to this Court for relief at that time. Debtor's indication that she initiated the pending adversary action as a debtor-in-possession on behalf of the bankruptcy estate is erroneous and fails to recognize that such standing belongs to the Chapter 13 Trustee. Thus, any argument that Debtor, in her individual capacity, is not attempting to relitigate the issue of title to the Property in this Court is flawed.

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master-in-equity's order) with Bear v. Patton, 451 F.3d 639, 641-42 (10th Cir. 2006) (interpreting Exxon Mobil to limit Rooker-Feldman's applicability to state court decisions only once the state proceedings are completed, or the state order is otherwise unappealable); Dornheim v. Sholes, 430 F.3d 919, 923 (8th Cir. 2005) (finding that Exxon Mobil makes clear that the Rooker-Feldman doctrine precludes federal district court jurisdiction only if the federal suit is commenced after the state court proceedings have ended); and State Resources Corp. v. The Architectural Team, Inc., 433 F.3d 73, 79 (1st Cir. 2005) (stating that that Rooker-Feldman doctrine is not applicable if "federal litigation is initiated before state proceedings have ended"). The Court, however, decides this matter on the basis of cause under § 362(d)(1) and need not rely on the Rooker-Feldman doctrine as a basis for modification of the automatic stay.

Based on the foregoing reasons, the Court finds that modification of the stay is appropriate at this time pursuant to § 362(d)(1) so that the issue of title to the Property can be finally determined through the state appellate process. Accordingly, Anasti's Motion is granted, and the appeal in state court may proceed. In the event the state court finds Debtor has an interest in the Property, the automatic stay shall apply and the parties may return to this Court.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 9, 2009

ENTERED
DEC 21 2009
K.R.W.

FILED
at ___ O'clock ___ M
DEC 21 2009
United States Bankruptcy Court
Columbia, South Carolina

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 09-02854-JW
	Chapter 13
Gina Anasti Lee,	**AMENDED ORDER GRANTING 11 U.S.C. § 362(d) RELIEF**
Debtor.	

This matter comes before the Court on the Amended Motion Seeking 11 U.S.C. § 362(d) Relief ("Motion") filed by James Anasti ("Anasti"). This Court has jurisdiction pursuant to 28 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), and (O). Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014, the Court makes the following Findings of Fact and Conclusions of Law.[1]

FINDINGS OF FACT

1. On October 26, 2007, the Richland County Court of Common Pleas entered an order ("state court order") granting partial summary judgment to Anasti with respect to the ownership of real property at 2325 Two Notch Road, Columbia, SC, 29202 (the "Property").[2] The court rejected Debtor's claim to the Property by adverse possession and Debtor's defenses of laches and estoppel and found title to the Property belonged solely to Anasti.

2. Gina Anasti Lee ("Debtor") filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 16, 2009. On Schedule A, Debtor listed the Property as an asset with a value of $167,000. Debtor stated the nature of her interest was disputed:[3] "Property the subject

[1] To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

[2] At the hearing on Anasti's Motion, counsel for the parties indicated that the Property is commercial property, which is presently being used by a tenant as a night club.

[3] However, it is undisputed that in January 2000, Debtor conveyed her claimed interest in the Property to a third party.

of litigation now pending in the SC Court of Appeals. The title was determined adversley [sic] to the Debtor in the Lower Court proceedings, and the matter is now on Appeal."

3. On April 22, 2009, the Court of Appeals filed an Order dismissing Debtor's appeal of the state court order. However, by order dated April 28, 2009, the Court of Appeals rescinded its April 22 order of dismissal, reinstated the appeal, and provided that the timelines for perfecting the appeal would be held in abeyance. Subsequently, on June 16, 2009, the Court of Appeals issued an order holding the appeal in abeyance pending a final decision in the bankruptcy proceedings.

4. On June 22, 2009, the Chapter 7 Trustee filed her Report of No Distribution, in which she stated no property was available for distribution from the estate.

5. This Court issued an order on August 14, 2009, granting Debtor's motion to convert her case to Chapter 13. The Chapter 13 Trustee does not oppose modification of the stay in this matter.

6. The Chapter 13 plan filed by Debtor does not contain any motions, but provides: "The Debtor has requested the Court to order the immediate sale of the [Property] with all interests being paid to the creditors." However, no sale of the Property is pending, and there are no contracts for the purchase of the Property.

7. On August 20, 2009, Debtor commenced an adversary proceeding against Anasti concerning the ownership of the Property.

CONCLUSIONS OF LAW

In the Motion, Anasti requests the Court to lift the automatic stay, pursuant to 11 U.S.C. § 362(d)(1) and (2), for the purpose of permitting completion of the appellate process with respect to the state court order. Section 362(d)(1) provides the Court shall grant relief "for cause,

including the lack of adequate protection of an interest in property of such party in interest," and § 362(d)(2) provides for relief if "the debtor does not have equity in such property" and "such property is not necessary to an effective reorganization."

For purposes of § 362(d)(1), a bankruptcy judge has "broad discretion to determine what constitutes 'cause' sufficient to warrant relief from stay." In re Breibart, C/A No. 03-07440-W, slip op. at 2 (Bankr. D.S.C. Feb. 17, 2004); see also Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992) (stating that "[b]ecause the Code provides no definition of what constitutes 'cause,' courts must determine when discretionary relief is appropriate on a case-by-case basis").

In determining whether to grant relief from stay to a creditor for the purpose of litigating an issue in state court, the court should consider the following factors:

> (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because the matter would have to be litigated in the bankruptcy court; and (3) whether the estate can be protected properly by a requirement that the creditor seek enforcement of any judgment through the bankruptcy court.

In re Katzburg, 326 B.R. 606, 610 (Bankr. D.S.C. 2004) (citing Robbins, 964 F.2d at 345); see also In re Charleston Affordable Housing, Inc., C/A No. 09-01020-dd, slip op. (Bankr. D.S.C. Jun. 9, 2009) (focusing on "whether judicial economy will be served by returning the parties to state court or whether litigation in the bankruptcy court would impair progress" in the bankruptcy case); In re Joyner, 416 B.R. 190, 192-93 (Bankr. M.D.N.C. 2009) (relying on the Robbins factors and modifying the automatic stay to permit the state court action to proceed).

Furthermore, courts, including this one, have granted relief from the automatic stay based on a finding of cause to allow a movant to pursue a state court appeal. In re Moore, C/A No. 04-

15363-B, slip op., 2005 WL 6267364, at *2 (Bankr. D.S.C. 2005) (finding cause existed to lift the automatic stay because the movant's state court appeal was the only method available for judicial review of the state court order); see also In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997) (finding that cause, pursuant to § 362(d)(1), existed to permit potential judgment creditor proceed with her state court appeal); In re Metz, 165 B.R. 769, 771 (Bankr. E.D.N.Y. 1994) (granting relief from stay to allow state appellate proceedings to continue, reasoning that the bankruptcy court could not serve as an appellate court for the state court judgment and that a parallel proceeding in the bankruptcy court would lead to "a serious duplication of efforts"); In re Morris, 153 B.R. 588, 590-92 (M.D. Fla. 1993) (affirming the bankruptcy judge's decision that sufficient cause existed to lift the automatic stay for the purpose of allowing the state appellate proceedings to continue, and noting that "the state court appeal would help lead the bankruptcy case to a conclusion").

Legislative history to § 362(d)(1) also supports lifting the stay in such circumstances: ". . . a desire to permit an action to proceed to completion in another tribunal may provide another cause." H.R. Rep. No. 95-595, at 343-44 (1977).

In this case, Anasti asserts that cause exists to lift the automatic stay to permit the continuation and conclusion of the state appellate proceedings as they provide the only mechanism available to create finality with respect to title to the Property. To this end, Anasti argues the Rooker-Feldman doctrine prevents any action by this Court with regard to the Property which, prior to the filing of Debtor's bankruptcy case, was determined to be the property of Anasti. Further, Anasti argues that his interests are not being adequately protected because he continues to have a cloud on his title. Alternatively, Anasti asserts the Property and the related appeal are not subject to the automatic stay due to the Chapter 7 Trustee's

abandonment of the Property.[4]

In her objection to Anasti's Motion, Debtor refutes that any order of abandonment was entered by the Chapter 7 Trustee. Debtor also disputes the applicability of the Rooker-Feldman doctrine, arguing that no final state order was issued. Further, Debtor asserts there is no indication of finality of the state court order since the state appellate proceedings have been stayed and the pending appeal has not been briefed by the parties. Debtor also contends a modification of the stay is not warranted because the bankruptcy estate and its creditors were not parties to the lower court action. Finally, Debtor states Anasti has no security interest in the Property and the sale of the Property is necessary to an effective reorganization.

The Court agrees that cause exists pursuant to § 362(d)(1), and finds that in the interests of judicial economy and comity, the automatic stay is modified to allow for completion of the state court appellate proceedings.[5] Through her response to Anasti's Motion, the Chapter 13 plan, and the adversary proceeding, Debtor seeks to have this Court adjudicate the issue of title to the Property and make a conflicting ruling to that of the state court order. The Court finds that even if the Rooker-Feldman doctrine does not preclude the Court's jurisdiction as to this issue,[6]

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[4] Anasti also notes he does not pursue any liability against Debtor beyond a determination of title to the Property since any such action is stayed.

[5] Because the Court finds that relief is appropriate under § 362(d)(1), the Court need not address Anasti's claim for relief pursuant to § 362(d)(2) at this time.

[6] The Rooker-Feldman doctrine applies only to bar "the loser in state court" from filing a "suit in federal district court seeking redress for an injury allegedly caused by the state court's decision." Davani v. Va. Dep't of Transp., 434 F.3d 712, 713 (4th Cir. 2006) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291 (2005)); McGuffin v. Barman (In re BHB Enters.), Adv. Pro. No. 97-80201, slip op., 1997 WL 33344249, at *6 (Bankr. D.S.C. Aug. 27, 1997). The "pendency of an action in the state court is no bar to proceedings concerning the same matter" in a federal court with jurisdiction; nevertheless, "[c]omity or abstention doctrines" may permit or require a federal court to stay a federal action in favor of a proceeding in state court. Exxon Mobil, 544 U.S. at 292 (internal citation omitted).

Courts have differed in their opinions as to what constitutes a final order for purposes of Rooker-Feldman, with some courts, including in this district, finding that the state court litigation need not reach a state's highest court for the doctrine to apply. See Sharper v. S.C. Dep't of Corr., C/A No. 2:09-777, slip op., 2009 WL 1209583, at *1 (D.S.C. May 1, 2009) (finding that the federal action was barred by Rooker-Feldman because "it [was] clear that the

relief from stay is still appropriate based on the Court's broad discretion in finding cause under § 362(d)(1).

The determination of title to the Property and the nature and extent of Debtor's interest is an issue of state law that has already been litigated in and addressed by the lower state court. Although the timing of the completion of the state appellate proceedings is uncertain, the Court of Appeals' series of orders indicates a readiness to handle the appeal upon modification of the stay. Moreover, Anasti has noted that he does not seek authority to pursue any action or liability against Debtor beyond a determination of title to the Property in the state court proceedings. Thus, a resolution of the issue in the pending state appellate proceedings would provide this Court with a final determination as to the dispute between Anasti and Debtor with respect to the Property and would avoid an unnecessary duplication of efforts and judicial resources in this Court.

Further, Debtor would not be prejudiced by the Court's refusal to adjudicate this issue; rather, Debtor's remedy is to pursue her appeal of the state court order, and if successful, she may return to this Court for relief at that time. Any unsecured creditors' rights are dependent

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plaintiff [was] seeking to challenge the results of an on-going state court action"); Lloyd v. Miller, C/A No. 9:08-cv-00675, slip op., 2009 WL 2356170, at *4 (D.S.C. May 8, 2009) (applying doctrine even though state court litigation had not yet reached highest state court); Field Auto City, Inc. v. Gen. Motors Corp., 476 F. Supp. 2d 545, 552-54 (E.D. Va. 2007) (finding the purpose of Rooker-Feldman is best served by applying the doctrine to state trial court judgments because "a federal suit is no less an appeal of the state trial court judgment simply because state appeals are not yet final"); Sinclair v. Bankers Trust Co. of Cal., N.A., C/A No. 5:05-CV-072, slip op., 2005 WL 3434827, at *3 (W.D. Mich. Dec. 13, 2005) (finding that "the state court proceeding that must reach judgment before a federal complaint is filed for Rooker-Feldman to be applicable is the appealable trial court's judgment"); Moore, 2005 WL 6267364, at *2 (finding the Rooker-Feldman doctrine precluded the bankruptcy court's review of the appealable master-in-equity's order). But see Bear v. Patton, 451 F.3d 639, 641-42 (10th Cir. 2006) (interpreting Exxon Mobil to limit Rooker-Feldman's applicability to state court decisions only once the state proceedings are completed, or the state order is otherwise unappealable); Dornheim v. Sholes, 430 F.3d 919, 923 (8th Cir. 2005) (finding that Exxon Mobil makes clear that the Rooker-Feldman doctrine precludes federal district court jurisdiction only if the federal suit is commenced after the state court proceedings have ended); State Resources Corp. v. The Architectural Team, Inc., 433 F.3d 73, 79 (1st Cir. 2005) (stating that that Rooker-Feldman doctrine is not applicable if "federal litigation is initiated before state proceedings have ended").

The Court, however, decides this matter solely on the basis of cause under § 362(d)(1) and need not rely on the Rooker-Feldman doctrine as a basis for modification of the automatic stay.

upon Debtor's rights in the Property, which are determined by state law.

Based on the foregoing reasons, the Court finds that modification of the stay is appropriate at this time pursuant to § 362(d)(1) so that the issue of title to the Property can be finally determined through the state appellate process. Accordingly, Anasti's Motion is granted, and the appeal in state court may proceed. In the event the state court finds Debtor has an interest in the Property, the automatic stay shall apply and the parties may return to this Court.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 21, 2009

The South Carolina Court of Appeals

James A. Anasti, Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court, Defendants,

Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are Respondents

And Gina L. Anasti Lee is the Appellant.

The Honorable J. Ernest Kinard, Jr.
The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2007-CP-40-00576
2007-CP-40-00576

ORDER

Respondent filed a motion to dismiss the above-captioned appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a Return, claiming his Rule 59(e) motion was timely.

By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After a hearing, the circuit court issued an order filed April 3, 2008, finding "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order

"much more than ten days prior to the filing of his Motion for Reconsideration." Appellant filed a Rule 59(e) motion, which the trial court denied on April 1, 2009. Appellant appealed the trial court's rulings, and this court consolidated the appeal with Appellant's initial appeal.

Appellant subsequently filed for relief in the United States Bankruptcy Court. This appeal, therefore, was held in abeyance pending conclusion of the bankruptcy proceedings. By order of November 9, 2009, the Bankruptcy court granted Respondent "relief from the automatic stay for the purpose of permitting completion of the appellate process with respect to the state court order." Appellant appealed the Bankruptcy Court's order to the United States District Court. In addition, Appellant filed a motion with the Bankruptcy Court, requesting the court issue a stay pending appeal. The court denied Appellant's motion, stating "this court believes it is best for the state court to finalize the appeal." The court further stated, "It is apparent that one of the primary reasons [Appellant] filed for bankruptcy relief was to escape the consequence of the state court order and any determination that the order was final due to the untimely appeal filed by [Appellant]." The Bankruptcy Court subsequently issued several additional orders reiterating its determination that Appellant's appeal to this court is not stayed.

After careful consideration of the parties' filings, the Bankruptcy Court's orders, and case law, we hereby lift the stay of abeyance. See Matter of Abington Realty Co., 530 F.2d 588 (4th Cir. 1976) ("[T]he filing of a petition to review an order of the bankruptcy judge does not stay the effect or operation of the order unless a supersedeas bond is filed or the order provides for the stay."); In re Regency Woods Apartments, Ltd., 686 F.2d 899, 903 (11th Cir. 1982) (providing although a stay may be continued pending appeal, the debtor must affirmatively act to obtain the stay and post a supersedeas bond).

In regards to Respondent's motion to dismiss, the trial court held on remand that Appellant received the underlying order more than ten days prior to filing her Rule 59(e) motion. See Rule 59(e), SCRCP (requiring motions to alter or amend the judgment be served not later than ten days after receipt of written notice of the entry of the order). Appellant, however, has appealed the trial court's order, and this court consolidated the appeal with Appellant's initial appeal. Therefore, we deny Respondent's motion to dismiss at this time. Appellant shall have thirty days from the date of this order to file her initial brief.

AND IT IS SO ORDERED.

Joseph M. Cureton A.J.

Columbia, South Carolina

February 19, 2010

FILED

2/22/10

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James A. Anasti, Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, and Richland County Clerk of Court, Defendants,

Of Whom Gina L. Anasti Lee is the Appellant.

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2011-UP-187
Submitted April 1, 2011 – Filed April 28, 2011

APPEAL DISMISSED

Tony R. Megna, of Columbia, for Appellant.

Douglas N. Truslow and Thomas George Earle, both of Columbia, for Respondent.

PER CURIAM: In January 2008, Appellant filed a notice of appeal from an order granting Respondent partial summary judgment and from the order denying reconsideration. In March 2008, this court remanded the appeal to the circuit court for an evidentiary hearing regarding the timeliness of Appellant's notice of appeal. After a hearing,[1] and after reviewing "all previous submissions to the [circuit] court by or on behalf of Appellant, including pleadings, affidavits, evidence, memoranda and evidence presented," the circuit court found that because Appellant received the order granting partial summary judgment more than ten days prior to filing her motion for reconsideration, her motion for reconsideration did not toll the time for filing her notice of appeal; thus, her notice of appeal was untimely.[2] Appellant moved for reconsideration, which was denied.[3] In its order denying reconsideration, the circuit court noted that "nothing credible, believable, or favorable to Appellant ha[d] been presented that would compel [the circuit court] to reverse the findings and conclusions set forth in [its prior order."[4] Because the circuit court's factual findings regarding timeliness are

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[1] Neither Appellant nor her counsel attended the hearing; however, the trial court found Appellant received notice of the hearing.

[2] Specifically, the circuit court found the order granting summary judgment was mailed to the parties on October 29, 2007, and received by Respondent's attorney on November 1, 2007. Giving Appellant the benefit of the doubt, and tacking on an additional five days for service by mail pursuant to Rule 6(e), SCRCP, the circuit court deemed Appellant's receipt of the order as being effective on November 3, 2007. Because November 3, 2007, was a Saturday, Appellant had ten days from Monday, November, 5, 2007, to file her motion for reconsideration. Appellant's motion for reconsideration was served and filed on November 20, 2007; therefore, the circuit court found it was untimely. The circuit court noted that Appellant did not contest that the order was properly mailed or that she actually received the order. The circuit court found Appellant's counsel was "not credible as to any contested issue" and, specifically, as to the date he claimed he received the order granting summary judgment.

[3] Appellant's counsel was present for the hearing on Appellant's motion for reconsideration.

supported by evidence, we dismiss[5] this appeal pursuant to Rule 220(b)(1), SCACR, and the following authorities: Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) ("Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal."); Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (citing Rule 203(b)(1), SCACR, and Rules 50(e), 52(c), and 59(f), SCRCP) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."); Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 57 (Ct. App. 1999) ("A motion under Rule 59(e) is timely if it is 'served not later than ten days after receipt of written notice of the entry of the order.'"); Pollard v. Cnty. of Florence, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994) (reviewing the circuit court's ruling on a Rule 59(e) motion pursuant to an abuse of discretion standard); Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007) ("An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.") (citation and quotation marks omitted); USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (deferring to the circuit court's credibility determinations regarding the timeliness of a motion for reconsideration and declining to reverse the circuit court's decision); Reed v. Ozmint, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007) (noting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony).

APPEAL DISMISSED.

FEW, C.J., and CURETON and GOOLSBY, A.J., concur.

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[4] In a footnote, the circuit court stated Appellant's counsel failed to produce the envelope in which the October 29, 2007 order was mailed to him or a date stamp or any other record establishing a date of receipt.

[5] We decide this case without oral argument pursuant to Rule 215, SCACR.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 5, 2011

Tony Ray Megna, Esquire
Matthews & Megna, LLC
3400 West Ave.
Columbia, SC 29203

Re: Anasti, James A. v. Lee, Gina L. A.
Trial Court Case No. 2007-CP-40-0576 (Judge Kinard)
Trial Court Case No. 2007-CP-40-0576 (Judge Manning)

Dear Mr. Megna:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

October 5, 2011."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

CLERK

DES/lda

cc: Douglas N. Truslow, Esquire
The Honorable Jeanette W. McBride
The Honorable Tanya Gee

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, Plaintiff, VS. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE AND RICHLAND, COUNTY CLERK OF COURT Defendants.	)	COURT OF COMMON PLEAS Case No. 2007CP40-0576 **ORDER TERMINATING EMPLOYMENT AND CONTINUANCE**

RICHLAND COUNTY
FILED
2012 MAR -1 AM 10: 36
JEANNETTE W. MCBRIDE
C.C.C.P. & G.S.

This matter is before me on a Notice of Motion and Motion of Thomas G. Earle, Esquire, by Carl A. Ellsworth, Esquire of Seigler, Earle & Ellsworth, dated February 24, 2012 and duly filed in the Office of the Clerk of Court for Richland County, South Carolina on February 24, 2012. Included in the Motion was the Motion and Order Information Form And Coversheet. Personal service was effected upon Lance Wilson as shown by Affidavit of Service filed herein, dated February 28, 2012 as well as in accordance with Rule 11(b) South Carolina Rules of Civil Procedure and pursuant to Rules 4 and 5 of South Carolina Rules of Civil Procedure by regular mail and certified mail, restricted delivery to the addressees of Lance Wilson and Willis Goodwin along with service by mail upon Douglas N. Truslow, Esquire, in behalf of James A. Anasti and Tony R. Megna, Esquire, in behalf of Gina L. Anasti Lee. Technically, Mr. Megna is not involved nor is his client in this aspect of the case such that his concurrence will not be necessary.

SCANNED

The substance of the Motion is to terminate the employment of Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth as a result of Thomas G. Earle's experiencing sudden and serious health problems which prevent him from continuing to handle the above captioned case and any other cases such as 04CP40-5333/5334 as a result of his being placed in a medically induced coma in the Intensive Care Unit (ICU) at Palmetto Richland Memorial Hospital since on or about January 27, 2012 and his being diagnosed with a condition called "myasthenia gravis". His return to the practice of law is questionable at the present time and any future date. The medical opinion letter of Franklin R. McGuire, M.D. attached to the Motion as Exhibit A and incorporated by reference herein confirms the same in support of this Motion.

It has been reported to the Court that the workload placed on Carl A. Ellsworth in the two-man partnership of Seigler, Earle & Ellsworth has been overwhelming according to Carl A. Ellsworth, Esquire, and has made continued handling of this case and any and all other cases of Lance Wilson and Willis Goodwin impossible. Seigler, Earle & Ellsworth waives any and all attorney's fees and costs which were substantial.

Consent to Release was duly signed by Lance Wilson and Willis Goodwin, dated February 24, 2012, and filed herein as shown by copy attached hereto consenting to the termination and release, the original being attached to the original motion filed with the Richland County Clerk of Court on February 24, 2012. All the files of Lance Wilson and Willis Goodwin were delivered personally to Lance Wilson and Willis Goodwin on February 24, 2012 at the offices of Seigler, Earle & Ellsworth as requested and as shown by the Receipt and Release for them to employ new counsel or to proceed *pro se* (individually by themselves) if they so desire.

Furthermore, to accommodate the termination of employment, employment of new counsel and preparation for a damages hearing presented by Plaintiff by and

through his counsel, Douglas N. Truslow, Esquire, in the above captioned case it is necessary that this case be continued and more time allowed for the defense to be prepared, and for good cause shown.

NOW, THEREFORE, IT IS ORDERED that the relief requested by Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth, attorneys at law, and as sought by Lance Wilson and Willis Goodwin be and hereby is granted.

IT IS FURTHER ORDERED that good cause has been shown and consent given by all interested parties approving the termination of employment of Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth by Lance Wilson and Willis Goodwin as it pertains to any and all legal matters they have past, present and future with the aforementioned attorneys which this Court hereby grants, and the Clerk of Court shall remove the name of Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth as attorneys of record.

IT IS FURTHER ORDERED that Lance Wilson of 149 Barney Lane, Columbia, South Carolina 29223 and Willis Goodwin of 1000 Windsor Shores Drive, Columbia, South Carolina 29222 shall have thirty (30) days from the date of the signing of this Order to employ new counsel. IF THEY FAIL TO DO SO THEY WILL PROCEED PRO SE. 2/29/12

IT IS FURTHER ORDERED that the hearing of the damages case brought by Plaintiff scheduled for March 12, 2012 before Judge Manning at 2:00 p.m. be and hereby is continued for a period of at least ninety (90) days from the date of this Order or until further Order of this Court.

AND IT IS SO ORDERED.

By _____
The Honorable James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

29 day of February, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2010-CP-16-0332
COUNTY OF DARLINGTON	)	
Ex Parte:	)	
	)	
Desa Ballard	)	
	)	
In re:	)	**ORDER FOR SANCTIONS**
	)	**AGAINST TONY R. MEGNA**
Pee Dee Health Care P.A.,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
Estate of Hugh S. Thompson	)	
	)	
Defendant.	)	

Non-party Desa Ballard moved for sanctions, pursuant to Rule 11(a), SCRCP, in connection with a subpoena for records served on her on or about July 30, 2011, ostensibly issued by the plaintiff in this action. The motion is granted.

FILED
2012 FEB 13 PM 2:47
SCOTT B. MOSS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

As will be discussed in more detail below, in order to reach a decision in this case this Court also was assigned jurisdiction in a Richland County case, *James A. Anasti v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576. Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anasti* case in Richland, a case that had nothing to do with the

TRUE CERTIFIED COPY
CLERK OF COURT/RMO
DARLINGTON COUNTY, S.C.

discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

In granting the sanctions motion in this case, the Court makes the following:

FINDINGS OF FACT[1]

1. This action was originally filed in the Darlington County Probate Court by the plaintiff corporation seeking to recover damages from the defendant. The plaintiff corporation was represented by attorney Tony R. Megna (Megna). The matter was removed to the Circuit Court in Darlington County.

2. After removal to this Court, defense counsel made a motion to disqualify attorney Megna from representing the corporate plaintiff, alleging Megna was a necessary witness in that he was, and had been since 1995, the Chief Executive Officer of the plaintiff corporation.

3. By order dated April 15, 2011, this Court made detailed findings of fact concluding that Megna was, in fact, a material witness as to core facts in this action and was disqualified from acting as counsel for the corporate plaintiff. The final sentence of that order stated "The Court orders complete disqualification effective with the execution of this Order. (footnote omitted)."

4. The Court thereafter permitted Megna, at his request, to remain counsel for the plaintiff for the sole and limited purposes of arguing his motion for reconsideration of the disqualification Order and for arguing summary judgment motions. The motion to reconsider was eventually denied, and the issue of Megna's disqualification as

[1] The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both the Richland County case and the instant case, the submissions of counsel, and the oral argument held in these consolidated matters in Darlington County on March 15, 2012.

counsel is on appeal to the South Carolina Court of Appeals as of this writing. As well, Defendant was subsequently granted summary judgment. An appeal from that Order is also pending. No stays were issued by the appellate court. Megna's disqualification to act as counsel in this matter is currently in effect.

5. When Megna was disqualified as counsel in this case, there was separate and unrelated litigation involving different parties pending in the Richland County Court of Common Pleas in a matter entitled *James A. Anasti v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576 (the Richland case). Megna represented defendant Gina L. Lee in the Richland County case.

6. Other than Megna being counsel for a party in each case, the two cases are completely unrelated to one another. Megna is the only common denominator.

JMB 3

7. As more fully detailed in an Order issued this date in the Richland case, there have been numerous state court appellate proceedings, all initiated by Megna on behalf of his client Gina Lee, as well as bankruptcy proceedings involving Lee as the debtor in the United States Bankruptcy Court for the District of South Carolina.

8. In the Richland case, the plaintiff James Anasti was represented by attorney Douglas N. Truslow (Truslow). Truslow continued to represent Anasti throughout the several state appeals initiated by Megna on behalf of Lee, all of which appeals were subsequently dismissed based on procedural grounds; the merits of the appeals could not be reached because of Megna's repeated failures to comply with various deadlines.

9. In attempts to escape the consequences of his failure to comply with the rules, Megna made false statements to the circuit court and the appellate court, as more fully described by Judge L. Casey Manning in Orders dated April 8, 2008 and April 1, 2009 in the Richland case, where he found Megna's explanations for his delay to be false and intentionally manipulative.

10. According to Truslow, because of appellate and ethical issues he encountered in dealing with Megna in the Richland case, Truslow associated and consulted with Ballard, who has experience in both fields. In September, 2011, in connection with of one of the appeals filed by Megna (on behalf of Gina Lee) at the South Carolina Court of Appeals, Ballard executed an affidavit which Truslow submitted to the Court of Appeals addressing the insufficiency of an appellate documents filed by Megna.

11. On or about July 30, 2011, Ballard was served with a subpoena signed by Megna as counsel for the plaintiff, bearing the caption in this case, seeking production of certain materials, including copies related to her communications with several attorneys, including Truslow, several of the lawyers involved in this case, and other lawyers which apparently have no relation to this case or the Richland case.

12. Ballard was not counsel for nor otherwise involved in the instant case in any way. The subpoena sought information related to the assistance she provided to Truslow in the Richland County case, and sought to discover if any evidence existed of her communications with a list of attorneys whom Megna apparently believed to be his adversaries in this or other cases. The subpoena sought nothing relevant to this case. The subpoena purported to be issued from Darlington County, although Ballard's

office is in Lexington County. The subpoena to Ballard did not comply with the SCRCP.

13. Ballard had no knowledge of the instant case, but when she received the subpoena, she located information to identify some of the attorneys involved. She obtained a copy of this Court's Order dated April 15, 2011, in which Megna was disqualified as counsel for the corporate plaintiff in this case.

14. Ballard filed and served an Objection to the subpoena. Since Megna had been disqualified in this case as counsel for the plaintiff, she served her objection on attorney Benjamin R. Matthews, who was listed on the Darlington County Clerk's website as Megna's law partner and also counsel for the plaintiff in the instant case.

15. She also filed and served a Motion for Sanctions on August 4, 2011, which argued that Megna had attempted to subpoena her records for an improper purpose, and in violation of this Court's order disqualifying him as counsel.

16. Truslow also filed a motion for sanctions in the Richland County case dated March 9, 2012. Ballard's motion for sanctions in this case was consolidated with Truslow's motion for hearing before this Court.

17. Prior to the hearing in this matter, Megna provided the Court and counsel with a document, bearing the caption in both cases, entitled "Synopsis." This document contained a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others. As best the Court can understand Megna's allegations against Ballard, they arise from a contact to her office by Megna in which he sought to associate her on a potential unrelated case on behalf of Pee Dee Health Care. Ballard's associate responded that Ballard would consider looking at the matter if she

was paid hourly and she never heard back from Megna. She was never asked to represent Megna and no confidential information concerning Megna or his client was provided to her[2]. Neither Megna nor his client contacted Ballard again until the subpoena was issued in this case.

18. In order to understand why Megna's efforts to subpoena information from Ballard were improper, a brief history of the litigation in the Richland case is necessary. By Order issued this same date in that case, that history is set forth in detail, and to the extent necessary, the findings in that Order are incorporated herein by reference.

19. By way of summary, the subpoena to Ballard was part of an improper and impermissible attempt by Megna to engage in discovery for purposes of defending himself (not his client) against motions for sanctions that were pending against him in the Richland County case. In addition, it appears that the subpoena was served on Ballard in an effort to punish her for consulting with Truslow in the Richland County case, and to deter her from continuing to assist him.

JwB 6

20. At the time Megna served the subpoena on Ballard, all discovery in the Richland County case had been concluded, Megna's client was no longer an active party to the Richland case, and the only remaining issues in that case in which Megna had any interest concerned the Richland Plaintiff's motions (via Truslow) for sanctions against Megna.

21. The subpoena issued to Ballard sought, among other things, her records of communications with Mr. Truslow in the Richland County case. This Court

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2 Even if the information provided by Megna to Ballard concerning Pee Dee Health Care was considered confidential information under Rule 1.6, and even if Ballard received and reviewed the material, this court finds she would not have been disqualified from continuing to assist Truslow in the Richland case. As stated earlier, the two cases are unrelated, the only common denominator again being Mr. Megna (representing two separate and unrelated clients in the two cases).

specifically finds there could be no other purpose for the discovery sought but to use the information to defend Truslow's claim for sanctions against Megna in the Richland case.

22. The subpoena to Ballard was issued in violation of this Court's order disqualifying Megna as counsel, sought privileged information regarding the advice she had given to Truslow, and constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose, *inter alia*, of seeking to deflect sanctions against himself in the Richland case.

23. Between his conduct in this case and in the Richland case, Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client.

24. The inevitable conclusion is that Megna has, under the auspices of this case, attempted to subpoena Ballard, as well as her legally protected files, even though he has been disqualified, and that his intentions were fully improper. The Court has no choice but to conclude that he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow in the Richland case.

25. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Richland case and he is in willful violation of this Court's orders, specifically including the Order disqualifying him as counsel for the plaintiff. He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in the Richland County case.

26. Megna's conduct is willful, deliberate and unapologetic. In both his "Synopsis" (captioned with both cases) and the memorandum he submitted to the Court in connection with the hearing in this matter, Megna continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and others who he considers to be adverse to him.

27. Perhaps the most egregious part of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court would be faced with an entirely different scenario if Megna had admitted his misconduct and shown remorse in any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.

28. The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.

JMB 8

29. Even viewed separately from Megna's conduct in the Richland case, Megna's conduct is ill-conceived, vitriolic, and abusive. When viewed in conjunction with the lengthy period during which he has engaged in similar conduct in the Richland case (as more thoroughly discussed in an Order issued this date), Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court and his colleagues in the process.

30. Ballard has requested an award of sanctions pursuant to Rule 11(a), SCRCP, for her time in having to respond to the subpoena served upon her by Megna. I find that sanctions under Rule 11(a) are warranted. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996).

31. Ballard's original affidavit of fees includes time she has spent in responding to two (2) grievances filed against her with the Office of Disciplinary Counsel which contain similar allegations as those asserted against her in these proceedings by Megna. Those two grievances (which were dismissed) were filed by Mark Matthews, who appears (from the Court's review of filings by Megna in this case) to be an employee and agent of either Megna or Pee Dee Health Care.

32. Although the Court perceives it is highly likely that Megna participated in or facilitated the filings of these grievances against Ballard, this Court concludes that her time spent in defending against these grievances is not within the scope of sanctions which this Court can award under Rule 11(a) or otherwise. At the Court's request, Ballard has submitted an amended affidavit of attorney fees which does not include the time spent in responding to the grievances. She has also included her time spent in attending the hearing on May 15, 2012 and her work since then, including the preparation of a proposed order for the Court, all of which are appropriate.

JWB 9

33. The Court's review of this affidavit finds that the time Ballard spent in responding to the subpoena, appearing before this Court, and preparing the draft order requested by this Court are reasonable.

34. Ballard's hourly rate is her regular hourly rate charged to her clients, and in light of her standing in the legal community and her expertise in these areas, is immensely reasonable. Ballard is a recognized expert in the field of attorney conduct (and misconduct), she has an AV rating with Martindale Hubbell, and she has earned the respect of her peers and of the Courts of this state for her professionalism as a member of the Bar. Her experience and insight in the areas in which Truslow was

attempting to defend against Megna in the Richland case made her an appropriate choice for assistance to Truslow. Her agreement to assist Truslow in the Richland case made her a target of Megna's wrath, and she should be compensated by way of sanctions against Megna for the time she spent in responding to his improper discovery against her. The costs set forth in her affidavit, which consist of filing fees, copying costs and postage, are reasonable and were necessarily incurred in connection with the subpoena served upon her and the subsequent sanctions motion against Megna.

35. Pursuant to Rule 11(a), SCRCP, this Court awards sanction in favor of Ballard against Megna in the amount of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents ($17,388.75), which constitutes reimbursement for the time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory, and are required to be paid notwithstanding any penalties imposed herein. *Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012).

JMB 10

36. The award of fees and costs herein are a sanction (and hence considered to be non-dischargeable except by payment), as well as a civil money judgment so as to carry interest at the legal judgment rate. The Clerk is directed to enroll this sum as a civil judgment in favor of Ballard against Megna.

37. In making this award, the Court is aware of the sanctions also being awarded to Truslow against Megna in the Richland County case. The sanctions awarded to Ballard are not duplicative of the sanctions awarded to Truslow, and the Court finds that both awards are compensatory in nature and are warranted, reasonable, and

supported by the evidence. The sanctions are awarded to pay the reasonable attorneys fees and costs incurred by the moving party. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

Criminal Contempt Citation Against Mr. Megna, *sua sponte*

In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Richland County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Megna is hereby specifically

advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Megna.

Because of the numerous occasions on which Megna has denied receipt of service of an order or other papers (in the Richland case), Ballard shall make arrangements for personal service of a copy of this Order and the Richland County order issued this date upon Megna, unless Megna personally (not through counsel) consents to accept service in some other fashion and executes a written acceptance of service to that effect.

THEREFORE IT IS ORDERED:

1. Ms. Ballard's motion for sanctions is granted.
2. Mr. Megna is ordered to pay Ms. Ballard the sum of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents ($17,388.75) within thirty (30) days of the date of this Order. The Clerk shall enroll a civil judgment for this sum.
3. Mr. Megna shall be required to show cause why he should not be held in criminal contempt of this Court for the actions outlined in this Order, and shall appear on March 18, 2013, at 2:00 p.m. in the fifth floor courtroom of the Darlington County courthouse for such hearing.

IT IS SO ORDERED.

J. Michael Baxley
Circuit Court Judge

February 11, 2013

FILED
2013 FEB 13 PM 2:47
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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CLERK OF COURT/RMC
DARLINGTON COUNTY S.C.

STATE OEF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Ex Parte:

Douglas N. Truslow,

JAMES A. ANASTI,
Plaintiff,

vs.

LANCE WILSON,
WILLIS GOODWIN,
GINA L. ANASTI LEE,
and RICHLAND COUNTY
CLERK OF COURT,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-40-0576

ORDER FOR SANCTIONS AGAINST TONY R. MEGNA

RICHLAND COUNTY
FILED
2013 FEB 13 PM 2:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

Plaintiff's counsel Douglas N. Truslow (Truslow) moves[1] for sanctions against Tony R. Megna (Megna), counsel for Defendant Gina L. Anasti Lee (Lee), in connection with improper subpoenas and discovery served upon him and a member of his staff in this matter and in an unrelated civil action pending in Darlington County, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, Case No. 2010-CP-16-0332 (the Darlington case)[2]. The motion is granted based upon the findings of fact set forth below.

Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's

[1] Truslow's motion is dated March 9, 2012.

[2] This Court had previously issued several orders in the Darlington action. The instant case was pending in Richland County; Chief Administrative Judge James R. Barber assigned this Court to hear both motions. Hearing was held in Darlington on May 15, 2012.

actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anasti* case in Richland, a case that had nothing to do with the discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

FINDINGS OF FACT[3]

1. This Richland case was filed by Plaintiff James A. Anasti (Anasti), through his counsel Truslow, to declare Anasti's ownership of real property at 2325 Two Notch Road in Columbia, and for an accounting for money allegedly due to Anasti from Defendant Gina Anasti Lee (Lee) and other defendants. Megna appeared as counsel for Lee in this action.

2. Summary judgment on the merits was granted to Anasti on October 26, 2007, with a damages hearing against Lee and others to follow. That damages hearing has yet to be held. Instead, Megna began a series of appeals that has lasted four (4) years (with two remands to the circuit court) in both the South Carolina Court of Appeals and Supreme Court. These appeals finally concluded with the Supreme Court's denial of Megna's petition for certiorari on October 28, 2011.

[3] The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both this case and the Darlington county case. Both files were made available to this Court prior to a motions hearing held in this matter on May 15, 2012.

3. Neither of the appellate courts addressed the merits of this action. The appeals were dismissed because of Megna's repeated failures to comply with deadlines set forth in both the South Carolina Rules of Civil Procedure (SCRCP) and the appellate court rules (SCACR).

4. Prior to Megna's first appeal, Truslow filed a Rule 11 sanctions motion against Lee and Megna on November 7, 2007. That motion has not been heard and is not addressed in this Order; however, the pendency of that additional sanctions motion is relevant, as discussed later herein.

5. By the time the appellate proceedings in this case concluded, Lee had been discharged in bankruptcy[4] and, consequently, absolved from any risk of a money judgment in this suit. After that time, any and all pleadings filed or discovery served by Megna, ostensibly on Lee's behalf, were undertaken solely by Megna for his own benefit, to defend Truslow's pending Rule 11 sanctions motion.

JWB 3

6. During the appellate proceedings, the case was remanded by the Court of Appeals to Circuit Judge L. Casey Manning on two (2) occasions to determine whether Megna's representations regarding the timeliness of his filings and receipt of notice by him were credible and accurate.

7. On both remands, Judge Manning found that Megna's various explanations to the courts as to when he received documents and when he received notice were "not

[4] *In re: Gina Anasti Lee*, Case No. 09-02854-jw (United States Bankruptcy Court, District of South Carolina). An order was issued by United States Bankruptcy Judge John Waites on November 9, 2009 for the purpose of lifting the stay to allow these state court proceedings to continue. Judge Waites' order was based, at least in part, on Anasti's representation that he would not seek any financial recovery against Lee. *Id*. (Docket No. 34 at page 6). Thus, it was clear as early as November 9, 2009 that the only issue which remained pending as to these parties was Anasti's November 7, 2007 motion for Rule 11 sanctions. Because of Lee's bankruptcy, Anasti's Motion for Rule 11 sanctions was pending only against Megna and not his client Lee. Lee was discharged in bankruptcy on April 16, 2010.

credible" and that he had made material misrepresentations of fact to the courts. Order dated April 3, 2008."*Id.* at ¶ 13; Order date-stamped April 1, 2009.

8. Following the conclusion of the state court appellate proceedings, Truslow requested a status conference so that, *inter alia*, Anasti's Rule 11 motion against Megna could be scheduled. A status conference was held on the record on January 18, 2012. At the status conference, Megna acknowledged and confirmed that Lee's involvement in the case had ended and Rule 11 sanctions were being sought against him only[5].

9. In February of 2012, under the caption of this case but indicating issuance from Darlington County, Megna served[6] a subpoena on Truslow to take his deposition and that of attorney Steve Licata (who represented Anasti in the bankruptcy matters) as well as Truslow's assistant, Amanda Hilley. He also served discovery requests upon Truslow which asked for a broad range of materials related to Truslow's communication with a number of lawyers[7] in the State, none of which have anything to do with this case.

10. Like the earlier subpoena served on attorney Desa Ballard (Ballard) in the Darlington county case (see separate sanctions order issued simultaneously in Darlington Case No. 2010-CP-16-0332 for additional sanctions arising from this conduct), the

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[5] On February 24, 2012, the Richland County Clerk of Court set Anasti's damages hearing against other defendants for March 12, 2012. That hearing was apparently not held, presumably because this sanctions motion was pending, although the two issues (damages against other defendants and sanctions against Megna) are unrelated.

[6] "Service" was made by email to Mr. Truslow, with a mailed copy sent to Mr. Truslow at 944 Richland Street, Suite 4, Columbia, which is not now nor ever has been Mr. Truslow's address. It appears that throughout this litigation, in both the circuit and appellate courts, Mr. Megna has forwarded mail to Mr. Truslow at incorrect or non-existent addresses, causing great confusion in the progress of the case.

[7] Jay James, J. René Josey, Kenneth Woodington, Steve Licata, Andy Savage, Caroline Streater, Celeste Jones, Ashley Stratton, any lawyers in the McNair Law Firm or their agents, any lawyers in Turner Padgett Law Firm or their agents, Thomas Earle, and Curtis Dowling.

discovery sought production of communications between Truslow and lawyers who Megna believed to be adverse to him in matters unrelated to this case.

11. Megna's former client in this case, Lee, has submitted an affidavit indicating she did not authorize the discovery by Megna, was not aware of it, and did not approve it. She indicated that Megna was no longer her lawyer at the time the discovery was served on Truslow.

12. By the time Megna served the subpoenas and propounded discovery to Truslow, the merits of this matter had been long decided (summary judgment had been granted to Anasti in October, 2007). Anasti had waived any damages or sanctions claims against Lee. All that remained to be adjudicated in this matter (as far as Megna was concerned) was Anasti's Rule 11 motion against Megna. As indicated above, Megna had also been disqualified as counsel in the Darlington case.

13. On March 9, 2012, Truslow filed the pending Motion to Quash and for other relief, including sanctions against Megna, in connection with the discovery.

14. Megna e-mailed this Court an unsolicited letter and 54-page "Synopsis" on March 19, 2012. The "Synopsis" contained the caption of this case, as well as the Darlington county case.

15. In the "Synopsis," Megna asserted that the Court of Appeals had previously and "unanimously denied" Truslow's March 9, 2012 motion. In addition, Megna leveled a number of claims of professional misconduct on the part of a number of attorneys, including Ballard, whose own motion for sanctions was pending in the Darlington action.

16. Truslow provided the Court with voluminous evidence refuting the allegations contained in Megna's "synopsis." This included Truslow's affidavit with detailed time records, the affidavit of former client Gina Lee, an affidavit of a legal assistant in Truslow's office, an affidavit of Ballard verifying that the fees sought by Truslow were reasonable in light of the issues raised by Megna, memoranda, and other documents.

17. Truslow asked that the Court take judicial notice of the Clerk of Court's files in the Thompson case in Darlington and relevant appeals; the "Florence cases" (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706); Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); the "companion" cases; and, Lee's bankruptcy case.

18. Megna neither objected, nor filed any counter-affidavits at the hearing on both motions, and his counsel handed up a memorandum with numerous attachments.

19. This Court has taken judicial notice of and considered the various records on file with the respective Clerks of Court, and has considered the other voluminous documentation referenced.

20. Much of the materials and argument asserted by Megna, to which Truslow necessarily responded and which this Court reviewed and considered, is completely irrelevant to the issues of the pending motion for sanctions. The Court has had to sift through mountains of materials as a result of Megna's efforts to dissuade this Court from looking at the merits of the issue actually presented. Unfortunately, the irrelevance could not be determined by the Court until all of the material was

reviewed. An immense amount of judicial time has been required to review these matters, only to discover that most of it was unnecessary.

21. The arguments in Megna's "Synopsis" are fragmented and illogical, but fervently presented; however, they are wholly without merit. The Court of Appeals has never considered sanctions with respect to Megna's service of discovery upon Truslow. Megna's other arguments can be summed up as follows: Megna does not like Truslow and/or Anasti and has hurled multiple accusations against them in an effort to deflect the Court from Megna's own misconduct. None of Megna's accusations have merit.

22. The Court notes that Megna has not heeded previous admonitions about his conduct. In his Orders on remand (April 3, 2008 and April 1, 2009) in this case, Judge Manning found that Megna had made "repeated and gross misrepresentations" to the Court, and he had made "unwarranted, unjustified and untrue attacks on opposing counsel." That has continued. This Court intends to stop it now.

JMB 7

23. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Darlington case (as more specifically described in the order issued this date in *Thompson*). He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in this case.

24. Megna's conduct is willful and deliberate. In both his "Synopsis" and the memorandum, he continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and multiple others he considers to be adverse to him.

25. A substantial component of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court

would be faced with an entirely different scenario if Megna had at any time admitted his misconduct and shown remorse to any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.

26. The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.

27. Even viewed separately from Megna's conduct in the Darlington County case, Megna's conduct is ill-conceived, vitriolic, and abusive. When the evidence from both cases is viewed together, Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court, his colleagues, and adverse parties in the process.

28. Megna's conduct in this case cannot be justified, nor condoned. The Court has both actual and inherent authority to address these matters, to preserve the integrity of the court system, to ensure respect for Court Orders and Court rules, and to protect litigants and counsel from further abusive conduct. Megna's conduct clearly violates the SCRCP, and Rule 11 provides ample authority for the Court to impose sanctions. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

JMB 8

30. Truslow has requested, by way of Rule 11 sanctions, an award for the time and expenses he incurred in responding to Megna's efforts at improper discovery. I find and conclude that Truslow did in fact expend the amount of time set forth in his fee and cost affidavit. The hours of legal time expended were both reasonable and necessary under the circumstances, given Megna's conduct.

31. The matter before this Court was made exceedingly difficult and contentious by Megna. His claims were convoluted and, though without any merit, were serious and have been time-consuming to address. The time expended by Truslow, as well as the basis for its expenditure, was well documented and confirmed independently.

32. Truslow's requested fees are reasonable, designed merely to compensate, and are justified. No loadstar multiplier has been utilized by this Court. Truslow is entitled to an award of fees and costs against Megna in the amount of $31,547.25, plus $295.14 in costs (for a total of $31,842.39), as set forth in his detailed affidavit and time sheets.

33. The award of fees and costs herein are a sanction (and hence considered to be non-dischargeable except by payment), as well as a civil money judgment so as to carry interest at the legal judgment rate. Thus, the Clerk of Court is instructed to enroll this sum as a civil judgment against Megna in favor of Truslow.

GMB 9

34. It is an unfortunate circumstance when the Court must induce someone to be civil, but it is an entirely different matter when a licensed professional such as Megna so seriously misuses the procedural processes and legal mechanisms of this Court in such an abusive manner, with an ulterior motive, and repeatedly in violation of previous Court Order(s).

CRIMINAL CONTEMPT CITATION AGAINST MR. MEGNA, *SUA SPONTE*

35. In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney

conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Darlington County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Mr. Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Mr. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Mr. Megna is hereby specifically advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Mr. Megna.

JwB 10

SERVICE OF ORDERS ON OFFICE OF DISCIPLINARY COUNSEL, *SUA SPONTE*

36. Under these circumstances, the reasons required for Megna to self-report this Order are self-evident. Megna is and shall be required to report (service by certified mail) this Order and the concomitant sanctions to Lesley M. Coggiola, Director of Office of Disciplinary Counsel (Post Office Box 12159, Columbia, South Carolina, 29211); together with an explanatory transmittal cover letter, within thirty (30) days of service of this Order upon him. Megna's report is to include at a minimum a copy of the Orders of the Honorable L. Casey Manning issued on April 3, 2008 and April 1, 2009, as well as the within Order. Megna shall enumerate in detail the documents being served/delivered, together with the signed return receipt or affidavit of service within the same time frame. Proof of service shall be required by Megna to be filed with the Richland County Clerk of Court in this matter and with the Darlington County Clerk of Court in Thompson.

JMB 11

NOW, THEREFORE IT IS ORDERED:

1. Plaintiff's March 9, 2012 motion is granted.
2. This Order shall be filed in such a manner as to make clear to the respective Clerks of Court in Richland and Darlington Counties that the Court has issued a related Order in Thompson (10-CP-16-0332), as well as in this case.
3. Sanctions are imposed upon Tony Megna personally as outlined hereinabove to include:
   a. Megna shall be and is required to pay Plaintiff's Counsel the sum of $31,842.39 within thirty (30) days, and the Clerk shall issue a civil judgment therefor.

b. Said sums shall be and are to be deemed a non-dischargeable, legal judgment, accruing interest at the legal judgment rate.

4. Megna shall self-report to the Office of Disciplinary Counsel.

a. His report shall include this Order, as well as Judge Manning's orders dated April 3, 2008 and April 1, 2009.

b. Megna shall enumerate in detail the documents being submitted to ODC by certified mail, return receipt requested.

c. He shall then file same with the respective Clerks of Court in Richland and Darlington Counties.

d. Furthermore, he shall copy respective Counsel in his filings with the Clerks of Court.

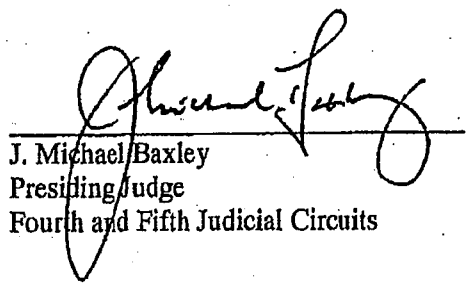
e. Megna shall be and is required to take this action within thirty (30) days of service of the within Order.

f. Megna shall appear at a Criminal Contempt Show Cause Hearing at the Darlington County Courthouse on March 18, 2013.

5. Parallel sanctions are being imposed in Thompson (10-CP-16-0332) pending in Darlington County.

6. Because of the numerous occasions on which Megna has denied receipt of service of an Order or other papers, counsel shall make arrangements for personal service of a copy of this Order upon Megna, unless Megna personally (not through counsel) consents to accept service in some other fashion and executes a written acceptance of service to that effect.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge
Fourth and Fifth Judicial Circuits

Hartsville, South Carolina
February 11, 2013

HSTATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Ex Parte:)
)
Douglas N. Truslow,)
)
In re:)
)
JAMES A. ANASTI,)
Plaintiff,)
)
vs.)
)
LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
and RICHLAND COUNTY)
CLERK OF COURT,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-40-0576

ORDER DENYING TONY R. MEGNA'S MOTION FOR RECONSIDERATION OF SANCTIONS

RICHLAND CO.
FILED
2013 JUN 12 AM 10:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
Ex Parte:)
)
Desa Ballard,)
)
Pee Dee Health Care P.A.)
)
Plaintiff,)
)
Vs.)
)
Estate of Hugh S. Thompson,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-16-0332

1

SCANNED

Tony R. Megna moves for reconsideration pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 59 of this Court's sanctions Orders filed February 13, 2013 in the above captioned cases. The motions are denied as set forth herein.

Motions for Rule 11 sanctions were filed seeking awards of sanctions against Tony R. Megna in both cases. In the Richland County case, *Anasti v. Lee*, sanctions were sought by an adverse party against Mr. Megna in connection with discovery abuses. In the Darlington case, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, non-party Desa A. Ballard also sought sanctions for discovery abuses. The sanctions motions were consolidated for hearing. While separate orders were issued in each case, the motions for reconsideration filed in both cases raise common issues, and were considered together.

The motions for reconsideration were heard on the record, via telephone, on March 7, 2013.[1] Attorney Megna's new counsel, James M. Griffin, Esq., represented Mr. Megna.[2] Douglas N. Truslow, Esq. represented his client James Anasti in the Richland County case; and Desa A. Ballard, Esq. appeared *pro se* in the Darlington County case. Also present for the hearing were J. Rene Josey, Esq. and John J. James II, Esq., counsel for defendants in the Darlington county case.[3] No objections to the scope or manner of conducting the hearing were made. As a preliminary matter, Attorney Truslow raised several procedural issues that may have barred the Court's consideration of the motions for reconsideration, and those objections were

[1] On March 4, 2013, the Court notified the parties that argument should be limited to the amount of sanctions awarded. No objection was made to the notice or limitation.

[2] Attorney Griffin filed notices of appearance on Mr. Megna's behalf (and others) in August, 2012, several months after the consolidated hearing on the pending sanctions motions, but before issuance of the orders. Mr. Megna continues to be represented by attorney Aimee J. Zmroczek as well as Mr. Megna's law partner, Benjamin R. Matthews, neither of whom signed the Motions for Reconsideration and neither of whom participated in the hearing in this matter.

[3] Messrs. Wilson's and Goodwin's counsel had requested that he be excused in that, while interested in the proceeding, he likely had nothing to add that would not otherwise be argued by others in attendance.

noted but not necessary to be ruled upon. The Court has considered all issues raised by the motions for reconsideration and concluded all to be without merit.

The Court heard argument on Mr. Megna's objection to the amount of sanctions awarded in both cases. Mr. Megna asserts the amount of sanctions awarded were unreasonable and excessive and, in the case of Attorney Ballard's motion, unwarranted in that Ms. Ballard represented herself *pro se* and was not eligible to be awarded sanctions under the well-established rule in South Carolina that an attorney proceeding pro se may not recovery attorneys' fees on behalf of herself. *See Hopkins v. Hopkins*, 343 S.C. 301, 306-07, 540 S.E.2d 454, 457 (2000).

The Court possesses discretion under Rule 11 to determine an amount of sanction to be awarded based on the unique facts of each case, and significant sanctions are appropriate when "a filing is so patently without merit that no reasonable attorney could have a good faith belief in its propriety. *"Ex Parte: Bon Secours et al., In re: Thomas R. Weiters v. Bon-Secours-St. Francis Hospital Inc. et al,*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011). Here, this Court has found that Mr. Megna's conduct far exceeded being "patently without merit." He acted in both cases in such a vexatious manner as to shock the conscience of the Court.

The traditional standard for an award of Rule 11 sanctions is where "no good grounds exist to support the filing." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). That standard pales here. While the findings of the Court are fully contained in the previous sanctions Orders, Mr. Megna was found to have violated previous Court orders that disqualified him as counsel in the Darlington case, and then used the Richland County case as a vehicle to propound discovery in the Darlington case. This occurred after Mr. Megna's client essentially no longer had an interest at Bar in the Richland case. Mr. Megna clearly intended to vex and

cause substantial inconvenience to Attorney Truslow and his staff and client, for no legitimate purpose, and further intended to intimidate Ms. Ballard, all in an effort to protect his own pecuniary interests notwithstanding his (former) client's lack of interest in the matter. He also acted in direct violation of a Court Order. It is difficult to imagine an award of sanctions not being made under these facts.

Mr. Megna argues the amount of sanctions awarded is substantial and not warranted by his misconduct. This Court disagrees. Mr. Megna is the architect of this situation. A reasonable attorney under these circumstances would have realized the error, or at least questioned the wisdom of his actions, when faced with two (2) motions for sanctions by different movants, both pointing out the extreme impropriety of his conduct. Here, however, after the motions for sanctions were filed, Mr. Megna attempted to divert the Court's attention from his own misconduct by burying the Court and the parties with a volume of documentation that attempted to justify his own misconduct while attacking everyone else. This pattern of misdirection and accusing others has continued into the Motions for Reconsideration.

In Mr. Megna's assertion that the amount of sanctions is unwarranted, he criticizes both Attorney Truslow and Ms. Ballard for spending the substantial time on these matters that was reflected in their time records, although he does not dispute that the time was actually expended by them. He argues that they should not have spent the time they did in responding to his discovery and in seeking sanctions against him. Aside from the question of whether the issue has been properly preserved, that is simply not his decision.

In determining an award of sanctions, the amount of time devoted by the responding party is only one of many factors that can be considered in determining an appropriate amount of sanctions. Sanctions available to the Court are not limited to a mathematical calculation of

attorney fees incurred by the defending party, but the time devoted to defending the matter and seeking sanctions is certainly a factor that the Court can consider in determining an appropriate amount of sanctions. *Ex Parte Bon Secours, supra.* Here, the Court chose to award an amount of sanctions that was tied to the time Attorney Truslow and Ms. Ballard spent in addressing this matter (and in fact addressing the reasonableness of that time), but it need not have done so. This Court has no hesitation in confirming that the amount of sanctions awarded, which are characterized by Mr. Megna as "substantial," are appropriate remediation for Mr. Megna's conduct in this matter and commensurate with the level of his offenses. Sanctions are, after all, awarded to "deter" the offending party from continued bad faith actions. *Id*

Mr. Megna asserts that Ms. Ballard cannot recover attorney fees, citing *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) and *Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d 867 (2009) for the proposition that, since Ms. Ballard did not pay someone else to represent her, she cannot recover for her own time. Ms. Ballard acknowledges that she represented herself *pro se* in responding to the discovery served upon her by Mr. Megna and in seeking sanctions against him.

Ms. Ballard was not awarded attorney fees, she was awarded sanctions. While the sanctions were tied to the amount of work required as a result of Mr. Megna's defalcations, the sums awarded were still sanctions. Order dated 2-13-2013, ¶¶ 35 – 37. In both *Calhoun* and *Williamson*, the appellate courts construed the applicability of statutes which could be used to shift the payment of attorney fees to a different party in the action, in contravention of the American rule that each party pays their own fees unless otherwise provided by agreement or statute. *Calhoun* involved statutory fee-shifting in family court, and *Williamson* involved fee shifting in a wage claim matter pursuant to S.C.Code Ann. Section 39-65-30. In *Williamson*, the

fee shifting statute specifically required the prevailing party to have "incurred" attorney fees before the obligation to pay could be shifted to the unsuccessful party. Neither case is applicable to an award of sanctions under Rule 11.

Ms. Ballard asked the Court to reduce the amount of sanctions she was awarded by $1,390.00 based on her error in including two time entries for time expended by her and her staff on April 5, 2012. Since her original request for sanctions, and the award, were based on the time she had spent in responding to the discovery and pursuing sanctions against Mr. Megna, the Court will grant her request to reduce the sanctions award by the amount requested. For that reason, the amount of sanctions awarded to Ms. Ballard in the February 13, 2013 order is reduced by $1,390.00, from $17,388.75 to $15,998.75. The Darlington County Clerk of Court is directed to amend the judgment entered against Mr. Megna in favor of Ms. Ballard to reflect this adjustment. The award of sanctions to Ms. Ballard is $15,998.75.

For the reasons set forth above, Mr. Megna's motions for reconsideration in both matters are denied.

J. Michael Baxley
Chief Administrative Judge
Fourth Judicial Circuit

June 5, 2013

Hartsville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 **CP**-40-0576

JAMES A. ANASTI

PLAINTIFF(S)

LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, and RICHLAND COUNTY CLERK OF COURT

DEFENDANT(S)

Submitted by: DOUGLAS N. TRUSLOW

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

2013 JUL -9 PM 1:44
JEANETTE W. GRANT
CLERK OF COURT
RICHLAND COUNTY
FILED

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : THIS IS A CONSENT ORDER AND CONFESSION OF JUDGMENT ORDER.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
JAMES A. ANASTI	LANCE WILSOW	$$250,000.00
JAMES A, ANASTI	WILLIS GOODWIN	$$250,00.00
		$

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

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

G. L. Cary
Circuit Court Judge

2426
Judge Code

7-1-13
Date

SCRCP Form 4C (03/2013)

SCANNED

For Clerk of Court Office Use Only

This judgment was entered on the 9 day of July 2013 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Bridges
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	Docket Number(s): 2007-CP-40-0576
Plaintiff,	)	
vs.	)	**CONSENT ORDER AND CONFESSION OF JUDGMENT**
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, and RICHLAND COUNTY CLERK OF COURT,	)	
Defendants.	)	

RICHLAND COUNTY FILED
2013 JUL -9 PM 1:44
JEANETTE W. WALDEN C.C.P. & G.S.

This matter came before me for a damages hearing on May 13, 2013. Plaintiff was represented by Douglas N. Truslow. Defendant Wilson ("Wilson") was represented by Tristan M. Shaffer. Defendant Goodwin ("Goodwin") was represented by Charlie J. Johnson, Jr.

STATEMENT OF THE CASE AND OVERVIEW

This hearing relates to a calculation of sums due Plaintiff from Wilson and Goodwin.[1] Wilson and Goodwin's obligations to Plaintiff are essentially equitable in nature and based on continued occupancy and use of Plaintiff's property – property determined by the courts and reiterated herein to have been owned by Plaintiff continuously and exclusively since the death of his father in October, 1995. It is evident that Wilson and Goodwin's obligations to Plaintiff have continued to mount as litigation instigated and continued by Lee relative to ownership of the property (and hence the specific party entitled to payment) has circuitously and laboriously wended its way through the courts. While continuing to occupy and use Plaintiff's property and/or by

[1] Defendant Lee ("Lee") is no longer involved by virtue of the terms of her bankruptcy discharge. The Clerk of Court likewise has no further interest – approximately $5,600 in funds from a separate and distinct condemnation action involving a small portion of the underlying property previously at issue had been paid into the court while ownership of the property was being litigated. Upon ownership being conclusively determined and all Lee's appeals exhausted, the funds were released to Plaintiff, by and with the express consent of Wilson and Goodwin.

virtue of Goodwin allowing its continuous use by his joint venturer Wilson, they failed to pay what would have been due. They failed to pay, while a) conceding that they had no lawful interest in the property (that they had ostensibly purchased from Lee with a good faith belief by them that she was the owner), b) alleging that a resolution of the title issue in Plaintiff's favor would bolster their claims against Lee, and c) successfully pursuing damages claims against Lee.

One of Wilson and Goodwin's positions in this matter has been that they were wronged by Lee, who had disingenuously and continuously advanced competing claims of ownership to the property. The net effect of Lee's claims and her continuing litigation on multiple fronts was that Wilson and Goodwin's ability to make repairs, improvements and other investments necessary to continue to effectively operate a business on the property they occupied was substantially impaired. Thus, their revenues declined to the point that they were unable to meet their obligations. They ultimately abandoned the property. They also assert that they were wronged by their real estate closing attorney, from whom the court/arbitrator has determined that they could not collect because of their failure to sue him within the applicable statute of limitations.

Plaintiff has conclusively been determined by the court(s) to have been at all pertinent times the lawful owner of the property. He was granted summary judgment as to all causes of action. He then promptly filed a Rule 11 SCRCP motion against Lee and her counsel.

In a separate, subsequently arbitrated lawsuit, Wilson and Goodwin asserted and established that Plaintiff was at all pertinent times the owner of the property, not Lee. That assertion and proof formed the basis for their damages award against Lee. It would be inappropriate for them to make a contrary assertion in this case; they have not attempted to do so.

The summary judgment Order herein provided that damages due Plaintiff from Wilson and Goodwin and also from Lee were to be determined at a subsequent hearing. The damages hearing, as well as the Rule 11 motion, were promptly scheduled. However, before they could be heard, Lee appealed. While the appeal was pending, and after having the arbitration award rendered against her, Lee filed for (and was ultimately discharged in) bankruptcy. This prevented recourse against her personally.

Lee's bankruptcy filing brought all State proceedings to a halt until the bankruptcy automatic stay could be lifted. The bankruptcy stay was lifted for the limited purpose of concluding the State appeal filed by Lee. Lee thereafter pursued multiple State and Federal appeals, as well as pursuing multiple motions for reconsideration and a Petition for Writ of Certiorari in the State Supreme Court. In bankruptcy court, Lee filed multiple motions, including multiple motions for reconsideration. Lee filed multiple appeals and multiple motions for reconsideration in the Federal District Court. She thereafter appealed to the Fourth Circuit Court of Appeals. While Lee lost at all levels and in all pertinent proceedings, the parties have submitted, acknowledged and agreed that this damages hearing, as well as the Rule 11 hearing, could not properly and conclusively be held until all Lee's appeals were exhausted.[2] Additionally, the parties herein have submitted, acknowledged and agreed that the actions taken by Lee kept Plaintiff from having use of his property. Those actions by Lee caused Plaintiff, as well as Wilson and Goodwin, considerable difficulty and expense. Under circumstances asserted to be sympathetic but nonetheless concededly legally non-cognizable, Wilson availed himself of the opportunity and/or ability to use and occupy Plaintiff's property, with the apparent coalescence of his joint venturer Goodwin.

Having heard arguments of counsel, considered all evidence presented, as well as having taken judicial notice of pleadings, Orders and other voluminous records in this matter, the arbitrated companion cases (2004-CP-40-5333 and 2004-CP-40-5334), the SCDOT condemnation case (2002-CP-40-06062), Lee's bankruptcy and her multiple State and Federal appeals and the stipulations of record, **I FIND AND CONCLUDE**:[3]

1. Albert Anasti and his son James Anasti owned property located at 2325 Two Notch Road, Columbia, South Carolina ("property"). They had owned the property together as joint tenants with right of survivorship since 1978.

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[2] The same attorney represented Lee throughout all proceedings until a time after her Petition for Writ of Certiorari was denied and she formally discharged him. The Rule 11 sanctions hearing against that (former) attorney has not yet been heard.

[3] To the extent conclusions of law may be, in whole or in part, findings of fact and vise versa, they are to be construed as such. Further the terms of the statement of the case and overview are adopted herein as findings and conclusions.

2. Albert Anasti died in October, 1995. He left as his sole survivors and heirs his son James Anasti (Plaintiff) and his daughter Defendant Gina Anasti Lee ("Lee").
3. At the death of Albert Anasti, Plaintiff became the sole, lawful owner of the property.
4. At the time of Albert Anasti's death, and until approximately 2003, Plaintiff had been living in Europe; Lee continuously resided in Richland County.
5. Lee was appointed as the personal representative of the estate of Albert Anasti.
6. For an extended period of years prior to Albert Anasti's death (since 1980 according to Wilson and Goodwin's pleadings), Wilson's father and Wilson (and thereafter Wilson alone since at least 1995) had rented the property from Mr. Anasti and Plaintiff for use as a nightclub -- on a month-to-month rental basis. Wilson operated the nightclub under the name of "Dave's". Until his death, Albert Anasti handled property matters on behalf of himself and Plaintiff.
7. Upon the death of Albert Anasti, Lee represented to Wilson that she had inherited the property and that all future rents should be paid to her individually.
8. Independently and thereafter, Lee represented to Plaintiff that the property was tied up in the probate of the estate of Albert Anasti. She also represented that it was not generating any income. Since Lee was his sister, Plaintiff accepted as true and relied upon those representations. It goes without saying that those representations of Lee were not accurate, although she may have initially or arguably been confused about ownership (before the condemnation lawsuit filed by SCDOT in 2002).
9. Based on her representations of being the owner of the property, Wilson paid rents to Lee from November, 1995 until December, 1999. Lee kept those sums as her own. The rental rate was $1,250 per month. In addition, Wilson was supposed to pay taxes and insurance on the property, as well as to keep it maintained.
10. Plaintiff was initially unaware of the circumstances surrounding Lee's claim of ownership, Wilson's consequent payments to Lee and that Lee had "sold" the property to Wilson and Goodwin.
11. In late 1999, believing to be true Lee's representations of ownership, Wilson entered into an agreement with her to buy the property. Rent was agreed upon

(and paid to Lee) at a rate of $1,500 per month for two months, until the projected real estate closing could take place.

12. Because Wilson was apparently unable to obtain satisfactory commercial financing to buy the property, he enlisted the assistance of his friend Goodwin.

13. As asserted by them in their multiple pleadings and, as subsequently found and concluded by the court as a result of their arbitration trial, Wilson and Goodwin were involved with one another in activities and an investment to purchase and thereafter own and use the property. Hence, they were found to have engaged in a joint venture with joint ownership, as well as imputed knowledge to one another in whatever interest they might possess in the property.

14. Under their arrangement, Lee agreed to sell the property to Goodwin with "owner financing" for the sum of $177,000. Goodwin was to make a down payment to Lee of $50,000. Mortgage payments due Lee from Goodwin on the balance were established at a rate of $1,519 per month, to be secured by a note and mortgage.

15. Upon receiving a title opinion (an erroneous title opinion) from their real estate attorney that Lee was the owner, Goodwin bought the property on the terms he and Wilson had negotiated with Lee.[4]

16. Wilson continued to operate his nightclub on the premise until October, 2012.

17. Goodwin worked at the nightclub for a period of time after Wilson had suffered a stroke, subsequent to his installment purchase in 2000. Goodwin was paid most of the installment payments due for the $50,000.00 down payment he had made for the purchase of the property from Lee.

18. Sometime in 2002 or 2003, Plaintiff returned to the United States and found that matters relating to his father's estate and specifically the property herein were not in fact tied up in probate; that Lee had "sold" the property to Wilson and Goodwin.

[4] Technically, title was to be placed in Goodwin's name, but Wilson had an agreement to buy the property from Goodwin by way of an installment sales contract and to assume the mortgage obligation, as well as responsibility for taxes. Upon projected payment to him by Wilson of the initial $50,000 over a four year period, Goodwin was to then transfer title to Wilson; provided, Goodwin was thereafter to retain a ten percent interest in the property along with Wilson.

19. Both Wilson and Goodwin knew in 2002 that Lee most likely did not own the property she had sold to them.[5] At that time, they completely stopped making any payments to Lee and never made another rent or mortgage payment thereafter.

20. Despite discontinuing payments to Lee, she did not at that time seek to foreclose or otherwise seek any relief from Wilson and/or Goodwin. That circumstance seemingly corroborated their beliefs that Lee was not the lawful owner.

21. Wilson and Goodwin initiated a lawsuit against Lee in 2004 (2004-Cp-40-5333). In their lawsuit, they alleged, *inter alia*, that Lee had sold them the property (that she did not own). They sought the return of the money they had paid her, as well as taxes they claimed they paid on the property and other damages.

22. In a separate, but related lawsuit (2004-CP-40-5334), they sued the attorney who had mishandled their real estate transaction with Lee for legal malpractice.

23. Lee counterclaimed to Wilson and Goodwin's lawsuit against her. She alleged that she was in fact the lawful owner of the property; that she had not been paid mortgage payments due and she sought to foreclose.

24. Why clearly not damaged by his error, Lee also sued the attorney who had mishandled the real estate transaction between her, Wilson and Goodwin for legal malpractice.

25. Notably, Plaintiff was not made a party to any lawsuits filed by Wilson and Goodwin or by Lee.

26. The lawsuits initiated by Wilson and Goodwin against Lee and their real estate attorney were subjected to SCRCP 40(j) dismissal, but were reinstated. Thereafter, Plaintiff brought the within suit, seeking to clear his title to the property and for damages. Wilson and Goodwin asserted in their Answer that a verdict in Plaintiff's favor would buttress their separate case against Lee.

27. Wilson and Goodwin did not file any pleading alleging affirmative legal or equitable defenses to Plaintiff's claims, nor have they advanced claims against each other. In answer to Lee's cross-claim seeking to foreclose, Wilson denied same and asserted that Plaintiff was likely the true, legal owner of the property.

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[5] Wilson was found by the Arbitrator to have known it shortly after the sale in 2000, when he attempted to find alternative commercial financing. Wilson and Goodwin were each aware of those circumstances at the time of the commencement of the SCDOT condemnation action filed in 2002.

28. On October 26, 2007, Plaintiff received summary judgment under the terms and circumstances outlined in that Order.[6]

29. Subsequent to Plaintiff being granted summary judgment, the lawsuits between Wilson and Goodwin and Lee and their real estate closing attorney were called for trial. The parties to those cases then agreed to have them referred to Thomas W. Cooper, retired circuit court judge, for binding arbitration.

30. Judge Cooper duly found and concluded in his arbitration award that Lee had sold Wilson and Goodwin property that she clearly did not own and that Wilson and Goodwin had been damaged as a result; Wilson and Goodwin were awarded (against Lee) the sum of $216,337.70. This once more validated Wilson and Goodwin's belief that Lee was not the lawful owner of the property.

31. Wilson and Goodwin's arbitrated malpractice lawsuit against the real estate attorney who had erroneously certified title and closed their real estate transaction with Lee was denied because it had not been timely filed, *to wit*, it did not comply with the applicable statute of limitations.

32. Lee's claim of ownership to the property was completely and thoroughly rejected. Her arbitrated malpractice lawsuit against the real estate attorney was also denied as a threshold matter because, *inter alia*, it had not been timely filed. *To wit*, it did not comply with the applicable statute of limitations.

33. Lee subsequently filed for bankruptcy and has now been discharged. She never repaid Wilson and/or Wilson and Goodwin any of the money she had received from them. Likewise, Lee never relinquished to Plaintiff any of the sums she had received from Wilson and Goodwin. Instead, Lee insisted until the conclusion of all her appeals that she owned the property.

34. Wilson and Goodwin have testified and stipulated, and it is found that subsequent to their purchase in January, 2000: a) Wilson continued to operate the nightclub on Plaintiff's premises until October, 2012 (by which time all of Lee's State and bankruptcy related appeals had been exhausted and Wilson then vacated the

[6] At the summary judgment hearing and despite her inconsistent deposition testimony, Lee argued, *inter alia*, that she owned the property by way of "adverse possession" because she could not have sold to Wilson and/or Goodwin what she did not own and therefore she owned what she had "sold" [sic]. Wilson and Goodwin at that point had conceded that Plaintiff was the rightful owner.

premises); b) while remaining on the premises and continuing to operate the nightclub and/or allowing Wilson to do so, Wilson and Goodwin did not pay any periodic rents or mortgage payments to Plaintiff (or Lee) after October, 2002; c) as established in the arbitration award, shortly after acquiring the property in 2000, Wilson was put on notice that Lee did not appear to own the property; d) in October, 2002 Wilson and Goodwin each knew that Lee appeared to have "sold" them property that she did not own; and e) Wilson and/or Goodwin paid Lee monthly "mortgage" payments of $1,519 between February, 2000 and October, 2002.

35. The parties have stipulated that $1,250 per month plus payment of taxes, insurance and maintenance was the fair market rental rate for the property from November, 1995 through November, 1999; that $1,500 per month was the fair market rental rate for December, 1999 and January, 2000 and that $1,520 per month plus payment of taxes, insurances and maintenance has been the fair market rental rate since that time.

36. Plaintiff has asserted that he is entitled to be recompensed from Wilson and Goodwin for their possession and/or use of his property from 2000 through October, 2012. Plaintiff's summary of damages is set forth as Plaintiff's Exhibit 8. It is self-explanatory. It establishes the basis for damages. Plaintiff's damages claims appear credible and well founded. Wilson and Goodwin have argued that Lee and/or former counsel were culprit(s) in this case and that they caused damages. While that maybe so, it is not germane to the issue currently under consideration. Further, it is unrelated to the pending Rule 11 sanctions motion pending against Lee's former counsel.

37. Wilson and Goodwin concede they could most likely have been made whole and otherwise had a ready source of funds to pay Plaintiff if they timely sued the real estate attorney who was found to have committed malpractice in certifying the title and facilitating the real estate closing transaction. While this circumstance is perhaps sympathetic, it too is likewise and admittedly not germane to the issue currently under consideration.

38. In essence, Wilson and together with Goodwin in a joint venture have since 2000 utilized to their financial benefit what clearly appears to have been specious claims of ownership by Lee. They subsequently further utilized the fact that Plaintiff was stymied in seeking redress by virtue of Lee's claims of ownership and especially her bankruptcy filings and multiple appeals. As a matter of equity, Plaintiff is entitled to relief, regardless of the circumstances faced by Wilson and Goodwin.

39. It is not equitable for Wilson and/or Goodwin to have had the exclusive use of Plaintiff's property without paying for it. Likewise, it would not be equitable for Wilson and Goodwin together to make claims for damages (and recover a judgment/arbitration award against Lee) for the period of January 6, 2000 forward until they received the award and to thereafter deny an obligation to Plaintiff for occupancy and use during the same period of time. As hereinafter set forth, their confession of judgment is prudent, well considered and logical.

40. Wilson occupied Plaintiff's property from 1995 to January, 2000. Wilson paid Lee rent during that time and she retained the proceeds as her own. Those funds were not Lee's and Plaintiff received no payments.

41. Goodwin allowed his friend Wilson to occupy and use Plaintiff's property after their ostensible "purchase" in 2000. In doing so, and according to the findings and conclusions in the arbitration award, Goodwin was involved in a joint venture with Wilson. This conclusion is further borne out by, *inter alia*, the fact that they together sued Lee for damages, and they asserted no claims for contribution between each other in the arbitration case, nor in this one.

42. A short time before the submission of the within Order, it was represented that Plaintiff and Wilson had settled their differenced relative to sums due Plaintiff from Wilson for the period of time from 1995 through 1999. Therefore, there is no need for this court to determine damages to be awarded during that specified period. Furthermore, it has been represented to the Court that Wilson and Goodwin have agreed to a confession of judgment in Plaintiff's favor in the sum of two hundred and fifty thousand dollars ($250,000.00) effective as of June 15, 2013. Plaintiff has in turn represented that he accepts the offer of judgment and

waives claims against Wilson and Goodwin for any excess damages that may be due. In doing so, Plaintiff does not waive, and instead specifically reserves, any and all Rule 11 claims against Lee's former counsel. Given the confession of judgment and acceptance by Plaintiff, it is not necessary for the court to address damages further.

Accordingly, judgment is granted in Plaintiff's favor against Defendants Wilson and Goodwin jointly and severally in the sum of two hundred and fifty thousand dollars ($250,000.00) effective as a judgment on June 15, 2013.

AND IT IS SO ORDERED.

G. Thomas Cooper
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina
July 1, 2013

The undersigned confess judgment in the amount of $250,000.00 and authorize the entry of same.

Lance Wilson

SWORN TO AND SUBSCRIBED BEFORE ME

this 19 day of June, 2013

Notary Public for South Carolina

My Commission Expires: My Commission Expires July 20, 2016

Willis Goodwin

SWORN TO AND SUBSCRIBED BEFORE ME

this 20 day of June, 2013

Notary Public for South Carolina

My Commission Expires: My Commission Expires July 20, 2016

I Consent:

Douglas N. Truslow
Attorney for Plaintiff Anasti

I Consent:

Tristan Shaffer
Attorney for Defendant Wilson

I Consent:

Charlie J. Johnson, Jr.
Attorney for Defendant Goodwin

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ex parte: Tony R. Megna, Appellant, and Douglas N. Truslow, Respondent,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, and Richland County Clerk of Court, Defendants.

And

Ex parte: Tony R. Megna, Appellant, and Desa Ballard, Respondent,

In re:

Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

Appellate Case No. 2013-001461

Appeal From Richland County and Darlington County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2015-UP-067
Heard January 7, 2015 – Filed February 11, 2015

AFFIRMED

Ariail Elizabeth King and James Mixon Griffin, Lewis Babcock & Griffin, LLP, both of Columbia, for Appellant.

Douglas N. Truslow, of Columbia, and Desa Ballard, of West Columbia, for Respondents.

PER CURIAM: The circuit court awarded sanctions to attorneys Douglas N. Truslow and Desa Ballard against attorney Tony R. Megna pursuant to Rule 11 of the South Carolina Rules of Civil Procedure. Megna raises seven issues on appeal. We find only one of the issues preserved because Megna raised six of the issues for the first time in his Rule 59(e), SCRCP, motions. *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").

As to the merits, we find the preponderance of the evidence supports the circuit court's findings of fact. *See Ex parte Gregory*, 378 S.C. 430, 436-37, 663 S.E.2d 46, 50 (2008) ("[A]n appellate court reviews findings of fact in an equity matter taking its own view of the evidence."). Moreover, we find the circuit court did not abuse its discretion in determining Megna's conduct warranted sanctions. 378 S.C. at 437, 663 S.E.2d at 50 ("[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard."); *id.* ("An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions."); *see also Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) ("The imposition of sanctions . . . will not be disturbed on appeal absent a clear abuse of discretion by the lower court.").

Megna's sole preserved issue is whether the circuit court erred in calculating the amount of sanctions awarded to Ballard because South Carolina law provides an

attorney proceeding *pro se* is not entitled to attorney's fees. We find the circuit court awarded Ballard sanctions—not attorney's fees—and find no abuse of discretion in the circuit court measuring the amount of the sanctions award by the amount of time Ballard spent responding to Megna's discovery requests and pursuing sanctions against Megna, multiplied by her hourly rate.

We also find no abuse of discretion in the amount of sanctions awarded to Truslow and Ballard.

AFFIRMED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

The South Carolina Court of Appeals

Ex parte: Tony R. Megna, Appellant, and Douglas N. Truslow, Respondent,

In re:

APR 20 RECD

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, and Richland County Clerk of Court, Defendants.

And

Ex parte: Tony R. Megna, Appellant, and Desa Ballard, Respondent,

In re:

Pee Dee Health Care, P.A., Plaintiff,

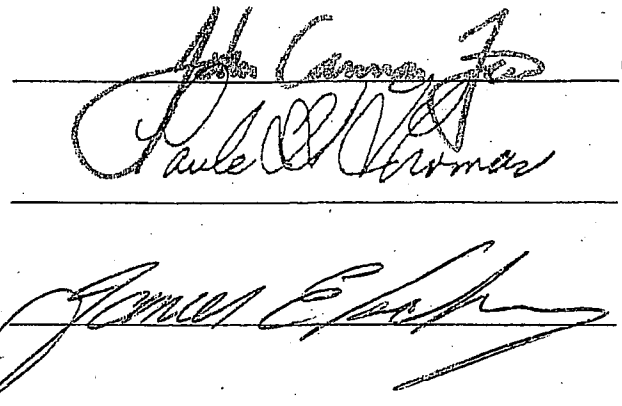
v.

Estate of Hugh S. Thompson, Defendant.

Appellate Case No. 2013-001461

ORDER

After careful consideration of the Appellant's petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.

J.

J.

Columbia, South Carolina

cc:
James Mixon Griffin, Esquire
Ariail Elizabeth King, Esquire
Douglas Neal Truslow, Esquire
Desa Ballard
The Honorable J. Michael Baxley

FILED
April 16, 2015

The Supreme Court of South Carolina

Ex parte: Tony R. Megna, Petitioner, and Douglas N. Truslow, Respondent,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, and Richland County Clerk of Court, Defendants.

And

Ex parte: Tony R. Megna, Petitioner, and Desa Ballard, Respondent,

In re:

Pee Dee Health Care, P.A., Plaintiff,

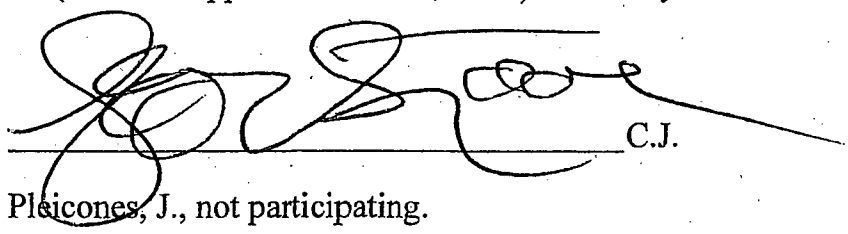
v.

Estate of Hugh S. Thompson, Defendant.

Appellate Case No. 2015-001048
Lower Court Case Nos. 2010-CP-16-00332
2007-CP-40-00576

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in *Ex parte Megna*, Op. No. 2015-UP-067 (S.C. Ct. App. filed Feb. 11, 2015). We deny the petition.



C.J.

Pleicones, J., not participating.

Columbia, South Carolina

October 8, 2015

cc:
The Honorable Jenny A. Kitchings
James Mixon Griffin
Ariail Elizabeth King
Desa Ballard
Douglas Neal Truslow
Scott B. Suggs
Jeanette W. McBride

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
In re: Tony Megna:		
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
Plaintiff,	)	
vs.	)	Case No. 2007-CP-40-0576
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT,	)	ORDER
Defendants.	)	

RICHLAND COUNTY FILED
2015 AUG 25 PM 4:21
JEANNETTE W. McBRIDE, C.C.P. & G.S.

This matter came before the Court on Plaintiff Anasti's Motion for Rule 11 S.C.R.Civ.P., Sanctions[1], which has been fully briefed by all Parties and was first argued before this Court on July 22, 2014 and again on July 23, 2015. The only issue that is properly before this Court is whether Mr. Megna knowingly interjected frivolous defenses during the course of the case, the result of which allegedly caused harm to Plaintiff.[2] Defendant opposed the Motion and has asked the Court to impose sanctions against Plaintiff's counsel for the inappropriate reference in his Motion and supporting Memorandum to certain privileged documents inadvertently produced

[1] The original Motion was filed November 7, 2007 and an Amended Motion was subsequently filed four years later on November 21, 2011. The amended motion contained a request for $500,000.00 in damages and sanctions.

[2] In his filings, Plaintiff references conduct occurring during the appeal of this Court's order granting summary judgment to the South Carolina Court of Appeals and conduct relating to a bankruptcy filing on behalf of Mr. Megna's client, Ms. Gina Lee. This Court does not have jurisdiction to impose sanctions for conduct during an appeal. *Bowen & Smoot v. Plumlee*, 308 S.C. 325, 417 S.E.2d 855 (1992). Moreover, this Court lacks authority to sanction an attorney for conduct occurring in federal bankruptcy court. *See, e.g., Gonzales v. Parks* 830 F.2d 1033 (9th Cir. 1987); *Mason v. Smith,* 140 N.H. 696, 672 A.2d 705 (1996).

SCANNED

by Defendant's counsel in violation of Rule 26(b)(5)(B), S.C. Rules Civ. P. Having considered all of the evidence, written submissions, and oral arguments of the Parties, and for reasons further explained herein, the Court finds and orders that Plaintiff's Motion for Sanctions is denied. In addition, the Court denies Defendant's request for sanctions against Plaintiff's counsel for noncompliance with Rule 26(b)(5)(B).

OPINION

Plaintiff's request for sanctions is denied. A party seeking sanctions under Rule 11 must prove an attorney knowingly signed a pleading or motion "to cause delay or when no good grounds exist to support the filing." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 713 S.E.2d 624, 628 (S.C. 2011). Plaintiff contends that the defenses asserted by Mr. Megna that related to his client's legal interest in certain property were frivolous and warrant sanctions because at the time they were asserted Mr. Megna knew them to be false and was using them to leverage his client's position in related litigation. However, Plaintiff has not cited to, nor has the Court found, controlling case law addressing the asserted defenses in the unique factual context of this case. Moreover, the Court finds the Plaintiff has not demonstrated proof of the mental state required for sanctions under Rule 11, and therefore, Plaintiff's Motion is denied. *See* Rule 11, S.C.R.Civ.P. ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; *that to the best of his knowledge, information and belief* there is good ground to support it; and that it is not interposed for delay.")(emphasis added).

Similarly, Defendant's request for sanctions is also denied. It is within the Court's discretion to award sanctions under Rule 11. Defendant requests the Court award sanctions against Plaintiff's counsel because, despite being put on notice by Mr. Megna that certain

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privileged information had been inadvertently disclosed, Plaintiff's counsel referenced the same in his public filings with this Court prior to seeking a determination from the Court regarding Defendant's claim of privilege. While the Court finds Mr. Truslow did not follow the established procedure set forth in Rule 26(b)(5)(B), the Court does not find that his conduct rises to the level of being sanctionable. Accordingly, Defendant's request for sanctions is denied.

CONCLUSION

Based on the foregoing, the Court denies Plaintiff's Motion for Sanctions and denies Defendant's request for sanctions against Plaintiff.

IT IS SO ORDERED.

REHood

Robert E. Hood
Circuit Court Judge

Columbia, S.C.
August 24, 2015

SCANNED

FORM 4

STATE OF SOUTH CAROLI.
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT II CIVIL CASE

CASE NO. 2007 CP-40-0576

JAMES A. ANASTI

PLAINTIFF(S)

LANCE WILSON, WILLIS GOODWIN,

GINA L. ANASTI LEE

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Plaintiff's Motion to Reconsider is DENIED.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2164
Judge Code

9/9/2015
Date

For Clerk of Court Office Use Only

SCRCP Form 4C (03/2013)

SCANNED

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Sept, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Jeanette W McBride

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

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

COPY

04CP405333

STATE OF SOUTH CAROLINA)
) IN THE CIRCUIT COURT FOR THE
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
Lance Wilson and Willis Goodwin,)
PLAINTIFS,)
) COVERSHEET FOR CIVIL ACTIONS
vs.)
)
Gina L. Anasti Lee,)
DEFENDANT.)
)
Docket No.: _____

FILED
2004 NOV 12 PM 2:33
BARBARA A. SCOTT
C.C. & G.S.

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

NATURE OF ACTION: (Check one category for the main cause of action)

( ) TORT – Motor Vehicle
( ) TORT – Professional Malpractice
( ) TORT – Unfair Trade Practices, other Economic or Business Related Wrongs
( ) TORT – Products Liability
(X) TORT – General or Other
( ) PCR
( ) GOV/ADM – Workers Comp
( ) GOV/ADM – General or Other

( ) CONTRACT – Debt Collection
( ) CONTRACT – Employment
( ) CONTRACT – Construction
( ) CONTRACT – Wrongful Breach
( ) CONTRACT – General or Other
( ) REAL PROPERTY
( ) MINOR SETTLEMENTS
( ) DOMESTIC FOREIGN JUDGMENT
( ) OTHER (Please Describe)

JURY DEMAND (X) YES ( ) NO

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and doe not constitute a demand for a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box.)

( ) This case is subject to **arbitration** (all cases with monetary damages less than $25,000.00 are subject to arbitration, unless otherwise exempt).
(X) This case is subject to **mediation** (all cases not subject to arbitration must be mediated, unless otherwise exempt.)
( ) This case is exempt from ADR, and certificate is attached.

Date: 12 NOV 2004

SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION

PLAINTIFF'S EXHIBIT 4

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

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

1. The parties shall select a neutral within 210 days of the filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the s election of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for Appointment of a Neutral" on or before the 224th day after the filing of the action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of this action.

3. Cases are exempt from ADR only upon the following grounds:

   (a) Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition

   (b) Cases which are appellate in nature such as appeals or writs of certiorari;

   (c) Post conviction relief matters;

   (d) Contempt of Court proceedings;

   (e) Forfeiture proceedings brought by the State;

   (f) Cases involving mortgage foreclosures; and

   (g) Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Lance Wilson and,
Willis S. Goodwin,)
Plaintiffs,)

vs.)

Gina L. Anasti Lee,)
Defendant.)

IN THE COURT OF COMMON PLEAS

FILED
2004 NOV 12 PM 2:33
BARBARA A. SCOTT
C.C.C. & G.S.

SUMMONS

FILE NO.:

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices at 1735 St. Julian Place, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEIGLER, EARLE & ELLSWORTH

By _____
Thomas G. Earle
Attorneys for Plaintiff
1735 St. Julian Place
Suite #103
Columbia, S. C. 29204
(803) 254-2791

Columbia, South Carolina

November 12, 2004

X

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Lance Wilson and Willis Goodwin, Plaintiffs, vs. Gina L. Anasti Lee, Defendants.	)	**COMPLAINT** **JURY TRIAL DEMANDED**

FILED
2004 NOV 12 PM 2:33
BARBARA A. SCOTT
C.C.C. & C.S.

Plaintiffs, complaining of the Defendant herein, allege:

GENERAL ALLEGATIONS:

1. Plaintiffs are citizens and residents of Richland County, South Carolina, and the property which is involved in this litigation is located in the City of Columbia, Richland County, South Carolina.

2. Upon information and belief, the Defendant, Gina L. Anasti Lee (sometimes hereafter referred to as Lee), is a citizen and resident of Richland County, South Carolina.

3. Defendant Lee listed for sale the property known as Dave's Place with Russell and Jeffcoat, Realtors and said realtors placed a "For Sale" sign on the property.

4. The Plaintiff, Lance Wilson, entered into an arrangement with Willis S. Goodwin whereby Goodwin would contract to purchase the property known as Dave's Place located at 2325 Two Notch Road, Columbia, S. C. (which Wilson through his corporation Padaro, Inc., d/b/a Daves had been leasing from Defendant Lee for several

years and which Wilson's father and brother had leased from Mr. Albert A. Anasti since 1980 and operated as a business know as Dave's Place with Willis S. Goodwin being the Purchaser on the Contract of Sale and with Gina L. Anasti Lee being the seller.

FOR A FIRST CAUSE OF ACTION:

5. The General Allegations set forth above are incorporated herein by reference as if set forth herein verbatim.

6. Willis Goodwin and Gina L. Anasti Lee entered into a Contract of Sale whereby Willis Goodwin paid $5,000.00 earnest money and entered into a contract of sale with Gina L. Anasti Lee whereby Willis Goodwin contracted to purchase the property known as Dave's Place for a gross sales price of $177,000.00.

7. Plaintiffs entered into a side agreement or collateral agreement designated as "Installment Sales Contract" whereby Lance Wilson agreed to purchase from Willis Goodwin the property in accordance with the terms and conditions of said agreement between Goodwin and Wilson. Said Contract was recorded on January 12, 2000 in Record Book 376 at Page 1268, copy is attached hereto and is incorporated herein by reference the same as if set forth here verbatim.

8. The transaction closed in the offices of Dallis Law Firm upon representation by Gina L. Anasti Lee that she had good, marketable fee simple title to the property and that Goodwin, once the transaction was closed and the deed recorded, would have had good, marketable fee simple title to the property.

9. At the closing Defendant executed and delivered a General Warranty Deed to Goodwin representing that she was the sole owner of the property and that she was conveying fee simple title to the property to Goodwin.

10. That at the time Gina L. Anasti Lee entered into the contract with Goodwin and at the time she delivered the General Warranty Deed to Goodwin she knew that she and her brother, James A. Anasti, were equal co-owners of said property and that she could not convey full fee simple marketable title to Goodwin.

11. Defendant Lee knew or should have known that she was under an affirmative obligation to disclose to Goodwin that she was not the sole owner of the property and, consequently, could not convey full fee simple title to Goodwin but that she willfully concealed said fact and failed and refused to reveal this information to Goodwin, her purchaser.

12. Defendant Lee accepted funds and installment paper obligations from Goodwin, knowing full well that she was perpetrating a fraud upon Goodwin and upon Wilson the long-time tenant of the property whom she knew was using Willis Goodwin as a money source for this transaction and knew further that Lance Wilson would eventually become the owner of the property that he or his father had rented from the Anasti Family since approximately 1980.

13. Defendant Lee's actions were intentional, were calculated to defraud Goodwin and Wilson as Defendant Lee knew full well that her brother, James A. Anasti, was co-owner of this property and that she could not convey full fee simple title to the property.

14. Willis Goodwin and Lance Wilson over time discovered that Gina L. Anasti Lee was not the sole owner of this property at the time of the real estate closing with Goodwin as a result of information obtained from SCDOT in connection with the widening project of Two Notch Road by South Carolina Department of Transportation

and correspondence by SCDOT with Goodwin and Wilson concerning a strip of land along the front of this property known as Dave's Place that the Highway Department would require in connection with its widening project.

15. Plaintiffs are informed and believes that Mrs. Lee's fraudulent actions were not discovered earlier due to the fact that her brother and co-owner, James A. Anasti, was living outside of the country and that Defendant Lee thought she could deal with this property in any way that she chose, and that her brother would not learn of her actions and come stateside to contest her illegal and fraudulent actions.

16. Defendant Lee's actions were intentional and harmful to Plaintiffs in that:

a. Defendant Lee represented to Goodwin and to Wilson that she was the sole owner of the property that is the subject of this action;

b. Said representation was false and Defendant Lee knew that it was false;

c. Said representation by Defendant Lee was material to and was the very essence of the proposed purchase transaction by Goodwin and Wilson and Defendant Lee knew that her representation was material to the proposed transaction;

d. The transaction was initiated by Defendant Lee and Goodwin and Wilson entered into negotiations with Defendant Lee only after the property (which Defendant Wilson and his family had leased from the Anasti Family since 1980 and operated a restaurant and bar known as Dave's Place) was listed for sale with a local real estate firm (Russell & Jeffcoat) and Defendant Lee or her representatives advised Wilson that the property was about to be sold out from under him;

e. Defendant Lee knew or should have known that her representation that she was the sole owner of the property was false;

f. Defendant Lee intended that her representation that she owned the property be acted upon by Goodwin and Wilson;

g. Goodwin and Wilson did not know that Defendant Lee's representation of ownership was false;

h. Goodwin and Wilson relied upon the truth of Lee's representation;

i. Goodwin and Wilson were entitled to rely upon Lee's representation; and

j. As a proximate and consequent result of the false representation of ownership by Lee, plaintiffs Goodwin and Wilson have suffered the injuries and damages set forth herein.

17. Plaintiffs are informed and believe that they are entitled to recover of Defendant their damages, actual and punitive and such other relief as is just and proper, to-wit:

a. Attorneys' fees they have incurred in efforts to correct this matter;

b. Any overpayments made to Defendant Lee;

c. Punitive damages in an amount determined by the Judge or Jury commensurate with the degree of fraud and deception employed by Defendant Lee to bring this fraudulent transaction to fruition; and

d. Such other actual damages as required to make Plaintiffs whole from a financial point for this transaction.

FOR A SECOND CAUSE OF ACTION:

18. The General Allegations and the allegations of the First Cause of Action are incorporated herein by reference as if set forth herein verbatim.

19. Defendant Lee falsely represented to Plaintiffs that she was the sole owner of said property.

20. Defendant Lee had a pecuniary interest in making this representation which was the difference between one-half of the sales price and all of the sales price.

21. Defendant Lee owed a duty to communicate truthful information to Plaintiffs and did not do so.

22. Defendant Lee breached that duty to communicate truthfully when she stated that she was the sole owner of subject property and executed and delivered to Plaintiff Goodwin a deed representing in said document that she was the sole owner.

23. Plaintiff Wilson had dealt with Defendant Lee or her agents ever since Mr. Albert Anasti died, knew that Defendant Lee served as personal representative of her father's estate (Estate of Albert A. Anasti) and that she had acquired an ownership interest in the property upon her father's death and Plaintiffs were justified in relying upon her representation that she was the sole owner of the property.

24. Plaintiffs have suffered a pecuniary loss in that they have paid or are obligated to pay full price for this property when the title although purporting to convey a full fee simple title to the property only conveyed the property interest that Defendant

Lee owned at the time of the conveyance which was an undivided one-half interest in the property.

25. Plaintiffs have been damaged by these actions of Defendant Lee and are entitled to recover the damages, actual and punitive, as well as such other relief as is just and proper.

FOR A THIRD CAUSE OF ACTION:

26. The General Allegations and the allegations of the First and Second Causes of Action are incorporated herein by reference as if set forth herein verbatim.

27. SCDOT has deposited with the Clerk of Court for Richland County the sum of $5500.00 in satisfaction of jury award in the condemnation action by SCDOT to acquire a strip across the front of subject property.

28. These funds are deposited in the names of Willis S. Goodwin, Lance Wilson, James A. Anasti and Gina L. Anasti Lee as their interests may appear and Plaintiffs are informed and believe that they are entitled to an order of this court that defendant Lee has no right, title or interest in said funds and that the Clerk of Court should make a notation to that effect on her records concerning these funds. See Judgment Roll Number 252784 for particulars on this matter.

WHEREFORE, having fully set forth their causes of action against the Defendant herein, Plaintiffs pray that they be granted the following relief as well as such other and further relief as is just and proper:

a. Attorneys' fees they have incurred in efforts to correct this matter;

b. Any overpayments made to Defendant Lee;

c. Punitive damages in an amount determined by the Judge or Jury commensurate with the degree of fraud and deception employed by Defendant Lee to bring this fraudulent transaction to fruition by closing at the offices of Dallis Law Firm; and

d. Such other damages suffered by Plaintiffs from this transaction as required to make Plaintiffs whole from a financial point; and

e. An order of the court directing the Clerk of Court to enter a notation on her records involving the $5500.00 deposited with the clerk by SCDOT that Defendant Gina L. Anasti Lee has no right, title or interest in said funds.

SEIGLER, EARLE & ELLSWORTH

By _____

Thomas G. Earle
Attorneys for Plaintiffs
1735 St. Julian Place, Suite #103
Columbia, S.C. 29204
Phone: (803) 254-2791
Fax: (803) 254-7755

Columbia, SC
November 12, 2004.

Book 00376-1268
Fee:$10.00 County Tax:$0.00 State Tax:$0.00
2000003818 John G. Hardin

STATE OF SOUTH CAROLINA)
) INSTALLMENT SALE CONTRACT
COUNTY OF RICHLAND)

AGREEMENT made and entered into on the day and year stated below by and between the undersigned seller or sellers ("Seller") and the undersigned buyer or buyers ("Buyer").

WITNESSETH:

WHEREAS, Seller holds title to certain real property more particularly described in Exhibit "A", attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer under the terms and conditions stated below; now, therefore,

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the above recitals, the mutual and dependent covenants recited below, and the sum of One ($1.00) Dollar, each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree as follows:

1. The purchase price for the Property shall be One Hundred Seventy-Seven thousand and No/100 ($177,000.00) dollars and shall be paid in the following manner: Buyer agrees to make 6 monthly payments of $1,500.00 to Seller beginning February 1, 2000 to be followed by 11 monthly payments of $1,000.00 to Seller beginning August 1, 2000, and inaddition to the aforesaid 17 monthly payments, Buyer agrees to assume First Mortgage Loan executed this date by Seller to Gina Lee in the amount of 127,000.00 calling for repayment over 11 years at an interest rate of Nine (9%) percent with monthly payments of $1,519.02.

2. Buyer shall have possession of the Property immediately upon execution of this Agreement.

3. Seller shall deliver to Buyer a general warranty deed to the Property immediately upon completion by Buyer of full performance under the terms of this Agreement whereupon Buyer shall then reconvey an undivided 10/100 interest in the property to Seller.

4. At the time that the deed is delivered to Buyer, title shall be free and clear of all liens and encumbrances other than those exceptions as follows (the "Allowed Exceptions"): Normal utility, water and sewer easements, covenants and restrictions of record, zoning regulations, assessments.

5. Upon execution of this Agreement, Buyer shall be responsible for paying taxes upon the Property and maintaining sufficient casualty insurance upon the Property to protect the interest of Buyer, Seller, and the holder of the Mortgage, if any, from windstorm, fire, and related peril as provided in standard homeowner policies, plus flood insurance, if applicable. In the event Buyer does not pay taxes and does not maintain sufficient insurance, then Seller may pay or provide the same. In such event, Buyer shall pay Seller any sums advanced pursuant to this Paragraph, plus interest from the date advanced until paid in full at the rate of fourteen (14%) percent per annum.

6. Buyer shall maintain the Property, including any improvements thereon, in a state of good repair and condition, normal wear and tear excepted, and Buyer shall not sell or otherwise dispose of any article of personal property or fixtures located upon the Property at the time of execution of this Agreement except for necessary replacements.

7. Neither Seller nor Buyer shall cause or permit any act to be done prior to delivery of the deed to the Property which would burden or cloud title to the Property or interfere with Buyer's or Seller's full use and enjoyment thereof.

Richland County ROD
John G. Hardin

8. In the event Buyer fails to pay any sum due hereunder or in the event that Buyer breaches any other provision of this Agreement and such breach continues for ten (10) days after provision by Seller of notice of such breach to Buyer, then Seller may, at Seller's option:

a. Declare a forfeiture of Buyer's rights hereunder and cancel this Agreement. Upon such election, all right, title, and interest of Buyer hereunder shall cease and determine, and all payments theretofore made by Buyer shall be retained by Seller as liquidated damages and as rental for the use and occupation of the Property; or

b. In lieu of declaring a forfeiture, accelerate and bring an action for the balance of the purchase price remaining due plus any sums advanced by Seller pursuant to the provisions hereof, or for any other relief available at law or in equity.

9. The parties hereto acknowledge and agree that a substantial portion or all of the performance contemplated hereunder shall be performed within the State of South Carolina and, therefore, stipulate that this Agreement shall be enforced and construed in accordance with the laws of the State of South Carolina and jurisdiction and venue shall lie with the courts of Richland County, South Carolina.

10. This Agreement represents the entire agreement between the parties and supercedes any prior agreements or negotiations, oral or written, between the parties.

11. This Agreement may not be changed orally but can be changed only by an instrument in writing signed by each of the parties hereto.

12. Neither this Agreement, nor any rights hereunder, may be assigned or transferred without the prior written consent of the other party.

13. This Agreement binds and inures to the benefit of the heirs, successors, representatives and permitted assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the date stated below.

WITNESSES:

SELLER:

As to Seller

BUYER:

LANCE WILSON

As to Buyer

Richland County RMC

Joan G. Morris

InstrumentNo: 2000003810 BookPage: R0376:1268.2 DateTime: 01/12/2000 15:43:15:670

Exhibit "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1), and thence running North Sixty-Seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-Seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-Seven Degrees 00 minutes East for a distance of 223.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning, and having such shapes, mates, bounds and distances as shown on said latter plat.

This being the same property conveyed to Willis S. Goodwin by deed of Gina L. Anasti Lee dated January 6, 2000 and recorded ~~simultaneously herewith~~ prior hereto.

TMS NO. 11510-03-03
Property Address: 2325 Two Notch Road Columbia, SC 29223

Richland County RMD

John D. Morris

Book 00375-0223
Deed
Fee: $10.00 County Tax: $194.70 State Tax: $480.30
2000002152 John G. Morris
Richland County ROD

(SPACE FOR RECORDING)

STATE OF SOUTH CAROLINA)
) RC-00-004
COUNTY OF RICHLAND) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT I, Gina L. Anasti Lee in the State aforesaid for and in consideration of the sum of One Hundred Seventy Seven Thousand and No/100 ($177,000.00) Dollars, to me in hand paid at and before the sealing of these presents by Willis S. Goodwin in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Willis S. Goodwin, his heirs and assigns forever, the following described property, to wit:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1), and thence running North Sixty-Seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-Seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-Seven Degrees 00 minutes East for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning, and having such shapes, mates, bounds and distances as shown on said latter plat.

This being the same property conveyed to Gina L. Anasti Lee by deed of distribution of Albert A. Anasti dated October 24,

John G. Morris

1995 and recorded November 7, 1996 in Deed Book D1347 at page 991 said ROD Office.

TMS NO. 11510-03-03
Property Address: 2325 Two Notch Road Columbia, SC 29223
Grantee Address: 1011 Windsor Shores Dr #16A Col SC 29223

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Willis S. Goodwin, his heirs and assigns forever.

AND I do hereby bind myself and my heirs, executors, and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Willis S. Goodwin, his heirs and assigns, against me and my heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this 6th day of January, in the year of our Lord two thousand and in the two hundred and twenty-fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Gina L. Anasti Lee

Gina L. Anasti Lee

Richland County ROD

John D. Hoxits

This Document is not to scale

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Gina L. Anasti Lee sign, seal and as his act and deed, deliver the within written Deed, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me, this
6 day of January, 2000.

(L.S.)
Notary Public for SOUTH CAROLINA
My Commission Expires:

Richland County RMD

John G. Norris

ORIGINAL

STATE OF SOUTH CAROLINA **Lance Wilson and Willis Goodwin,** **Plaintiffs,** **vs.** **Gina L. Anasti Lee,** **Defendant.** **vs.** **Dallis Law Firm, PA** **Third-Party Defendant.**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** **CIVIL ACTION NO: 04-CP-40-5333** **COVERSHEET FOR CIVIL ACTIONS FOR CROSS-CLAIM AGAINST DALLIS LAW FIRM, PA**

2005 MAR 25 AM 9:

BARBARA A. SOO
C.C. & G.S.

FILED

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

NATURE OF ACTION: *(check one category for the main cause of action)*

( )	TORT - Motor Vehicle	( )	CONTRACT - Debt Collection
( )	TORT - Professional Malpractice	( )	CONTRACT - Employment
( )	TORT - Unfair Trade Practices, and	( )	CONTRACT - Construction
	Other Economic or	( )	CONTRACT - Wrongful Breach
	Business-Related Wrongs	(x)	CONTRACT - General or Other

( ) TORT - Products Liability ( )TORT - General or Other (x)REAL PROPERTY
( ) PCR ( )MINOR SETTLEMENTS() DOMESTICATEFOREIGNJUDGMENT
( ) GOV/ADM - Workers' Compensation( ) OTHER *(Please Describe)*
( ) GOV/ADM - General or Other

JURY DEMAND ( ) **YES** (x) **NO**

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does NOT constitute a demand for or a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION *(Check one box.)*

( ) This case is subject to **arbitration** (all cases with monetary damages less than $25,000 are subject to arbitration, unless otherwise exempt).

(x) This case is subject to **mediation** (all cases not subject to arbitration must be mediated, unless otherwise exempt).

( ) This case is exempt from ADR, and certificate is attached.

Tony R. Megna
1815 Fulmer Road
Blythewood, SC 29016
Telephone: 803-799-1700
Facsimile: 803-753-9004

3-24-05

SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION

ORIGINAL

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Lance Wilson and Willis Goodwin, **Plaintiffs,** **vs.** **Gina L. Anasti Lee,** **Defendant.** **vs.** **Dallis Law Firm, PA** **Third-Party Defendant.**	**CIVIL ACTION NO: 04-CP-40-5333** **THIRD-PARTY DEFENDANT SUMMONS TO DALLIS LAW FIRM, PA**

FILED
2005 MAR 25 AM 9:39
BARBARA SCOTT
C.C.C.C.P.S.

TO THE THIRD-PARTY DEFENDANT DALLIS LAW FIRM, PA:

YOU ARE HEREBY SUMMONED and required to answer the third-party Complaint against you in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on Tony R. Megna, Esquire at 1815 Fulmer Road, Blythewood, South Carolina 29016, within thirty (30) days after service hereof, exclusive of the date of service; and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Tony R. Megna, Esquire
Attorney at Law
Bar Number 3930
1815 Fulmer Road
Blythewood, SC 29016
Telephone: 803-799-1700
Facsimile: 803-753-9004
E-mail: tony.megna@scbar.org

March 24, 2005.

ORIGINAL

STATE OF SOUTH CAROLINA **Lance Wilson and Willis Goodwin,** **Plaintiffs,** **vs.** **Gina L. Anasti Lee,** **Defendant.** **vs.** **Dallis Law Firm, PA** **Third-Party Defendant.**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** **CIVIL ACTION NO: 04-CP-40-5333** **ANSWER AND CROSS-CLAIM AGAINST THIRD-PARTY DEFENDANT DALLIS LAW FIRM, PA**

BARBARA A. McC.C. & C.P.
2005 MAR 25 A 9:39
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TO: Plaintiffs named above and their attorney, Thomas G. Earle, 1735 St. Julian Place, Suite 103, Columbia, SC 29204 [telephone 803.254.2791] and the Defendant Dallis Law Firm, PA.

The Defendant Lee, by and through her undersigned attorney, answering the complaint of the Plaintiffs, and cross-claiming against the Dallis Law Firm, PA states as follows:

FOR A FIRST DEFENSE

1. The Defendant denies all allegations of the Plaintiffs Complaint not specifically admitted herein, and demands strict proof thereof.

FOR A SECOND DEFENSE

2. The Defendant Lee admits the allegation of paragraphs 1 and 2 of the Complaint.

3. The Defendant Lee has insufficient information to admit or deny the remaining allegations of the Plaintiffs' Complaint, and therefore denies same.

FOR A THIRD DEFENSE

4. The Defendant Lee is informed and believes that despite any technical defect in the recorded chain of title to the contrary, she does, in fact, have good and marketable title to the property at 2325 Two Notch Road, Columbia, South Carolina based on applicable statutory and common law including but not limited to the law of ouster, adverse possession, laches, and statute of limitations.

FOR A FOURTH DEFENSE

5. The Defendant Lee is informed and believes that the Plaintiffs are estopped from seeking damages against the Defendant Lee because of their relationship with the Defendant Lee and her family, and their knowledge of the ownership history of the Two Notch property for over twenty years.

FOR A FOURTH DEFENSE

6. The Defendant Lee is informed and believes that the Plaintiffs are barred from seeking damages against the Defendant Lee because of their contributory negligence.

COUNTERCLAIM AGAINST PLAINTIFFS

7. On January 6, 2000, the Plaintiff Goodwin executed and delivered a Promissory Note and a Purchase money Mortgage securing payment of the Note to the Defendant Lee named thereon. The Mortgage was recorded in the Public Records of Richland County, South Carolina, County. The Plaintiff owns and holds the Note and Mortgage.

8. The Plaintiff owns and holds the Note and Mortgage.

9. The Defendant Lee declares the full amount payable under the Note and Mortgage to be due.

10. The Defendant Lee request an accounting of all funds due be had and taken under the direction of this Court of for principal and interest on said Mortgage and Mortgage Note, and for the costs, charges and expenses, including attorneys fees and title search costs, and advancements which Plaintiff may be put to or incur in and about this suit.

11. The Defendant Lee request further requests that the Plaintiffs be found responsible for same and be ordered to pay the Defendant Lee the amounts so found to be due her; that in default of such payments, all right, title, interest, claim, demand, or equity of redemption of the Defendants and all other persons claiming by, through, under or again said Defendants since the filing of the Plaintiffs complaint herein be absolutely barred and foreclosed and that said mortgage property be sold under the direction of this Court; that out of the proceeds of said sale, the amounts due the Defendant Lee may be paid so far as same will suffice; and that a deficiency judgment be entered if applicable, and a Writ of Possession be issued.

THIRD-PARTY CLAIM AGAINST DALLIS LAW FIRM, PA

12. Upon information and belief, the Dallis Law Firm, PA is a professional association organized under the laws of the State of South Carolina and maintains an office in Richland County, South Carolina.

13. The Dallis Law Firm, PA undertook the joint legal representation of the Plaintiffs Wilson and Goodwin and the Defendant Lee as evidenced by the following:

a. providing legal assistance to the Plaintiffs and the Defendant Lee in the preparation of contracts between the Plaintiff and Defendants for the sale and purchase of property located at 2325 Two Notch Road, Columbia, SC when the Dallis Law Firm knew or had reason to know the interests of the parties were adverse one to the other,

b. representing and certifying to the Plaintiffs and to the Defendant Lee that the Defendant Lee was, in fact, the sole owner of the Two Notch Road property, and that the Defendant Lee had good, marketable fee simple title to the Two Notch Road property of record according to the terms of the contract documents prepared by the Dallis Law Firm, PA when the Dallis Law Firm, PA knew or had reason to know that legal marketable title as defined and required by the contractual documents prepared by the Dallis Law Firm, PA was not supported by the recorded chain of title on the property in question, and

c. preparing a deed of title and other contractual documents on behalf of Defendant Lee containing legal representations by the Defendant Lee which the Dallis Law Firm knew or had reason to know could be construed to be inconsistent with the requirements of the deed of title and other contractual documents prepared by the Dallis Law Firm, PA.

14. The Defendant Lee is further informed and believes that the Dallis Law Firm, PA failed to discover that a purchaser, such as the Plaintiffs, could claim there is a defect in the recorded chain of title of the property and as such, a defect in the marketable title to the property, the result being that such claim, whether correct or incorrect, would cause the Defendant Lee to incur substantial damages, including but not limited to litigation costs and expenses as well as attorney's fees, due to the deficient legal work by Dallis Law Firm, PA.

15. The Defendant Lee is further informed and believes the Dallis Law Firm, PA had a duty to Defendant Lee

a. to inform her of the possible defect in the marketable title to the property,

b. to inform her of her legal right to claim possession of the Two Notch Road property by invoking the legal concepts of adverse possession, ouster, laches, and/or the statute of limitations,

c. to inform her that the Plaintiffs could claim there is a defect in the recorded chain of title of the property and as such, a defect in the marketable title to the property, the result being that such claim, whether correct or incorrect, would cause the Defendant Lee to incur substantial damages, including but not limited to litigation costs and expenses as well as attorney's fees.

16. The Defendant Lee is further informed and believes the Dallis Law Firm, PA breached its fiduciary duty to Defendant Lee to take no action on behalf of others, such as Plaintiffs, which would negate or in any manner compromise her ability to claim her statutory and common law rights of

legal possession of the property in question via such legal concepts as adverse possession, ouster, laches, and/or the statute of limitations.

17. As a direct and proximate cause of the negligence of the Dallis Law Firm PA, as evidenced above, the Defendant Lee is informed and believes she has suffered injuries and damages that entitles her to recover actual damages, including attorney's fees for the defense and prosecution of this action, from the Dallis Law Firm, PA, and such other relief as is just and proper.

WHEREFORE, based on the foregoing, the Defendant Lee respectfully requests as follows:

1. That this Court dismiss the Complaint of Plaintiffs,

2. The Defendant Lee request an accounting of all funds due be had and taken under the direction of this Court of for principal and interest on said Mortgage and Mortgage Note, and for the costs, charges and expenses, including attorneys fees and title search costs, and advancements which Plaintiff may be put to or incur in and about this suit,

3. The Defendant Lee request further requests that the Plaintiffs be found responsible for same and be ordered to pay the Defendant Lee the amounts so found to be due her; that in default of such payments, all right, title, interest, claim, demand, or equity of redemption of the Defendants and all other persons claiming by, through, under or again said Defendants since the filing of the Plaintiffs complaint herein be absolutely barred and foreclosed and that said mortgage property be sold under the direction of this Court; that out of the proceeds of said sale, the amounts due the Defendant Lee may be paid so far as

same will suffice; and that a deficiency judgment be entered if applicable, and a Writ of Possession be issued.

4. That this Court grant judgment to the Defendant Lee and against the Dallis Law Firm, PA for her actual injuries and damages, including her attorney fees and costs in defending and prosecuting this action.

5. For such other further relief that is deemed just, proper and equitable.

Tony R. Megna, Esquire
Attorney at Law
Bar Number 3930
1815 Fulmer Road
Blythewood, SC 29016
Telephone: 803-799-1700
Facsimile: 803-753-9004
E-mail: tony.megna@scbar.org

March 24, 2005.

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT**
Lance Wilson and Willis Goodwin, Plaintiffs,	**CIVIL ACTION NO: 04-CP-40-5333**
vs.	
Gina L. Anasti Lee, Defendant.	
vs.	
Dallis Law Firm, PA Third-Party Defendant.	

FILED
2005 MAR 25 AM 9:39
BARBARA A. SCOTT
C.C.C. & G.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below a copy of the Defendants Answer and Cross-Claim was served upon the below-named by delivering a copy first class mail, postage prepaid as follows:

a. Thomas G. Earle, 1735 St. Julian Place, Suite 103, Columbia, SC 29204 [telephone 803.254.2791, facsimile: 803.254.7755]

b. Richland County Clerk of Court, The Honorable Barbara A. Scott P.O. Box 2766, Columbia, SC 29202-2766 [telephone 803.576-1950]

c. Dallis Law Firm, PA, 1925 Marion Street Columbia, SC 29201 [telephone 803.799.9595]

Hand-delivered

Tony R. Megna, Esquire
Attorney at Law
Bar Number 3930
1815 Fulmer Road
Blythewood, SC 29016
Telephone: 803-799-1700
Facsimile: 803-753-9004
E-mail: tony.megna@scbar.org

March 24, 2005.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

JAMES A. ANASTI) CIVIL ACTION COVERSHEET
Plaintiff(s))
) ____- CP -____- 0576
vs.)

LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, RICHLAND COUNTY CLERK OF COURT)
Defendant(s)

(Please Print)
Submitted By: DOUGLAS N. TRUSLOW
Address: P.O. BOX 1465, COLUMBIA, SC 29202

SC Bar #: 5642
Telephone #: 803-256-6276
Fax #: 803-256-7659
Other:
E-mail:

2007 JAN 25 P 4:49 RICHLAND COUNTY, S.C.

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

DOCKETING INFORMATION (*Check all that apply*)

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

☐ JURY TRIAL demanded in complaint. ☑ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☑ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)

Submitting Party Signature: Douglas N. Truslow **Date:** 1/9/07

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

OR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, RICHLAND COUNTY CLERK OF COURT Defendants.	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT Docket Number: **SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber, at his office at 914 Richland Street, Suite B102, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P. O. Box 1465
Columbia, SC 29202
(803)256-6276

Columbia, South Carolina
1/22, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
JAMES A. ANASTI,	)	Docket Number:
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LANCE WILSON,	)	**COMPLAINT**
WILLIS GOODWIN,	)	(Non-Jury)
GINA L. ANASTI LEE,	)	
RICHLAND COUNTY CLERK OF COURT	)	
	)	
Defendants.	)	

Plaintiff, complaining of the Defendants above named, alleges:

For a First Cause of Action

1. Plaintiff is a citizen and resident of Charleston County, South Carolina.

2. Defendants Lance Wilson, Willis Goodwin and Gina L. Anasti Lee are, on information and belief, citizens of Richland County, South Carolina and they may claim some interest in the real property described hereunder.

3. This case involves title and ownership to real property located in Richland County, South Carolina that is described herein, and this Court has jurisdiction over the parties and subject matter herein.

4. The real property that is at issue in the within lawsuit is located at 2325 Two Notch Rd., Columbia, South Carolina, and has the following legal description, to wit:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1), and thence running North Sixty-Seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-Seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-Seven Degrees 00 minutes East for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning, and having such shapes, metes, bounds and distances as shown on said latter plat.

5. The Richland County Clerk of Court is, on information and belief, holding in Trust funds that belong to the Plaintiff.

6. The aforesaid real property (hereinafter "property") is alleged to be owned by Plaintiff, and in support of that claim, he would show that on or about November 17, 1978 the then titled owner of the property Laura Corvi deeded the property over to Plaintiff and his father Albert A. Anasti as joint tenants with a right of survivorship, as is shown in the deed recorded on November 17, 1978 at Deed Book D 482, pages 756-758 and attached hereto as Exhibit 1.

7. On October 24, 1995 Albert A. Anasti died, so that the Plaintiff then became the sole owner of the property.

8. On or about November 16, 1995 Gina L. Anasti Lee was appointed as the Personal Representative of the Estate of Albert A. Anasti.

9. On or about October 25, 1996 Gina L. Anasti Lee prepared a "Deed of Distribution" so as to make it appear that she might be the owner of the aforesaid property on Two Notch Road, when in fact the said property was and is owned by Plaintiff. Plaintiff alleges that the "Deed of Distribution" is and was of no legal effect, is and was not in proper form and that any and all ownership claims and/or attempted transfer to or by Defendant Gina L. Anasti Lee is and was believed to be void, invalid and a nullity.

10. On or about January 6, 2002, Gina L. Anasti Lee attempted to transfer and deed the property over to Lance Wilson and Willis S. Goodwin or one of them, and that deed transfer and any supposed retainage of any rights relating to the property is also asserted to be of no legal effect

and is and was void, invalid, and a nullity as to the rights of the Plaintiff.

11. Plaintiff seeks to Quiet Title and have this Court declare that the deed to Gina L. Anasti Lee and any deed from Gina L. Anasti Lee, as well as any rights relating to said property are all void, invalid and a nullity. Further, Plaintiff seeks to have the Court declare, rule, and Order and to make clear that Plaintiff is the true and lawful owner of all rights to the property, to the exclusion of all others.

For a Second Cause of Action

12. Each and every allegation is repeated herein as if verbatim.

13. Plaintiff is informed and believes that at some point in the recent past, the South Carolina Department of Transportation took a portion of the property by way of eminent domain and attempted to pay some money to the owner. Plaintiff believes that those sums of money are being held by the Clerk of Court for Richland County, and Plaintiff seeks to have the Court declare that he is the true and lawful owner of those sums held by the Clerk of Court.

For a Third Cause of Action

14. Each and every allegation is repeated herein as if verbatim.

15. Plaintiff is informed and believes that Defendant Gina L. Anasti Lee has received certain funds from or for Lance Wilson and/or Willis Goodwin that are or should be the rightful property of the Plaintiff and he seeks an accounting and payment to him of those sums paid to her.

For a Fourth Cause of Action

16. Each and every allegation is repeated herein as if verbatim.

17. Plaintiff is informed and believes that Defendants Wilson and Goodwin are and have been occupying for business purposes Plaintiff's property for some extended period of time and that they should in equity pay Plaintiff some fair sum for the use of Plaintiff's property.

Wherefore, having set forth his claims herein, Plaintiff prays that the Court declare that the property herein is his property to the exclusion of all others, and that he be awarded all sums that are due from Defendants.

Douglas N. Truslow
Attorney for Plaintiff
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276

Columbia, South Carolina
1/22, 2007

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	C.A. Number: 2007-CP-40-0576
Plaintiff,	)	
Vs.	)	
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, RICHLAND COUNTY CLERK OF COURT	)	ANSWER OF DEFENDANTS, LANCE WILSON AND WILLIS S. GOODWIN
Defendant.	)	

These Defendants answering the allegations of the Complaint herein allege:

As to First Cause of Action

1. Admit on information belief the allegations of Paragraph 1.

2. As to the allegations of Paragraph 2, admit Defendants, Lance Wilson and Willis S. Goodwin are citizens of Richland County, South Carolina and they do claim some interest in the real property described in said Complaint and in further response thereto admit on information and belief the allegations regarding Gina L. Anasti Lee.

3. Admit the allegations of Paragraphs 3 and 4.

4. As to allegations of Paragraph 5 admit only that the Clerk of Court is holding funds paid over to her by SC DOT in connection with the condemnation matter noted later herein.

5. As to the allegations in Paragraph 6, admit the allegations thereof, but in further response thereto would show that the Defendant, Gina L. Anasti Lee claims or at least in the past has claimed an ownership interest in said property.

6. Admit the allegations of Paragraph 7, but in further response thereto would show that Gina L. Anasti Lee claims or has claimed in the past an ownership interest in said property.

7. Admit the allegations of Paragraphs 8 and 9 of said Complaint.

8. As to allegations of Paragraph 10 would show that Defendants, Lance Wilson and Willis S. Goodwin retained the Dallis Law Firm, PA to represent them in connection with the real estate transaction mentioned in Paragraph 10 and said Defendants were advised by Dallis Law Firm, PA that they acquired good Fee Simple Title to said property, free and clear of any liens and encumbrances except for the purchase money mortgage back to Gina L. Anasti Lee to secure a portion of the purchase price for said property.

9. As to the allegations of Paragraph 11, Defendants, Lance Wilson and Willis S. Goodwin would show that they presently have pending litigation against Dallis Law Firm, PA (04-CP-40-5334) and Gina L. Anasti Lee (04-CP-40-5333) and they are informed and believe that the resolution of this present action will buttress the position of Lance Wilson and Willis S. Goodwin in these early actions.

<u>As to the Second Cause of Action</u>

10. Assuming Paragraph 12 of the Complaint incorporates by way of reference the first eleven (11) paragraphs of said Complaint, these Defendants incorporate as

their response to Paragraph 12 their answers to said eleven (11) paragraphs the answers given earlier [paragraphs 1 thorough 9 of this Answer] which are incorporated here by reference as their answer to Paragraph 12 as if repeated here verbatim.

11. As the allegations of Paragraph 13 would show that the Defendants Lance Wilson and Willis S. Goodwin were the only Defendants in this action who actively participated in the litigation and the only parties who incurred cost and expenses in connection with same including obligation for attorney's fees for their attorney, Thomas G. Earle, to be paid out of these deposited funds when determination of rightful owner or owners is made and these Defendants assert here that regardless of who is determined to be lawful owner of these funds that a reasonable attorney's fee should be paid their attorney who represented them throughout the course of this litigation.

As to the Third Cause of Action

12. As to allegations of Paragraph 14 of the Complaint which seems to incorporate by way of reference the first thirteen (13) paragraphs of said Complaint, these Defendants incorporate as their response answer to said thirteen (13) paragraphs the answers given earlier which are incorporated here by reference as their answer to Paragraph 14 as if repeated here verbatim.

13. As to allegations of Paragraph 15 Defendants, Lance Wilson and Willis S. Goodwin have paid funds to Gina L. Anasti Lee comprised of the initial funds paid upon closing of this transaction at Dallis Law Firm, PA with Gina L. Anasti Lee and monthly payments on the purchase money mortgage as long as Lance

Wilson was able to make those payments and if Plaintiff proves he owns this property, these Defendants concur with Plaintiff that Defendant Gina L. Anasti Lee should pay said monies to Plaintiff..

As to the Fourth Cause of Action

14. In response to allegation in Paragraph 16 of the Complaint which seems to incorporate by way of reference the first fifteen (15) paragraphs of said Complaint, these Defendants incorporate their answers to said fifteen (15) paragraphs the given earlier by them which are incorporated here by reference as their answer to Paragraph 16 as if repeated here verbatim.

15. In response to the allegations of Paragraph 17 of said Complaint would show:

a.) Defendant Goodwin acquired "Record Title" to the property at the closing at Dallis Law Firm as security for funds he loaned Defendant Wilson in order that the property could be acquired and simultaneously with said closing Defendant Goodwin entered into an installment sales contract with Defendant Wilson which basically secured the funds that Defendant Goodwin had advanced from his retirement funds to enable Defendant Wilson to acquire this property which Defendant Wilson and or members of his family had operated as Dave's Place for many years.

b) The improvements on said property were in bad shape when Goodwin and Wilson acquired same from Gina L. Anasti Lee and Wilson knew that substantial, major improvements would be required to get the property up to par and in good operating order.

c) When the title problems appeared Goodwin and Wilson were unable to borrow any funds to rehabilitate the property as there were some serious questions about the title to the property.

d) Defendant Wilson has lost substantial funds trying to keep the property afloat until the title issue could be resolved as to all causes of action.

e) Defendant Lance Wilson has been through an absolute financial nightmare over this title problem; has seen the finances of Dave's Place shift from earning a reasonably good living for him and his family to losing money day after day and week after week due to the inability to rehab the building in that;

i) The roof needs replacing and leaks like a sieve.

ii) The kitchen equipment is outdated.

iii) The parking area needs to be updated and paved.

iv) The front entrance of the building needs to be completely redone.

f) Defendants Lance Wilson and Willis S. Goodwin could do none of the rehabilitation work as they were unable to borrow any funds to accomplish this work once the title problems became known.

g) Defendants Lance Wilson and Willis S. Goodwin could not deal directly with Gina L. Anasti Lee insofar as obtaining her consent to place a mortgage lien on the property to rehabilitate the same as it appeared that she did not have any record title to the property other than perhaps the assertion by Gina L. Anasti Lee or her attorney that they had the title by adverse possession; however, neither Defendants Wilson and Goodwin

nor their attorney were able to find any confirmation or documentation that Gina L. Anasti Lee had acquired by way of litigation title to the property by adverse possession.

h) Defendants Lance Wilson and Willis S. Goodwin realize the predicament they have been placed in by virtue of Dallis Law Firm, PA assuring them that they had good Simple Fee Title to this property; having paid substantial funds to Gina L. Anasti Lee upon assurance of Dallis Law Firm and Gina L. Anasti Lee that she was the owner in fee simple of the property and thus entitled to proceeds from the sale of the property and these Defendants are hopeful that should this court decree that James A. Anasti is the owner of the property that the court will likewise acknowledge that Lance Wilson and Willis S. Goodwin were innocent parties in all of this mess and protect their interest in this matter.

As to All Causes of Action

16. All allegations of said complaint that are not hereinabove specifically admitted, qualified or explained are denied.

Wherefore, having fully answered the allegations of said Complaint the Defendants Lance Wilson and Willis S. Goodwin pray that this court carefully consider all of the evidence in this matter; determine who is the owner of the property described in the Complaint; find that the defendants Lance Wilson and Willis S. Goodwin are the innocent parties in this matter and should be protected in this litigation; grant reasonable attorney's fees to Thomas G. Earle, their attorney, for services rendered including the trial of the condemnation case brought by South Carolina Department of Transportation; and should the court find that Plaintiff is the owner of

said property that it also grant judgment for Plaintiff against his sister, Gina L. Anasti Lee, for all sums paid by Lance Wilson and/or Willis S. Goodwin to Gina L. Anasti Lee for this property.

Seigler, Earle & Ellsworth

By _____
Thomas G. Earle
Attorneys for Defendants,
Lance Wilson and Willis S. Goodwin
1735 St. Julian Place, Suite 103
Columbia, S.C. 29204
(803) 254-2791
(803) 254-7755 Facsimile

Columbia, South Carolina
March 5, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document(s) has been served upon opposing counsel by mailing a copy properly addressed, with sufficient postage affixed thereto, to Douglas N. Truslow, P.O. Box 1465 Columbia, S.C. 29202, this 5th day of March.

_____

COPY

STATE OF SOUTH CAROLINA **James A. Anasti,** **Plaintiff,** **vs.** **Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** **CIVIL ACTION NO: 07-CP-40-0576** **ANSWER OF DEFENDANT LEE TO CLAIMS OF PLAINTIFF** **AND** **CROSS-CLAIMS OF DEFENDANT LEE AGAINST DEFENDANT WILSON** **[FORECLOSURE AND SUIT ON NOTE]** **[NON-JURY]**

TO: (a) Plaintiff named above and their attorney, Douglas N. Truslow, Esquire

(b) Thomas G. Earle, Esquire, Attorney for Defendants Wilson and Goodwin

The Defendant Lee, by and through her undersigned attorney, answering the complaint of the Plaintiff, states as follows:

FOR A FIRST DEFENSE

1. The Defendant Lee denies all allegations of the Plaintiff's Complaint not specifically admitted herein, and demands strict proof thereof.

FOR A SECOND DEFENSE

2. The Defendant Lee admits the allegation of paragraphs 2, 3, 4, and 8 of the Complaint.

3. The Defendant Lee has insufficient information to admit or deny the remaining allegations of the Plaintiffs' Complaint, and therefore denies same.

FOR A THIRD DEFENSE

4. The Plaintiff is barred and estopped from asserting any claim, however defined, against the Defendant Lee of any interest, legal or equitable, in the property known as 2325 Two Notch Road, Columbia, SC because:

   a. the Plaintiff participated in the Probate Court proceedings that led to the transfer of the property of which Plaintiff complains and is bound by the orders and/or deeds of transfer,

   b. the Plaintiff acquiesced in the transfer of the property to Defendant Lee by the Probate Court and is bound by the orders and/or deeds of transfer, and

   c. the provisions of S.C. Code Ann. 62-3-1006 bar recovery by Plaintiff against the Defendant Lee.

FOR A FOURTH DEFENSE

5. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the statute of limitations.

FOR A FIFTH DEFENSE

6. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrines of laches and abandonment.

FOR A SIXTH DEFENSE

7. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrine of adverse possession as the possession by Defendant Lee of the property which is the subject of this action has been actual, open, notorious and exclusive possession under claim of title as filed in the Office of the Richland County Clerk of Court, and that continued exclusive occupation, possession and

claim under title of the premises by Defendant Lee has existed for over ten (10) years prior to the filing of this action.

FOR A SEVENTH DEFENSE

8. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrine of adverse possession on behalf of the devisee of the property to Defendant Lee as the property which is the subject of this cause of action had been in devisee's actual, open, notorious and exclusive possession under claim of title and that there had been continued occupation and possession of the premises for over ten (10) years prior to the death of the devisee. Therefore, the subsequent transfer of the property to the Defendant Lee by the Richland County Probate Court, on behalf of the decedent devisee, was proper and bars all claims of the Plaintiff.

FOR A EIGHTH DEFENSE

9. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrine of ouster as the possession of the property which is the subject of this cause of action has been in actual, open, notorious and exclusive possession of the Defendant Lee and the devisee of the property in question to Defendant Lee under claim of title and that there had and has been continued occupation and possession of the premises for over twenty (20) years prior to the filing of this action.

FOR A NINTH DEFENSE

10. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the common law presumption of grant as the possession by the Defendant Lee [and her ancestors and heirs] of the property which is the subject of this cause of

action has been in actual, open, notorious, continuous and exclusive possession and occupation of and by the Defendant Lee [and her ancestors and heirs] for over twenty (20) years prior to the filing of this action.

FOR A FIRST CAUSE OF ACTION

AGAINST DEFENDANT WILSON

(Foreclosure)

11. Plaintiff incorporates each of the foregoing allegations as fully as if repeated herein verbatim.

12. On January 6, 2000, the Plaintiff Goodwin executed and delivered a promissory note and purchase money mortgage securing payment of the note to the Defendant Lee. A copy of the note and mortgage is attached hereto as Exhibit A.

13. Defendant Lee is the legal owner of the Mortgaged Property.

14. The Note and First Mortgage (collectively "Loan Documents") provide that upon Defendant Wilson's failure to make payments thereunder when due, the entire outstanding balance under the Loan Documents shall, at the option of Defendant Lee, become immediately due and payable, and Plaintiff may foreclose the Mortgage.

15. Defendant Wilson is in default under the terms of the Loan Documents by reason, among others, of the failure to make payments when due.

16. Defendant Lee has and does hereby elect to declare the total unpaid balance of principal and interest on Note due and payable, and does hereby elect to foreclose its First Mortgage on the Mortgaged Property reserving, however, any and all other rights and remedies Defendant Lee may have under the Loan Documents including but not limited to the right to a deficiency judgment and the right to judgment against any other person or entity liable for the debt.

17. There is due and owing on the Note the following amounts:

Principal Balance	$122,301.00
9% Contractual Interest Due	$23,674.19
Late Fees [$79.60 per month]	$5,174.00
Balance Due on Note [through February 28, 2007]	$154,149.19

Interest continues to accrue at the rate of 9% per annum (which is currently $31.31506 *per diem*). This figure does not include attorney's fees incurred to date, but such fees are requested pursuant to the terms of the Note.

18. Despite demand, Defendant Wilson has not paid the aforesaid amounts due under the Note.

19. The Loan Documents provide that Defendant Wilson pay all costs and expenses of the Plaintiff in the collection of the Loan Documents including reasonable attorneys' fees in connection with the collection and enforcement of the Loan Documents.

20. Defendant Lee does not waive, but specifically demands judgment against the Defendant Wilson for the full amount found to be due on the Loan Documents held by Defendant Lee, with the right to enter a personal deficiency judgment against the Defendant Wilson for any deficiency in this action remaining after the sale of the Mortgaged Property.

FOR A SECOND CAUSE OF ACTION

AGAINST DEFENDANT WILSON

(Suit on Note)

21. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

22. In the event the Court determines not to issue an order declaring the First Mortgage remains on the Mortgaged Property nor places an equitable lien on the Mortgaged Property and allows Defendant Lee to foreclose its lien on the Mortgaged Property, Defendant Lee seeks to enforce her rights under the Note. Exhibit B.

23. For valuable consideration given, on or about January 6, 2000, Defendant Wilson executed and delivered to Plaintiff the Note in the amount of $127,000.00 Dollars.

24. The Note provides that upon failure by Defendant Wilson to make payments thereunder when due, the entire outstanding balance under the Note shall at the option of the Defendant Lee, become immediately due and payable.

25. The Defendant Wilson is in default under the terms of the Note by reason of the failure to make the payments when due.

26. Defendant Lee has and does hereby elect to declare the total unpaid balance of principal and interest on the Note due and payable, reserving, however, any and all other rights and remedies Plaintiff may have under the Note.

27. There is due and owing on the Note the following amounts:

Principal Balance	$122,301.00
9% Contractual Interest Due	$23,674.19
Late Fees [$79.60 per month]	$5,174.00
Balance Due on Note [through February 28, 2007]	$154,149.19

Interest continues to accrue at the rate of 9% per annum (which is currently $31.31506 *per diem*). This figure does not include attorney's fees incurred to date, but such fees are requested pursuant to the terms of the Second Note.

28. Despite demand, Defendant Wilson has not paid the aforesaid amounts due under the Note.

29. The Note provides the Defendant shall pay all expenses, including reasonable attorneys' fees and expenses of the Defendant Lee in the collection of the Note.

30. Defendant Lee has placed this matter with the undersigned attorneys for collection.

WHEREFORE, Plaintiff prays that this Court enter an Order as follows:

1. Dismissing the complaint of the Plaintiff and entering such orders as are necessary to declare and order Defendant Lee's full, sole and complete ownership in fee simple of the property in question,

2. The indebtedness due under the Loan Documents be computed, ascertained and established by this Court, together with all accrued interest, all costs of this action and other costs of collection incurred by Defendant Lee, and a reasonable attorney's fee, and that Plaintiff be granted judgment of foreclosure against Defendant Wilson in that amount; and

3. This Court issue its order:

(a) Declaring the Defendant Lee's First Mortgage to be a first lien upon the Mortgaged Property;

(b) Directing that the Defendant Lee's First Mortgage described herein be foreclosed, that the Mortgaged Property hereinabove described be sold in accordance with the law and practices of this Court, and that the Defendants Wilson and Goodwin as well as the Plaintiff James A. Anasti and all other persons claiming by, through, or under them be barred and forever foreclosed of all right, title, and interest and equity of redemption in and to the said Mortgaged Property or any part thereof now and forever;

(c) Directing that out of the proceeds of the sale of the Mortgaged Property, after the costs of this action and of such sale have been deducted, Defendant Lee be paid in full the amount due on its Loan Documents and with interest thereon and attorneys' fees as set out above and all amounts that it may hereafter and prior to such sale have to pay pursuant to the provisions of its Mortgage with the surplus, if any, to be distributed according to law; and

(d) For the costs and fees associated with this action; or in the alternative,

3. Granting Defendant Lee judgment against Defendant Wilson on the Note as indicated hereinabove; and

4. Granting Defendant Lee the costs and attorneys fees associated with this action,

5. For such other further relief that is deemed just, proper and equitable.

Tony R. Megna, Esquire
Attorney at Law
Bar Number 3930
1815 Fulmer Road
Blythewood, SC 29016
Telephone: 803-799-1700
Facsimile: 803-753-9004
E-mail: tony@pdhc.com

March 20, 2007.

STATE OF SOUTH CAROLINA **James Anasti,** **Plaintiffs,** **vs.** **Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** **CIVIL ACTION NO: 07-CP-40-0576**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below a copy of the Defendant Lee's Answer and Cross-Claim was served upon the below-named by delivering a copy first class mail, postage prepaid as follows:

Douglas N. Truluck, PO Box 1465, Columbia, SC 29202 [tel: 803.256.6276]

Thomas G. Earle, 1735 St. Julian Place, Suite 103, Columbia, SC 29204 [telephone 803.254.2791, facsimile: 803.254.7755]

The Honorable Barbara A. Scott, Richland County Clerk of Court, P.O. Box 2766, Columbia, SC 29202-2766 [803.748.4684]

Tony R. Megna
Attorney-at-law
1815 Fulmer Road
Blythewood, SC 29016
803-799-1700
tony@pdhc.com

March 20, 2007.

EX. A

PROMISSORY NOTE

$127,000.00 January 6, 2000

FOR VALUE RECEIVED, the undersigned (hereinafter referred to as "Borrower(s)") promise(s) to pay to the order of **GINA L. ANASTI LEE** (hereinafter referred to as "Lender") at Columbia, South Carolina, in lawful money of the United States of America the principal sum of **ONE HUNDRED TWENTY SEVEN THOUSAND and NO/100 ($127,000.00) DOLLARS**, with interest thereon at the rate of **Nine (9%)** percent per annum, payable as follows:

(a) Payments of Principal and Interest to Lender, on the **6th** day of each month beginning on **February 6, 2000**. Any principal and interest remaining on the **6th** day of **January, 2011**, will be due on that date, which is called the "Maturity Date."

(b) Each Monthly payment of principal and interest will be in the amount of **U.S. $ 1,519.02.**

(c) Payment shall be made at Gina L. Anasti Lee
P.O. Box 685 Blythewood, SC. 29016.

(d) If Lender has not received the full monthly payment required by the end of fifteen calendar days after the payment is due, Lender may collect a **late charge** in the amount of **Five (5%) Percent** of the overdue payment.

(e) The undersigned borrower(s) **have the right** to prepay the debt evidence by this Note, in whole or in part, without charge or penalty, on the **6th day of any month**. Lender shall accept prepayment on other days provided that borrower(s) pays any interest due at the time of prepayment.

If default be made in the performance of or compliance with any of the covenants and conditions of the mortgage or any other instrument securing this note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due, and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt courts, or under foreclosure proceedings under the mortgage securing this note, then all cost or collection, including a reasonable sum for attorney fee shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment protest and notice are hereby waived.

It is expressly agreed and declared that this note is

No/100 ($127,000.00) Dollars.

This note is secured by a mortgage of even date conveying property in Richland County, South Carolina.

This note is assumable, provided that Borrower(s) obtain prior written consent from Lender, which consent shall not be unreasonably withheld.

Witness the hand and seal of each of the signers hereof.

Witness:

Andrea Renzer

Willis S. Goodwin (l.s.)
Willis S. Goodwin

EX. B

(Space for Recording)

STATE OF SOUTH CAROLINA)
) MORTGAGE OF REAL ESTATE
COUNTY OF RICHLAND)

WHEREAS, WILLIS S. GOODWIN ("Mortgagor(s)") in and by that certain Note or obligation bearing even date herewith (the "Note"), stand firmly held and bound unto GINA L. ANASTI LEE ("Mortgagee(s)") conditioned for the payment in lawful money of the United States of America of the full and just sum of ONE HUNDRED TWENTY SEVEN THOUSAND AND NO/100 ($127,000.00) Dollars, as in and by that certain Note having a maturity date of January 6, 2000 and the conditions thereof, reference thereunto had will more fully appear.

NOW, KNOW ALL MEN, that Mortgagor(s) in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the Note; which with all its provisions is hereby made a part hereof; and also in consideration of Three Dollars to Mortgagor(s) in hand well and truly paid, by Mortgagee(s), at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the Mortgagee(s), forever, the following described property, to wit:

SEE "EXHIBIT A" ATTACHED HERETO AND MADE A PART HEREOF

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises unto Mortgagee(s) and Mortgagee(s)'s successors or heirs and assigns forever.

AND Mortgagor(s) does hereby bind Mortgagor(s) and Mortgagor(s)'s successors or heirs, executors, and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unencumbered except as otherwise stated above, and also to warrant and forever defend all and singular the said Premises unto Mortgagee(s) and Mortgagee(s)'s successors or heirs and assigns, from and against Mortgagor(s) and Mortgagor(s)'s successors or heirs, executors, and administrators and all persons lawfully claiming, or to claim the same or any part thereof.

AND IT IS AGREED, by and between the parties hereto, that Mortgagor(s) and Mortgagor(s)'s successors or heirs, executors, or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of Mortgagee(s), for an amount not less than the fair market value, in such company as shall be approved by the Mortgagee(s), and shall deliver the policy to Mortgagee(s), and in default thereof, Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, may effect such insurance and reimburse themselves under this mortgage for the expense thereof, with interest thereon, from the date of its payment. And it is further agreed, in the

Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns ll be entitled to receive form the aggregate of the insurance neys to be paid, a sum equal to the amount of the debt secured by his mortgage.

AND IT IS AGREED, by and between the said parties, that if Mortgagor(s), Mortgagor(s)'s successors or heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED by and between the said parties, that upon any default being made in the payment of the interest on the Note, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, that then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, that if the holder of the Note secured hereby is compelled to pay any taxes upon the debt represented by said note, or by this mortgage, then, and in that event, unless the said taxes are paid by some party other than the said holder, that then the entire amount of the debt secured, or intended to be secured, shall forthwith become due at the option of Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, although the period for its payment may not then have expired.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then and in that event, Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, shall have the right to have a Receiver appointed of the rents and profits of the above described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings and the execution of the said trust as Receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the said parties, that should legal proceedings be instituted for the foreclosure of this mortgage, or for any purpose involving this mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expense incurred by Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, including a reasonable counsel fee (of not less than ten percent of the amount involved) shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these Presents, that when Mortgagor(s), Mortgagor(s)'s successors or heirs, executors or administrators shall pay, or cause to be paid unto Mortgagee(s), Mortgagee(s)'s certain attorneys, successors or heirs and assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, according to the conditions and agreements of the Note, and of this mortgage and shall perform all the obligations according to the true intent and meaning of the Note and this mortgage, and the conditions thereunder written, then this Deed of Bargain and Sale shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties,

Mortgagor(s) is to hold and enjoy the said prem s until ult of payment ll be made.

WITNESS the hand and seal of Mortgagor(s), this ____ day of January in the year of our Lord Two Thousand and in the two h dred and twenty fourth year of the Sovereignty and Independence o the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Mortgagor(s) sign, seal and as his act and deed, deliver the within written Deed, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me, this
6 day of January, 2000.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 07-08-2008

Exhibit "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1), and thence running North Sixty-Seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-Seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-Seven Degrees 00 minutes East for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning, and having such shapes, metes, bounds and distances as shown on said latter plat.

This being the same property conveyed to Willis S. Goodwin by deed of Gina L. Anasti Lee dated January 6, 2000 and recorded simultaneously herewith.

NO. 11510-03-03
perty Address: 2325 Two Notch Road Columbia, SC 29223

SEPTEMBER 19, 2007

MR. TRUSLOW: I would suggest that perhaps the motion for summary judgment ought to be heard first because if we're successful, that may be dispositive of a lot of issues and streamline the case, but if you would prefer to --

THE COURT: I mean, I don't know anything about it, Mr. Truslow, so if you feel like summary judgment should be argued first, have at it.

MR. TRUSLOW: All right. Your Honor, I represent James Anasti. And the parties or the people involved as it relates to my case, there is James Anasti. There is a sister. Her name is Gina Anasti Lee. And then there -- and she is represented by Mr. Megna, who is to my far right, to your far left. My friend Mr. Earle to my immediate right is representing Lance Goodwin and/or -- Lance Wilson and/or Mr. Goodwin.

Again, Mr. -- and my client and Mr. Megna's clients are brother and sister. Their father was a man named Albert Anasti.

We're here seeking partial summary judgment with the issue of damages to be heard at a later time.

The issues in this case, or what the Plaintiff

would submit are the issues for summary judgment are whether a personal representative in a probate -- or in an estate case, whether that deed of distribution the personal representative, Mr. Megna's client, prepared to herself trumps what the law calls to be the perfect deed, what is of record in the chain of title.

My client submits that this is a very straightforward issue, that as a matter of law a deed trumps a personal representative's deed of distribution. Otherwise, one of us could deed away the Statehouse or the Empire State Building and it would be effective, which we submit that it is not.

If Your Honor agrees, however, with Mr. Megna's position, and that would go to the second issue as to whether four years constitutes adverse possession, my client submits as a matter of law, four years, if you accept everything that they had to say, assume everything that they had to say would be correct as related to that, would four years of ownership under a deed of distribution constitute adverse possession.

My client says it doesn't and we're entitled to a judgment as a matter of law.

Your Honor, I have submitted a memorandum, but

if I can go through so you'll understand some of the background and the undisputed facts.

THE COURT: All right. Well, Mr. Truslow, I don't know anything about the case. You understand that. I mean, I'm holding nonjury. It is not like I'm an Appellate Court and I had six months and briefs. I walk in here and we get handed the file.

MR. TRUSLOW: Yes, sir.

THE COURT: All I know, next case, next case.

MR. TRUSLOW: I understand.

THE COURT: Four year holding does not satisfy adverse possession, unless the law has changed, as far as I know.

MR. TRUSLOW: That's what we say.

THE COURT: So he is going to lose that. Now, what about the other thing? You need to tell me sequentially what happened.

MR. TRUSLOW: That's what I was going to do, Your Honor.

THE COURT: Good idea.

MR. TRUSLOW: In 1978, my client and his father, Albert Anasti, acquired real estate on Two Notch Road. It was called the Amvets Club. And then about 1980 or so --

THE COURT: It doesn't matter. They had

property.

MR. TRUSLOW: They acquired this together as joint tenants with the right of survivorship in 1978. They owned this property continuously since that time.

In 1980, Mr. Earle's client began to operate the club as a tenant. That was Mr. Lance Wilson, operating the club as Dave's as a tenant. He paid the rent.

In 1995, Mr. Albert Anasti died. And, again, they -- he and his son were joint tenants with a right of survivorship.

My client submits that at the time of death his right -- his interest ends, he can't will it away, he can't deed it away after death, it is gone.

In 1996, Mr. Megna's client, Gina Lee, did a deed of distribution deeding the property to herself, and then by way of a private mortgage type of deal, she then sold the property to Mr. Earle's client.

In 2002, the Highway Department was condemning the property. Mr. Earle's client finds out that he has got problems with the title. He is not -- and significantly in this case, he is not alleging or

not disputing any affidavits we submitted.

Again, he bought the property in the year 2000, so Gina Lee got it by way of deed of distribution to herself in 1996. She sold it in 2000.

THE COURT: Well, she didn't get anything.

MR. TRUSLOW: That's what we say.

THE COURT: All right. What do y'all say about it?

MR. MEGNA: Your Honor, as often, the facts are a little bit more complicated. What we say --

THE COURT: If -- and I haven't looked at anything -- if it was truly held by father and son, joint tenant with right of survivorship, it passed to the son when the father died. If it was not, we go forward with the case, that's all.

MR. MEGNA: Your Honor, adverse possession I think is a little more difficult than that. There is no doubt that we will concede that the deed did exactly what he says it did at the time of death.

However, after that, during the Probate Court proceedings and then subsequent to that, she has held that property more than 10 years under deed of title, under color of title. And she possessed the property, she handled all the rent with the

property, she did everything. She paid the property taxes. She --

THE COURT: If that is so, then that is a factual issue --

MR. MEGNA: Yes, sir.

THE COURT: -- that you can't rule as a matter of law on adverse possession.

MR. MEGNA: That is correct.

THE COURT: If she's been in possession 10 years, allegedly, Mr. Truslow, allegedly, then I can't grant summary judgment.

MR. TRUSLOW: Your Honor, you can, if I can explain why. Number -- he is claiming under a grant, which a grant would be 20 years. Under a deed or a claim pursuant to a deed it is 40 years. For adverse possession or having it hostilely, it would be 10.

THE COURT: Ten.

MR. TRUSLOW: She had it for four. And she says in her deposition that I handed to you, I know haven't read it --

THE COURT: He says over 10. I mean, you know, y'all are quoting two things to me.

MR. TRUSLOW: She sold it in the year 2000, Your Honor. If in fact she owned it from '96. He

is saying that since she has a mortgage that she owns the property. Well, she has given a deed to Mr. Earle's client. Mr. Earle --

THE COURT: Back off.

MR. MEGNA: Well, I'm saying she had nothing to sell. What happened is when she did the closing, the closing attorneys, and we have a cross claim against the closing attorneys --

THE COURT: Good idea.

MR. MEGNA: There was absolutely -- she had no legal title. She had nothing to sell. However, she continued in possession of the property with actual notice of all of this, and that will go to the factual dispute, for more than 10 years. As a matter of fact, it was over 11 years before this action was filed. There are --

THE COURT: Well, Mr. Truslow, you have got to litigate it.

MR. TRUSLOW: Just because he -- with all due respect, just because he says it is not true -- Mr. Earle's client is in the property. She has sold it. She is not in it. She is not possessing it.

THE COURT: Hold it, hold it, hold it, hold it. I don't know anything about it, but how can she be in possession of it? If she has filed an

affidavit saying she was in possession for over 11 years, you win at summary judgment stage. If she was not, you lose, because you can't tack 10 years.

MR. MEGNA: I'm not trying to tack anything, Your Honor. She actually owned this property for 10 years. When they sold this property allegedly --

THE COURT: 2000, what happened?

MR. MEGNA: 2000 -- I'm sorry, 1996, during the probate -- 1995, '96, she took possession of this property.

THE COURT: All right.

MR. MEGNA: Factually. Our facts, our allegation and our factual allegations are that she continued in possession of this property until 2007 until they began their -- initiated their lawsuit this year. It is more than 10 years.

MR. TRUSLOW: Your Honor, she has given a deed that you have and filed it in the courthouse and we have taken her deposition and we provided it to you and Mr. Earle can confirm his clients bought it. She gave a deed to them in the year 2000.

Now, counsel is going to -- I don't know what we would do if he just says that she is in possession when it says in her own deposition she

hasn't stepped foot on the property, not collecting rent.

THE COURT: If she sold it and if she is not in possession, you lose. I mean, you know, I don't know anything --

MR. MEGNA: Your Honor, and I agree with you, but the truth is, when it was sold, there was nothing -- she owned nothing. How could she sell something she did not own?

THE COURT: She should not have sold something, but if she in fact did sell it, that severed any adverse claim because she disavowed any ownership of it. You lose. Have a good day. Prepare an order --

MR. TRUSLOW: All right. Thank you.

THE COURT: -- sustaining. It might be kind of quick on it, but, you know, you are talking out of four sides to me.

MR. MEGNA: No, sir, I'm not. I have got her affidavit in the file. I mean, I just --

THE COURT: Well, hand me her affidavit.

MR. MEGNA: It is in the file, Your Honor. I mean, there are factual disputes here.

THE COURT: What are the factual disputes?

MR. MEGNA: Whether or not she was able to

convey property she can't sell.

THE COURT: Well, forget about that.

MR. MEGNA: Okay. She did not sell the property. There is no way she could have sold that property.

THE COURT: She signed a deed to the property. I am not arguing with you. I haven't researched it, obviously. You do not deny that she deeded the property to herself for deed of distribution at some point around 1996?

MR. MEGNA: Yes, sir.

THE COURT: Subsequently, around the year 2000, she signed another deed transferring it to an adverse party to these parties?

MR. MEGNA: There is a 1931 case in South Carolina that specifically says you can't deed what you don't own.

THE COURT: Well, it is not valid, but you can deed anything like you can sue anybody.

MR. MEGNA: Yes, sir. But she didn't -- she can't deed what she didn't own.

THE COURT: She did deed it. She did sign a deed to it. Don't tell me she didn't if she did.

MR. MEGNA: Oh, we know she signed the deed.

THE COURT: All right, then it was a void

deed.

MR. MEGNA: But she signed the deed, Your Honor. This is a factual issue. She signed the deed because of the issue with the attorneys clearing the title. There is no way that we can say as a matter of fact and law that this woman signed away what she had. For adverse possession, that is a jury issue, and that is clearly a jury issue in South Carolina, Your Honor. Clearly a jury issue. It is not an issue appropriate for summary judgment.

THE COURT: The property passed to the son when the father died. You don't deny that?

MR. MEGNA: I would agree with that, Your Honor.

THE COURT: All right.

MR. MEGNA: But I would also disagree with anything happening subsequent to that time. And those are factual issues for a jury to decide. Based on this before the Court, the Court is making factual determinations, you know, without listening to motion for summary judgment.

THE COURT: I'm listening to what is being argued, and her affidavit is not much. Who prepared it, you?

MR. MEGNA: Yes, sir. It states the actual sequence of events that occurred A to Z, including the fact that he had a power of attorney, including the fact that he participated in the probate proceedings, including the fact that his attorney in fact agreed to -- and the documents are in there -- agreed to the distribution, the deed of distribution in 1996, including the fact that they did the title search in 2000, including the fact that the title search turned out to be inaccurate, and including the fact that they didn't file this action until 2007, 11 years after that deed. These are actual factual disputes, Your Honor. These are just not subject to summary judgment.

MR. TRUSLOW: Your Honor, as a matter of law, a person can't will away something that they don't own and the personal representative can't --

THE COURT: That's right.

MR. TRUSLOW: -- deed away something that the person didn't have.

MR. MEGNA: This is adverse possession. We're not saying she took under the Probate Court. We're saying that the deed -- and the law is very specific on adverse possession.

THE COURT: She lived in the property?

MR. MEGNA: Sir? This is commercial property. You know, she took the property, she owned the property, she took the rents on the property, she dealt with the property. Yes, sir. The law is very specific, and there is case law which I have supplied to this Court. This is not an issue for summary judgment. That is our only concern. This is an issue to be decided at trial, rightfully.

THE COURT: Not rightfully. You've got a sister who doesn't like the fact that the dad let the property go to the son and she is trying to flimflam him.

MR. MEGNA: Your Honor, that is just not fair.

THE COURT: I'm reading this. Why do you even put all this stuff in here about Mr. Truslow is examining her and she has got cancer and all that?

MR. MEGNA: Because if you will -- the Court will read -- Your Honor, that is just not fair. That is just inappropriate, with all due respect, sir.

THE COURT: I mean, I'm reading what you --

MR. MEGNA: And I did -- and that is a very appropriate affidavit, Your Honor. And it is very appropriate to say that there are issues of fact here. And regardless of how this Court feels about

it, there are issues of fact for a jury.

THE COURT: Hold it, hold it, hold it. You submit to me an affidavit in proper form without going into all these extraneous things saying what she did to satisfy a claim, and I will let it go forward.

MR. MEGNA: To satisfy a claim?

THE COURT: For adverse possession. That she occupied the property, that she told --

MR. MEGNA: I will be happy to do that. I will be happy to do that.

THE COURT: -- she told her brother, listen, I don't care what dad did, I'm entitled to this property, and so forth and so forth.

MR. MEGNA: I will happy to submit that to the Court, Your Honor.

MR. TRUSLOW: Your Honor, in that regard, Mr. Earle is here, and he is an officer of the court, and he will, I believe he will tell you he hasn't opposed our motion for summary judgment. He is the person that got the property and paid $177,000 to Mr. Megna's client that he is trying to get back and my client is trying to -- dealing with. He, as an officer of the court, I'm sure Mr. Earle will tell you his client has been

continuously in that property since 1980.

MR. MEGNA: This is commercial property.

MR. TRUSLOW: As a tenant. Excuse me, if I can finish. And just because she might sign just like this affidavit --

THE COURT: That puts facts in issue. You are going to eventually win because she has not played fair, irrespective of what he says. She is going to lose. She is going to owe him back $100,000 something dollars. Your client is going to have the property, because you have got legal title.

MR. TRUSLOW: I'm just --

THE COURT: If he wants to fool with it and bring it out and put in an affidavit like that, you can have a trial on it, but you need to have it right away. It doesn't need to drag out.

MR. TRUSLOW: Well, I would think so. I would respectfully -- and I'm choosing my words carefully, but I believe it would not -- I am going to just say not appropriate, if she knows she has not been -- counsel knows she hasn't been on the property, she knows she hasn't been on the property.

THE COURT: He has got to file an affidavit signed by her setting forth grounds for the claim.

MR. TRUSLOW: But she can't, because we have done her deposition.

THE COURT: Well, I don't know that, Mr. Truslow. If she does not file an appropriate affidavit, she loses at summary judgment.

MR. TRUSLOW: We have already taken her deposition and she said that she had not even set foot on the property.

THE COURT: Then you prepare an affidavit.

MR. TRUSLOW: Okay.

THE COURT: Then you prepare an order granting it and address all those issues, you prepare an order denying it and send it to him, and we'll deal with it.

MR. TRUSLOW: I understand.

THE COURT: Okay.

MR. TRUSLOW: Your Honor, my point was, I just take it seriously if somebody says something that is in -- not in direct contradiction to her deposition, her affidavit that she had given before.

THE COURT: You will be able to address that when you see the affidavit.

MR. TRUSLOW: I understand. Thank you, Your Honor.

THE COURT: All right.

MR. DOWLING: Your Honor, Curtis Dowling. I represent the Dallas Law Firm.

We had a status conference with Judge Lee a coupe of weeks ago. She said hopefully you would be able to address my motions to compel directed at these two parties.

We pretty much have got everything worked out. They have since responded to my discovery. And I just want to put on the record with respect to Mr. Megna, his client was sued by Mr. Truslow's client, and I guess he has been defending that. His client was also sued by Mr. Earle's client, who has been defending that. And they were claiming that as an element of damage in the case against the closing attorney, the Dallas Law Firm, who I represent.

And my position was if it is an element of damage I want to see the bills and invoices and those type of things.

Mr. Megna has represented to me now that he is not charging her in those cases, but he is getting a contingency in the case against the Dallas Law Firm. If he prevails, that contingency will take care of it. Therefore, if their representation is

correct, then we don't need to address bills and fees from those cases. Is that correct, Mr. Megna?

MR. MEGNA: Yes. I have -- this is all on contingency.

THE COURT: All right. You are on a contingency basis, so you are not claiming anything from the Dallas Law Firm in addition to whatever you collect?

MR. MEGNA: We're not claiming any fees for the underlying malpractice action.

MR. DOWLING: All right. As long as it is correct the way I worded what he was telling me is that if he has been -- he told me he wasn't charging her by the hour in these other two cases where he is a Defendant, and if we are not going to be seeing those elements of damage, then that is fine.

With respect to Mr. Earle, he has kindly now given me the documents that he has, and Mr. Earle sent us everything he has got. I believe him on that. But he has also said that he is trying to find the rest of the documents that I would need and have asked for.

THE COURT: What else do you need, Mr. Dowling?

MR. DOWLING: Tax returns, basically, and statement -- back-up supporting documents. Just don't tell me you have lost $100,000 in a year. Give me some documents to support that you have lost $100,000 from your business income.

So -- and the tax returns for a number of years, I mean, I don't even know if they have even filed tax returns, but like every few years I do have a tax return, but Mr. Earle said that he is trying to get those and will provide those to me, so I believe we have an agreement on that. And if that is not the case, then Mr. Earle could say, but I believe -- I just want to represent that we do have that understanding.

THE COURT: All right, Mr. Earle, is that everybody's understanding?

MR. EARLE: That's correct. That's correct.

THE COURT: If he has tax returns, he will give them to you. If he doesn't have them --

MR. DOWLING: If he -- yeah, if he doesn't have them or if he tells me his client has never filed them for these years, you know, tell me that so I know. But when they tell me -- they have come and said, all right, we -- our business, you know, revenues was "x" amount each year. If they are

able to do that, they should be able to get the documentation. I believe they haven't turned it over to Mr. Earle. Mr. Earle is going to make an effort to get those to me, is my understanding. And if they don't have it, they don't have it.

MR. EARLE: That's true.

THE COURT: All right. When are y'all going to get these things to me?

MR. MEGNA: Your Honor, I have got to be in the Fourth Circuit next week. Can I have two weeks?

THE COURT: If you need a month, no problem. You have got as much time as you want. But my deal is, October 1st I'm going to Greece for two weeks, and I'm really not back here until the last week in October. When I get back I'm in Aiken or somewhere. So --

MR. TRUSLOW: If in fact an affidavit is submitted --

THE COURT: I am not going to act on it immediately. He will copy you with it and you can reply to it.

MR. TRUSLOW: As it related to -- if the Court were inclined not to deal with that, then we are going to need to deal at a later time on a motion

to compel. I want tax returns. If she claimed that she got income, which would be an indicia of ownership, that she declared on tax returns, and we want to get those, among other things. But I don't think we need to deal with that unless they come up with something that I wouldn't expect.

THE COURT: Well, Mr. Megna will give you his information within the next two weeks, you will reply to it. And then I'm back whatever week it is in October. You can check on the schedule. I think it is the last week in October. Y'all can come over some morning at 9 o'clock, other than Monday.

MR. TRUSLOW: That will be fine.

THE COURT: And knock it out.

MR. TRUSLOW: Appreciate it. Thank you, Your Honor.

THE COURT: To compel, or whatever. If you want to argue further on it, no problem.

MR. MEGNA: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

Binding arbitration hearing held before the Honorable Thomas W. Cooper, Jr., Resident Judge, Retired, taken by Faye A. Grainger, Certified Court Reporter and Notary Public in and for the State of South Carolina, at the Richland County Courthouse, Courtroom 2-E, Columbia, South Carolina, on Wednesday, December 5, 2007, commencing at the hour of 10:27 o'clock, A.M.

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

For Lance Wilson & Willis Goodwin : Thomas G. Earle, Esquire
Seigler, Earle & Elsworth
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Columbia, South Carolina 29204

For Gina Lee : Tony R. Megna, Esquire
Attorney at Law
1815 Fulmer Road
Blythewood, South Carolina 29016

For Dallis Law Firm : Curtis W. Dowling, Esquire
J. Todd Kincannon, Esquire
Barnes, Alford, Stork & Johnson
1613 Main Street
Post Office Box 8448
Columbia, South Carolina 29202

Also Present : Douglas N. Truslow, Esquire

Faye A. Grainger
Court Reporter

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Judgment in that action.
MR. EARLE: Your Honor, we move to admit that for information purposes.
JUDGE COOPER: All right. That's the - that's the Order.
(Plaintiff's Exhibit Number Seven was marked for identification purposes and entered into the record)
MR. KINCANNON: Your Honor, we would respectfully object on the basis of the fact that the Order is not final. South Carolina Rules of Civil Procedure say that an Order is not final if a Motion to Reconsider is pending until that Motion to Reconsider has been decided and that finality is with respect to appeal, Your Honor, but I think it applies equally to this case. The Order is not final and therefore does not necessarily rightly determine who owns the property.
JUDGE COOPER: What is the status of - of the case? Judge Kinard has ordered and a Motion for Reconsideration has been filed. Has the Motion to Reconsider been decided?

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MR. KINCANNON: No, sir. It's pending, is my understanding.
MR. MEGNA: But the facts of this case, Your Honor, by stipulation of the parties, was stipulated that it included the information up until the day of this arbitration.
JUDGE COOPER: Right.
MR. MEGNA: Now, that would mean that this is amicable -- even forget that. It's only not final for purposes of appeal.
MR. KINCANNON: Well, Your Honor, we don't dispute that --
MR. MEGNA: For purposes of appeal - for purposes of this arbi - excuse me - for purposes of this arbitration, that is a final Order.
MR. EARLE: It is.
MR. KINCANNON: No, sir. We don't dispute that Judge Kinard has - has granted summary judgment.
JUDGE COOPER: Right.
MR. KINCANNON: We dispute the legal effect of that Order in that it is not a

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final Order because the Motion for Reconsideration has not been decided.
JUDGE COOPER: Right.
MR. MEGNA: And the Rules do not say that. The Rules say for purposes of appeal.
JUDGE COOPER: In any event, there's nothing to keep me from taking this matter and taking the Order. In all probability, knowing Judge Kinard's promptness for dealing with things like this, the Motion to Reconsider is not likely to be held up for a long time.
MR. MEGNA: It's been a couple - I mean shortly, within a week after he filed the Order, a week or ten days after he filed the Order. I don't remember the exact date the Motion --
THE COURT: All right.
MR. MEGNA: - - to Reconsider was filed.
MR. KINCANNON: Your Honor, but even then, until the appeal time lapses, the Order is not final.
JUDGE COOPER: But now, I think

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there's a body of law that says that - that the -- the final Order of a - of a subordinate court is the law of the case until a superior court overturns it. Is that true?
MR. MEGNA: That is correct, Your Honor.
JUDGE COOPER: And so, I think the only question is whether or not Judge Kinard's order is final. Once his Order is final, then for all intents and purposes, without a doubt, it becomes the law of the case unless and until it is appealed. There's a - there's a fair body of law on that issue, I think you can find. To the extent that the Order of - of Judge Kinard may be significant in this court's decision, obviously, if the finding of this court would turn on whether or not he grants this Motion to Reconsider, then I may well be inclined to - to withhold issuing an award until I hear what his Motion - his decision on the Motion is going to be. I'm not sure as to how significant it is right now

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JUDGE COOPER: It's not in evidence, no, it's not.
MR. MEGNA: I'll move forward and put it in shortly.
Q After that, did you believe yourself to be the property -- the owner of that property?
A Yes, I did.
Q Did anyone ever tell you that you were not the owner of that property?
A No, they did not.
Q Did you have discussions with your brother or with Mr. Gravelin or anyone else about you being the sole owner of that property?
A Yes.
Q And, would you tell us about those discussions?
A It was ---
Q As much as you can.
A Well, I mean, the kind of stuff like, he would ask me how it was going or how the house was going or how we were doing.
Q Did you distribute any property to your brother during the Probate proceedings?
A Any other property?
Q Any property, real or otherwise?
A I gave him that house. Is that what you're talking

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about?
Q What -- what house? You tell me.
A The house on Pinestraw.
Q And whose house was that?
A It was my dad's.
Q Okay. And, did your brother get that house?
A He got half of it.
Q He got half of it.
A Because Daddy left us half.
Q Did he get anything else?
A Did I -- did I ---
Q I mean, did he -- did your brother -- did you distribute any other kind of property, money or ---
A The money he got, yes.
Q Okay. So, he got money, too; do you recall how much money he got?
A I don't know, I mean, it was off the house, you know, it was like a bank account or two that my dad -- he got a CD, I do know that.
Q Okay. Do you know about how much that was?
A I think it was sixteen thousand dollars.
Q And so you worked with Mr. Gravelin in all this?
A Yes.
Q After the Probate proceedings, and after the Probate deed was final, what did you do with the property of

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2325 Two Notch Road?
A Lance was still leasing it.
Q You leased it?
A Yes.
Q And did you continue to lease it to Mr. Wilson?
MR. EARLE: If Your Honor, please?
JUDGE COOPER: Yes, sir.
MR. EARLE: I hate to interrupt, but I'm so old and hard of hearing --
MR. MEGNA: Oh, I apologize.
MR. EARLE: I'm sorry.
MR. MEGNA: Am I being too soft? I apologize.
JUDGE COOPER: I can identify with that, Mr. Earle, I'm hard of hearing, too. Ms. Lee, if you could, keep your - your voice up to -- for accommodation for those of us whose hearing has failed over the years.
MR. MEGNA: See if y'all have any objections to this deed of distribution.
MR. DOWLING: The Deed of Distribution and the Will both were produced to me in litigation. I have no -- no problem.
JUDGE COOPER: The Will should be a

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part of the Probate file as well.
MR. MEGNA: It should be, Your Honor. It should be, Your Honor, but some of those records are hard to read. Deed of Distribution, Will, and Certificate Appointing Personal Representative.
(Defendant Lee's Exhibits Number Three, Number Four and Number Five were marked for identification purposes and were entered into the record)
MR. MEGNA:
Q Then, at some point in time, I take it you decided to sell the property?
A Yes.
Q Would you just tell the Court, tell the arbitrator what you did at that point in time when you decided to sell the property to Mr. Goodwin? Mr. Wilson and Mr. Goodwin.
A Well, we went through the Dallis Law Firm and they did up the papers, the contract.
Q Okay. And how did you all pick the Dallis Law Firm?
A Lance chose them.
Q He chose the Dallis Law Firm?
A Uh-huh (affirmative response).

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have done what she did.
MR. MEGNA: That's not true. There is evidence. The evidence is what I have now put into the record. On January in 2003, Mr. Anasti, who had title to the property, had actual notice there was a problem with the title. Your Honor, you can look at all of the condemnation proceedings.
JUDGE COOPER: Yes.
MR. MEGNA: Then he failed to file an action to quiet title, even though he took that condemnation proceeding to his lawyers, until after the ten year Statute of Limitations. We are basing this on no conjecture whatsoever.
JUDGE COOPER: All right.
MR. MEGNA: No conjecture. This is actual established facts.
JUDGE COOPER: Well, you've established - it assumes the fact that she would prevail in the adverse possession action to begin with.
MR. MEGNA: She didn't prevail in the adverse possession because Judge Kinard

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said when she sold the property, it was four years and ten days, which was less than the ten year Statute of Limitations.
JUDGE COOPER: Well, that was an alternative ruling, though, wasn't it?
MR. MEGNA: No, sir, it was not. You can read the Order for yourself. There was not - that was his primary reasoning.
JUDGE COOPER: All right.
MR. MEGNA: It was not an alternative.
JUDGE COOPER: I have not seen that, but certainly, I will look at it.
MR. MEGNA: That's the theory.
JUDGE COOPER: There is no point in me arguing about whether I'm going to accept the evidence or not because I've told you I'm going to accept it.
MR. MEGNA: Thank you.
JUDGE COOPER: I'm just trying to figure out what to do with it, and I don't think I'm going to be able to resolve that today.
MR. KINCANNON: Your Honor, we would just like to reserve a relevance objection

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to any damages that Ms. Lee is claiming prior to our involvement in the case whatsoever.
MR. DOWLING: And I think once again, we would have to go back to the order, if he is doing this, we weren't provided the opportunity -- you know, we asked her in her deposition what her damages were. This was not -- if it -- as far fetched as it is, it wasn't discussed, it's something that he has come up with now, maybe within the last week, he has got documents that we have never seen. But once again, I think we go back to Judge Barber's order. You are stuck with what you had back then and you didn't have it then because you didn't even know you had lost then. And this is all after the fact. And I would object to any evidence going back to '96/'97, not one single document has ever been produced, you have never answered in discovery this is an element. Otherwise, we would've addressed it and come forward.
MR. MEGNA: That is totally untrue, Your Honor. Totally untrue. These

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documents - I'm happy to argue this later, but these documents that Judge Barber wrote, Judge Kinard already had that order; he had that motion under consideration; he filed it, and this order of Judge Barber's was subject to the motions for summary judgment which had already been determined and Judge Kinard was simply filing it, that everybody knew about it, everybody. There is no surprise here. It is absolutely untrue that they're surprised.
MR. DOWLING: Your Honor, if that's the case, if he knows this, he's untimely in his Motion to Reconsider because he's already filed a Motion to Reconsider that he didn't even know about the Order until what, ---
MR. MEGNA: I filed the Motion.
MR. DOWLING: -- about three weeks - about three weeks --
MR. MEGNA: That is totally untrue.
JUDGE COOPER: You all can go down the hall and argue that motion before Judge Kinard. If the Motion to Reconsider

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2007-CP-40-576

James A. Anasti,

Plaintiff,

vs.

Gina L. Anasti Lee, Lance Wilson, Willis Goodwin, and Richland County Clerk of Court,

Defendants.

Transcript of Record

January 18, 2012
Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge

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

Douglas N. Truslow, Esquire
Attorney for the Plaintiff

Thomas G. Earle, Esquire
Attorney for Defendants Wilson and Goodwin

Tony R. Megna, Esquire
Benjamin R. Matthews, Esquire
Attorneys for Defendant Lee

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

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E X H I B I T S

No.	Description	I.D.	Ev.

No Exhibits Introduced.

THE COURT: All right, this is the case of Anasti vs. Anasti, et al. Mr. Truslow requested a status conference apparently, and apparently my law clerk got him to get everybody together, and we're all here this morning. So, if y'all would tell everybody who you are for the court reporter so Ms. Harris will know exactly who is speaking when you speak.

MR. TRUSLOW: Your Honor, thank you for accommodating us. I'm Doug Truslow; I represent the plaintiff in this action. Mr. Tom Earle is here; he represents Wilson and Goodwin. They are defendants. There is ---

THE COURT: Mr. Megna.

MR. TRUSLOW: Mr. Megna and Mr. Matthews, they represent Ms. Lee, and I think ---

THE COURT: Does somebody represent the clerk of court?

MR. TRUSLOW: They were only involved as a stakeholder. They're not necessary at this point in time. This has all been resolved.

THE COURT: All right. So ---

MR. TRUSLOW: Your Honor, Your Honor.

THE COURT: Y'all have Ms. Lee?

MR. MATTHEWS: Yes, sir.

MR. MEGNA: Yes, Your Honor, Tony Megna and Ben Matthews.

THE COURT: All right, who has Lance Wilson? Mr. Earle, you do?

MR. EARLE: Yes, Your Honor.

THE COURT: And who has Willis Goodwin?

MR. EARLE: I do.

THE COURT: Oh, you got both of them? Okay, good.

All right, tell me what we need to talk about here, Mr. Truslow.

MR. TRUSLOW: Your Honor, we're requesting a status conference. We've asked that this be considered to be on the record because I wasn't sure what claims were going to be made, and whether an assertion would be made in case the matter shouldn't go forward at this time. There are two basic issues: setting of a damages hearing, and setting of a Rule 11 sanctions hearing.

THE COURT: All right, is there already a judgment in this case?

MR. TRUSLOW: Yes, sir. By way of history, this was a real-estate matter. It went up on appeal. It's got a tortured history of coming back for, for certain factual findings that are, that are in large part the basis for Rule 11 sanctions.

From that point in time, after the lower court ruled in my client's favor, there was -- ultimately an appeal was commenced, but there was a filing of bankruptcy by Ms. Lee

which stayed proceedings until the stay was lifted. The Court of Appeals ruled in my client's favor. There was a petition for writ of certiorari; that was also resolved in my client's favor. An argument was made that the matter was stayed because of appeals by Ms. Lee in a bankruptcy court. That was rejected by the bankruptcy court on least two occasions, by the federal district court on at least two occasions, and by the Fourth Circuit Court of Appeals most recently.

We -- quite frankly, the plaintiff didn't think that anything that was going on in appeal in the Fourth Circuit had anything to do with the case since the, since the Supreme Court of the State of South Carolina had ruled it in view of comity. But be that as it may, we waited until that was resolved. I thought that was going to be inevitable that she was going to lose. She did.

So, the matter is now ripe for two things. For a damages hearing, and that will involve -- it won't involve Ms. Lee because she's filed for bankruptcy and has some limited protection. Your Honor, we could, we could potentially go beyond that, but there's no need. We're going to be dealing with -- in the, in the damages hearing would be my friend and Mr. Goodwin and Mr. Wilson. I don't believe Ms. Lee would be even involved in that because we're not seeking dollars from her, and especially given

her bankruptcy.

So, the damages hearing will be, will involve just myself, Mr. Earle, and our respective clients. We think that that probably ought to be resolved first because that goes almost ---

THE COURT: All right, let me ask you. How do you -- I mean, is that a normal damages hearing, fifteen minutes or so? Is it going to be, going to be protracted because if I'm going to need ---

MR. TRUSLOW: I would think that it would take no more than two hours. We're talking about rentals for -- since 2007 or so. So, we're, you know, we're going to have a lot of money at stake.

Mr. Earle has had some -- he's one of the nicest -- I know Your Honor knows, but he's one of the nicest, nicest, most conscientious professionals I've ever had the pleasure to deal with. He's had some recent health problems, and as you would expect, I would certainly accommodate whatever, whatever his needs are, and my client would. But we're probably going to need two hours for that.

THE COURT: All right. So, you're requesting a damages hearing with respect to Mr. Wilson and Mr. Goodwin only. You think it will take two hours?

MR. TRUSLOW: Yes, sir.

THE COURT: Y'all agree Ms. Lee is not, would not be

involved in that?

MR. MEGNA: Yes, sir, Your Honor.

THE COURT: All right, and then after that, you're going to request, assuming damages are awarded, you're going to ask the court to set a Rule 11 hearing on sanctions against all of them or?

MR. TRUSLOW: No. That would be only against Mr. Megna and/or Mr. Matthews. It's them and the order is without -- I'm not here to argue the case, Your Honor. I'm just trying to get this thing scheduled.

THE COURT: Well, I'm just trying to figure out.

All right, Mr. Earle, what are you -- tell me about your clients or you and when y'all will be available.

MR. EARLE: Your Honor, I've been diagnosed with MG, and it's sort of doubtful how speedily I'll recover. I can speak today; tomorrow I may not be able to speak. So, I would ask for protection until the end of March to see if I'm going to improve, or if not, I'll need to get substitute counsel for that damages hearing. It's very doubtful at the moment whether or not I will be able to handle it.

THE COURT: All right, do you concur is that it's probably a two hour hearing?

MR. EARLE: Yes, Your Honor.

THE COURT: All right. Well, I'll look and see what

kind of damages hearing we can -- how long if, in fact, somebody is substituted, Mr. Earle, how long would it take them to get up to stuff?

MR. EARLE: I think it would take them about two weeks.

THE COURT: All right. So, you will be able to make a decision by March 1st, and we could have a hearing some time after March 15th?

MR. EARLE: Yes, Your Honor. Yes, Your Honor.

THE COURT: Any problems with that, Mr. Truslow?

MR. TRUSLOW: No, Your Honor.

THE COURT: All right. Well, I'll have to find out what nonjury court we have and when it is, and I'll see about trying to schedule some hearing.

I guess y'all don't care since you're not involved in that process.

MR. MEGNA: No, Your Honor.

THE COURT: Although we'll give y'all notice so if you want to appear for whatever reason, you're certainly able to do so.

All right, well, I'll -- let me ask you this. I don't know whether your clients have any ability to respond to a judgement, Mr. Earle. Your position may be that they got nothing anyway. So, whatever anybody got against them, it's just a piece of paper. But is there any chance that

-- do your clients have any ability to respond to a judgement?

MR. EARLE: I would say very little. I would say very little. The -- I'm trying to surmise. I would guess, and this is just my guess, that the damages hearing primarily would relate somewhere to the Rule 11 sanctions. I'm not sure, but I would think.

THE COURT: I was just curious as to whether y'all might be able to resolve it before we tie up two hours of court, and then something happens and it falls off.

I assume your primary purpose, Mr. Truslow, is to collect money for your client. So, you know, if in fact some way y'all can resolve -- a little bit of something is worth a lot more than a whole lot of nothing. But I'll try to get you something scheduled after March 15th for two hours.

MR. TRUSLOW: And if we can work it out, I'll let you know just as soon as possible.

THE COURT: Yes. I mean, even if it's a week before because we can plug in stuff all the time if I got two hours. That basically will ruin a morning if we don't go forward.

MR. TRUSLOW: All right. Your Honor, in that regard, one, one request I'm going to have. Since it's nonjury, I don't think it would be a problem. My client lives in

Mexico at this point in time, and I assume since it's nonjury, we'll have a date certain.

THE COURT: Well, as much as a day certain -- you know, there may be three cases set at 9:00.

MR. TRUSLOW: That day certain?

THE COURT: Yeah, you'll have a day. You'll know what day the hearing is.

MR. TRUSLOW: Yes, sir. Thank you.

THE COURT: And you'll know. I don't know. Sometimes they'll set them up. They'll give each one of them fifteen minutes, thirty minutes, whatever time they claim they need. And sometimes they'll, as you know, put four of them at 9:00, and three of them will drop off. But yeah, y'all know the time frame, and the roster should be out several weeks ahead. I don't know how much time you need to get your client here.

MR. TRUSLOW: All right.

THE COURT: Matter of fact, it will probably be on the Internet thirty days ahead of time.

MR. TRUSLOW: Yes, sir.

THE COURT: All right, anything y'all want to say?

MR. MEGNA: Yes, Your Honor. Only that the -- number one, that Mr. Truslow made this same motion before the Court of Appeals, motion for sanctions, and that we, since we're on the record, we would like -- appreciate having the

opportunity to have this filed with the record. And the Court of Appeals unanimously denied it on May 29, 2011. And he did not appeal that order to the South Carolina Supreme Court, and the case law is very plain. That becomes the law of the case, right or wrong.

In addition to that, we would apparently all agree he wrote me a letter on January 9, 2012, saying that the underlying motions, there are some underlying motions from his side and our side to compel discovery and other motions similar to that, and that they are moot as a practical matter.

The federal court actions have nothing to do with the state court actions, and that our position is very simple. And I believe the court has the authority to deal with this now. That the Court of Appeals has ruled on this. It's ruled unanimously on this. He has no -- he has nothing, and rightly or wrongly, he didn't appeal that and it becomes the law of the case. And if for no other reason -- may I approach the bench and file this?

THE COURT: Well, I'm not here to -- this is a status conference, not a motions hearing. It wasn't noticed as anything like that. You know, if y'all can't agree and there is a motion, it will probably be scheduled for a hearing, and then you can make your argument at that time.

MR. MEGNA: Right. Your Honor, as long as it's a

status conference, may I have the opportunity also? It's kind of hard to do a motion to dismiss the motion for sanctions. But the plaintiff would like to have an opportunity after they finish whatever they're finishing -- or the defendant Ms. Lee would, to file a response and file a counter motion to whatever he has filed with the court as a part of the status conference. And we'll have -- just need a few weeks, thirty days, fifteen days.

THE COURT: All right, tell me that again now. You want to file something, a motion? You want to file your own motion for sanctions under Rule ---

MR. MEGNA: Well, I don't know if I want to file for sanctions. I want to respond to -- if we file any response to what ---

THE COURT: We can go ahead and do that.

MR. MEGNA: Well, I could if you wanted me to. I just thought if you'd wait until this damages hearing was over.

THE COURT: Well, I don't know. I mean, his motion is pending. I don't know. See, I don't know what this has to do with motions for sanctions.

MR. MEGNA: Right.

THE COURT: I mean, I'm just trying to accommodate y'all.

MR. MEGNA: Yes, sir. I understand, but I'm happy to file in the next few weeks anyway. That's fine.

THE COURT: I wasn't planning on setting the Rule 11 hearing until after the 15th, so it may be the term after that. But again, I just turn it over to the scheduling clerk, and he does all that stuff, and so you would probably have -- I mean, what is today? You got two months before the earliest that his hearing would be held.

MR. MEGNA: Okay. That will be fine.

THE COURT: So, I mean, you can just keep that in mind.

MR. MEGNA: I will. Thank you.

THE COURT: I would tell you even if it comes up short, whatever you want to file, file it.

MR. MEGNA: Okay. Thank you, Your Honor.

THE COURT: Even the day before the hearing, understanding that if you send it to the clerk, the judge won't get it because it will languish in the clerk's office for two months before it gets in a file. So, make sure that whoever hears it gets a copy of whatever you file.

MR. MEGNA: I will. Thank you. May I file this today since it's on the record now?

THE COURT: Sure.

MR. MEGNA: Thank you.

THE COURT: Well, you'll just have to take it to the clerk.

MR. MEGNA: Sir?

THE COURT: You'll have to take it to the clerk to file.

MR. MEGNA: Okay.

THE COURT: We don't -- you can't file them in here. Just take it in there and give it to Randy or Athena.

All right, I thank y'all, and you will be noticed.

MR. TRUSLOW: It sounds like we don't, we don't even need to deal with the setting of the Rule 11 hearing at this point.

THE COURT: Well, didn't you tell me you wanted -- I can set the Rule 11 hearing right now. I mean, the next term that I can get, I think we're scheduled up through the end of this month on nonjury, but there's probably a nonjury term some time in February I can put the Rule 11 on.

MR. TRUSLOW: I was thinking that the Rule 11 probably ought to go after. I think both sides ---

THE COURT: Well, based on what Mr. Earle told me, I assumed that was the case.

MR. TRUSLOW: Yes, sir.

THE COURT: So.

MR. TRUSLOW: We would just ask that it be some time after March 15th. Give the -- Ms. Lee's counsel time to be adequately prepared, and if they have concerns, they can let me know or they can file whatever motions they deem

appropriate.

THE COURT: How long is the Rule 11 going to take?

MR. TRUSLOW: Your Honor, I'm guessing -- I've started to list who I thought the witnesses were going to be. I'm guessing nonjury, regrettably at least a day. And I can tell you some of the witnesses, I would expect -- here are some of them.

THE COURT: Well, I don't need to know that.

MR. TRUSLOW: Yes, sir. All right.

THE COURT: But that's going to be, that's going to be difficult finding a day, and that won't be a -- that will probably go on a nonjury trial week. And it would be -- you'll have a roster meeting, and you'll just have to show up because we don't, we don't have days we can ---

MR. TRUSLOW: I realize. It's a, it's a very serious matter and ---

MR. MEGNA: Could we ask Your Honor ---

MR. MEGNA: --- they're entitled to their day in court.

MR. MEGNA: Could we ask Your Honor for a list? This is the first we've heard of this. Could we also request for a list of all the witnesses? And that's my concern. We have no notice of what he's going to do at this point in time so we can address it.

THE COURT: Well, you want to tell him who your

witnesses are?

MR. TRUSLOW: I don't have any problem at all with that. This is a preliminary list that would be here would be Desa Ballard, possibly Mr. Earle, depending on where this goes. Curtis Dowling, Rene Josey, Celeste Jones, Steve Blacatto.

THE COURT: And all these people are going to come in and testify as to some ---

MR. MEGNA: Nothing related to this case.

THE COURT: Well, I don't know. I mean, they're all going to -- this is not all cumulative, is it?

MR. TRUSLOW: I think each one stands separately.

THE COURT: Well, I know they're all well respected attorneys, but we're not going to hear five or six lawyers coming in to say the same thing: that these are bad fellows. If that's what you're going to say, I mean, two people can say that.

MR. TRUSLOW: It could be, it could be Ms. Ballard and myself. I think he has lot of the documentation because we've provided it before, but if he needs something ---

THE COURT: Well, I would tell you to write him and tell him who -- what prospective witnesses you might have. Now, I can't promise you you're going to hear -- we're going to hear seven or eight lawyers come in and say basically the same thing.

MR. TRUSLOW: It's on different cases with Mr. Megna.

THE COURT: Well, I don't know about that.

MR. TRUSLOW: May relate, maybe not. We're not arguing that right now.

THE COURT: Well, I'm arguing it because I've got to schedule time.

MR. TRUSLOW: Oh, yes.

THE COURT: Y'all understand that.

MR. MEGNA: I would ask the court to please consider that other cases have no bearing on ---

THE COURT: Well, that will be up to the hearing judge. I can't rule at this point in time.

MR. MEGNA: Well, if I ---

THE COURT: Let me tell y'all something. There's very little benefit to being the administrative judge in the Fifth Circuit of Richland County, but there is one: you don't hear nonjury. So, I probably will not be involved in this because of that prohibition. But you'll have to take that up with whoever the hearing judge is.

MR. TRUSLOW: Thank you, Your Honor.

MR. MEGNA: Well, can I ask just one more thing, Your Honor?

THE COURT: Sure.

MR. MEGNA: Since this is a status conference. If we're going to do this, and obviously that's the -- your

court's -- Mr. Truslow's decision, it would seem only fair that we have an understanding that he detail what his issues are so that we can be prepared to counter them. Otherwise, we aren't prepared to counter them.

THE COURT: Well, I don't know how that would work. But, I mean, y'all, y'all need to have some conversation about it.

Doug, I'm probably not going to schedule this for more than a half a day. You're just going to have to fit it in in a half a day.

MR. TRUSLOW: All right, sir.

THE COURT: And I may just go ahead and schedule it on a motions thing because -- I mean, I don't want to tie lawyers up sitting around for days at a time waiting to see whether a case comes for trial.

But, you know, tell them what your complaints are against -- is it against the clients or the lawyers?

MR. TRUSLOW: Lawyer. You can look at the record and you can see the orders of Judge Manning and draw your own conclusions, and you can look at the summary judgement order and the transcript and probably ---

MR. MEGNA: And the Court of Appeals has already denied all those motions.

THE COURT: Well, that may, that may free up that judge quickly, whoever it is.

MR. MEGNA: As long as we understand exactly what he's dealing with and that we can respond. That's all we ask.

THE COURT: Well, I can't -- I don't know anything about the case, Mr. Megna, so I cannot speak to ---

MR. MEGNA: No, sir, I'm not ---

THE COURT: --- any of the allegations in the ---

MR. MEGNA: I'm not asking you to.

THE COURT: --- in the motion.

MR. MEGNA: I just would like for him to ---

THE COURT: Well, talk, talk to Mr. Truslow. Y'all have some conversations.

All right, y'all will get a notice as to a hearing.

MR. TRUSLOW: Thank you.

MR. MEGNA: Thank you, Your Honor.

THE COURT: Y'all have a nice day.

--- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Lance Wilson and Willis Goodwin,

Plaintiffs,

-vs-

Gina L. Anasti Lee,

Defendant/
3rd Party
Plaintiff,

-vs-

Dallis Law Firm, P.A.,

3rd Party
Defendant/
4th Party
Plaintiff,

-vs-

Sandra Michelsen d/b/a Abstract Title,

4th Party
Defendant.

Case# 2004-CP-40-5333

DEPOSITION OF

GINA LEE

FAYE A. GRAINGER, d/b/a
GRAINGER REPORTING SERVICE
Post Office Box 532
Irmo, South Carolina 29063
(803) 798-2679 fax# (803) 772-1108

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A I did.
Q Since your father and Mr. Wilson had had a relationship for sixteen years or a very long time, did you know Mr. Wilson very well?
A Just in speaking. My husband would talk to him once in awhile.
Q Was this when it was Dave's or whatever it became after your father and then after Mr. Wilson has taken over the property, was it a type of business that would be open five days a week, six days, seven, or what?
A I'll say at least six days a week, at least.
Q Would you ever visit the property?
A Would I?
Q Yes.
A Like now or ---
Q No, no, back ---
A Back then?
Q --- during that time period?
A I never went down there. Not after, you know, Lance took it over.
Q At some point in time, obviously, it appears to me that Mr. Wilson wanted to buy the property?
A Yes, sir.
Q Is that a fair statement?

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A Uh-huh (affirmative response).
Q Do you recall about when that was?
A 2000/2001, I'm not good on dates.
Q Would it be about the time that -- whenever that time period was, was that when you had a written agreement with him to buy the property?
A Yeah, it was somewhere around there.
Q Here's an Agreement To Sell Real Estate. Take a look at that and see if you recognize that document?
MR. MEGNA: Do you recall?
A I don't think so.
MR. DOWLING:
Q Does that appear to be the agreement that you and Mr. Wilson signed?
A Yes, sir.
Q If you'll look at the second page of that document. What is the date of that document?
A '99.
Q Is that your signature on the document?
A Yes, sir.
Q 09/29/99, so you said 2000/2001, but this would be -- you think this document would more accurately reflect when this actually took place?
A I don't really know.
Q When you signed your name, would you have then

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dated, put the date? Does that appear to be your handwriting, 09/29/99?
A It looks like my handwriting.
Q On the left-hand side, well, right above it, it seems to be -- has buyer, but can you read whose signature that is?
A Lance.
Q Lance Wilson?
A Uh-huh (affirmative response).
Q And to the left, it has the signature of James Lee. Who is that?
A Yes, sir, it's my husband.
Q Excuse me?
A It's my husband.
Q That's your husband?
A Uh-huh (affirmative response).
Q So Pete is James?
A Uh-huh (affirmative response).
Q Okay. Was he -- it says witness. Is he witnessing the -- what he's doing, just witnessing the document?
A Yes, sir.
Q Because he didn't have an ownership interest in it?
A Right.
Q How is it that you arrived at the purchase price for

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the property?
A I think I had it appraised.
Q And it says purchase price, a hundred eighty-five thousand dollars, correct?
A Uh-huh (affirmative response).
Q And a five thousand dollar deposit?
A Right.
Q Where did you get this form document, Agreement to Sell Real Estate? Is it something you did or did Mr. ---
A I just don't remember this.
Q You don't know if this is something Mr. Wilson brought to you? Seems to be just a form document.
A Right.
MR. DOWLING: Let's go ahead and mark this as the next exhibit.
(Defendant's Deposition Exhibit Number Six was marked for identification purposes)
MR. DOWLING:
Q So at least with Number Six, with a hundred and eighty-five thousand dollars, your testimony is you don't know where the agreement came from?
A I don't remember seeing that one, but ---
Q And you don't ever remember the document?

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stating that you were the owner of the property?
(OFF THE RECORD)
MR. DOWLING: Let's go ahead and mark the Promissory Note as the next Exhibit.
(Defendant's Deposition Exhibit Number Eleven was marked for identification purposes)
MR. DOWLING:
Q Did you have a chance to look at the Seller's Affidavit?
A Yes, sir.
Q And even at the closing, you understood and thought you were the owner of the property, is that correct?
A Yes, sir.
Q As we sit here today, do you believe that when you sold that property, you were the owner of the property?
A Yes, sir, I do.
Q And think about this before you answer, because I don't want to know anything that you and your lawyer have discussed, but if something other than what you and your lawyer discussed and if something other than what you've previously told me about what your father told you, what the Will said, what the Deed of Distribution said, anything else, what is it that

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you base your position on that you were the owner of the property when you deeded the property to the Goodwins or Wilson in January of 2000?
A I thought it was mine because I had the Deed of Distribution and the Will.
Q And, as you say, you still believe that that is correct?
A I still do.
Q And that you believe that you're entitled to receive or you should be receiving the monthly payments?
A Yes, sir.
Q And even through today, you do not -- your brother hasn't taken a contract -- well, I guess maybe he has, I haven't seen the documents -- at least telling you, talking to you, he has not taken a contrary position?
A What do you mean contrary, I mean?
Q Does your brother maintain that he is the owner currently of the property?
A Well, according to that paper, I would say.
Q All right.
A Yes.
Q And I haven't seen it, but I understood that it was coming and I did talk to his lawyer who called me and at least, that's what he told me is that he

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thought that Jim Anasti was the owner of the property. Have you heard or do you know whether your brother knew about the arrangements and what was going on over the years with this property?
A No, sir.
Q Because what his lawyer told me is that he did and was just sitting watching and seeing what was going on, which is odd to me, but nevertheless, that's what I was told, but you don't know of anything like that?
A No, he got copies of everything. To my knowledge, he should have gotten copies of the Will, the deeds and everything.
Q Your brother should have?
A Uh-huh (affirmative response).
Q So when all this was being done back in '95, when the Estate was being probated --
A Right.
Q -- you were providing copies to your brother, wherever he was?
A Yes, sir, right.
Q All right, so your brother was on notice from the time of when the Will was filed, he got a copy of the Will, Deeds of Distribution, everything?
A He did.

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Q He did?
A Or he should have.
Q Did you do what you were supposed to do? Did you provide him --
A I did.
Q You provided him copies?
A Uh-huh (affirmative response).
MR. DOWLING: Mark this as the next exhibit, please.
(Defendant's Deposition Exhibit Number Twelve was marked for identification purposes)
MR. DOWLING:
Q When the condemnation action by -- who was it, the city, was it?
A Yes.
Q Is that what kind of stirred this up and brought it to a head for you, anyway?
A Yes, sir.
Q Tell me what happened there? Is that condemnation action over now?
A They've done the sidewalk because that's what it was over.
Q Did you receive any money from the city?
A No, sir.

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Q Do you know if the city paid any money to anybody?
A That, I don't know.
MR. MEGNA: To the Court.
A Oh, to the Court.
MR. DOWLING:
Q Did you take a position with the Court or in the condemnation action that you were entitled to that money?
A No, sir.
Q You didn't?
A Huh-uh (negative response).
Q All right, and that's because you had already sold the property by ---
A Right.
Q --- the time the condemnation action took place? So, then in the condemnation action, it would either be your brother's money or the Goodwins or Wilson's money or you just don't have any ---
A Just, I don't know.
Q All you know is you're supposed to be getting your monthly payment?
A Right.
Q So, I guess your position would be -- is that would be whoever you sold it to should be getting it?
A Right.

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Q Is that correct?
A Right.
Q And not your brother?
A Yes.
Q Now, in the quiet title action ---
MR. DOWLING: Is that what it is, a quiet title action?
MR. MEGNA: I don't know what you call all this. I mean, in the final result, that's what ---
MR. DOWLING: I mean, this other one is whatever what he's done ---
MR. MEGNA: It is kind of more or less, yes, I would call. It is a quiet title.
MR. DOWLING: Because that's what he told me when he called me, that's the words that he used.
MR. MEGNA: That's a fairly accurate description.
MR. DOWLING: All right.
MR. MEGNA: And a foreclosure.
MR. DOWLING: That's what I was going to get to.
Q Are you familiar with when your lawyer says

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foreclosure, what a foreclosure is?
A Not exactly.
Q All right, are you taking the position at least against who you sold the property to that they should be paying you the monthly -- whatever is due monthly?
A Right.
Q Are you further taking the position that if they don't pay it, you're entitled to foreclose and get the property returned to you?
A Yes, sir.
Q Up until the condemnation action, is it fair to say that whoever bought the property from you, either Mr. Goodwin or Mr. Wilson, whatever agreement they reached between themselves, that one of them was timely paying monthly payments?
A Yes, sir.
Q And with that money, were you then depositing it into your checking account?
A Yes, sir.
Q And at that point, you had no further interest in the property, correct?
A Yes, sir.
Q You were not, I mean, you were not paying -- you were not doing any repairs? You were not paying

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taxes?
A No, sir.
Q During the time after your father died and I believe you said this earlier, you were paying the taxes, correct?
A Yes, sir.
Q Did the tax assessor's office have you listed as being the owner? You were the one receiving the notices?
A Yes, sir.
Q As far as you know, you were never delinquent on the property taxes, were you?
A No, sir.
Q The property was never sold for tax sale?
A No, sir.
Q Have you reached any agreements with anybody, whether it's your brother, whether Wilson, Goodwin, with respect to anything relating to these cases or the quiet title action?
A No, sir.
Q When is the last time that you talked to either of the gentlemen in this room, Mr. Wilson or Mr. Goodwin?
A It's been about three or four years ago. Whenever the payments stopped.

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES A. ANASTI, PLAINTIFF,	
VERSUS	C.A. NO.: 07-CP-40-0576
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, RICHLAND COUNTY CLERK OF COURT, DEFENDANT.	

- - -

THE DEPOSITION OF GINA L. ANASTI LEE

- - -

LAW OFFICES OF DOUGLAS N. TRUSLOW

914 RICHLAND STREET, SUITE B-102

COLUMBIA, SOUTH CAROLINA

JUNE 26, 2007

9 A.M. - 11:10 A.M.

IN BEHALF OF THE ATTORNEYS FOR THE PLAINTIFF, THE DEPOSITION OF THE ABOVE-NAMED WITNESS WAS TAKEN BEFORE ME, JUDITH H. HAYES, CERTIFIED COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, PURSUANT TO NOTICE AND/OR AGREEMENT IN THE ABOVE-ENTITLED CAUSE PENDING IN THE ABOVE-NAMED COURT.

APPEARING IN BEHALF OF THE PLAINTIFF:

DOUGLAS N. TRUSLOW, ESQ.
914 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201

APPEARING IN BEHALF OF THE DEFENDANT LEE:

TONY R. MEGNA, ESQ
3400 WEST AVENUE
COLUMBIA, SOUTH CAROLINA

APPEARING IN BEHALF OF THE DEFENDANTS WILSON AND GOODWIN:

SEIGLER, EARLE & ELLSWORTH
1735 ST. JULIAN PLACE, SUITE 103
COLUMBIA, SOUTH CAROLINA 29204
BY: THOMAS G. EARLE, ESQ.

ALSO PRESENT: JAMES ANASTI

YOU KNOW WHAT THE TEN COMMANDMENTS ARE, OF COURSE?

A. YES, SIR.

Q. I'M SURE YOU KNOW, NOT PARTICULARLY IN THE ORDER, BUT YOU KNOW WHAT THE EIGHTH COMMANDMENT IS, IF I SAY IT TO YOU, YOU COULD ACKNOWLEDGE THE EIGHTH COMMANDMENT IS, I BELIEVE, THOU NOW SHALL NOT STEAL?

A. YES, SIR.

Q. AS IT RELATES TO YOUR BROTHER JIM, DID YOU EVER INTEND TO STEAL ANYTHING FROM HIM?

A. NO, SIR. I NEVER HAVE.

Q. HAVE YOU EVER INTENDED TO STEAL ANYTHING FROM HIM?

A. NO, SIR.

Q. IS IT YOUR CONTENTION IN THIS CASE THAT YOU TRIED TO STEAL FROM YOUR BROTHER?

A. NO, SIR.

Q. IS IT YOUR CONTENTION IN THIS CASE THAT YOU TRIED TO TAKE SOMETHING FROM YOUR BROTHER, TAKE ANYTHING FROM YOUR BROTHER THAT WAS NOT YOURS, WAS NOT RIGHTFULLY YOURS?

A. NO, SIR.

Q. IF YOU OBTAINED SOMETHING, AND I AM GOING TO BE TALKING, I BELIEVE, SPECIFICS ABOUT THE TWO NOTCH PROPERTY, IF YOU GOT IT SOMEHOW BY MISTAKE, SINCE YOU HAVE SAID YOU NEVER INTENDED TO STEAL, WOULD YOU WANT TO RETURN IT IF YOU DIDN'T GET IT HONESTLY AND PROPERLY?

A. IF IT WAS A MISTAKE, YES.

Q. IF IT WAS AN ACCIDENT, A GOOD FAITH ACCIDENT, YOU WOULD WANT TO RETURN IT TO YOUR BROTHER, IS THAT CORRECT?

A. YES, SIR.

Q. LET'S GO BACK A LITTLE FURTHER IN THE BACKGROUND. YOUR MOTHER AND FATHER HAD A LONG-TERM MARRIAGE AND YOU AND JIM WERE THE PRODUCTS OF THAT MARRIAGE?

A. YES, SIR.

Q. IT WAS A HAPPY MARRIAGE, IS THAT CORRECT?

A. IT WAS.

Q. YOUR MOTHER PREDECEASED YOUR FATHER, IS THAT CORRECT?

A. YES, SIR.

Q. AND THEN THAT LEFT YOU, JIM, AND YOUR DAD OUT?

A. YES, SIR.

Q. WERE YOU AND JIM CLOSE GROWING UP?

A. WE WERE.

Q. YOU LOVE JIM?

A. I DO.

Q. DOES HE LOVE YOU?

A. I DON'T KNOW.

Q. DO YOU THINK HE DOES?

A. I HOPE HE DOES.

Q. DID YOU EVER TALK TO HIM BEFORE, SAY, 2002, SAY FROM 1993 TO 2002, DID YOU ALL EVER TALK ON THE TELEPHONE?

A. YES.

Q. ---DID HE LOVE HIM AS MUCH JUST PRIOR TO THE TIME OF HIS DEATH AS HE HAD THROUGHOUT HIS LIFE?

A. HE DID.

Q. SO THEY CONTINUED, EXCEPT FOR JIM NOT BEING HERE, THEY CONTINUED TO HAVE A GOOD RELATIONSHIP AS FAR AS COMMUNICATION AND CARDS AND THAT SORT OF THING?

A. YES, SIR.

Q. IN FACT, YOU SAID YOU HAD BEEN OVER TO YOUR FATHER'S HOUSE WHEN EITHER JIM WOULD CALL OR YOUR FATHER WOULD CALL HIM?

A. YES, SIR.

Q. YOU WOULD SEE CARDS THAT CAME FROM JIM?

A. YES.

Q. OF COURSE, AS YOUR BROTHER, YOU WOULD RECOGNIZE THAT THEY WERE FROM YOUR BROTHER?

A. YES, SIR.

Q. SO YOUR FATHER WASN'T ANTAGONISTIC TO JIM AFTER HE LEFT AT ALL, WAS HE?

A. NO, SIR.

Q. YOU WEREN'T EITHER?

A. NO.

Q. I AM GOING TO TRY TO SEE IF YOU CAN ANSWER THIS, AND IF YOU CAN'T, YOU CAN TELL ME. GIVEN YOUR RELATIONSHIP AT THAT POINT IN TIME, AT THE TIME OF YOUR FATHER'S DEATH,

DO YOU THINK JIM WOULD TRUST YOU TO DO WHAT WAS RIGHT, TO BE HONEST?

A. I WOULD THINK SO, YES, SIR.

Q. UP UNTIL 2002, WOULD YOU SAY THAT CONTINUED THAT HE WOULD THINK THAT YOU WOULD BE AN HONEST PERSON?

A. YES, SIR.

Q. DID YOU EVER UP UNTIL THAT POINT IN TIME, DID YOU EVER DO ANYTHING FROM YOUR WAY OF THINKING THAT WOULD MAKE YOUR BROTHER, JIM ANASTI, THINK THAT YOU WERE NOT AN HONEST PERSON?

A. NO, SIR.

Q. I KNOW THE ANSWER TO THIS ALREADY, BUT WOULD YOU IN YOUR OWN MIND HAVE EVER DONE ANYTHING TO LEAD YOUR BROTHER TO THINK THAT YOU WERE NOT COMPLETELY HONEST IN DEALING WITH HIM?

A. NO, SIR.

Q. HAVE YOU EVER DONE ANYTHING TO PUT HIM ON NOTICE OR MAKE HIM, TO YOUR WAY OF THINKING, MAKE HIM BELIEVE OR PUT HIM ON NOTICE THAT YOU HAD EVER DONE ANYTHING THAT WAS LESS THAN HONEST AS IT RELATES TO HIM?

A. NO, SIR.

Q. NOW I AM GOING TO FOCUS ON AFTER YOUR FATHER DIED. HE HAD A HOUSE ON PINE STRAW?

A. YES, SIR.

Q. IS THAT CORRECT?

Q. JUST SO THE RECORD WILL BE CLEAR. I KNOW YOU AND I KNOW WHAT WE ARE TALKING ABOUT, BUT WHEN SOMEBODY READS THIS, THEY'LL KNOW WHAT WE ARE TALKING ABOUT. TELL ME WHAT YOU UNDERSTAND TO BE THE PROPERTY, I AM TALKING ABOUT THE REAL PROPERTY ON TWO NOTCH ROAD, WHAT IT IS AND WHAT WE ARE TALKING ABOUT.

A. IT'S A CLUB. MY DAD LEFT IT IN HIS WILL TO ME.

Q. BUT WHAT IS THE TWO NOTCH PROPERTY?

A. IT'S A CLUB.

Q. WHERE IS IT LOCATED?

A. 2325 TWO NOTCH.

Q. PRIOR TO THE TIME OF YOUR FATHER'S DEATH, FOR A LONG TIME, YOUR FATHER AND MOTHER HAD RUN THAT AS THE AMVETS?

A. YES, SIR.

Q. IS THAT CORRECT?

A. YES, SIR.

Q. IT WAS KIND OF A -- THE WORD BAR ISN'T A CORRECT WORD. THAT DOESN'T COME TO MY MIND.

A. I ALWAYS SAY RESTAURANT/LOUNGE. BECAUSE DADDY COOKED IN IT AND STUFF.

Q. YOUR PARENTS COOKED AND THEY HAD A REGULAR GROUP OF PEOPLE THAT---

A. CAME EVERY WEEK.

Q. REGULARS?

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A. I WOULD SAY EARLIER THAN THAT.

Q. IT HAD STARTED GOING DOWNHILL IN THE SEVENTIES?

A. (NODDING.)

Q. THIS HAS NOTHING, I DON'T THINK THIS HAS ANYTHING TO DO WITH ANYTHING, BUT IT HAD GONE FROM THE COMMUNITY HAD BEEN MORE COMPOSED OF CAUCASIANS AND THEN HAD GONE, IT WAS CHANGING TO ALMOST EXCLUSIVELY AFRICAN AMERICAN, IS THAT A FAIR STATEMENT?

A. YES, SIR.

Q. SO SOMETIME IN THE EARLY EIGHTIES, I AM NOT GOING TO TIE YOU TO THE DATE, I THINK IT WAS ABOUT 1980, YOUR FATHER HAD STOPPED OPERATING THE CLUB, PER SE?

A. YES.

Q. AND WHO WAS OPERATING IT THEN?

A. I THINK LANCE TOOK OVER THEN OR MIGHT HAVE BEEN DAVE. BECAUSE I THINK DAVE DIED, FROM WHAT I CAN REMEMBER.

Q. THERE WAS SOMEBODY NAMED DAVE AND SOMEBODY NAMED LANCE GOODWIN, I THINK?

A. NO. THAT'S WILLIS.

Q. WILLIS GOODWIN. WAS IT LANCE WILSON?

A. YES, SIR.

Q. SO LANCE WAS RUNNING THE CLUB SOMETIME TO YOUR KNOWLEDGE AS OF THE 1980'S?

A. PROBABLY. I'M TRYING TO THINK. YES, PROBABLY THE MIDDLE EIGHTIES.

Q. SO YOUR FATHER NEVER RAN THE CLUB AFTER AT LEAST BY THE MID EIGHTIES, CORRECT?

A. YES. HE HAD IT THE BEGINNING OF THE EIGHTIES.

Q. BUT BY THE MID EIGHTIES UP UNTIL THE TIME OF HIS DEATH HE CERTAINLY WAS NOT OPERATING IT?

A. NO, SIR.

Q. AND JIM WAS NOT OPERATING IT?

A. NO, SIR.

Q. PRIOR TO THE TIME OF EITHER LANCE WILSON OR WILLIS OR DAVE TAKING OVER, HAD YOU GONE IN TO THE RESTAURANT/LOUNGE?

A. I DIDN'T WHEN THEY TOOK IT OVER. THAT WASN'T A PLACE FOR ME.

Q. BEFORE THEN?

A. BEFORE THEN?

Q. YES. BUT YOU HAD, CORRECT?

A. OH, YES, SIR.

Q. JIM LIKEWISE, JIM HAD BEEN IN THERE ON A REGULAR BASIS HELPING YOUR FATHER, CORRECT?

A. HE WOULD COME BY.

Q. HE WOULD COME HELP YOUR FATHER, CORRECT, AND YOU WOULD HELP YOUR FATHER ON OCCASION, WOULDN'T YOU?

A. YES, SIR.

Q. SO THE ANSWER TO BOTH OF THOSE WOULD BE YES?

A. YES.

Q. IN THE TWO NOTCH PROPERTY, THE REAL PROPERTY, THE CLUB, THE LOUNGE, RESTAURANT, WAS THERE ANY PERSONALTY IN IT?

A. WHAT DO YOU MEAN?

Q. PERSONAL PROPERTY AS COMPARED TO REAL PROPERTY?

A. LIKE MY---

Q. STUFF. LIKE STUFF.

A. YES. MY DAD'S STUFF STAYED IN THERE. IS THAT WHAT YOU'RE TALKING ABOUT?

Q. YES. WHEN WE'RE TALKING ABOUT STUFF, I AM TALKING ABOUT PERSONAL PROPERTY. DO YOU UNDERSTAND WHAT I MEAN?

A. YOU'RE TALKING ABOUT LIKE THE BAR AND TABLES?

Q. YES.

A. YES.

Q. ANY ITEMS THAT WERE NOT LAND OR PERMANENTLY AFFIXED TO LAND?

A. HE EVEN HAD A PIANO IN THERE AT ONE TIME.

Q. WHAT HAPPENED TO THE PIANO?

A. I HAVE NO CLUE. I DON'T KNOW. I DON'T KNOW.

Q. TELL ME SOME OF THE ITEMS OF PERSONALTY THAT WERE IN THE RESTAURANT/LOUNGE?

A. HE HAD A JUKEBOX. OF COURSE ALL OF YOUR KITCHEN ITEMS.

Q. CHAIRS AND TABLES?

A. YES. CHAIRS AND TABLES. A BANDSTAND.

Q. CABINETS?

A. YES, SIR.

Q. I AM NOT TRYING TO TIE YOU DOWN TO EVERYTHING.

A. NO. I AM JUST TRYING TO---

Q. DID THOSE ITEMS OF PERSONALTY REMAIN ON THE REAL PROPERTY AFTER DAVE TOOK OVER OR LANCE OR WILLIS?

A. YES, SIR.

Q. SO IT WAS JUST LEFT IN THERE AND THEY USED IT?

A. YES, SIR.

Q. TO THE BEST OF YOUR KNOWLEDGE?

A. YES.

Q. SO AFTER YOUR FATHER'S DEATH YOU DIDN'T TAKE ANY ITEMS OF PERSONALTY OUT?

A. NO, SIR.

Q. DIDN'T INVENTORY THOSE, IS THAT CORRECT?

A. YES, SIR. THEY STAYED IN THERE.

Q. WHY NOT?

A. I JUST---

Q. JUST DIDN'T?

A. I JUST DIDN'T DO IT.

Q. ANY REASON WHY YOU DIDN'T?

A. WELL, I DIDN'T KNOW THAT IT WAS SUPPOSED TO HAVE BEEN DONE. THAT WAS HIS PROPERTY. OR LANCE AND THEM WERE LEASING IT, WHATEVER.

(PLAINTIFF'S EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

Q. I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER ONE. I AM GOING TO ASK YOU DO YOU KNOW WHAT THAT IS?

A. IT WAS ANOTHER DEED.

Q. YOU SAY IT'S A DEED?

A. IT SAYS WARRANTY DEED.

Q. IT'S A DEED, CORRECT?

A. YES, SIR.

Q. PLAINTIFF'S NUMBER ONE INDICATES THAT LAURA CORVI IS SELLING THE PIECE OF PROPERTY OR TRANSFERRING, DEEDING OVER A PIECE OF PROPERTY?

A. YES. I MEAN I DON'T KNOW HOW THAT ONE WAS DONE. SO I DON'T KNOW.

Q. LAURA CORVI IS YOUR AUNT?

A. YES, SIR.

Q. WHAT IS THE DATE OF THIS PLAINTIFF'S EXHIBIT NUMBER ONE?

A. IS IT RIGHT HERE (POINTING)?

Q. THAT'S THE FILING DATE. WHAT DATE IS IT FILED?

A. NOVEMBER 17TH OF '78.

Q. SO YOU CAN LOOK AND YOU CAN SEE THAT THIS HAS BEEN FILED IN THE COURT HOUSE?

A. YES, SIR.

Q. YOU CAN LOOK AT THIS, AND LOOKING AT PLAINTIFF'S EXHIBIT NUMBER ONE, YOU CAN SEE THAT THAT IS A DEED FROM LAURA CORVI TO WHOM?

A. JAMES ANASTI, ALBERT AND JAMES ANASTI.

Q. ARE THERE ANY OTHER TERMS THAT ARE SIGNIFICANT THAT YOU SEE THAT ARE ON THERE LIKE JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP?

A. I DON'T KNOW. I CAN'T HALF SEE THAT.

Q. DO YOU WEAR GLASSES?

A. WELL, I HAD THEM AND I LOST THEM.

Q. I WILL HELP YOU. I'LL FLIP THIS THING AROUND AND ASK -- IF YOU CAN, UNDER THE NAME ALBERT ANASTI AND JAMES ANASTI, YOU CAN SEE A PARAGRAPH WHERE IT SAYS RELEASES UNTO SAID, THIS IS FOR THEM, AND READ THE NEXT SENTENCE "FOR AND DURING."

A. THEIR JOINT LIVES AND UPON THE DEATH OF EITHER OF THEM, THEN TO THE SURVIVOR OF THEM, HIS OR HER HEIRS.

Q. FOREVER?

A. I'M SORRY?

Q. FOREVER.

A. (READING.) FOREVER, IN FEE SIMPLE, TOGETHER WITH EVERY CONTINGENT REMAINDER AND RIGHT OF REVERSION, THE FOLLOWING DESCRIBED PROPERTY.

Q. YOU CAN LOOK AT THAT DEED AND IDENTIFY IT AS PLAINTIFF'S EXHIBIT ONE AND SEE THAT IN 1978, THE TWO NOTCH

REAL PROPERTY WAS DEEDED OVER TO ALBERT ANASTI AND JAMES ANASTI AS JOINT TENANTS, IN FEE SIMPLE, WITH RIGHT OF SURVIVORSHIP, CORRECT?

A. YES, SIR.

(PLAINTIFF'S EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

Q. I AM GOING TO SHOW YOU WHAT'S GOING TO BE MARKED AS PLAINTIFF'S TWO. I HAVE SHOWN YOU PLAINTIFF'S TWO. TELL COURT WHAT THAT IS.

A. MY DAD'S DEATH CERTIFICATE.

Q. YOUR FATHER DIED ON OCTOBER 24, 1995, IS THAT CORRECT?

A. YES, SIR.

Q. YOU'RE CERTAIN HE DIED THAT DAY, CORRECT?

A. YES, SIR.

Q. IN FACT, I THINK YOUR AUNT LAURA CORVI AND YOU BASICALLY PLANNED THE FUNERAL, DIDN'T YOU?

A. I PLANNED THE FUNERAL.

Q. DID SHE ASSIST YOU?

A. NO, SIR.

Q. DID ANYBODY ASSIST YOU?

A. NO, SIR.

Q. DID YOU ASK FOR ANY ASSISTANCE?

A. NO. I PRETTY MUCH DID IT MYSELF. DAD'S SISTERS AND THEM CAME DOWN AND THEY HELPED ME DO THE OBITUARY.

Q. WE KNOW THAT YOUR FATHER DIED OCTOBER 24, 1995?

A. YES, SIR.

Q. THERE'S A DEED INDICATING THAT YOUR FATHER AND YOUR BROTHER ARE JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP AND YOU KNOW THAT YOUR FATHER DIED ON OCTOBER 25TH, AND YOU KNOW THAT YOUR BROTHER IS HERE IN THIS ROOM WITH YOU, YOU KNOW YOUR BROTHER SURVIVED YOUR FATHER?

A. YES, SIR.

Q. SO IF YOU LOOK AT THIS DEED, DO YOU KNOW ONE WAY OR THE OTHER, DO YOU KNOW OF ANY DEED WHERE YOUR BROTHER JIM ANASTI RELINQUISHED ANY AND ALL RIGHTS HE HAD OF THE PROPERTY BY WAY OF A DEED TO YOUR FATHER? HAVE YOU EVER SEEN SUCH A DOCUMENT?

A. NO, SIR.

Q. SO IF YOU LOOK AT THIS DEED FROM 1978, AND YOU LOOK AT THIS DEATH CERTIFICATE, YOU KNOW THAT YOUR BROTHER SURVIVED YOUR FATHER?

A. YES, SIR.

Q. SO YOU NOW KNOW THAT YOUR BROTHER, BY VIRTUE OF THIS DEED AND THIS DEATH CERTIFICATE, THE PROPERTY SHOULD RIGHTFULLY BE YOUR BROTHER'S?

MR. MEGNA: OBJECT. YOU'RE ASKING FOR A LEGAL CONCLUSION.

BY MR. TRUSLOW:

Q. GO AHEAD.

HERE IN COLUMBIA THAT I DON'T OWN AT THE CORNER OF MAIN STREET AND GERVAIS. IF I DIDN'T OWN IT AND I PUT IN MY WILL I GIVE IT TO MR. TOM EARLE OVER HERE, WOULD YOU THINK THAT WOULD BE VALID?

A. IF IT'S IN HIS MIND, I WOULD THINK IT WOULD BE.

Q. AND THEN SO MR. EARLE WOULD THEN OWN THE STATE HOUSE? IS THAT WHAT YOUR UNDERSTANDING -- I AM JUST TRYING TO FIGURE OUT WHERE YOU'RE COMING FROM AND YOUR UNDERSTANDING THAT---

A. ALL I KNOW IS MY DAD DID THE WILL AND I PUT IT UP AND HE WILLED THE CLUB TO ME.

Q. YOU REMEMBER WHEN I FIRST STARTED THIS DEPOSITION I WAS ASKING WHETHER YOU INTENDED TO TAKE SOMETHING THAT WASN'T YOURS, AND YOU SAID NO, YOU WEREN'T A THIEF, YOU WEREN'T TRYING TO STEAL, YOU STATED YOU WOULD WANT TO BE HONEST AND WOULDN'T WANT TO TAKE SOMETHING THAT WAS NOT LEGALLY YOURS, CORRECT?

A. EXACTLY.

Q. I AM TRYING TO UNDERSTAND WHERE YOU ARE COMING FROM. IF YOUR FATHER DIDN'T OWN THE PROPERTY---

A. RIGHT.

Q. ---I AM TALKING ABOUT THE REAL PROPERTY.

A. YES, SIR.

Q. IF HE DIDN'T OWN THE REAL PROPERTY AT THE TIME OF HIS DEATH, THEN AT THE TIME OF HIS DEATH, HIS INTEREST IN

THAT PROPERTY WAS EXTINGUISHED, HOW IN YOUR MIND COULD HE HAVE WILLED IT TO YOU IF HE DIDN'T OWN IT AT THE TIME OF THE DEATH?

A. WELL, HE PROBABLY -- I DON'T KNOW. I COULDN'T TELL YOU.

Q. CAN I COUNT ON THAT BEING YOUR FULL ANSWER, THE TRUTH, WHOLE TRUTH AND NOTHING BUT THE TRUTH?

A. YES, SIR.

Q. I NOTICED IN THIS WILL THAT THERE ARE, AS IT RELATES TO, AND I HAVE CIRCLED SOME OF THEM, SO IF YOU WOULD, WHERE IT HAS PARAGRAPH TWO AND THREE, IF YOU CAN READ THESE TWO PARAGRAPHS TO YOURSELF AND I AM GOING TO TALK TO YOU ABOUT THEM.

A. (READING.)

Q. HAVE YOU HAD A CHANCE TO READ THEM?

A. IS THIS WHAT YOU ARE TALKING ABOUT RIGHT HERE (POINTING)?

Q. YES, MA'AM.

A. YES.

Q. HAVE YOU HAD SUFFICIENT TIME TO READ IT CAREFULLY?

A. YES. I THINK SO.

Q. I DON'T WANT TO TRY TO TRICK YOU. I WANT TO MAKE SURE YOU UNDERSTAND BEFORE I ASK QUESTIONS.

A. I THINK DID.

A. YES, SIR. I MEAN, YES, BECAUSE IT REALLY WASN'T THAT MUCH IN THERE BUT A BED.

Q. THAT WAS YOURS AND YOUR HUSBAND'S?

A. YES, SIR.

Q. IT WASN'T YOUR FATHER'S, CORRECT?

A. YES, SIR.

Q. WE CAN GO TO THE NEXT, AND IT SAYS AND THE LOTS "IN" BERKELEY COUNTY, CORRECT?

A. YES, SIR.

Q. DID IT EVER CROSS YOUR MIND UNTIL TODAY THE REASON WHY YOUR FATHER USED THE WORDS PROPERTY "ON" TWO NOTCH ROAD VERSUS RELATING TO PROPERTY "IN" FAIRFIELD COUNTY AND "IN" BERKELEY COUNTY?

A. NO, SIR.

Q. DID YOU NOTICE THAT AT THE TIME WHEN YOU WERE PROBATING THE WILL?

A. NO, SIR.

Q. DID IT EVER COME TO YOUR ATTENTION EVER BEFORE I JUST ASKED THOSE QUESTIONS ABOUT THE CHOICE OF THE WORDS, "IN" VERSUS "ON?"

A. NO, SIR. NEVER PAID IT ANY ATTENTION.

Q. THAT WAS BECAUSE YOU WERE TRYING TO ACT IN GOOD FAITH, CORRECT?

A. I WAS TRYING TO.

Q. BUT IF YOUR FATHER DIDN'T OWN THE LAND AT THE

TIME OF HIS DEATH, AND THE BUILDING, HE COULDN'T WILL AWAY SOMETHING HE DIDN'T OWN, COULD HE?

A. I DON'T GUESS SO.

Q. LET'S GO ON TO SOMETHING ELSE. YOUR FATHER DIED IN, WHAT DID YOU SAY, OCTOBER, OCTOBER 24, 1995?

A. YES.

Q. AND THEN YOU WERE APPOINTED AS A PERSONAL REPRESENTATIVE WHEN, IF YOU RECALL?

A. I DON'T RECALL.

Q. I'M NOT GOING TO MAKE IT HARD ON YOU.

(PLAINTIFF'S EXHIBIT NO. 4 WAS MARKED FOR IDENTIFICATION.)

Q. I AM GOING TO SHOW YOU PLAINTIFF'S EXHIBIT NO. 4. JUST SO THE RECORD WILL BE CLEAR, TELL THE COURT WHEN YOU GOT APPOINTED AS PERSONAL REPRESENTATIVE.

A. NOVEMBER 16TH.

Q. OF WHAT YEAR?

A. NINETY-FIVE.

Q. SO YOU ARE THE PERSONAL REPRESENTATIVE OF YOUR FATHER'S ESTATE AS OF NOVEMBER 1995, CORRECT?

A. YES, SIR.

Q. SO AT THAT TIME YOU WOULD HAVE READ THE WILL, CORRECT?

A. YES.

Q. YOU WOULD HAVE SUBMITTED IT TO PROBATE?

A. YES, SIR.

Q. AND WAS IT ALWAYS YOUR INTENT TO BE HONEST AND COMPLY WITH THE LAW?

A. YES, SIR.

Q. I AM GOING TO ASK YOU WHAT I CONSIDER TO BE AN IMPORTANT QUESTION NOW, SO THINK ABOUT IT CAREFULLY IF YOU WILL. I DON'T THINK IT WILL TAKE YOU LONG. HAS IT EVER BEEN YOUR INTENTION TO DO ANYTHING THAT WAS ILLEGAL IN THE PROBATE OF YOUR FATHER'S ESTATE?

A. NO, SIR.

Q. IF YOU DID ANYTHING THAT WAS INCORRECT OR INACCURATE, WOULD IT HAVE BEEN A SIMPLE ACCIDENT OR MISTAKE?

A. YES, SIR.

Q. WOULD YOU LIKE TO HAVE IT CORRECTED IF YOU DID SOMETHING WRONG?

A. OH, YES.

Q. I APPRECIATE THAT. I DIDN'T THINK IT WOULD TAKE YOU LONG TO ANSWER THE QUESTION, BUT THERE ARE REASONS WHY I WAS ASKING. DID YOU EVER HAVE A LAWYER ASSIST YOU IN THE PROBATE?

A. NO, SIR.

Q. DID YOU EVER HAVE AN ACCOUNTANT ASSIST YOU IN THE PROBATE?

A. MY TAX ACCOUNTANT HELPED ME.

Q. YES.

A. HE SHOULD HAVE.

Q. YOU MAY OR YOU MAY NOT UNDERSTAND THE SIGNIFICANCE OF THIS, BUT DO YOU KNOW HOW IN THE WORLD SOMEBODY CAN PUT THEIR OWN SELF UNDER OATH AND NOTARIZE THEIR OWN SIGNATURE?

A. NO, SIR.

Q. AS PERSONAL REPRESENTATIVE, DID THAT NOT CAUSE YOU ANY CONCERN?

A. EVIDENTLY I DIDN'T READ IT.

Q. IF YOU HAD READ IT, YOU WOULD HAVE KNOWN THAT THAT DEED OF DISTRIBUTION WASN'T NOTARIZED PROPERLY, WOULDN'T YOU?

A. YES, SIR.

Q. AND YOU KNOW NOW THAT IT WASN'T PROPERLY NOTARIZED?

A. BY LOOKING AT THAT, YES.

Q. IT ALSO SAYS IT'S ON THE 25TH, DOESN'T IT? YOU CAN LOOK AT IT AGAIN.

A. YES.

Q. IS THE ANSWER YES?

A. YES.

Q. SO YOU SWORE THAT THIS HAPPENED ON THE 18TH OF OCTOBER, THERE IS A WITNESS NAMED ROBERT JOHNSON THAT SAYS YOU SIGNED IT ON THE 18TH OF OCTOBER BUT JAMES RIMER

MAKE SURE THAT IT WAS DONE RIGHT, IS THAT WHAT YOU ARE TELLING ME?

A. I THOUGHT IT WAS BEING DONE RIGHT.

Q. PARDON ME?

A. I THOUGHT IT WAS BEING DONE RIGHT.

Q. BUT YOU NOW KNOW THAT IT WASN'T, DON'T YOU?

A. WELL, I REALLY DON'T KNOW, BUT I MEAN I STILL HAVE IN MIND THAT IT WAS DONE RIGHT.

Q. HAD YOU SEEN THAT DEED WHEREBY LAURA CORVI DEEDED THE PROPERTY OVER TO YOUR FATHER AND YOUR BROTHER AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AND KNOWING THAT JIM SURVIVED YOUR FATHER YOU WOULD HAVE DONE THINGS DIFFERENTLY, WOULDN'T YOU?

A. OH, YES.

Q. BECAUSE YOU WOULD WANT TO BE HONEST?

A. YES.

Q. AND YOU STILL WANT TO BE HONEST TODAY?

A. YES.

Q. THAT LEADS ME TO THE NEXT QUESTION. HAVING NOW SEEN THE DEED FROM LAURA CORVI TO YOUR BROTHER AND TO YOUR FATHER KNOWING YOUR BROTHER SURVIVED YOUR FATHER AND SAYING THAT YOU WANT TO DO THE HONEST THING EVEN NOW, ISN'T THE PROPERTY JIM'S, THE REAL PROPERTY?

A. I WOULD SAY HALF OF IT IS BECAUSE I STILL THINK MY DAD DEEDED ME THE OTHER PART, HIS PART.

TAXES?

A. HE WAS PAYING THEM, YES, AND THEN, YES, AND THEN MY HUSBAND DID MOST OF THE REPAIRS ON IT.

Q. AFTER YOUR FATHER PASSED, IN 1995, OCTOBER OF 1995, WHO WAS THE PERSON THAT COLLECTED RENT?

A. I DID.

Q. HOW MUCH RENT WERE YOU GETTING?

A. I WANT TO SAY IT WAS $1,200. I THINK THAT IS WHAT IT WAS.

Q. A WEEK, MONTH OR YEAR?

A. A MONTH.

Q. PER MONTH?

A. YES, SIR.

Q. AND AFTER YOUR FATHER PASSED, FROM OCTOBER 24TH, I GUESS WE HAVE BEEN TALKING ABOUT NOVEMBER OF '05 RENT, $1,200 PER MONTH?

A. YES, SIR.

Q. DID IT REMAIN THE SAME?

A. YES, SIR. FOR A WHILE.

Q. FOR HOW LONG DID YOU COLLECT THE RENT?

A. I DON'T KNOW. IT WAS TWO OR THREE YEARS. I THINK. SEEMS LIKE TWO OR THREE YEARS.

Q. DID THEY PAY EVERY MONTH?

A. YES, SIR.

Q. WHAT HAPPENED AFTER TWO OR THREE YEARS?

A. I DECIDED TO SELL IT.

Q. WHAT DID YOU DO?

A. WELL, WE WENT TO LANCE'S LAWYER AND HAD ALL THE PAPERWORK DONE.

Q. SO YOU WERE BASICALLY GETTING $14,400 A YEAR?

A. PRETTY MUCH, YES.

Q. AND WERE YOU DECLARING THAT ON YOUR INCOME TAXES?

A. YES, SIR.

Q. SO I WOULD BE ABLE TO GET YOUR INCOME TAXES AND---

A. YES, SIR.

Q. AND BE ABLE TO CORROBORATE THE ACCURACY OF THAT, CORRECT?

A. YES, SIR.

Q. WHEN YOU SAY INCOME TAX, IT WENT INTO YOUR PERSONAL ACCOUNT?

A. YES.

Q. DIDN'T GO INTO AN ESTATE ACCOUNT?

A. NO.

Q. SO YOU TOOK IT ALL?

A. YES, SIR. AND DID ALL THE UPKEEP AND THE TAXES ON IT.

Q. DO YOU HAVE RECORDS REFLECTING WHAT UPKEEP WAS DONE AND WHAT TAXES WERE PAID?

A. SOME OF IT, I DO, BUT MY HUSBAND DID SOME OF THE

A. NO, SIR.

Q. HAVING LOOKED AT THIS NOW, DOESN'T IT APPEAR THERE WAS NO PROPER DEED OF DISTRIBUTION BY YOU?

A. I MEAN I STILL THINK, YOU KNOW, I STILL THINK THAT, BUT I THINK THE DATE IS ON THERE WRONG. I THINK WILLIS HAD THAT TYPED UP.

Q. BUT WHO IS THE PERSON THAT SIGNED IT UNDER OATH?

A. I DID. I DIDN'T READ IT WELL.

Q. THAT IS NOT JIM ANASTI'S FAULT, IS IT?

A. NO. THAT'S NOT.

Q. IT'S NOT MY FAULT OR YOUR LAWYER'S FAULT?

A. NO, SIR.

Q. IT'S YOUR FAULT?

A. YES, SIR. IT IS.

Q. SO WE GO FROM NOVEMBER OF '95 TO JANUARY OF 2000. THAT WOULD HAVE BEEN HOW MANY YEARS OF RENT?

A. I DON'T KNOW.

Q. NOVEMBER. NINETY-SIX, NINETY-SEVEN, NINETY-EIGHT, NINETY-NINE. AT LEAST FOUR YEARS AND ONE MONTH, IS THAT CORRECT?

A. COULD BE.

Q. WE ARE GOING TO HAVE TO TAKE A BREAK HERE AND SEE IF I AM RIGHT OR NOT. I'M TRYING TO BE POLITE, AND WITH ALL DEFERENCE TO YOU, WE ARE GOING TO HAVE TO PLOW THAT FIELD A LITTLE BIT MORE. YOU SAID YOU GOT RENT OF $1,200 A

MONTH UP UNTIL THE TIME IT WAS SOLD, AND I AM JUST COUNTING ON MY FINGERS.

A. YES, SIR.

Q. BY YEARS, NOVEMBER '96, NOVEMBER '97, NOVEMBER '98, NOVEMBER '99, AND THEN DECEMBER WOULD BE ONE MORE MONTH, SO FOUR YEARS AND ONE MONTH OF PAYMENTS THAT YOU GOT?

A. SOMEWHERE AROUND THERE.

Q. THAT IS CORRECT, ISN'T IT, FOUR YEARS AND ONE MONTH?

A. IT SHOULD BE SOMEWHERE AROUND THERE.

Q. DURING THOSE FOUR YEARS AND ONE MONTH, GINA LEE RECEIVED $58,800 IN RENT?

A. IT COULD BE SOMEWHERE AROUND THERE.

Q. IF YOU WRONGFULLY GOT RENT THAT YOU WEREN'T ENTITLED TO, AND LISTENING TO WHAT YOU HAVE SAID ABOUT WANTING TO DO THE RIGHT THING ALWAYS, IF YOU ARE INCORRECT IN THIS CASE, AND JIM IS CORRECT, YOU OWE HIM $58,800 PLUS INTEREST, CORRECT?

A. YES, SIR.

Q. I AM GOING ON TO SOMETHING ELSE FOR A MOMENT AND THEN WE'LL DEAL WITH IT. THIS IS UNPLEASANT. DO YOU NEED TO TAKE A BREAK OR ARE YOU OKAY?

A. I HAVE TO GO TO THE BATHROOM.

(BREAK AT 10:35 A.M.)

STILL THERE?

A. YES, SIR.

Q. YOU'RE STILL PAYING TAXES ON IT?

A. YES, SIR.

Q. DO YOU HAVE ANY SAVINGS?

A. NO, SIR.

Q. DO YOU HAVE ANY INVESTMENTS?

A. NO.

Q. IF THE COURT DETERMINED THAT YOU OWED JIM ANASTI $58,800 PLUS INTEREST, HOW ARE YOU GOING TO PAY THAT?

A. I DON'T KNOW.

Q. YOU DON'T HAVE ANY MONEY?

A. NO. I JUST LIVE DAY TO DAY.

Q. THAT IS WHAT I WAS GOING TO ASK. I DIDN'T KNOW HOW TO POLITELY ASK IT. THAT IS THE WAY A LOT OF PEOPLE LIVE AND HOPE FOR A BETTER DAY TOMORROW.

A. YES.

Q. WHAT YOU ARE TELLING ME IS IF WE GOT A $58,000 VERDICT YOU JUST DON'T HAVE ANY MONEY TO PAY IT?

A. NO, SIR.

Q. IF IN FACT THIS $58,800 THAT YOU COLLECTED IN RENT WAS, IN FACT, OWED TO THE LEGAL ENTITLEMENT OF JIM, IS IT YOUR TESTIMONY THAT YOU JUST SPENT IT?

A. NO. I PAID BILLS WITH IT.

Q. YOU SPENT IT?

A. WELL YES, I GUESS YOU HAVE TO SPEND TO PAY BILLS.

Q. BUT IF IT WASN'T YOURS, YOU WOULDN'T WANT TO TAKE MONEY THAT DIDN'T BELONG TO YOU, IS THAT CORRECT?

A. CORRECT.

Q. YOU WOULD WANT TO PAY HIM BACK IF YOU COULD?

A. OH, YES.

Q. YOU JUST CAN'T?

A. RIGHT.

Q. NOT THAT YOU DON'T WANT TO, YOU JUST CAN'T. YOU DON'T HAVE THE MONEY?

A. RIGHT.

Q. IN 2002, THE HIGHWAY DEPARTMENT BROUGHT A LEGAL ACTION, DO YOU RECALL THAT?

A. YES, SIR. THAT'S WHEN THEY PULLED UP THE OTHER DEED.

Q. THE OTHER DEED, WE ARE TALKING ABOUT---

A. JIM'S. JIM'S DEED.

Q. PLAINTIFF'S EXHIBIT NUMBER ONE, CORRECT?

A. YES, SIR.

Q. I AM JUST TRYING TO GET THIS TIME LINE BACK.

A. YES.

Q. YOU DID A DEED OF DISTRIBUTION THAT WAS FILED SOMETIME IN NOVEMBER OF '06, CORRECT?

A. I THINK SO.

Q. YOU CAN LOOK ON EXHIBIT SIX AND SEE, I THINK.

DID I SAY 2006? I MEANT 1996. I APOLOGIZE. YOU CAN SEE WHEN THIS WAS FILED. I HAD THE WRONG EXHIBIT. IT WAS EXHIBIT FIVE. YOU CAN LOOK UP HERE AND YOU CAN SEE THAT THIS DEED OF DISTRIBUTION WAS FILED ON NOVEMBER 7?

A. I THINK SO, YES.

Q. AND WE DON'T KNOW WHEN YOU ACTUALLY SIGNED THIS BUT MAYBE AS EARLY AS OCTOBER OF 1996, BUT FILED IN NOVEMBER OF 1996?

A. YES, SIR.

Q. AND THEN YOU SOLD IT IN JANUARY OF THE YEAR 2000, CORRECT?

A. I THINK THAT WAS THE YEAR.

Q. YOU CAN LOOK AT EXHIBIT SEVEN AND SEE THAT. LOOK ON THE THIRD PAGE AND SEE NOVEMBER 6, 2000.

A. YES, SIR.

Q. SO AFTER NOVEMBER 6, 2000, YOU DIDN'T OWN IT ANYMORE?

A. NO, SIR.

Q. THE ONLY WAY YOU COULD EVER REACQUIRE PROPERTY WOULD BE BY WAY OF FORECLOSING ON A -- I THINK THAT MIGHT BE THE RIGHT WORD, FORECLOSE ON A DEBT THAT YOU MIGHT BE OWED IF, IN FACT, IT WAS OWED TO YOU, CORRECT?

A. YES, SIR.

Q. YOU HAD RELINQUISHED, SOLD COMPLETELY YOUR INTEREST IN THIS PROPERTY AS OF JANUARY 6, 2000?

A. YES, SIR.

Q. I HAVE NOTICED AND YOU MIGHT KNOW THIS AND YOU MIGHT NOT KNOW IT, BUT DO YOU KNOW WHAT ADVERSE POSSESSION IS?

A. I HAVE HEARD OF IT, YES.

Q. DO YOU KNOW WHAT IT MEANS?

A. SOMETHING LIKE PROPERTY THAT'S RIGHTFULLY YOURS GOES BACK TO YOU.

Q. YOU DIDN'T OWN THIS PROPERTY FOR TEN YEARS, DID YOU, BECAUSE YOU SOLD IT IN 2000?

A. YES.

Q. SO AT THE MOST YOU OWNED IT ABOUT FOUR YEARS AND A COUPLE OF MONTHS?

A. YES, SIR.

Q. AS OF THE YEAR 2002, YOU ARE AWARE THAT THE HIGHWAY DEPARTMENT ASSERTED THAT THERE WERE ISSUES RELATING TO THE OWNERSHIP, CORRECT?

A. YES, SIR.

Q. IS THAT THE FIRST TIME YOU WERE AWARE THAT THERE MIGHT HAVE BEEN A PROBLEM?

A. YES, SIR.

Q. IN ADDITION TO THAT, THOSE PAYMENTS OF $58,800, AFTER THE DATE OF SALE, WERE PAYMENTS MADE TO YOU AFTER THAT IN RELIANCE ON THE SALE OF THE PROPERTY?

A. YES.

Q. FOR HOW MANY YEARS WERE THEY PAID TO YOU? WAS IT FROM 2000 TO---

A. I THINK 2002.

Q. WHEN THE ISSUE CAME UP ABOUT WHO WAS THE RIGHTFUL OWNER OF THE PROPERTY, LANCE AND/OR DAVE OR WHOEVER, OR WILLIS STOPPED PAYING, CORRECT?

A. YES, SIR.

Q. SO IN ADDITION TO $58,800, YOU ALSO GOT WHAT PURPORTED TO BE MORTGAGE PAYMENTS OF $1,519.02?

A. YES, SIR.

Q. SO YOU GOT THOSE FOR AT LEAST---

A. TWO YEARS.

Q. DID YOU GET ANY OTHER MONEY?

A. I GOT A DOWN PAYMENT ON IT.

Q. HOW MUCH?

A. I THINK IT WAS TWENTY-FIVE. TWENTY-FIVE OR THIRTY-FIVE THOUSAND.

Q. YOU GOT AT LEAST TWO YEARS OF PAYMENTS AT MORE THAN FIFTEEN HUNDRED A MONTH?

A. YES, SIR.

Q. SO THAT COMES OUT, THAT WOULD BE ABOUT THIRTY-SIX THOUSAND DOLLARS?

A. YES, SIR.

Q. AND IN ADDITION TO THAT YOU GOT THE TWENTY-FIVE THOUSAND DOWN PAYMENT, AT LEAST TWENTY-FIVE THOUSAND?

A. YES.

Q. SO WE ARE UP TO $61,000, AND IF YOU ARE NOT CORRECT IN THIS CASE WE HAVE GOT $61,000 PLUS INTEREST PLUS $58,800 PLUS INTEREST, CORRECT?

A. YES, SIR.

Q. AND YOU DON'T HAVE THE ABILITY TO PAY IT?

A. NO, SIR.

Q. BUT IF YOU OWED IT, YOU WOULD WANT TO PAY IT?

A. SIR?

Q. IF YOU GOT MONEY WRONGFULLY, YOU WOULD WANT JIM TO BE REPAID?

A. YES, SIR.

Q. YOU JUST CAN'T PAY HIM BACK?

A. YES.

Q. HAVE YOU EVER CALLED HIM AND WRITTEN HIM AND TOLD HIM THAT YOU WERE SORRY?

A. NO, SIR. BECAUSE I DIDN'T KNOW THAT -- I DIDN'T EVEN KNOW WHERE HE WAS AT.

Q. I DON'T KNOW WHETHER IT HAS OR HASN'T, BUT HAS THIS DEPOSITION BEEN AN EYE OPENER FOR YOU ABOUT WHAT HAPPENED?

A. YES.

Q. TELL ME WHY YOU FEEL THAT WAY. I KNOW THE ANSWER, BUT GO AHEAD.

A. I WOULD GO ABOUT IT DIFFERENTLY.

A. LACHES?

Q. YOU HAVE ALLEGED THAT ALL CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES, L-A-C-H-E-S. DO YOU KNOW WHAT THAT MEANS?

A. NO, SIR.

Q. DO YOU KNOW WHAT FACTS YOU RELY ON?

A. NO.

Q. DO YOU RELY ON ANY FACTS IN ASSERTING THAT?

A. NO.

Q. SAME FOR ESTOPPEL?

A. I DON'T KNOW WHAT YOU MEAN.

Q. TELL ME WHAT YOU DON'T UNDERSTAND AND I WILL TRY TO CLEAR IT UP.

A. I DON'T KNOW WHAT YOU ARE GETTING AT. I DON'T KNOW WHAT THESE WORDS ARE.

Q. YOU ARE THE ONE THAT ASSERTED THEM AND FILED AN ANSWER WITH THE COURT, SO I'M TRYING TO FIND OUT WHAT YOU MEANT. YOU HAVE VOUCHED THAT THIS IS CORRECT AND I WANT TO KNOW WHAT FACTS YOU ARE RELYING ON. IF YOU SAY YOU ARE NOT RELYING ON ANYTHING, THAT'S OKAY.

A. I GUESS THIS RIGHT HERE. THE DEEDS AND STUFF. THE DEEDS OF DISTRIBUTION.

Q. SO WHAT YOUR WHOLE CASE WOULD BE BASED ON IS THE DEED OF DISTRIBUTION?

A. AND THE WILL.

Q. AND THE WILL?

A. AND THE WILL.

Q. AND THAT'S IT?

A. AND MY DAD, WHAT MY DAD TOLD ME. I MEAN, BUT THAT'S NOT RECORDED.

Q. DID WE CALL IT DAVE'S PLACE AFTER THE EIGHTIES?

A. YES.

Q. IN MY MIND, BECAUSE I AM OLDER THAN YOU ARE, IT WAS ALWAYS AMVETS FOR US.

A. AMVETS.

Q. BUT THEN IT BECAME DAVE'S IN THE EIGHTIES THAT WE TALKED ABOUT?

A. YES.

Q. BEFORE, WHEN IT WAS AMVETS, TO YOUR KNOWLEDGE WAS JIM EVER BARRED, PROHIBITED FROM GOING ON THE PROPERTY OF THE AMVETS?

A. NO, SIR.

Q. SO HE WAS NEVER OUSTED FROM THE PROPERTY?

A. NO, SIR.

Q. NEVER PROHIBITED FROM GOING THERE?

A. NO.

Q. AFTER IT BECAME DAVE'S AND KIND OF THE DEMOGRAPHICS CHANGED YOU JUST CLOSE NOT TO GO THERE, CORRECT?

A. YES, SIR.

Q. BUT YOU COULD HAVE GONE THERE IF YOU HAD CHOSEN?

A. YES. BUT IT WASN'T A PLACE FOR ME TO GO.

Q. I UNDERSTAND WITH RESPECT TO WHAT YOU'RE SAYING FOR A LADY TO GO YOU WOULDN'T HAVE FELT UNCOMFORTABLE GOING IN THERE ALONE, WOULD YOU?

A. NO. NOT IN THERE.

Q. TO YOUR KNOWLEDGE AFTER IT BECAME DAVE'S WAS JIM EVER OUSTED OR PROHIBITED FROM GOING IN THERE?

A. NOT THAT I KNOW OF.

Q. I THINK YOU HAVE ALREADY TOLD ME THAT YOUR FATHER AND YOUR BROTHER ENJOYED A VERY GOOD RELATIONSHIP UP UNTIL THE TIME HE DIED TO THE BEST OF YOUR KNOWLEDGE?

A. YES.

Q. SO HE NEVER FORBADE JIM FROM COMING ABOUT THE PROPERTY OR GOING ON THERE OR DOING ANYTHING ELSE?

A. NO.

Q. YOU HAVE ALLEGED IN YOUR ANSWER THAT, I THINK YOU HAVE ALREADY ANSWERED ALL MY QUESTIONS I NEED FOR THIS, BUT IN YOUR EIGHTH DEFENSE YOU HAVE SAID THAT JIM WAS OUSTED FROM THE PROPERTY.

A. NO.

Q. IF I CAN, I WILL SHOW YOU, I KNOW YOU DON'T BELIEVE ME WHEN I SAY IT, BUT THIS IS WHAT YOU SAID. IF YOU WILL LOOK AT PARAGRAPH EIGHT, THE EIGHTH DEFENSE, ALL CLAIMS ARE -- (READING.) HOWEVER, TO FIND AGAINST LEE ARE

BARRED BY THE DOCUMENT OF THE OUSTER.

IS THERE ANYTHING THAT YOU CAN TELL ME THAT INDICATES THAT JIM WAS BARRED FROM THE PROPERTY, PROHIBITED FROM COMING TO THE PROPERTY, KICKED OFF THE PROPERTY?

A. NO.

Q. NOT ALLOWED TO BENEFIT IN ANY WAY WHATSOEVER?

A. NO, SIR.

Q. YOU MIGHT THINK I'M SKIPPING AROUND, BUT I'M NOT, BECAUSE LAWYERS ALWAYS KNOW WHAT QUESTIONS THEY ARE GOING TO ASK IN LINE, OR THEY SHOULD. YOU HAD HAD A DISCUSSION AT SOME POINT IN TIME WITH YOUR FATHER ABOUT AN ATTORNEY NAMED JOHN DELGADO?

A. YES, SIR.

Q. JOHN DELGADO IS A WELL-KNOWN CRIMINAL DEFENSE ATTORNEY?

A. YES, SIR.

Q. WAS IT YOUR UNDERSTANDING THAT JOHN DELGADO WAS EMPLOYED BY YOUR FATHER ON JIM'S BEHALF?

A. YES, SIR.

Q. YOUR FATHER PAID FOR THE LEGAL FEES?

A. THAT I KNOW OF, YES.

Q. AND YOU WERE ABLE TO LOOK THROUGH THE FINANCIAL RECORDS AND SEE, IN FACT, HE HAD PAID MR. DELGADO?

A. I THINK IT WAS BY A LETTER THAT JIM WROTE.

Q. BUT I WASN'T ASKING ABOUT THAT. I WAS ASKING

THAT YOUR FATHER USED PROCEEDS TO PAY FOR AN ATTORNEY FOR JIM?

A. AS FAR AS I KNOW.

Q. I HOPE YOU HAVE NEVER HAD TO EMPLOY AN ATTORNEY FOR A CRIMINAL CASE, BUT YOU UNDERSTAND IT CAN BE VERY, VERY EXPENSIVE?

A. YES, SIR.

Q. DO YOU KNOW HOW MUCH YOUR FATHER PAID MR. DELGADO ON JIM'S BEHALF?

A. NO, SIR.

Q. WAS IT YOUR UNDERSTANDING THOUGH THAT IT WAS SUBSTANTIAL, OR DO YOU HAVE ANY KNOWLEDGE?

A. I DON'T KNOW.

Q. IN YOUR NINTH DEFENSE, AND I AM READING HERE AGAIN, THAT YOU WERE CERTAIN THAT JIM DOESN'T HAVE A CLAIM AGAINST YOU OR THIS PROPERTY BECAUSE THERE IS A PRESUMPTION OF GRANT. I AM READING THE EXACT WORDS THAT YOU ALLEGED IN PARAGRAPH TEN. WHAT IN THE WORLD DOES THAT MEAN?

A. I HAVE NO CLUE.

Q. DO YOU KNOW WHAT FACTS YOU RELY ON, IF ANY?

A. NO.

Q. ARE THERE ANY FACTS TO YOUR KNOWLEDGE TO SUPPORT SUCH A CLAIM?

A. EXCEPT THE DEED AND THE WILL.

Q. IF YOU RECALL, I ASKED YOU SEVERAL TIMES HOW

SOMEBODY COULD WILL AWAY PROPERTY THEY DIDN'T OWN AT THE TIME OF DEATH?

A. YES, SIR.

Q. DO YOU RECALL ME ASKING YOU THAT?

A. YES, SIR.

Q. AND IN FACT, I WAS ASKING YOU IF I WANTED TO, IN A WILL, I WANTED TO DEED AWAY TO MR. EARLE THE STATE HOUSE THAT I DIDN'T OWN, IT COULDN'T BE DONE, COULD IT?

A. I DON'T GUESS SO.

Q. YOU CAN'T WILL AWAY SOMETHING YOU DON'T KNOW DON'T OWN, CAN YOU?

A. EXACTLY.

Q. TO WRAP UP EVERYTHING AND MOVE ON TO ANOTHER POINT, YOU ARE NOW AWARE THAT TO THE EXTENT IF, IN FACT, YOUR FATHER WAS INTENDING TO WILL YOU REAL PROPERTY ON TWO NOTCH ROAD AS COMPARED TO PERSONAL PROPERTY, YOU NOW KNOW THAT HE DIDN'T OWN IT AT THE TIME OF HIS DEATH?

A. WELL, I STILL THINK HE WOULD OWN A PART OF IT.

Q. HOW WOULD HE OWN IT AFTER HE WAS DEAD GIVEN THE WILL FROM LAURA CORVI WHERE IT WAS JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP?

A. I GUESS THAT'S LIKE A PIECE OF PROPERTY THAT YOU WOULD HAVE AND DIDN'T WILL IT TO ANYBODY AND YOU DIED. IT SHOULD EVENTUALLY GO TO SOMEBODY.

Q. SPECULATION?

A. YES.

Q. AGAIN, YOU CHOSE NOT TO GET AN ATTORNEY TO ADVISE YOU ABOUT ANY OF THAT?

A. NO, SIR.

MR. TRUSLOW: NOW IS THE TIME FOR US TO TAKE A BREAK AND POW-WOW. I HOPE I HAVE BEEN PRETTY ORGANIZED, BUT WE ARE GOING TO TAKE A BREAK AND TALK ABOUT IF THERE ARE ANY OTHER QUESTIONS WE NEED TO ASK AND WE OUGHT TO BE DONE.

(BREAK AT 11 A.M.)

(BACK ON THE RECORD.)

BY MR. TRUSLOW:

Q. WE'RE ABOUT DONE. IT WASN'T AS BAD AS YOU EXPECTED, WAS IT?

A. NO, SIR.

Q. A COUPLE OF THINGS JUST TO CLEAN UP. SEE IF THIS REFRESHES YOUR MEMORY. IS IT CORRECT THAT THE DOWN PAYMENT THAT WAS PAID TO YOU PURPORTEDLY FOR THE SALE OF THE TWO NOTCH ROAD REAL ESTATE WHETHER YOU GOT $50,000 RATHER THAN $25,000?

A. I DON'T THINK IT WAS FIFTY. I THINK IT WAS EITHER TWENTY-FIVE OR THIRTY-FIVE.

Q. A COUPLE OF OTHER THINGS AND WE'LL CLEAN UP AND WE'LL BE DONE. BECAUSE WE ALWAYS HAVE TO ASK THIS, TELL ME WHAT YOU ALL TALKED ABOUT OUTSIDE.

A. THAT I WAS DOING A GOOD JOB.

Q. WHAT ELSE? DID YOU DISCUSS ANY QUESTIONS THAT MIGHT BE ASKED?

MR. MEGNA: JUST TELL HIM THE TRUTH. IT'S NO BIG DEAL.

A. ABOUT THE DEED, THE DATE ON THAT. THAT THE DATE WAS NO GOOD. I ASKED HIM ABOUT THAT.

MR. MEGNA: I WILL ASK SOME QUESTIONS, TOO.

BY MR. TRUSLOW:

Q. SO WHAT WAS ASKED, WHAT DID HE SAY, WHAT DID YOU SAY?

A. ABOUT THE DEED, THE DATE ON IT THAT WASN'T ANY GOOD.

Q. WHAT DID HE SAY AND WHAT DID YOU SAY?

A. THAT THE DEED JUST IS NO GOOD.

Q. HE TOLD YOU THE DEED IS NO GOOD?

A. WE WERE TALKING ABOUT THE DATES ON IT.

Q. WHAT DID HE SAY AND WHAT DID YOU SAY?

A. THAT WAS ABOUT IT.

Q. DID HE SAY THE DEED WAS NO GOOD OR DID YOU SAY THE DEED WAS NO GOOD OR DID HE SAY WHAT HAPPENED?

A. I DON'T KNOW.

Q. GO AHEAD.

A. AND WHAT IS ADVERSE POSSESSION.

MR. MEGNA: JUST TELL HIM I ASKED ABOUT -- I'LL

A. YES, SIR.

Q. I DON'T WANT TO PUT WORDS IN YOUR MOUTH. I'M JUST TRYING TO CUT TO THE CHASE. IS IT YOUR POSITION THAT IF THERE WAS AN ERROR IT WAS A GOOD FAITH ERROR AND PART OF IT WAS PRECIPITATED BY THE LAWYER IN NOT DOING A PROPER TITLE SEARCH?

A. YES, SIR.

Q. YOU STILL FEEL THAT WAY, DON'T YOU?

A. YES, SIR.

Q. FOR WHAT IT'S WORTH, I DON'T KNOW HOW THEY DID IT.

A. I DON'T KNOW.

Q. DO YOU KNOW HOW IN THE WORLD -- I AM NOT ASKING YOU WHAT YOU DISCUSSED WITH YOUR ATTORNEY, I RESPECT THAT, BUT CAN YOU FIGURE OUT HOW IN THE WORLD THE ATTORNEY MISSED JIM'S TITLE?

A. I HAVE NO CLUE.

Q. WE ARE ABOUT DONE. IS THERE ANYTHING THAT YOU CAN THINK OF THAT IS IMPORTANT TO THIS CASE? DO YOU REMEMBER WHEN YOU PROMISED UNDER OATH TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP ME GOD?

A. YES.

Q. IS THERE ANYTHING AT ALL THAT YOU CAN THINK OF THAT YOU WOULD LIKE TO ADD?

A. I JUST WANT TO DO EVERYTHING THE RIGHT WAY.

BEFORE IT WOULD HAVE GOTTEN THIS FAR. BUT OTHER THAN THAT, I DON'T KNOW WHY THE LAWYERS DIDN'T DO THE TITLE SEARCH SO IT WOULDN'T HAVE GOTTEN THIS FAR.

Q. IF THEY HAD DONE A PROPER TITLE SEARCH WE WOULDN'T BE HERE, RIGHT?

A. RIGHT.

Q. YOU WOULDN'T HAVE INCURRED THE LEGAL FEES YOU'RE INCURRING?

A. RIGHT.

Q. IF, WHEN THEY HAD DONE THE TITLE SEARCH, I GUESS BACK IN THE YEAR 2000, IF THEY HAD FOUND ALL OF THIS, YOU WOULD HAVE MADE IT RIGHT AT THAT TIME, WOULDN'T YOU?

A. YES, SIR.

Q. YOU WOULDN'T HAVE SOLD THE PROPERTY IF YOU HAD KNOWN ABOUT JIM'S TITLE, WOULD YOU?

A. NO, SIR.

MR. TRUSLOW: THAT'S ALL I HAVE. THANK YOU. I APPRECIATE YOU BEING HERE AND I KNOW IT'S NEVER PLEASANT. KIND OF LIKE WHEN YOU GO TO THE DOCTOR, THE DOCTOR DOES IT FOR A LIVING, AND YOU ARE HURTING.

WITNESS: YES.

MR. TRUSLOW: WE UNDERSTAND THAT. THANK YOU.

EXAMINATION

BY MR. EARLE:

Q. I HAVE JUST ONE QUESTION. ON THE CLOSING OF THE TRANSACTION YOU RECEIVED $36,964.31?

A. OKAY. I SAID IT WAS TWENTY-FIVE OR THIRTY-FIVE.

Q. AT THE CLOSING. AND YOU ALSO HAD SETTLEMENT CHARGES OF $7,995.04. SO YOU RECEIVED A NOTE AND MORTGAGE FOR $127,000 EVEN MONEY?

A. NO. I DIDN'T GET THAT EVEN MONEY.

Q. PROMISSORY NOTE?

A. NO. I MEAN I ONLY GOT -- I HAD THAT NUMBER IN MY SAVINGS ACCOUNT BOOK.

Q. I MEAN THE PROMISSORY NOTE. THE MORTGAGE HE GAVE YOU WAS FOR $127,000?

A. OH, OKAY, YES.

Q. SO YOU NETTED $36,964.31 PLUS YOU HAD EXPENSES OF $7,995.04. THAT WAS ABOUT $45,000 THERE AND IT WAS $5,000 EARNEST MONEY THAT WAS FLOATING IN THE TRANSACTION, SO IN GENERAL TERMS, YOU HAD $127,000 PLUS ROUGHLY $50,000, YOU PRICED IT AT $177,000?

A. YES. THAT WAS THE WHOLE PRICE, YES.

MR. EARLE: THAT'S ALL I HAVE.

RE-EXAMINATION

BY MR. TRUSLOW:

Q. USING THOSE FIGURES IN ROUGH TERMS, IF YOU ARE

INCORRECT IN THIS CASE AND IN FACT THE PROPERTY BELONGS TO JIM, YOU OWE HIM SOMEWHERE $131,700 PLUS, PLUS INTEREST, AND YOU DON'T HAVE THE ABILITY TO PAY IT, DO YOU?

A. NO, SIR.

Q. BUT THAT'S WHAT YOU WOULD OWE HIM, IN EXCESS OF $131,000, IS THAT CORRECT?

A. IT SHOULD BE AROUND THAT, IF, IF IT TURNS OUT TO BE ALL HERE.

MR. TRUSLOW: THAT'S ALL.

(AT 11 A.M., THE DEPOSITION WAS CONCLUDED.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS

James Anasti,
PLAINTIFF
VS.

Lance Wilson, Willis Goodwin, Gina Anasti Lee, and the Richland County Clerk of Court,
DEFENDANTS.

TRANSCRIPT OF RECORD
CASE 2007-CP-40-0576

July 22, 2014
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

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

DOUGLAS N. TRUSLOW, ESQ.
ATTORNEY FOR THE PLAINTIFF

JAMES MIXON GRIFFIN, ESQ.
A. CAMDEN LEWIS, ESQ.
ATTORNEY FOR THE DEFENDANT

WENDY WISE DERRICK
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were presented.

MR. TRUSLOW: Good afternoon your Honor. I'm Doug Truslow. I'm representing the plaintiff in this case James Anasti.

THE COURT: Okay. All right.

And then, Mr. Griffin.

MR. GRIFFIN: Yes. Jim Griffin, Your Honor. And we're here on behalf of what I believe would be the respondents, Tony R. Megna, Ben Matthews and Matthews L.L.C. Although I'm not sure Mr. Truslow is actually seeking sanctions against Ben Matthews -- I'll let him clear that up -- or the law firm. But we're here on behalf of all three.

THE COURT: You with him, Mr. Lewis? With Mr. Griffin today?

MR. LEWIS: Yes, sir.

THE COURT: Very good that's A. Camden Lewis with Jim Griffin.

Okay. And, Mr. Truslow, this is your motion?

MR. TRUSLOW: Yes, sir.

THE COURT: Okay. Happy to hear from you.

MR. TRUSLOW: Your Honor, first of all, I would note that my friend Mr. Griffin and Mr. Lewis, to their credit, have taken on many challenging cases in the past, and this is yet another one. Both of them have been very courteous. They've been good or

always a pleasure to deal with, but the case is not about them. It's about the conduct of their client.

Your Honor, first as a matter of housekeeping, by consent, we've agreed to submit this case based on our memorandum and exhibits and what's in the record, which is voluminous, almost the size of a chair. It's quite large case. This would be supplemented by oral arguments if opposing counsel wanted to make them.

Your Honor, we would note that Mr. Wilson and Goodwin are no longer involved. Mr. Earl's not involved. Ms. Zmroczek was representing Mr. Megna. She hasn't sought to be relieved, but I understand she's no longer involved on behalf of Mr. Megna. Mr. Harpootlian is no longer involved on behalf of Mr. Megna either. He had an order relieving him as counsel. So we have Mr. Griffin. We have two fine lawyers on the other side. Again, this case is not about them it's about reprehensible conduct by Mr. Megna.

Your Honor, I know you have a lot to review in this case. And it may be extraordinary difficult to make a decision today. I'm sure you'll want to look at everything in context and mull over it and make an appropriate decision.

We take this very seriously. We feel that Mr. Megna has engaged in very, very, very bad conduct. You've got the orders of Judge Manning where Mr. Megna was -- on more than one occasion -- was found on multiple occasions to have been untruthful. You have Judge Baxley's order in which he says the conduct and sanctioning Mr. Megna in something unrelated to this. That in his experience as a skilled trial judge Mr. Megna's conduct was unprecedented for him. It was that bad. You have the bankruptcy court indicating why Mr. Megna had done what he had done, which was to avoid the whole reasons why we're here. You have judge -- at the time of summary judgment -- and contrary to what Mr. Megna has argued, he claims, Your Honor, that he survived summary judgment. He did not. He did not. I stress that time and time again. He did not. In fact, he attempted to appeal, although he was out of time.

Your Honor, when this case started it was a very -- it should have been a very simple straightforward case but for the conduct of Mr. Megna. Judge Kinard found against him in the companion case. Judge Cooper found against him in the claims -- all the claims he's made. And you

have the orders before you. He's -- every claim that he's made has been rejected. Probably the most egregious one is that he claims he survived summary judgment when he did not. Judge Kinard granted summary judgment in favor of my client. At the time of the arguments, Mr. Megna made -- and you have the transcript before you -- made -- I could use stronger words -- but made specious arguments. He was admonished by Judge Kinard to stop making undue attacks. Stop talking out of four sides of his mouth. He was given, what we call in federal court, I think it's called a safe harbor when you find that you said things that were untrue and that you know or later knew that they weren't true, you have an opportunity to withdraw them. And Mr. Megna, in this case, what he did was worse and worse and worse. It's been escalating pattern of misconduct, and it's as bad as you'll ever see.

You've got affidavits that are unrefuted. You've got affidavit by Mrs. Ballard. You've got my affidavit. You've got the other ones that are all of record as to what happened and why.

I know you're fresh to this case, Your Honor. If you wish, I could go through some of the background and tell you how we got here and why. I

think it's important.

Your Honor, James Anasti has a sister. Her name is Gina. Their father was Mr. Anasti. During his lifetime there was a deed done by which they became joint owners with right of survivorship. We learned about that in our first semester of law school. It was they owned the property as joint tenants with right of survivorship. Upon Mr. Anasti's death, Albert Anasti's death, his son would own the property automatically. It seems like that's simple straightforward law. What happened in this case, however, is that my client was living in Europe at the time his father died. His sister apparently in good faith, bad faith -- it really doesn't matter -- did a deed of distribution to herself, and then held the property for about three years and rented it. Kept the money. Submitted some moneys to my client but ultimately sold the property. Didn't disclose that to my client. She sold the property for $177,000. What she did was take a -- got a $50,000 down payment and then did what we call tenant note. Kind of owner financing if you will. After that, the purchasers found out that she didn't own the property that she'd sold. The reason that they found that out was because the

highway department was condemning some property on Two Notch Road as it was being improved, and the highway department alerted them to the fact. So they sought -- they brought a lawsuit against Gina Lee for selling property that she didn't own. She put forward some -- really not of concern to me -- but she put forth -- not directly of concern -- she put forth some specious defenses in that case. I was not involved. My client was not involved. You can see that Mr. Megna said that my client was a necessary party but then later withdrew that after claiming that he was necessary and should be joined.

Your Honor, that case languished. My client was not required to do anything. In fact, I wasn't representing him. At the time Mr. Mann, Mr. James Mann, was representing him. They were getting, after this case languished for years -- I think three -- they were closing down their shop and asked me to take the case over. So I looked at it, and I could see that this case was going nowhere. So, we brought a lawsuit. Didn't hear from Gina Lee. Didn't hear from Mr. Megna. Finally, I get -- I thought it was to be a simple matter in which sister would admit she made a mistake. She sold property she didn't own. My client could take her place.

They could work out whatever they could work out between brother and sister. What I got in response from Mr. Megna -- and you have the affidavit before you -- he said -- words that were stronger than this and excuse me for using these words. This is what he said. He said, your client's a fagot. He'll get nothing. I can drag this case on forever. I can break him or words to that effect. And I'll tell you my thought process at the time was this is not going well. It's not going -- be understatement -- it wasn't going the way I expected, especially when you have a deed of this nature that she didn't own the property. She'd sold it. But he put forth defenses that you'll see.

One was he claimed that Gina Lee owned the property by way adverse possession. Now depending on which component you use, whether it was 40 years, whether it was 20 years, or whether it was seven, she wouldn't qualify because she didn't own the property. Whatever interest she had acquired, she sold. She sold it. So there was a closing. There was a closing statement. She got $50,000. She'd gotten some rents. And -- but she was alleging that she owned the property by some kind of a grant, by adverse possession, but she'd sold the property.

Your Honor, you'll see that we went through some various attempts at discovery. You'll see Mr. Megna's duplicitous conduct. You've got it before you. What you'll see is, as important as anything, he had already gotten a title opinion. So he knew his client didn't own the property. And what he did was wrote a letter and said, well let's just raise these issues -- and you've got here in exhibits. I believe it's Exhibit 6 -- said, let's raise these and get leverage. In other words, let's make a claim that we know is not correct. You've got the title opinion, but we're going to raise -- we're going to raise this, perhaps get leverage. And if you're lucky or -- using -- it's Exhibit 4. He's got the title opinion. And you'll see that Mr. Megna, when you look at his January 13th, 2005 letter, that he knew it. If we're fortunate, perhaps argument will at least provide some leverage.

THE COURT: All right.

MR. TRUSLOW: Your Honor, this is an attorney that not only had gotten an opinion from somebody who was skilled in real estate about what the status of the property was, what his chances were of being successful, but he is advising someone to say

something or make a claim that he knows has no value as quote unquote leverage. That's as bad as it gets. But it gets worse.

It seems to be an uncanny thing where you have somebody who's not on the right track at every fork in the road where they can get back on the right track. He's one of these people that goes the wrong way. And, again, you've seen it with Judge Kinard. You saw it -- you've seen it documented here with Judge Cooper. You've seen it here with Judge Manning twice. You've seen it with Judge Baxley in three different cases where Mr. Megna's been sanctioned. And you've got it. And you have Judge Baxley saying it's unprecedented for him to see conduct like this from an attorney. And he intended to see it stop. Again, it's as bad as it can get.

Again, Your Honor, I'm being redundant, but summary judgment was granted my client's favor. That would mean my client would have the property, except then we filed our motion for sanctions. And Mr. Megna's, knowing that he's facing sanctions, he waited till his -- because he probably -- it's obvious he didn't know any better. He waited too long. He waited too long to file the motion for reconsideration. Sent it to the wrong place, but he

also sent it untimely. And then waited until 30 days from that point in time after he was already way over time. And when he's facing -- we're getting ready to have the sanctions motion hearing, Your Honor -- that was in January, 2008 -- 2008. That's when Mr. Megna's facing -- and you've got the documents before you -- that's when he's facing -- he's going to have to own up to what he's done.

My client has been without his property. And, Your Honor, you've got an affidavit before you. Got two affidavits. My client -- property had been sold for $177,000 by Ms. Lee. My client had a purchaser for 325, 350, but he couldn't get a title. You can't bond it off. And he lost his sale. So he's got significant damages and sanctions as well I would submit that we're dealing with. I understand -- I understand -- believe me, I understand and I wish and hope that Mr. Griffin may be successful in another matter. And that if the Court determined these were damages rather than sanctions, everybody may be happy. But for right now, we're dealing with sanctions. Mr. Megna was facing sanctions in January, 2008. And like a day or two before the actual hearing, he files an out-of-time appeal. And you know what that did.

When he filed an appeal, we can't have -- anything is stayed. We can't proceed on our sanctions. So we filed a motion to dismiss his appeal. It's untimely. Mr. Megna said that he was timely. The matter went back before Judge Manning to determine whether he was timely. You've got Judge Manning's order in which he says, in essence -- maybe more than that -- Mr. Megna's not to be believed. He's not truthful. What he was doing was saying that somehow he'd gotten everything at a late time. But all the documentation -- and it's all detailed by Judge Manning in a very conscientious, thorough order -- says to the contrary. Mr. Megna was untruthful. And he only had -- only one person was going to benefit from this, and that was going to be Mr. Megna because he's the one that was out of time. He's the one that mishandled this case from the beginning, and he's one that should be responsible. He knew he had no case from the beginning. He already had a title opinion to that effect. He's trying to say that he's going to do this for leverage.

And, Your Honor, going back to the summary judgment. He admitted that the deed from Mr. Albert Anasti to my client did exactly what we said. He

said he wasn't claiming under probate law or any other theory. He claimed that his client owned the property for more than seven years such as to be entitled to have it under adverse possession. The problem was, again, she held it and then sold it after about three years. Judge Kinard said, Mr. Megna, you talking out of both sides of your mouth. Actually he said, you're talking out of four sides of your mouth. You can't tell me one thing when you know it's something else. Did she sell the property or didn't she sell the property? He finally -- I need to know. And after some time when he tried darting around and not answer the question, he was forced to admit that she sold it. And Judge Kinard said, well you lose. Truslow, you win. Have a good day. At which time, Mr. Megna then argued well, Judge, she couldn't have sold the property because she couldn't have sold what she didn't own. Therefore, she owns what she sold. And, again, Judge Kinard, being a very gracious person, gave him every opportunity to do the right thing and go down the right path, rather than the wrong, and he didn't. Instead, what he said is our factual allegations is that she's continued to -- in possession of this property until now, until 2007.

Your Honor, she'd been out -- she'd been out of the property since 1999. We've taken her depositions. She said she had no involvement with the property after she sold it. It wasn't a place where she would go or be expected to go. That she sold any and all interests. But Mr. Megna's here saying that she's still in possession when he knows it's not true. And it gets worse. What Mr. Megna did is worse.

He then goes on to say, when the judge inquires about the inconsistent positions, he says, I agree with you, but the truth is when she sold it, there was nothing that she owned. And, therefore, she owns what she sold. And then the judge said, can't do that. He said, well, Judge, she owns the property. Our allegation is she still owns the property. And, again, you have the transcript so you can see what it had said.

Your Honor, the result of this is -- again, the case -- this isn't about the appeal. But ultimately getting back maybe on track, Judge Manning found that Mr. Megna was untruthful in claiming that when he -- his excuse for not filing an appeal in a timely manner. Mr. Megna then said he never got -- he never got the notice for the hearing. The Court

of Appeals sends it back. Goes before Judge Manning. This time there's more evidence because Mr. Megna said he didn't get any notice. And you'll see in the order what Mr. Megna says. It changes from moment to moment. But what he claimed then is, well he didn't get the notice. We showed that he got the notice. Because when you fax somebody something, you can get the sent received documentation. And he was -- it showed -- it showed that he did get it. And then he argued, well I haven't used that fax number in a long time. However, any subsequent communications with the Court and subsequent communications with us, guess what fax number he used? So it's -- I mean, it's that serious. Somebody who's got problems that deserve sanctions. He then went on and said, oh, that doesn't. You know, it doesn't matter. And you can look at Judge Manning's -- Judge Manning's order. And if I can -- I think it's Exhibit -- it's going to start at Exhibit 2. You'll have those before you as to what happened and why Mr. Megna -- you'll look -- invite you to look at both orders. It's hard for me to describe. Words don't do justice as to how duplicitous he was in that regard.

Then, facing the second order from Judge

Manning and with the dismissal of the case, Mr. Megna would then have to go back and deal with what we're dealing with here. But it didn't happen because Mr. Megna on his client's behalf put her in bankruptcy which stayed everything. We sought to have the bankruptcy reopened so the Court of Appeals could deal with the issue. And you have the bankruptcy court's order and what it says about Mr. Megna and why he was doing what he was doing and what the motive was and who was the one that would benefit. When faced with the dismissal -- I'm paraphrasing -- but when faced with a dismissal of his appeal because either his client or Mr. Megna's untimeliness and consequence filed in bankruptcy but would not agree to have the matter heard. That took a long time to resolve. We ultimately got it resolved. Then we had to make a record. And contrary to what Mr. Megna argues -- he is argued -- Your Honor, and you'll have the documents before you. You'll have every one of them. And I urge you to look at many of Mr. Megna's letter where he's writing to the Court of Appeals. Just -- I mean, excuse me -- to the bankruptcy court. And it's bizarre. And he's writing to the Court of Appeals telling them different things. He's saying he won

the case. He, in fact, used -- and these are his words -- that the orders of Judge Manning were reverse and vacated. And I would ask you to look at the record and see if that ever happened, whether he was ever truthful, or whether it was -- it was conduct that in this context is deserving of sanctions. It was that bad.

He then tells the Court of Appeals that the matter's going on in bankruptcy when he knows it's not. He's arguing to the Court of Appeals that he got -- you've got bankruptcy going on. Bankruptcy appeals are going on. And it takes a while for us to get here.

Ms. Lee didn't support. You have her affidavit. She doesn't support what Mr. Megna's been doing.

The matter is back. It was back for the setting of a sanctions hearing. And then Mr. Megna engaged in further misconduct and that resulted in Judge -- I don't think I need to look at -- going to through this unless you want me to. But you have -- read it. You have it in Exhibit 1; what Judge Baxley said, what Judge Cooper said, what the bankruptcy court said, what Judge Manning said. I'm just looking at one place; based on overwhelming

evidence presented is a lack of any believable documentary evidence or affidavits produced by Megna. I find and conclude that Megna was and had been using these numbers where he was conduct -- where he was contacted. I find that these -- and he goes through a series of things -- and says, I find them to provide overwhelming evidence of the lack of credibility of Megna as to all contested issues. Judge Baxley's order is even stronger.

Your Honor, again at every fork in the road Mr. Megna as done everything wrong. Only good thing I can think of he's done is gotten very good lawyers. Other than that, his conduct is been as bad as I've ever seen. What the affidavits of the people, including Mrs. Ballard say, it's the worst they've ever seen. He's done over $285,000 worth of damage to my client. And we've given you what we submit is appropriate regarding attorney's fees. Had he been honest from the beginning, he wouldn't have had to put his client in bankruptcy. He put her in bankruptcy to protect himself, didn't help her at all. We would have dealt with this issue. We would have been all done for, what, a thousand, $1500 if he just been honest from the beginning instead of saying, your client's a fagot, and I'll

drag this thing out to the ends of world to see that he gets nothing. He says he's representing Ms. Lee on -- I don't know what their relationship is. Both live in the Blythewood area. Said he had a contact of employment. We asked him to produce it, and he says that it was privileged and he wouldn't. You've got the -- all the discovery. You've got the depositions. You've got what Ms. Lee said in her depositions which indicated we were going to get summary judgment.

And, Your Honor, we would submit that we're entitled to the dollars that we've asked for. There are no counter affidavits that put this in dispute. What we have is arguments. And one argument that I take -- in candor, one of the arguments that -- only argument that would be made that would seemingly have any merit at first glance would be that the Court of Appeals didn't award attorney's fees on the appeal. Well we're not dealing with -- this is not about an appeal. And what has been suggested by Mr. Megna is from the period of time when he first appealed -- I'm talking about for attorney's fees -- until the time the case was dismissed -- he took it up to the Court of Appeals. Then petitioned for writ of cert before it got remitted a year ago.

Still been going on. If you separate that out, you still have to figures that we have, but you wouldn't have an additional $177,000. What we would have argued -- and, again, we've documented it all -- but what the position of Mr. Megna is essentially is that the Court of Appeals and or the Supreme Court have condoned misconduct by Mr. Megna. We say that's not correct. What the Court of Appeals found is that it never had any jurisdiction over the case to begin with because Mr. Megna's appeal was untimely. And, therefore, the Court of Appeals properly -- since they're not a fact finder -- they sent the matter back to this Court where it properly should be.

So in a greater sense, we submit that we're entitled to something in excess of $300,000. If you include what happened during the appeal, that would be an additional $177,000.

Again, Your Honor, there was no -- there was never any jurisdiction. Mr. Megna's claims and repeated assertions to Judge Baxley, to this Court, to others that he won the appeal is false. His claim that Judge Manning was reversed is false. His claim that he won the case is false. And it's now time for him to deal with the consequences of his

misconduct.

Thank you.

THE COURT REPORTER: Your Honor, I need to plug my machine up before he starts his argument. I'm sorry. One second.

(WHEREUPON, the court reporter attended to her equipment.)

THE COURT REPORTER: Thank you.

THE COURT: All right. Okay.

Thank you, Mr. Griffin, for waiting.

MR. GRIFFIN: Sure.

May it please the Court. Your Honor, I'm here on behalf of Mr. Megna, Mr. Mathews and the Law Firm of Mathews and Megna.

And I couldn't disagree more strongly with Mr. Truslow as his characterization of Mr. Megna's conduct in this case. Although, I haven't lived the case like Mr. Truslow has, it gives me certain disadvantages but it gives me advantages because I'm not clouded by personalities or what results were. But I have the benefit of reviewing the record, which we have. And so, Mr. Truslow speaks a lot about things that really aren't before the Court and shouldn't be before this Court.

Like to first talk about what is before the

Court and that is essentially motion for Rule 11 sanctions on Mr. Megna for pursuing fraudulent, false, frivolous defenses on behalf of his client, Ms. Lee, and improperly prolonging this litigation.

I think it's important the Court to understand the basic factual predicate is that Ms. Lee and Mr. Anasti are brothers and sisters. Their father died in October of 1995, and he had a will. And in his will he left certain property to Ms. Lee, including the property that we're -- that's subject of this lawsuit. Unbeknownst to everybody or at least no one really appreciated it, when the property was acquired by Mr. Anasti, the father, it was acquired as joint tenant in common with his son. That escaped a whole lot of people over the course of the years. But when he died, he named her as the executor of his will. Mr. Anasti had left the country. He had some legal problems. He had borrowed money from his dad to pay for those legal problems. And his sister had cared for the father. And when the father died, he named her executor of the estate. He provided for her in the will, including this piece of property. When Mr. Anasti left the country, he left behind a friend who had a general power of attorney for Mr. Anasti. The guy's

name is Joseph Gravelyn, G-R-A-V-E-L-Y-N. When Ms. Lee was probating the estate and doing deeds of distribution, including the deed of this property, they had to get releases from interested parties. They got a release from Mr. Gravelyn on behalf of Mr. Anasti who held general power of attorney. And so Ms. Lee gets this property. Mr. Anasti provided a release through his general power of attorney of Ms. Lee of handling the estate. And then in October 25th, 1996 this property was distributed to Ms. Lee in accordance with Mr. Anasti's wishes under the will. And, again, as I mentioned, that there was a release.

At some point in time, there was a condemnation proceeding involving highway department. They needed to widen the road. When they named all the folks that had an interest in the property, they named Mr. Anasti. And so that pretty much have triggered this inquiry of who now owns the property. And January 26th, 2007, some eleven years after the property was deeded to Ms. Lee and 12 years after the father's death, Mr. Anasti filed this lawsuit. And he alleged that the property was his as a result of the father passing and had joint tenants in common. Mr. Megna undertook the defense of Ms. Lee

who he knew, who had done some domestic work for he and his wife. Free of charge. Never paid a dime for this. And so he filed an answer on behalf of Ms. Lee, and he raised certain defenses. He characterized them as that Mr. Anasti is barred from making any claims against Ms. Lee as a result of the release and probate matters, and that the fact that it had been so long, and that he also raised this issue of adverse possession.

There's three legitimate defenses that Mr. Megna was pursuing. One is this release. The release is good and releases any claims Mr. Anasti had. Second is it's really a statute of repose. We cited the statute in our brief. But after more than ten years, somebody can't come back and file suit and claim interest in property if they've been sitting on their rights for more than ten years. And he had here. And then this adverse possession, which Your Honor knows requires a prescription period of more than ten years, which the property had been deeded to Ms. Lee more than ten years prior to this lawsuit. She did in 2000 sell the property to Mr. -- two other folks, Wilson and Goodwin. But it was owner financed. She maintained equitable interest in the property through a mortgage.

And in any event, so that's the status of things.

There was a motion for summary judgment before Judge Kinard. Read the transcript. I mean, Judge Kinard is Judge Kinard. He goes about two minutes to either side and says, I'm ruling. And this is the ruling, and you're talking out of both sides of your mouth. The whole transcript is maybe 14 pages. You can't read into that that Judge Kinard's upset, angry, or that he's chastising Mr. Megna more than he does any other lawyer who all of us have been before. And so look at Judge Kinard's ruling. He rules that he disagrees that the prescription period, the ten years, can continue to run while after the property is sold. Equitable interest maintained the property through the mortgage. He just says, I disagree. We cited in our brief, black-letter law on this. To suggest adverse possession -- it's on page four of our brief -- it says, where there has been an adverse possession by one claimant for part of the statutory period of limitations, followed by a sale by the claimant of the land so occupied to another who then assumes possession and transfer, there's no interruption of continuity of the adverse possession, provided

there's an actual transfer within a reasonable period of time and there's no intention to abandon the property. So what basically black-letter law is you tag it. If I sell it to someone else, as long as they don't leave the property, it continues. And, again, that doesn't speak to and no South Carolina cases that are spoken to that maintaining the interest through equitable title and the property through the mortgage. So that's what we have here. Judge Kinard didn't rule on the issues of the effect of the release, whether there's a statute of limitations issues. His ruling was limited to this adverse possession issue.

Now Mr. Megna filed a motion to reconsider. The record establishes it was out of time. He then -- but Judge Kinard did not. Apparently, he ruled on the motion to reconsider. I'm not sure it was raised before Judge Kinard as being late. Then Mr. Megna, on behalf of his client, appealed to the Court of Appeals addressing the merits of the entire case. The Court and Mr. Truslow then moved to dismiss the appeal. He said it was untimely because the motion to reconsider was filed too late and, therefore, the notice of appeal was filed too late. It wasn't tolled under the rules.

And so the Court of Appeals, while it's on appeal, sent it back to this Court for evidentiary hearing to see when Mr. Megna got notice of the order. There was a hearing before Judge Manning. Mr. Megna didn't appear at the hearing before Judge Manning. Mr Megna said that he didn't get notice of the hearing before Judge Manning. I don't know who drafted Judge Manning's order. If Judge Manning drafted it back there or Mr. Truslow prepared the order and presented Judge Manning for signature. Regardless, it's Judge Manning's signature. No question about it. But there's a lot of language in there that's not good for Mr. Megna. No doubt about it. It goes back to the Court of Appeals.

Mr. Megna says, I never got notice of the hearing before Judge Manning. So it comes back down and to have a hearing on whether Mr. Megna got notice of the first hearing. And Mr. Megna participated in that. And then Judge Manning ruled against him. It goes back up to the Court of Appeals. Court of Appeals ultimately dismisses the appeal. The Court of Appeals does not ever rule on the merits of Mr. Megna's defenses that he asserted on behalf of his client. Never have ruled on those.

What is important and is that at the Court of

Appeals, after the Court of Appeals ruled, Mr. Truslow files a motion for sanctions in the Court of Appeals. He addresses -- in his motion for sanctions, he addresses all matters occurred before Judge Manning. He addresses frankly everything that have occurred since the inception of the lawsuit and that he addressed the -- he quoted in his motion -- and we've attached as our Exhibit 6 -- and he referred to everything in the record. Well the Court of Appeals ruled. They didn't rule that they didn't have jurisdiction to consider sanction motion. What the Court of Appeals ruled is -- and all this -- the notice was filed in Court of Appeals January 7th, 2008. And the motion for sanctions was filed on May 6th, 2009. It took Court of Appeals almost two years to rule on the motion for sanctions. And then the ruling -- Judge Few, Judge Cureton, and Judge Goolsby ruled; quote after consideration of respondent's motion for sanctions, appellate's return, and the record before this Court, respondent's motion is denied. That was filed May 20th, 2011. So all the matters that he's -- that Mr. Truslow's complaining about that occurred before Judge Manning, those were on limited remand for factual determination in the Court of

Appeals. Judge Manning didn't issue any sanctions against Mr. Megna. All those matters is evidentiary hearing for benefit of the Court of Appeals. Court of Appeals considered all that, and then denied his motion for sanction. He doesn't get a second bite at the apple under a lot of theories; under the law of the case, under collateral estoppel, res judicata, whatever you want to call it. But he doesn't get a second bite at the apple. That's exactly what he's asking here to do by bringing up these issues and orders from Judge Manning. The -- and so there's really nothing that contradicts or makes any finding that Mr. Megna's claims were somehow frivolous. Judge Kinard just said, I disagree. We do believe it's a matter of first impression in South Carolina. We think it's been addressed in other states. It would have been addressed in Ms. Lee's benefit had the Court of Appeals followed the law in other states.

But the only thing that Mr. Truslow points to as to this frivolous nature are these attorney-client-privileged letters that were produced inadvertently during discovery to Mr. Truslow. Now in that regard, Mr -- when Mr. Megna found out that those

attorney-client-privileged letters had been produced, he requested Mr. Truslow to return them. Mr. Truslow refused. Mr. Megna filed a motion in this court for protective order. And, Your Honor, Rule 26(b)(5) of the South Carolina Rules of Civil Procedure says, specifically if an attorney's notified that a document was inadvertently produced and subject to the claim of privilege, the rule requires the attorney must properly return the document or sequester it or destroy it and all copies that it has and may not use or disclose the information until the claim is resolved. And it says receiving party may properly present the information to the Court under seal. So that's a way to handle that. He didn't do it. What he has done is he has flagrantly violated Rule 26(b)(5) attaching it to every sanctions motions he's filed. And so Your Honor should consider that as to whether someone who comes before this Court seeking an award of sanctions comes with clean hands. Does not. Not under Rule 26(b)(5). The document doesn't say what the plaintiff asking the Court to accept it as.

First, the letters were addressed not to this lawsuit, not to the Jim Anasti versus Gina Lee lawsuit, but the document addressed the lawsuit from

Goodwin and Wilson, who were the two folks who bought the property against Ms. Lee. And the letter was written two years before the lawsuit by Mr. Anasti was filed. And the letter was written before the ten-year-prescription period had run in adverse possession of law as to Ms. Lee's possession, which she took possession in 2006. And the letter was written before this statute of repose or statute of limitations had one run. So the letter addressed a factual circumstance. Even in the letter, the second letter, Mr. Megna points out that time's on your side. The longer it goes, these time periods are running. And they did run. They did run. They ran in 2007. So that's the issue.

Now what is -- did Mr. Megna -- did he engage in frivolous defenses? Absolutely not, Your Honor. He absolutely did not. And so did he get crossways with Judge Manning? Apparently so. That issue was addressed by the Court of Appeals. The Court of Appeals denied Mr. Truslow's and Mr. Anasti's motion for sanction on that.

And then you've got this issue of bankruptcy. Read the order. There's nothing in that bankruptcy order that says Mr. Megna did anything other than -- what the issue before the bankruptcy court that the

order that Mr. Truslow attaches was, are they going get relief from the stay, the bankruptcy stay, to continue the appeal in the Court of Appeals? The bankruptcy court said -- granted the request for relief of stay. And what they said was the timing of the bankruptcy was on the heels or right in advance of the Court of Appeals' ruling. So we're not going to interrupt that. But there's no finding of improper conduct. In fact, what we've attached is the order of discharge in bankruptcy court that -- in the findings that the bankruptcy was filed in good faith, for legitimate purpose. And under the bankruptcy rules, you don't get a discharge if you're -- if you're acting in flagrant violation or any violation of the rules for improper purpose.

And as set forth in the schedules, I mean, Ms. Lee had tremendous debt built up from medical expenses. She was in jeopardy of losing her house. And she did whatever reorganization is and was successful, and she kept her house. She discharged her debt. And she discharged any claims that Mr. Anasti had against her. So the whole bankruptcy thing -- I mean, it was good legal work. Now they might not be satisfied with the fact that

Mr. Truslow -- excuse me -- that Mr. Megna properly filed bankruptcy on behalf of Ms. Lee. But look at the order. She got a discharge in bankruptcy. It wasn't thrown out. It wasn't sanctioned.

Even in -- and this Court, with all due respect, has no jurisdiction to sanction Mr. Megna for any representations that he made to Judge Waites (sic) or any federal judge about what may have happened with regard to Judge Manning's order. Judge Manning's order was vacated. The first order was vacated. There's no doubt about that because the question was did Mr. Megna have notice of the hearing. But this Court doesn't have any jurisdiction over that issue, but, B, I mean the bankruptcy was proper.

The other orders that he brings before the Court are orders that were entered be Judge Baxley on matters that Judge Baxley had jurisdiction over and has ruled on. That's how we got involved with Judge Baxley. And there are two matters, Your Honor, and they really relate to this. But when the case came back on appeal from the Court of Appeals, when the remitter came down, Mr Truslow at some point in time filed an amended motion for sanctions where he -- and he seeks damages for some $150,000.

Mr. Megna then -- and it's against Megna. Mr. Megna then seeks to try to find what the factual basis is for this claim in damages. And he goes about it in -- one way he goes about it is he serves discovery in this case, sanctions discovery trying to find -- after the case come back from the Court of Appeals, he's served with sanctions. He serves discovery in this case. Mr. Truslow on behalf of Mr. Anasti objects, move to quash. And Judge Baxley ruled that Mr. Megna didn't have a right to pursue discovery to defend himself in a sanctions matter because it was in this case, and he didn't get permission from his client. And so he sanctioned him for that. He did. So that's when we got involved. And we've worked with Judge Baxley.

There were a number of sanctions. At one point in time, Judge Baxley sua sponte ruled that Mr. Megna should be held in contempt of court and go to jail for like six months. Well Judge Baxley vacated all that. He's dismissed it. And he -- so that's not an issue. But so the issue of Judge Baxley was, did Mr. Megna have a right to do discovery to find out what this claim of 150,000 plus is?

The second issue was another case over in

Darlington where Mr. Megna was an attorney for a business that he owned where he owned, along with others, or he was the C.E.O. of Pee Dee Health Care, it's a health care that he owned, medical practices. They sued a doctor over there with regard to some billing issue. Well during the -- during the discovery phase of that, Mr. Megna on behalf of Pee Dee Health Care Service served a subpoena or documents on behalf of Desa Ballard. I can't remember -- it really didn't matter what the reason is. But there is an objection that Mr. Megna was using that Pee Dee Health Care lawsuit to try to get discovery in relation to this sanctions case. So that's -- Judge Baxley sanctioned Mr. Megna for that. So -- and those matters are on appeal to the Court of Appeals as to whether the sanctions were appropriate and what amount. But those matters have been decided and resolved. They're really not for Your Honor to rule upon because they've been ruled upon. And so, you know, they want to, you know, just stir Mr. Megna up about those matters. They're not final orders. So they are on appeal. And so really the issue before this Court -- and there's some claims of -- I don't know -- it's discovery disputes that happened seven years ago. And so

that's bridge under the water. This lawsuit was, you know, discovery issues seven years ago.

And there's -- I disagree strongly with Mr. Truslow, a notice of appeal stays a sanctions hearing. The law is pretty clear that a notice of appeal does not stay post-trial motions, including sanction motions. The law's been well developed in the cases. The cases are Wicker v. Anderson County, 347 S.E.2d 96, Hudson v. Hudson, 290 S.C. 215. And they all stand for the proposition that a post-trial motion can be filed even after a notice of appeal's been filed. The trial court doesn't lose jurisdiction. Even if the trial court loses jurisdiction, they can consider sanctions motion even if Mr. Megna filed notice of appeal. All these matters could have been heard years ago. They were not.

And then there's this issue of settling and why didn't Mr. Megna settle on behalf of his client? That's just -- if he didn't convey a settlement offer to his client, the client may be upset about that. That may be between him and his client, but it's not between him and Mr. Truslow's client. And so -- and, again, Ms. Lee has never complained, never filed a complaint, never taken any action. In

fact, Ms. Lee had all her liabilities discharged in bankruptcy. So she hasn't complained. No reason to complain. They did get an affidavit from Ms. Lee at the end of it. And you'll see Mr. Goings apparently is representing Ms. Lee now, who I think shares office space in the same complex as the Truslow Firm, and doesn't mean anything other than that they're friendly. At the end of Ms. Lee's affidavit submitted to the Court, she says, my brother and I have reconciled. Well i'm happy for them, but that didn't mean what she says now should be given any greater credence than what she said in the affidavits that she signed when Mr. Megna was representing her. It's a lot like a witness, who after a criminal case, comes up and recants in some form of fashion. The courts disregard that.

So, I mean, what you have is a situation that frankly if Ms. Lee's rights were denied her, then she may have a remedy, but she wasn't damaged. She's never sought remedy. And it's been many, many, many years.

The last thing I'd point out, Your Honor, is the -- I think I handed the Court of Appeals matter. But there's a case Bowen Smoot v. Plumlee, 308 SC 325, that basically says unless the Court of Appeals

or Supreme Court award sanctions or remands the matter of sanctions, determination of this Court, that they're stuck with $750 that you get under the rules and no more. And so if you wanted more, then, you know, he had to file a motion for sanctions. He did. He lost. He can't then appeal the Court of Appeals' denial to this Court, which is what he's trying to do.

And lastly, Your Honor. He's seeking sanctions in the form of an award of attorney's fees. And the law's clear on this where there's no notice of attorney's fees and costs actually incurred by a party, you cannot award -- you cannot assess an award of attorney's fees against the other party in the form of sanctions. The case of Williamson v. Middleton, 383 S.C. 490, which is a statutory attorney's fee case, but it was used in a case that I was involved in where they -- where they took the Supreme Court took $668,000 away from the Speights & Runyan Law Firm for my client, as Brandt B. Gooding (sic) because there was no evidence that they had incurred fees.

And so in this case -- I mean, the record's closed. There's a bunch of bills, but there's no evidence of any payment, no evidence of Mr. Anasti

making any payments. So there's no fees that have been incurred. Period. End of story. And so -- and that was the case in the Brandt case and it was unpublished opinion but it was entered April 12th, 2010. It's opinion No. 2010. And in any event, it cites Williamson v. Middleton for that proposition. And then so there's -- it's not -- he just doesn't get to choose to bill Mr. Megna for everything, all the time he's worked on it. And you got to ask yourself, who's the plaintiff here? Who's seeking sanctions? Because Mr. Anasti -- I mean, Mr. Anasti needs to be coming to this Court asking reimbursement for his fees and expenses that he's had to incur as a result of Mr. Megna's violating Rule 11 or whatever rule they claim he's violated. And that's not the case. There's no affidavit from Mr. Anasti saying, I owe this money or I paid this money or I have to pay this money unless I get some relief. That's not in this record. It doesn't exist. Mr. Truslow in his brief -- I think he's relying on the Court of Appeals' decision that was reversed by the Supreme Court where the Court of Appeals I think it was awarded an attorney's fees and Supreme Court took it away.

And then lastly, we cited the Balloon

Plantation v Head Ballons case, that sanctions imposed should be reasonable and should not go beyond the necessity of the situation. And, I mean, I don't know -- I don't think sanctions are merited in this case at all. And so we would ask that the Court deny the motion.

And I think Mr. Lewis had a few parting comments.

THE COURT: All right.

MR. LEWIS: When I sit -- and I haven't been in this very long. I wish, Your Honor, when you look at this record between Mr. Megna and Mr. Truslow, you see two bickering lawyers who don't like each other. And they're taking all kinds of shots by hyperboles and not by facts. And when you read them, I just wish you would look at that. And what we need to do is tell both of them to go back into their offices, throw away their little pens, their poison pens, and stick to the law. Both of them. Mr. Truslow is -- if you read his letters -- are just as bad as Mr. Megna's. And I look at this and I said, this isn't the way we practice law. This isn't what you do. This isn't what you do to drag in to this case other sanction hearings to try to make you dislike Mr. Megna. Mr. Griffin -- we sat

down and said, let's look at the facts. Let's stay where we should be. And he's just pointed that out to you. And there's that Speights case. There's no money due. And I would issue -- if you read this -- and if you take -- and I think that it'll jump out at you. These -- this isn't the way lawyers should be. Either one of them, either Mr. Megna or Mr. Truslow. Either one of them shouldn't act like this.

THE COURT: All right. Thank you, gentlemen. Anything further, Mr. Truslow?

MR. TRUSLOW: If I may respond to some of the arguments that were made.

Your Honor, first of all about the bickering that they say exists, I urge you to look at the emails and letters. You have them before you. You can make your own judgment as to whether this is one sided by Mr. Megna who continues to go down the wrong path or whether it's mutual. I'm looking at Judge Manning's order. And he says, in making these findings, I've considered Megna's serious and repeated inattention to detail as to well documented of records, as well repeated and gross misrepresentations to the Court, as well as his unwarranted, unjustified, and untrue attacks on

opposing counsel who appears to have been remarkably restrained and professional in the representation of his client and in dealing with Megna under the circumstances. Your Honor, it's been -- it's been one sided where there have been -- we're trying to doing the right thing and get a case resolved. And we have Mr. Megna on the other hand engaging in -- attacks that are never ending. Not only -- Your Honor, you have the record before you. You can consider what he said in the Darlington case. He talked about the unprincipled conduct of Rene Josey, the unprincipled and unethical conduct of Jay James, The McNair Firm, Turner & Padgett, Celeste Jones, the circuit court in Florence. And you have those records before you. So the argument that this is two lawyers bickering is belied by the record.

Your Honor, again, Mr. Megna has argued that he survived summary judgment, but he did not. The law is clear. Judge Manning's orders have become the law of the case. I've just read you one of them. He goes on to say that he makes -- he draws special emphasis to the order of Judge Cooper. All these judges can't be wrong. Judge Baxley in finding that Mr. Megna's conduct is unprincipled -- is unprecedented for the Court.

THE COURT: Do we have your notebook?

MR. TRUSLOW: Yes, sir. It's in the file.

THE COURT: That's not it. That's Griffin's notebook.

MR. GRIFFIN: Your Honor --

THE COURT: I have your notebook.

MR. GRIFFIN: -- we delivered a second one yesterday.

THE COURT: I have two of yours.

MR. GRIFFIN: Okay.

MR. TRUSLOW: Your Honor, what I did is I filed mine, and then checked that it was there and confirmed with Elizabeth and saw that it was on top.

THE COURT: Okay. Okay.

MR. TRUSLOW: It was in a notebook originally or notebooks.

THE COURT: Yeah, that's it. Okay. I just wanted to make sure. I didn't want to get back and start processing through and realize I didn't have something.

Okay. All right. I think I sufficiently understand the issues as both sides have presented them. This is the sanctions hearing pursuant to the rules. And I need to, No. 1, determine if I have any jurisdiction to even decide the matter. And

further beyond that, look at the issue of what the defenses were, what the -- and the other issues that went into play in the handling of this case, and how all the sides were affected after thorough review of the orders written by the Court, by the circuit court and by the Court of Appeals. And it's just going to take me a little bit of time to get through it.

MR. TRUSLOW: Can I tell you about two things?

THE COURT: Sure.

MR. TRUSLOW: Two things. The argument's been made Judge Baxley vacated his order. That's not correct. What he -- all he did -- he was retiring. And he said -- in his order, he said he wasn't going to put off this on somebody else as far as Mr. Megna going to jail. That's the only thing that -- so the order was not vacated. Second thing was --

MR. GRIFFIN: Your Honor, I'd be happy to give you the order. I'm going to hand deliver the order this afternoon. It absolutely was vacated. He is wrong by saying that.

MR. TRUSLOW: Your Honor can read this --

THE COURT: I'll read it.

MR. TRUSLOW: -- and decide for yourself. It wasn't because their law firm has the matter on

appeal. You can decide.

Your Honor, the argument was made -- and this is what I wanted to address -- the argument was made Mr. Megna inadvertently turned over documents to me that showed that he was being deceitful. I want to set that in context. What happened is we had filed -- we had filed repeated motions to compel because Mr. Megna would not produce documents. And, again, you've got the record. He wouldn't produce things. Wouldn't even produce a contract of employment, saying it was privileged. He wouldn't answer discovery. Denied the undeniable. But he finally called one day -- and you've got the documents -- and said, I'm sick and tired of this. I'm going to produce -- I'm going to give you my entire file. You can have anything you want in it. And I never had somebody purport to produce their entire file, but he produced what he said was the entire file. Said we can have whatever we wanted. We looked at it. We marked what we wanted. One of the items was a letter from Mr. Megna to his client suggesting that they present a dishonest defense. I think I knew what my -- in fact, I knew what my ethical obligations were, but I got a second opinion from somebody who's skilled in ethics about what

you're supposed to do in this situation. Your Honor, if they're trying to perpetrate a fraud on the Court or do something dishonest and they're urging a client to do something dishonest, first of all, it's not privileged. But aside from that, these are documents that Mr. Megna had produced and said repeatedly, both he and his partner, said that I could have anything and everything that he produced. He produced it. It wasn't by mistake. Once he found out -- we didn't use it during the case because there was no reason to. But it's something that's important, and we handled the matter correctly. We handled it ethically. And I think the reason they don't like it is because it shows what a bad person Mr. Megna has been in the context where he's urging someone who's not -- who's a hairdresser to -- he says, we're going to do this and maybe it's a long shot. Maybe this will give us some leverage to get a less than correct result. So it was properly done. And it's before you.

Other on the that, I'm sure you can look at all the records and you can draw your own conclusions as to what the law of the case is.

Thank you.

THE COURT: All right. Thank you very much.

Have a good day.

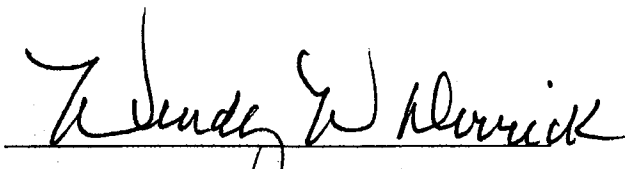
MR. GRIFFIN: Thank you, Your Honor.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Wendy Wise Derrick, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, Court of Common Pleas for Richland County, South Carolina, on the 22nd day of July, 2014.

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



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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2007-CP-40-0576
	)	
	)	
JAMES ANASTI,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, AND THE RICHLAND COUNTY CLERK OF COURT,	)	
	)	
DEFENDANTS,	)	

July 23, 2015
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

DOUGLAS N. TRUSLOW, ESQ.
Attorney for the Plaintiff

CATHARINE GRIFFIN, ESQ.
Attorney for the Defendants

KAREN AMBROZIAK
Official Court Reporter

CONTENTS

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

THE COURT: Okay. We're on the record in Anasti vs. Lance Willis, Willis Goodwin, Gina Lee, and the Richland County Clerk of Court. This is 2007-CP-40-576.

All right. I know who you gentlemen are, but if you would please stand up and state who you represent for the record so the record is clear.

MR. TRUSLOW: My name is Doug Truslow. I represent James Anasti who is the plaintiff, and this is a sanctions matter.

THE COURT: All right. Mr. Griffin.

MR. GRIFFIN: Good afternoon. Jim Griffin, and I represent Tony Megna who was formerly counsel for Ms. Lee, and he formerly would be the respondent --

THE COURT: Okay.

MR. GRIFFIN: -- here in connection with the sanctions.

THE COURT: Okay.

Very well. All right. Now, we did a hearing on this case way too long ago, and I do apologize to all of the parties for not having ruled.

After that hearing, the parties did approach me and said, "Could you wait a while to rule?" They were looking at resolving some things. Then both parties promptly came back in front of me and said, "You can go ahead and rule. We weren't able to make it to where we needed to make it

to."

Since that time, I got the entire file from the Clerk of Court's office, and frankly, it was little overwhelming because it was so big.

So we spent a considerable, considerable, considerable amount of time going through it and trying to process through it and understand where we are and to get this thing resolved. This case needs to be resolved at least at this level, and so it can continue to do whatever it is it's going to do.

So you all were e-mailed some questions; is that right?

MR. GRIFFIN: Yes, Your Honor.

THE COURT: Okay. Okay. So Mr. Truslow, let me start with you just because you're the first on my mind. One of the questions was this document -- I'm just going to call it the privileged communication. I'm not saying that as a matter of law. I understand you have an argument that it's not.

The document that I'm referring to is something that apparently Megna gave some kind of indication that it was privileged or something like that, and my question was, you know, what extent did you rely on that in forming your opinion that the defenses were frivolous?

MR. TRUSLOW: Your Honor, I submitted a response, and

the answer is that I didn't -- if I may explain, I will.

THE COURT: Sure, sure, yes. I want you to, yes.

MR. TRUSLOW: Your Honor, basically this was a claim by the plaintiff to quiet title. Father and son owned a piece of property together as joint tenants with right of survivorship.

Mr. -- my client's father, Mr. Anasti, Albert Anasti, died, and sometime after that Ms. Lee got -- was the personal representative of his estate, got a deed of distribution to herself, and then she ostensibly sold the property.

I'm not going to argue for right now whether she acted in good faith or not, but she can't -- it's elementary you can't sell something you don't own, just as Judge Kinard said.

What happened next was is that the purchasers of the property represented by Mr. Earl found out that they didn't own the property, and they initiated a lawsuit against -- against Ms. Lee.

Mr. Megna represented her. That case started, I want to say in 2000 -- it's hard to believe but 2004. He raised certain defenses that we know now were spurious.

You have the award of the order of Judge Cooper that says that -- that indicates that none of the defenses had no merit and moreover trying to foreclose on a piece of

property that you never owned is the antithesis of her claims.

Your Honor, that case got put on, was 40(J)d. I wasn't involved in that. In 2007 when that case hadn't been resolved, we initiated this action seeking to clear title.

There is more detail, but this is the essence of it. Mr. Megna on Ms. Lee's behalf submitted certain defenses that quite frankly we thought were positive -- were frivolous from the beginning.

He was claiming that his client owned the property by way of adverse possession. We had this -- we had the closing documents. There was a deposition in the other case of her. There was discovery. There is no doubt that she sold it.

You can't -- and she wasn't paying taxes on it. The people who had bought it were in it, had occupied it. She had gotten their money and moved on, but Mr. Megna was claiming that she owned the property by way of adverse possession.

Your Honor, we -- we filed discovery. We attempted to resolve the case quickly. You have what Mr. Megna said in response to our early attempts to resolve the issue. You got them. I can remind you if you need, but they were quite at odds with what I would have expected of a

professional regarding Mr. Anasti.

We went forward with the discovery, didn't get responses, filed a motion to compel, a motion to compel. We kept trying to take Ms. Lee's deposition. We finally -- we finally got it.

In her deposition that is part of the record -- and Judge Kinard had it, as well. In her deposition, she said she sold the property in the year 2000. After that she had no further interest in it. She hadn't gone there; that she had sold it.

Her -- I asked her what her basis was for claiming adverse possession or any of her other defenses, and she said she didn't know but she wouldn't want to take something that was not hers and was her brother's.

Sometime after we filed a motion to compel -- because we still had damages to deal with, Mr. Megna said -- and this is almost a verbatim quote, "I'm sick and tired of dealing with discovery."

Now, this is somebody who practices law at the time out of his home on the weekends and had a regular job during the week. He said, "I'm tired, sick and tired, of dealing with these issues. I'm just going to give you my entire file. Copy what you want."

It seemed -- it seemed somewhat odd, but he had somebody bring it. She has given an affidavit that she

provided the entire file for us to copy anything that we wanted in there.

This is after we had already formed a clear opinion that -- as had -- as had the other attorneys involved, and you had affidavits in the file of the records.

Mr. -- when -- when he provided this file, we made some copies of some things. One of them was a letter that Mr. Megna says is privileged.

They -- when we got these things, we put a tab on the -- on whatever we copied, put it back in the file, provided -- called his office that day, and the file was picked back up.

I looked at this and what it did, Your Honor, it wasn't -- didn't form any basis for the conclusion that the defense interposed by Mr. Megna on Ms. Lee's behalf was frivolous. What it did was confirm that he knew what he was doing was not only frivolous but a fraud.

I briefly looked at the -- at the law. I think -- I knew what the answer was. Number one, he had given it -- given it to me without any reservation that I could copy anything I wanted, but I also looked at the law that says, you know, in an attempt to do what he was doing, and clearly in the letter, was not privileged. But I went the extra step, and you have the affidavit of Desa Ballard.

I got an ethics opinion about what to do. Quite

frankly, she suggests that I should report him to ODC. At the time, I asked my client about it. We discussed it, preferred to wait until the litigation was over, when this entire matter is over, to deal with that.

But I think it's been dealt with independently by Judge Baxley, but she confirmed that -- that it was appropriate; that we could use it, but I didn't need to use it because I had her deposition. And, Your Honor, you can look at the -- at the transcript of -- that you have of the summary judgment. You can look at the affidavits that were submitted. You can consider all the arguments that were made.

We didn't -- we didn't need it, didn't use it, and it -- the only time it became appropriate was -- and you have the law. Once we had gotten summary judgment and after Judge Kinard had given -- in federal court, we called it a safe harbor that -- that Mr. Megna was put on notice when the judge was telling, "Don't talk to me out of four sides of your mouth, and don't tell me that she didn't sell it when she sold it."

Then he said that she did, and then when the judge said that he was granting summary judgment, "Judge, she didn't sell it." He said, "She didn't sell it because she couldn't sell something that she never owned" which is correct.

That in and of itself was further corroboration that -- that the conduct of Mr. Megna was inappropriate. The defense was frivolous. He is the one that suggested it in the other case, what's called -- what's called the companion case from 2004.

He utilized the same defense in this case. You have affidavit -- you have the affidavit of Ms. Ballard that I had done everything absolutely right, didn't need it. It was so obvious from the initial pleadings of what Mr. Megna was asserting was frivolous.

All this proved was that he knew it. So the short answer is didn't use it, didn't need to use it for the purpose of getting summary judgment. This goes to the sanctions issue.

THE COURT: All right.

MR. TRUSLOW: If you need to hear anything else from me --

THE COURT: Okay.

MR. TRUSLOW: -- I've got --

THE COURT: We'll take a --

MR. TRUSLOW: I've got a complete file.

THE COURT: Okay. We'll circle back around, all right.

Do you want to respond to that, Mr. Griffin?

MR. GRIFFIN: Yes, Your Honor. With regard to

whether -- and your question to Mr. Truslow was -- was did Mr. Truslow need the attorney/client privilege letter to establish that the defenses were frivolous.

He says no, and because Mr. Truslow viewed the defenses as frivolous, we have an absolutely contrary view to that we have set forth in our pleadings and our memoranda that they weren't frivolous.

But the issue for Rule 11 sanctions, Your Honor, is that a written or electronic signature of an attorney constitutes a certificate by him that he had read the pleading, motion, or other paper and that to the best of his knowledge, information, and belief there is good ground to support it and it's not interposed for purposes of delay.

Now, for purposes of his Rule 11 sanction motion, that is his case. That's what he just told you is they knew it was frivolous, but we're relying on -- but this proves that he knew it was frivolous.

And so that is the cornerstone of their claim of sanctions against Mr. Meador is his subjective state of mind. Of course, they have to be. It has to be established.

You can't rely upon this document. Your Honor, we set forth the standards, and they're very clear. Rule 26(b)(5) says that -- that if a document is produced,

there is a claim of privilege once it's asserted that the receiving party must take certain steps, and none of those were taken here.

These steps are that after being notified, a party must promptly return, sequester, or destroy the specific information and any copies it has and may not use or disclose the information until a claim is resolved.

THE COURT: So when do you have to make the assertion that it's privileged?

MR. GRIFFIN: Well, I mean, you have to -- well, first the privilege is the client.

THE COURT: Right.

MR. GRIFFIN: The lawyer can never waive the privilege.

THE COURT: Right. I understand.

MR. GRIFFIN: And here once it was disclosed, I mean, Mr. Megna at the time -- Mr. Megna can't waive the client's privilege, and there is no waiver established in this record.

Mr. Megna took steps to secure the privilege after it was -- the document was inadvertently released.

Now, you know, if -- Mr. Megna may have issues with his client by producing that document.

THE COURT: Right.

MR. GRIFFIN: But -- but they aren't -- Mr. Anasti's

issue -- what Mr. Anasti and his lawyer were under strict obligation to return it or sequester it, file it with the court, have a hearing.

There are ethical rules on that, as well. A lawyer who received a document relating to her representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Now, that wasn't here. And Mr. Truslow, you know, Judge, what he is saying, give him all the benefit of the doubt, is that he assumed that Mr. Megna intended to release the document. So he didn't think it was inadvertent, but clearly, once Mr. Megna had learned it had been produced --

THE COURT: I mean, you would think somebody would look through their file and determine whether or not something was privileged before --

MR. GRIFFIN: They absolutely should have, yes.

THE COURT: Why is Mr. Truslow not allowed to rely on that?

MR. GRIFFIN: Well, he could. He can to a degree until Mr. Megna steps up and says, "That was inadvertently produced. Please return it or please file it with the court."

Mr. Megna went further and filed a motion for a

protective order, filed the document under seal of the court. Mr. Truslow continued to -- to use the document. It's Exhibit No. 4 to this sanctions motion, so it very much is the cornerstone of what he believed.

Now, it's important to put the document in perspective, too. The document was written in connection with a different lawsuit, not the one Mr. Anasti brought against the sister and others, but it was the lawsuit that Mr. Wilson and Mr. Goodwin brought against Ms. Lee.

There was an issue, and that's when they researched whether -- whether she was the rightful owner. If you look at the deeds coming out of Probate Court, it shows she is the rightful owner, but then you go look at the -- the property deeds -- and what happened was their father had a life estate, and the son had the remainder. So when the father died, the property goes to the son.

Although it was probated -- Mr. Megna wasn't involved in any of that, but -- so the first lawsuit was the folks who she had sold the property to trying to get out from under their payment obligation. So they said, "We don't owe you anything, because you don't own the property."

So that is when this research came up. That is when this issue was raised, but what's important to note is that was years before Mr. Anasti filed this lawsuit.

One of the defenses that he had is the statute of

limitations. It's a 10-year statute of limitations period. Mr. Anasti didn't file this lawsuit until after the ten-year period from -- from when the deed of distribution was made to Ms. Lee in -- in Probate Court.

So it's -- so it's a letter but -- if the court were to consider it, which we don't believe you should -- if the court would consider it, you have to consider the time when it was written which was within the ten-year period, not after the 10-year statute of limitations. You have to consider what case it was written for, and that -- and that you have to consider what it didn't address.

One of the significant issues it didn't address was the fact that Mr. Anasti, the son, he was overseas for whatever reason. He had given a general power of attorney to someone here in South Carolina who executed a release through the probate proceedings that released any claims against the estate, any claims against Ms. Lee in her capacity as a PR and that -- and that included, you know, acknowledging the deed of distribution of this property that went to Ms. Lee.

Now, what ultimately Judge Kinard ruled was the Probate Court didn't have jurisdiction over the property. The releases would have been invalid.

All of those are issues of first impression. None of those issues were -- have ever been -- until Judge Kinard

ruled. It had never been flushed out in this state. I mean, those are significant issues. We can't say it's a frivolous defense.

Now, it is an odd situation of what happened when Ms. Lee gets deed to a property through probate that had passed to her brother outside of probate. I mean, that's unusual. There's no question about it.

Over ten years lapses before he steps up and says, "Oh, that's my property." So that's a problem. I mean, it's a unique case, but you can't say that Mr. Megna's defenses are frivolous. They're not frivolous.

And you can't rely on this document that was written in another case years before they filed this lawsuit to -- and it was privileged to say that he knew at the time he asserted the defenses that they were -- that they were not well grounded or they were in bad faith, which they were not in bad faith.

THE COURT: Okay.

MR. TRUSLOW: If I may respond?

THE COURT: Sure.

MR. TRUSLOW: I don't know whether you need it or not.

THE COURT: No. Go ahead. I mean, I'm not...

MR. TRUSLOW: Your Honor, several points: Number one, I'm not here to reargue summary judgment. You have

Judge Kinard's order, and it became -- it's become the law of the case; number two, contrary to the information that Mr. Griffin has been provided, the record reflects Mr. Megna called and said, "I'm sick and tired of dealing with this. You can have my entire file. Copy anything you want."

His staff said the same thing; that he -- that she was directed to turn over the entire file, and we could copy anything we wanted. That's regarding the other -- the case that -- the companion case that led into this one.

He says there was no waiver of privilege. However, Your Honor, you have the affidavit before you of Ms. Lee after her relationship with Mr. Megna ended saying the contrary.

Her attorney at the time, I think, was Mr. Robert Goings. They provided it to us. She wanted to -- she wanted to show, among other things, that she was not the creator of these defenses that had been originally suggested by Mr. Megna. He told her that this was to try to gain leverage, long shot and on and on. So --

THE COURT: I mean, my question is regardless of whether or not the document is privileged, under the rule, once a claim of privilege is made, how do you not have to comply with the rule?

MR. TRUSLOW: Your Honor, what I did -- what I did was I have -- of course, he had it. We didn't use it. We offered and we got the -- the record before you. We offered to submit it to this court. We offered to submit it to ODC.

We could have had a hearing. Mr. Megna waived the right to have that hearing. He didn't want to hear it, and I suggest there was good reason why he didn't want to hear it, because it would reflect the same reasons we are here.

So he can't on one hand say -- say that, "I want this heard," and I say, "Fine. Let's put it before the court," and then he wants to withdraw that.

So he had the document. I didn't have the only copy. I gave it to him. I alerted him to it. I not only tabbed it and told him what I had, but he didn't raise this issue until immediately before summary judgment, and we didn't have any -- any reason to use it. That's why I say that --

THE COURT: So when does Megna tell you, "Hey, I think you have a privileged document"? How soon after you get the file?

MR. TRUSLOW: It was about --

THE COURT: Not -- not down to the hour but just ballpark me.

MR. TRUSLOW: Approximately three months.

THE COURT: After you get it, after you copy the file?

MR. TRUSLOW: After I copied the file and told him -- we put a copy on everything and say, "This is what I have."

THE COURT: So he tells you, "I think this is privileged," right?

MR. TRUSLOW: Yes, Your Honor.

THE COURT: And I mean, why does 26(b)(5)(b) or whatever it is not kick in?

MR. TRUSLOW: Well -- and I'm sorry, I don't have the --

THE COURT: Okay. What it says is: "Information that is produced in discovery, if it is subject to a claim of privilege" -- blah, blah, blah, blah -- "the party making the claim may notify any party that received the information of the claim and the basis for it."

After being notified -- "after being notified, a party must promptly return, sequester, or destroy the information. The receiving party may present the information to the court under seal for a determination of the claim."

I mean, that's my -- I'm not saying it's privileged or it's not privileged, and that's not the issue that

Mr. Griffin is making.

The issue Mr. Griffin is saying is that once Megna makes that claim under 26(b)(5)(b), you've got to stop using the document and present it to the court or agree not to use it, and that never happened.

MR. TRUSLOW: Well, I never -- I never -- number one: I never used it, but before that, what I do -- what I did was I submitted it to, I think it's very well-respected ethics --

THE COURT: And that's not -- that's not what the rule says. The rule doesn't say if John Freeman tells you can use it, you can use it.

MR. TRUSLOW: I didn't -- I didn't use it and --

THE COURT: I'm using the word "use" inappropriately. The rule says if a claim of privilege is made, you have to return it, sequester it, or destroy it.

If you want to fight about it, go to the judge, not go to an ethics professor, not call John Freeman, not get somebody else's opinion on whether or not it's privileged. It says when a claim of privilege is made, you have to sequester -- return, sequester, or destroy. If you want a hearing, you have to, you know, submit it under seal to the judge and let a judge figure out whether or not it's privileged.

MR. TRUSLOW: Your Honor, I would suggest that that's

essentially what happened. I kept this -- I kept a copy -- I mean, the original went back to Mr. Megna with an indication that it had been copied, and it was kept segregated. It wasn't used, and Mr. Megna filed the motion.

I said, "Let's submit it to the court or submit to it ODC and -- for somebody to make a decision." He's the one that withdrew that, Your Honor. I mean, so it never got addressed. He had that motion. He didn't want to proceed with it.

THE COURT: All right. Mr. Griffin?

MR. TRUSLOW: And I would also --

THE COURT: Sorry.

MR. TRUSLOW: -- refer to Judge Baxley's order in that regard which I think has become the law of the case because the Court of Appeals has now ruled.

All right. Thank you.

THE COURT: All right. Mr. Griffin, did you want to respond to that?

MR. GRIFFIN: Yeah.

THE COURT: Or do you want me to move on to a different issue?

MR. GRIFFIN: No. I'd like to --

THE COURT: Okay.

MR. GRIFFIN: -- address some of the --

THE COURT: All right.

MR. GRIFFIN: -- what's in the record.

Our Exhibit No. 20 is an affidavit from Eric Hobbs who details the document production to Mr. Truslow. She says it was the end of June 2007. She takes the file over there. He takes out what he wants, copies it, et cetera. That's the end of June 2007.

Our Exhibit No. 28 is a letter dated August 27th, 2007 from Mr. Megna to Mr. Truslow. Exhibit 28 says, "Dear Doug, please review Rule 26(b)(5)(b). It is self-explanatory. Regardless of your reasoning, use and dissemination of a priveledged work product document left in the file by mistake that you copied and retained without advising is in direct violation of the rule and usurps the authority of the court. I urge you not to use the document or further inflame the issue until the court has had an opportunity to rule on the matter."

Then in getting no response -- there is a response of September 10 -- 27 -- and that's our Exhibit No. 30 which says, "To follow up on my request for the letter, you referenced in your letter to Ms. Lee, I do not believe it's privileged because it was waived, and one may not rely on a claim of privilege to assist or help a person commit a tort.

I respectfully suggest you obtain a separate opinion

from a qualified attorney of your choosing before you proceed further because I believe you may be unwittingly putting yourself in an untenable position." I mean, that's what the record says.

THE COURT: Okay. All right. So one of the things that you raised, Mr. Griffin, is that this court doesn't have subject matter jurisdiction. What -- flesh that out for me.

MR. GRIFFIN: Yes, sir, and it's not subject matter jurisdiction over all of the claims.

THE COURT: I don't take any offense to that so...

MR. GRIFFIN: Well --

THE COURT: I mean, walk me through what you -- where you're going with that.

MR. GRIFFIN: Sure, and it's -- it's a tough follow up to follow. No question about it --

THE COURT: Right.

MR. GRIFFIN: -- but part of the claim is that Mr. Megna on behalf of Ms. Lee filed bankruptcy, and it was a frivolous filing in bankruptcy court in order to ward off an ultimate judgment being entered by a South Carolina court.

THE COURT: Trying to get a stay in state court.

MR. GRIFFIN: Right.

THE COURT: Okay.

MR. GRIFFIN: They are. So that -- that's part of their -- plaintiff's basis for seeking sanctions, and the supplemental memorandum that we submitted today basically says stuff that happens in federal court and particularly federal bankruptcy court is not subject to, you know, a state claim for abuse of process, malicious prosecution, or anything because in -- I started out with -- in a case you and I worked on, State v. Shepherd, where Mr. Shepherd was indicted for committing perjury in connection with a deposition in a bankruptcy proceeding.

THE COURT: Right.

MR. GRIFFIN: Judge Johnson says state court doesn't have jurisdiction over that, and he relied on a US Supreme Court decision.

The other cases involved in that, Your Honor, are -- are more similar to this, and it's where things happened in bankruptcy court and people who have been affected by it are claiming that was a frivolous proceeding and only messed us up down here, et cetera, et cetera.

The hole in that area is not so much a subject matter jurisdiction area as a preemption issue, and that it is -- it is in some cases referred to as subject matter jurisdiction, but -- but you can't have a federal procedure, bankruptcy court procedure.

People participate in a federal procedure and then

come back and get sanctioned in state court for exercising their federal rights. That's the preemption issue. We cited a lot of cases that support that. So -- so our subject matter/preemption argument is anything that happened in bankruptcy -- and they cited Judge Waites' order.

It's important to note that the final order Judge Waites approved the plan, and Ms. Lee successfully completed it. Those findings in and of itself were -- established that bankruptcy was appropriate. That can't be second guessed here, and sanctioning Mr. Megna for representing Ms. Lee in bankruptcy court so that's that.

The other issue that keeps -- other grounds that keep infiltrating into this motion, what happened in the Court of Appeals.

THE COURT: With the untimely filing of the appeal of the summary judgment motion. Is that what you're talking about?

MR. GRIFFIN: I am.

THE COURT: Okay.

MR. GRIFFIN: That's exactly what I'm talking about. And so there was a motion to reconsider. The motion to reconsider was late. There was an appeal.

There was a motion to dismiss the appeal because the motion to reconsider was ineffective. It was delayed, and

therefore, they missed the time, Mr. Megna missed the time period to appeal.

So that goes to the Court of Appeals. The Court of Appeals says, "Well, there's a factual dispute. I'm going to remand it back to judge" -- this court. Judge Manning gets it for the limited purpose -- I mean, the case is still in the jurisdiction of the Court of Appeals for a factual determination.

THE COURT: On timeliness?

MR. GRIFFIN: On timeliness. So there's a hearing for it. Well, Mr. Megna did not appear at the hearing. Mr. Megna says, "I didn't get notice of the hearing."

There was an order issued. It goes back to the Court of Appeals. Megna is in the Court of Appeals, said "I didn't get notice of the hearing on the question of whether -- when the original judgment was delivered to me."

So the Court of Appeals sends it back down for the limited purpose of did you get notice. He was there at that hearing. Judge Manning ruled against him. It goes up, Court of Appeals affirms the dismissal.

Mr. Truslow, on behalf of the plaintiff, files a motion in the Court of Appeals for sanctions. The Court of Appeals denies that motion for sanctions. In the motion for sanctions, they put all of that contorted

procedural history, and Judge Manning's order had some quite some harsh language in there about Mr. Megna, and all that is before the Court of Appeals but they don't have -- they don't sanction it.

They don't award attorneys fees. There's a -- there's a limit on attorneys fees that's provided in the rules, and the case law in this area is clear that that's all you get unless the Court of Appeals or the Supreme Court orders some different relief.

They sought the different relief, and it was denied to them. So anything that happened in the Court of Appeals, anything that happened with these factual findings related to the appeal, Your Honor, it's our position that that's -- that that is -- the court doesn't have jurisdiction over that.

And so really what is at issue before Your Honor is this motion for sanctions on whether these defenses were frivolous and whether Mr. Megna pursued these defenses for some ulterior purpose for the purposes of delay, et cetera. That's really it.

Now, during that, there has been a cottage industry, if you will, of litigation, spent off litigation against Mr. Megna that had resulted in some sanctions of lawyers that Judge Baxley issued and -- because the file is confusing.

There was an original motion for sanctions, one page, hard to see what it meant. That -- then the case goes up to the Court of Appeals, that tortured procedural history, it ultimately comes back, comes back I think at that point in time.

Mr. Truslow files an amended motion. In that amended motion, he -- he says, "I want to make it clear I'm not seeking sanctions or damages or anything against Ms. Lee" because she had been discharged from bankruptcy at that point in time.

"I want it clear that I'm only going after Mr. Megna, and I'm seeking $500,000 in damages," damage sanctions for his conduct.

What happens after that is Mr. Megna then undertakes an effort to conduct discovery on the basis for this $500,000 claim, and he did two things that got him sanctioned.

One is he issued a subpoena to Mr. Truslow wanting his file, and another thing -- in another thing, he issues a subpoena to Desa Ballard in another case where he was representing -- he has -- he was a principal of a -- an officer in a healthcare company over in Florence, and they were involved in some litigation.

He, in that case, served a subpoena on Ms. Ballard to get records because he had seen something that -- where

she was communicating with the defendants in that case. Judge Baxley sanctioned him for it.

So -- so what -- so those issues, Judge Baxley sanctioning Mr. Megna, serving a subpoena on Mr. Truslow and for documents to do discovery on what we're here about today and serving a subpoena on Ms. Ballard in a related case, that's what Judge Baxley issued orders on, sanctioned him.

We appealed those orders. We lost in the Court of Appeals, and those are -- we have a petition in the South Carolina Supreme Court for certiorari, and they haven't -- we haven't gotten an indication of whether it's been accepted or rejected.

You'll see all of this in the record about serving subpoenas and stuff. That evolved, started to be ruled upon by Judge Baxley. We really are back to Mr. Megna in post frivolous defenses to these claims. We would submit that he did not.

THE COURT: Where does the big number come from in the sanctions? You asked for the $325,000 limit.

MR. TRUSLOW: The -- I feel set this forth in my memorandum. You take out the 177 which relates to the appeal, and you go and that's the number.

THE COURT: And that's the -- no, I mean the 215 number, I'm sorry. The 215,000, the sanctions for

deterrence compensation, the harm caused to the plaintiff by Megna's misconduct. Tell me -- walk me through that.

MR. TRUSLOW: Your Honor, first of all, we think this was a clear case that should have been resolved from the beginning for about -- for less than $2,500 in fees.

Two lawyers get together, and you say, "Hey, sister thought she owned something, but she really -- she -- she didn't. She clearly can't sell something she never owned. We do owe -- we quiet the title." That takes -- that takes nothing.

What -- instead we had this, unfortunately, very contentious case where you have some of the documents. From the very beginning, Mr. Megna said that -- I'm not going to repeat what he said about my client except a derogatory term about his sexual orientation that he could drag this case on for years which he has been correct in that regard, but Your Honor, at the time in -- you have to look at 2007, 2008.

We're trying to get this thing resolved, and we're getting a lot of resistance from Mr. Megna in which he is raising defenses which have been determined to have been non-meritorious.

We have a purchaser who could -- who is ready, willing, and able to buy the property, and you have got his affidavit. He can't buy it because Mr. Megna

continued with these appeals.

It's almost been unprecedented from filing the motion for -- he filed a motion for reconsideration. He didn't file an appeal, out of time, and you have Judge Manning's orders which I think are very clear, and they establish what was going on. Then it goes on and on and on and on and on and on. So we -- we start with the -- my client couldn't sell the property because he couldn't get a clear title out of the property.

THE COURT: So Mr. Byrd was willing to buy the property, right?

MR. TRUSLOW: Yes, sir.

THE COURT: Okay. How do we know that that amount that he was willing to pay for the property is reasonable? That's my question.

MR. TRUSLOW: Well, Your Honor, I would suggest that you go back to years before and just use a four percent return on investment from the time Ms. Lee ostensibly sold the property to Mr. Wilson and Mr. Goodwin for what was it, the -- 195 -- I got it here. One hundred whatever it was. Maybe it was 165, hundred, $200,000.

They had originally been willing to purchase it for more but couldn't get the money, and if you bring that forward from nineteen -- from 1999 until 2008, you would -- that would clearly show at the time when we were

in a tremendous growth period with real estate before the bubble burst and the property would have been sold by that point in time.

My client wouldn't have incurred the legal fees. He would have been able to sell the property, and we would have been -- we would have moved on far past this.

Your Honor, as to the -- it appeared that Mr. Megna would propose to relitigate the issue of summary judgment and argue again, but Judge Baxley issued his order that said in part Megna has willfully, deliberately and unapologetically attempted to misuse the legal process throughout this case and the Darlington case.

That's where -- the one where he was alleging unethical conduct about Mr. Jose, about Mr. James, about the McNair Law Firm, Turner Padgett, families of a lawyer -- of a judge and attorneys in the low country and on and on.

He has engaged in misconduct for the ulterior purposes to seek to defend his own personal interests in this case. He goes on and on to say it's willful and deliberate and says this matter is properly before the court. That's at paragraph four of paragraph 23 is what I just read to you.

I would suggest to you that that's the law. That would be the law of the case at this point. We're seeking

Rule 11 sanctions there against Mr. Megna. This court is the proper one to hear this as it relates to this issue.

Your Honor, the issue that Mr. Megna would talk about -- about when I raised -- when I got this information, and I suggested to him in an earlier letter, let's put it before the court. Let's put it before the court or ODC about -- about what I could and should do with this.

He withdraw that -- withdrew that motion, but most significantly he didn't ever raise it and corroborate what I'm saying. He never raised it before Judge Baxley so -- or anyone else. This is coming again. He's been untimely before, grossly untimely again.

Thank you.

THE COURT: What -- what do you think about the -- I understand your argument is that the defenses aren't frivolous, but what about the calculation on the property? What's your position on that?

MR. GRIFFIN: Well, first the plaintiff has the property. He has got the property. They have put no value on it. It be worth more today than it was under this contract.

I mean that's no damage. There's no competent evidence of any damages on -- on loss of a sales opportunity before the court because he still owns the

property.

There's no -- there's no reliable -- any evidence of the value of property. That's number one. Number two, we pointed out in our brief, if there was a deal, a willing buyer, then let's escrow the money. You know, sell it. That offer was never made.

There was no -- there was no attempt to do that, there is no communication about that, and Ms. Lee doesn't want the property because she tried to sell it.

So to say that this action, the continuation of the case precluded the transaction to take place, there is no factual support for that. It happens all of the time when you're disputing over something.

I mean, everybody wants the cash. No one wanted the property, apparently. Mr. Anasti apparently wanted to sell it. Ms. Lee had tried to sell it, and so sell it. There's nothing but this guy's affidavit.

There -- there is nothing in the record that -- contemporaneously when that was going on, there was efforts by the plaintiff, through Mr. Truslow, to communicate with Mr. Mr. Megna, to Ms. Lee.

I have this buyer here. What can we do? Can we sell the property, put it in somebody's escrow account, put it in the Clerk of Court's account? We do none of that. All of that could have been done, and what -- what I do want

to lodge an objection to is Mr. Truslow making factual representations that aren't in the record.

He is not testifying. He is not under oath, and lawyers' comments are lawyers' comments. He said a couple of things today. One is Mr. Megna said something about the sexual orientation of the client. That's nowhere in the record. It's just Mr. Truslow saying that. I don't know if it happened or not, but there is no -- there is no competent evidence of that.

There is no competent evidence of -- of the damages, really. I mean there is this guy who is out there saying now, you know, I was -- I was willing to buy it for X price, but the plaintiff has the property.

So if there -- if there was a damages element proximately caused by improper delay in this case, you know, A, can you award sanctions for that? I don't think so. But B, they haven't proved what the difference in the value is today versus before, and they haven't explained why they didn't try to sell it other than Mr. Truslow saying, "We couldn't sell it." That's not in evidence. There is no evidence in the record that they tried to sell it.

It's back to Judge Baxley's order, I think I explained the box that his orders fit in. I mean, it's Mr. Megna trying to conduct discovery to get an underlying

premise for what this claim is all about.

THE COURT: In another case.

MR. GRIFFIN: Well, one was in another case, and one was in this case.

Judge Baxley was in town. He was holding court here. He had the other case. He was in Florence, and there was this issue in this case. And so he was assigned both.

THE COURT: All right. I mean, but let's literally talk about these defenses. I mean, most anybody that reads this file, the first words out of their mouth are, "These defenses are obviously frivolous" besides you and Mr. Megna.

So walk me through why you think these defenses aren't frivolous. Just -- and I'm -- move on past the federal bankruptcy, move on past the appeals.

MR. GRIFFIN: Sure.

THE COURT: Tell me, walk me through why his defenses to this claim were not frivolous in their basis.

MR. GRIFFIN: Sure.

(Pause).

So in the answer --

THE COURT: Right.

MR. GRIFFIN: -- and on page three of our brief, Megna served the answer on behalf of Ms. Lee where she asserted a number of appropriate affirmative defenses.

Number one, he asserted the plaintiff was barred and estopped from asserting any claim, however defined, against Defendant Lee of any interest, legal or equitable, in the property because the plaintiff participated in the probate court proceeding that led to the transfer of the property in which plaintiff then claims and is bound by the orders and the deeds of transfer.

So the factual unpinning of that, Your Honor, is Mr. Anasti had given someone general power of attorney who got all of the appropriate notices in the bankruptcy court who signed off on the deed of distribution where this land went to Ms. Lee, and that -- and signed a release releasing any claim against Ms. Lee for how she handled the probate matter which -- and the Probate Court issued a deed of distribution.

And so that's the -- that's the estoppel, barred to come forward now after ten years when she has relied upon her having interest in the property. She tried to have it sold, and -- and the only way -- so -- so that's the basis. I don't think that's frivolous, Your Honor.

THE COURT: Is that the only defense asserted?

MR. GRIFFIN: No, sir.

THE COURT: Okay. Go through -- go through each one of them.

MR. GRIFFIN: The --

THE COURT: So number one was estoppel. Basically, he said -- or Megna said --

MR. GRIFFIN: Right.

THE COURT: -- plaintiff participated at probate. There was a deed of transfer. There was a release signed by a general power of attorney. You should have known what was going on --

MR. GRIFFIN: Right, sir.

THE COURT: -- so you can't come back and sue me now; is that right?

MR. GRIFFIN: That's correct. That's the estoppel.

THE COURT: Okay.

MR. GRIFFIN: The second one, there was defense of statute of limitations, Laches and abandonment. The doctrine of adverse possession, the ouster, and the documented presumption were granted.

Those were the offenses that -- that were asserted. Your Honor, with regard to the statute of limitation what -- well, with regard to the issue of estoppel -- excuse me, adverse possession -- I mean, the law up there is you have to be in continuous possession for a ten-year period.

THE COURT: Right.

MR. GRIFFIN: And here she sold the property within the ten-year period, but she made -- but it was an owner

financing. So her maintained an interest in the property as the mortgagee and was collecting payments, rents, if you would call them. So that she didn't relinquish her interest in the property.

Now, Judge Kinard said that's not continuous possession just because you have an interest it as a mortgagee, but there is -- there is no law on that, Your Honor.

In fact, we are cite in our -- we cite in our brief, the CJS Adverse Possession -- it's on page four of our brief -- we say, "This ruling appears to be at odds with decisions from other states."

The CJS, section 192 says, "Where there has been an adverse possession by one claimant for a part of the statutory period of limitations followed by a sell by the claimant of the land so occupied to another who then assumes possession under the transfer, there is no interruption of the continuity of the adverse possession. Provided there is an actual transfer within a reasonable period of time, there is no evidence of an intention to abandon the possession."

So there is law out there that says even if you sell it, that doesn't interrupt your -- your possession, and we had more here. We had -- she was owner financed. That was the issue of first impression.

Judge Kinard just said, "I disagree." I mean, there is nothing in his order that says this is -- this is frivolous. I mean, he just said, "I disagree with that."

The Court of Appeals never addressed substantively any of these defenses because -- on the timeliness issue.

THE COURT: Right.

MR. GRIFFIN: The -- it says the order doesn't address other important affirmative defenses. These include statute of limitations.

15-3-340 says, "No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, grantor was seized or possessed under the premises in question within ten years before the commencement of the action." That's the ten-year statute of limitations period.

So when Mr. Lee -- Mr. Truslow filed suit on behalf of -- on behalf of Mr. Lee, it was beyond the ten-year period. It was beyond ten years from when the property was deeded to Ms. Lee from the Probate Court. I don't see how you can say that's frivolous. I don't see how.

It says that, "The plaintiff didn't commence suit until January 26th, 2007. The undisputed evidence in the record established that the property was conveyed to Ms. Lee through a deed of distribution in 1996. That's 11

years earlier. Thus, plaintiff did not commence suit within 10 years from the last date the plaintiff, his ancestor, predecessor, grantor possessed the" --

COURT REPORTER: I'm sorry, can you slow down, please.

MR. GRIFFIN: I apologize.

THE COURT: You read faster than you talk, so just slow down just a little bit please, Mr. Griffin.

MR. GRIFFIN: "Plaintiff Anasti did not commence suit within ten years from the last date that the plaintiff, his ancestor, predecessor, or grantor possessed the property."

And then it says, "In addition, the order does not address the defenses of Laches which are equitable defenses which is you do something, and in reliance upon what you believe to be a situation, if someone doesn't stand up and affirmatively assert their rights, which is what happened here. And that -- so she sells the property, and -- and that defense is not objected to.

I understand the court saying it was conveyed outside of Probate Court. That's what a life estate does. That's why you have a life estate. I'm not arguing anything about that, but the person who has interest in that property through that remainder, I mean they can't just sit around not doing anything for over ten years. That's

what happened here.

Now, Mr. Anasti was overseas, but he had someone who was a general power of attorney. We cited the deposition testimony where Mr. Anasti admitted -- and it's on page eight of our brief -- that he was not mislead about anything; that Ms. Lee didn't do anything to mislead him.

The reason it came up, and how this issue was discovered is that the Highway Department came through, and they were widening the roads. So they did condemnation proceedings.

They notified everybody who had legal title on the property which included Mr. Anasti. He gets a notice. He sends it to a lawyer. I'm not sure if it's Mr. Truslow first or another lawyer, but that's how this issue got raised.

THE COURT: All right. Mr. Truslow, do you want to respond to that?

MR. TRUSLOW: Your Honor, first as to the claim that there was no -- that we think they could have put money in, sold the property and put the proceeds in escrow and that there was no communication regarding the sale at page -- of the return -- it is in the -- it is, I would suggest, in the record, and I can cite you the exhibit.

It's going to be at page four of -- of a document that's dated -- that's an affidavit dated December 23rd,

2013. It's page four where he wouldn't do that, and then at page seven, he would not agree to sell the property and hold the proceeds in trust pending a resolution of the case.

So I don't doubt Mr. Griffin's good faith, but he is misinformed on this, as well, because it is in the record. It's replete in the record that Mr. Megna would not agree to sell the property and put the money in -- sell the property, put the proceeds in escrow or in trust until we could determine where it was.

He says there is no record -- nowhere in the record that Mr. Megna said inappropriate things about my client -- and please forgive me for saying this, but it's -- and it's uncontroverted by Mr. Megna. He said that the plaintiff -- talking about Mr. Anasti was a pervert. He actually said faggot, and it went downhill from there.

You know, I told him that matters such as race, sex, sexual orientation had nothing to do with the case, but he continued to say this and said he could litigate the case forever.

You have the -- on the -- you have Mr. Earls, Mr. Thomas Earle, a well-respected attorney, has done a lot of real estate, practiced law for over 50 years, thought this was frivolous from the beginning.

Your Honor, you've got in the record that we had

offered from -- and it's -- I can cite you to page and verse, but you have it in the record that we had offered -- and from the very beginning because it's brother and sister. Listen, she got -- she got whatever it was, $125,000 cash, and the rest on a note, whatever the figure was.

We would let her keep the money that she had wrongfully gotten, and we would just -- my client would -- I guess the word in real estate is tote the note. He would get paid the rest. So she would get the money to -- get to keep the money she had wrongfully gotten, and we would get the rest and we would resolve the case.

The next thing you have is that even in the -- and you got it in the record, and you got Mr. Earls' affidavit. You have got my affidavit. It's not contradicted by Mr. Megna that even at the time of her deposition when she said that she didn't own the property; that she had sold it in the year 2000, had no more interest in it after that at all, we made an offer to settle at that time.

Mr. Megna in writing -- Mr. Megna just crumpled it up, threw it across the table in my direction and said, "She is not doing this."

I said, "Well, aren't you going to" -- it's in the record. I'm --

THE COURT: I mean, if she says she has got no interest, how can he claim adverse possession?

MR. TRUSLOW: That's --

THE COURT: Hold on.

Mr. Griffin.

That's what I -- that's what I don't get. If Ms. Lee says, "I knew I had no interest. I sold it," how do you make a good faith -- I mean, I don't remember what my grade in property was, but I thought it was like ten years of continuous ownership to establish adverse possession.

How -- if that testimony is uncontradicted in deposition testimony by a party to the case, how can he claim adverse possession? That's what I don't understand, because he found a CJS article somewhere that says in some states you may be able to do it. There's not even any proof that he knew about that article.

MR. GRIFFIN: No but -- I mean, the point is -- well, I have to get her testimony. I mean she said she sold it.

THE COURT: Right.

MR. GRIFFIN: She sold the property and she did, although she kept this mortgage on it. I mean, that's not disputed.

THE COURT: I mean, under -- under that theory, none of us own our houses because the bank has adversely possessed them because they kept a mortgage on it for more

than ten years.

MR. GRIFFIN: No. I mean, they have to come into possession of it first.

THE COURT: I mean, I mean, it just -- I mean, this idea that, "Well, she sold it but she kept it -- you know, she mortgaged it to somebody."

So I mean, I don't understand -- I mean, his main thrust of arguments to the court were adverse possession. I don't understand how it's an adverse possession case.

MR. GRIFFIN: She asserted a legal right to the property. She got a deed of distribution.

THE COURT: Right, at probate.

MR. GRIFFIN: In probate, January 2006.

THE COURT: Right.

MR. GRIFFIN: Sometime she entered into a contract to sell the property, and she had a contract to sell, sold it. Someone came in, took possession of it, and she was collecting mortgage payments on it.

THE COURT: Right.

MR. GRIFFIN: That's the issue is during the period of time when she had sold it but she has a mortgage on it, you know, does that interrupt the continuous possession.

Since you asked, though, it doesn't. Judge Kinard says it didn't. There is no law in South Carolina on it.

THE COURT: Well, her testimony, according to what

Mr. Truslow said, is that she believed she had no interest in the property.

MR. GRIFFIN: Because she sold it.

THE COURT: Right.

MR. GRIFFIN: Right. I mean, she is not a lawyer. That doesn't mean she doesn't have a legal interest. She absolutely has a legal interest because she -- she sued, foreclosed to get the property back.

Well, actually she -- she was sued by -- by the people who stopped paying her, and then she counterclaimed. So she was asserting a legal interest in the property.

I don't know what she said. I mean, I don't have the deposition testimony right at my fingertips. I'll be happy to look at it, Your Honor, but understand that's what she said. Now, that doesn't -- and based on --

THE COURT: I mean, how does a lawyer know that that is the testimony of their client and make that claim? That's my question.

MR. GRIFFIN: Because the lawyer knows she had a legal interest in the property.

THE COURT: Based on what?

MR. GRIFFIN: By virtue of the mortgage, by virtue of the mortgage.

THE COURT: But based on no law, based upon no law in

South Carolina did he make that belief, right? Because you just told me there is no law in the state on it.

MR. GRIFFIN: On whether it's continuous possession.

THE COURT: Right.

MR. GRIFFIN: But does he know she has a interest in the property or claim? Yes, he knows because she has a mortgage on it.

THE COURT: But there is no authority in the state for him to base that argument other than his own interpretation of it?

MR. GRIFFIN: Right, and there is no --

THE COURT: Authority.

MR. GRIFFIN: -- authority to the contrary, correct?

THE COURT: Right.

MR. GRIFFIN: I mean, there is authority, but it's just not in South Carolina.

THE COURT: Well, we don't have any knowledge that he knew any of that or understood any of that, right?

MR. GRIFFIN: I mean, I -- other than he pursued it, Your Honor, and it's not frivolous. Even if it was not adverse possession, we still have these other defenses.

THE COURT: What about the title report? I thought there was a title report at some point in time that Megna ordered that said she had no interest in it.

MR. GRIFFIN: The title report that they did clearly

established that -- what we talked about earlier, that it was a life estate.

THE COURT: Right.

MR. GRIFFIN: It would have gone outside -- it would have gone to Mr. Lee as the remainder under the life estate. That's what the title report said.

THE COURT: So how does Mr. Megna not know at that point when his client doesn't have any interest?

MR. GRIFFIN: Well, he knew at that point that his client -- that the property shouldn't have passed through probate to his client but it did --

THE COURT: Right.

MR. GRIFFIN: -- and she took possession, and she had possession for over ten years whether it's physical possession or --

THE COURT: Okay.

MR. GRIFFIN: -- she had a legal interest in the property.

THE COURT: Mr. Megna knows once he gets a title report the fact that the probate court gave her some kind of interest was improper.

MR. GRIFFIN: Correct, and he knows that Mr. Lee through general power of attorney signed off on that, released Mr. Anasti.

THE COURT: Right.

MR. GRIFFIN: Signed off on it, released her, signed the deed of distribution, and that -- and that she has had the property for ten years.

THE COURT: Well, why doesn't Mr. Anasti have to accept responsibility for that, Mr. Truslow? That's my question.

I mean, if he -- if Mr. Anasti is wherever he is doing whatever he is, makes the decision to give somebody a power of attorney, the power of attorney signs all of these indictments as part of the probate giving up his right to his claim in the property and to release Ms. Lee, why does he get to come back now and say -- you know, why is that not an issue?

MR. TRUSLOW: First of all --

THE COURT: As a -- and I don't mean it as the result of the case. I mean, why is that not a fair issue for any defense attorney to raise? That's my question.

MR. TRUSLOW: First of all, because that's not the way that it occurred. Secondly, Ms. Lee in -- in her deposition said that -- when I asked her about, you know, the whole -- what her whole case was based on, she said -- she said -- well, I asked her, "Did you own this property for 10 years?"

"You didn't own this property for ten years, did you, because you sold it in the year 2000?"

And her answer was, "Yes".

And then the question was, "So at the most, you owned it for about four years and a couple of months."

Then she said that -- during a break in her deposition -- as I understand the rules, you're not supposed to talk to your client about -- about the case, but Mr. Megna went outside and talked to her. That was fair game. We didn't object.

I asked, "What did he say to you?"

And he said, "The deed is no good."

Your Honor, he juxtaposed that against what he told Mr. -- about what he told Judge Kinard where he said they weren't relying -- that this is a transcript page 13, line I think it's 21. We're not relying on the probate, and he says at page -- transcript page eight, ten and 11, "She had nothing to sell."

Then he -- then he said, "When she sold the property, she owned nothing." That's at the transcript.

THE COURT: So that's what Megna is saying to Judge Kinard in the summary judgment hearing?

MR. TRUSLOW: And then --

THE COURT: Is that right?

MR. TRUSLOW: Yes.

THE COURT: Okay.

MR. TRUSLOW: And the judge said, "Well, you know,

I'm going to grant summary judgment," and then you have Mr. Megna's statements right after that. That's at page -- at transcript page 11 line 13.

"Judge, she did not sell the property."

Again, the judge is telling him not to talk out of four sides of his mouth, and he gives him the safe harbor opportunity to get -- get straight.

What he did instead was submit another affidavit that he -- admittedly, he was the one that -- the judge asked him who prepared all of this. He said he did, and he went back and did an affidavit that was even more egregious in support of what I said earlier where there's -- where he said there was nothing in the record.

He attaches some newspaper report that was -- references my client's sexual orientation that had nothing to do with the -- with the issue. And, Your Honor, he says he was continuing to exercise some interest by way of a mortgage, yet she made no claims for mortgage payments after 2002.

Also in the -- in this case and in the companion case, it was being asserted by Mr. Wilson and Mr. Goodwin that my client owned the property and that a verdict in favor of my client would help them in their case against Ms. Lee for selling them property she didn't own.

Thank you.

THE COURT: All right. Anything else, Mr. Griffin?

MR. GRIFFIN: Yes, sir.

THE COURT: Okay.

MR. GRIFFIN: If you look at the transcript.

THE COURT: Which transcript are you referring to?

MR. GRIFFIN: The hearing before Judge Kinard --

THE COURT: Okay.

MR. GRIFFIN: -- at line ten.

Mr. Truslow has said that Mr. Megna told Judge Kinard that she couldn't sell something she didn't own. You said he said that to Judge Kinard.

What -- what he said here is a rhetorical question because there is a question mark. It says, "Your Honor -- and I agree with you -- but the truth is when it was sold, there was nothing. She owned nothing. How could she sell something she did not own?"

So that's a -- so when she sold it -- before she sold it, she owned it. So how could you sell something you don't own? Then the question becomes under an adverse possession -- and he says it in there, that -- that there -- he says this is adverse possession. We're not -- we're not saying she took it under the Probate Court.

This is line 13. We're saying that the deed -- the law is very specific on adverse possession and that the deed provided that.

Then Judge Kinard said, "Well, she lived on the property?"

And Mr. Megna said, No, sir. This is a commercial property. She took the property. She owned the property. She took the rents on the property. She dealt with the property, yes, sir.

The law is very specific. There is case law which I have supplied to the court. This is not an issue of summary judgment.

I mean, that's -- so that was the issue is how could she sell something she didn't own? She did sell it. No one says she didn't sell it.

THE COURT: Right.

MR. GRIFFIN: I mean, the question is -- but by selling it, did that interrupt her, quote, continuous possession particularly when she maintained a mortgage on it.

THE COURT: Okay.

All right. Any response to that, Mr. Truslow?

MR. TRUSLOW: Only that I would have a different paraphrase than Mr. Griffin. The Court said she lived in the property, and he said -- he said that Mr. Megna said no.

What he -- what he actually says is yes, sir.

And he also said -- to make it more egregious, even

though he hadn't gotten any mortgage payments, he said he -- Mr. Megna was saying contrary to what Ms. Lee had said that she was getting rents which she was not after 2002, and he said she was paying the taxes, which she was not and that she was exercising other incidents of ownership which she clearly said in her deposition that after the year 2000, she never went to the property.

It wasn't a place that she would go. She had nothing to do with it.

After -- and my question at page -- appears at page 83, "So after 2002, you didn't own it anymore?"

And the answer was, "No, sir."

"You didn't own this property for ten years because you sold it in the year 2000."

"Yes, sir."

Thank you, Your Honor.

THE COURT: Okay.

MR. GRIFFIN: Judge, he didn't say she lived on the property. Just, Your Honor, line -- the transcript page 14.

THE COURT: Okay.

MR. GRIFFIN: He doesn't -- he doesn't say that. He says, "She dealt with the property?"

"Yes, sir."

"She dealt with the property?"

"Yes, sir."

THE COURT: All right. I'm going to decide this quick. I'll let you all know.

Thank you very much. I appreciate you coming back in. I'm sorry you had to do it, but I just had some questions I have needed to work through in my own mind to put together. So thank you very much for both of you coming back in and being present.

I apologize for having to bring you back in, but this is a lot to process and a lot of different maneuvering parts -- so a lot of different moving parts, excuse me. So I appreciate you coming back in. Thank you.

All right. Have a good day.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the In the Common Pleas Court for Richland County, South Carolina, on the 23rd day of July, 2015.

November 19, 2015

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Lance Wilson and Willis Goodwin, Plaintiffs, vs. Gina L. Anasti Lee, Defendant.	CIVIL ACTION NO: 04-CP-40-5333

FILED
2005 JAN 13 AM 8:34
CLERK OF COURT
RICHLAND CO., S.C.

DEFENDANT'S MOTION FOR JOINDER OF PARTIES

Pursuant to Rule 19 of the South Carolina Rules of Civil Procedure, the Defendant Lee, ten days henceforth, by and through their undersigned attorney, move this Honorable Court for an order joining as parties to the above captioned matter the following:

1. The Dallas Law Firm, PA
   Columbia, SC

2. James A. Anasti
   526 EdistoAvenue
   Columbia, SC

The basis for the Motion is that complete relief cannot be accorded among the existing parties without joinder. Also, as a practical matter, Mr. Anasti will more likely than not claim an interest in the property at issue. Therefore, disposition of the action in his absence may, as a practical matter, impair or impede his ability to protect that interest and leave the Defendant Lee at substantial risk of inconsistent obligations by reason of

his claimed interest. The attorney for the Plaintiff was consulted regarding the foregoing Motion by letter dated January 7, 2005.

Respectfully submitted,

Tony R. Megna, Esquire
1815 Fulmer Road
Blythewood, SC 29016
803-799-1700

January 12, 2005.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

JAMES A. ANASTI)
☒ Plaintiff) CASE NO.
) 2007-CP-40-0576
v.)
) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET
Lance Wilson, Willis Goodwin, Gina L. Anasti Lee,)
Richland County Clerk Of Court
☐ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Douglas N. Truslow, Bar No. 5642 Address: PO Box 1465, Columbia, SC 29202 phone: 803-256-6276 fax: 803-256-7659 e-mail: doug_dnt@bellsouth.net other:	, Bar No. Address: phone: fax: e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: 30 MM Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant — Date submitted: 7/30/07

SECTION III: Motion Fee

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

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

CLERK'S VERIFICATION

Collected by: Mells Date Filed: 7/30

☐ MOTION FEE COLLECTED: ✓
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
	)	
Plaintiff,	)	
	)	
vs.	)	**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
	)	
LANCE WILSON,	)	
WILLIS GOODWIN,	)	
GINA L. ANASTI LEE,	)	
RICHLAND COUNTY CLERK OF COURT	)	
	)	
Defendants.	)	

TO: TONY MEGNA, ESQ., ATTORNEY FOR DEFENDANT GINA L. ANASTI LEE and THOMAS EARLE, ESQ., ATTORNEY FOR DEFENDANTS LANCE WILSON AND WILLIS GOODWIN:

YOU WILL PLEASE TAKE NOTICE that pursuant to South Carolina Rules of Civil Procedure, Rule 56, the undersigned will move before the Court at such time as is proper for an Order of Summary Judgment.

The grounds for this Motion are that there is no issue of material fact and as a matter of law, Plaintiff is entitled to the relief requested, as reflected by discovery, including depositions and Affidavits that may be submitted.

Douglas N. Truslow
Attorney For Plaintiff
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276

Columbia, South Carolina
7/26, 2007

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES A. ANASTI,	
PLAINTIFF,	
VERSUS	C.A. NO.: 07-CP-40-0576
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, RICHLAND COUNTY CLERK OF COURT,	
DEFENDANT.	

- - -

THE DEPOSITION OF GINA L. ANASTI LEE

- - -

LAW OFFICES OF DOUGLAS N. TRUSLOW

914 RICHLAND STREET, SUITE B-102

COLUMBIA, SOUTH CAROLINA

JUNE 26, 2007

9 A.M. - 11:10 A.M.

IN BEHALF OF THE ATTORNEYS FOR THE PLAINTIFF, THE DEPOSITION OF THE ABOVE-NAMED WITNESS WAS TAKEN BEFORE ME, JUDITH H. HAYES, CERTIFIED COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, PURSUANT TO NOTICE AND/OR AGREEMENT IN THE ABOVE-ENTITLED CAUSE PENDING IN THE ABOVE-NAMED COURT.

APPEARING IN BEHALF OF THE PLAINTIFF:

DOUGLAS N. TRUSLOW, ESQ.
914 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201

APPEARING IN BEHALF OF THE DEFENDANT LEE:

TONY R. MEGNA, ESQ
3400 WEST AVENUE
COLUMBIA, SOUTH CAROLINA

APPEARING IN BEHALF OF THE DEFENDANTS WILSON AND GOODWIN:

SEIGLER, EARLE & ELLSWORTH
1735 ST. JULIAN PLACE, SUITE 103
COLUMBIA, SOUTH CAROLINA 29204
BY: THOMAS G. EARLE, ESQ.

ALSO PRESENT: JAMES ANASTI

YOU KNOW WHAT THE TEN COMMANDMENTS ARE, OF COURSE?

A. YES, SIR.

Q. I'M SURE YOU KNOW, NOT PARTICULARLY IN THE ORDER, BUT YOU KNOW WHAT THE EIGHTH COMMANDMENT IS, IF I SAY IT TO YOU, YOU COULD ACKNOWLEDGE THE EIGHTH COMMANDMENT IS, I BELIEVE, THOU NOW SHALL NOT STEAL?

A. YES, SIR.

Q. AS IT RELATES TO YOUR BROTHER JIM, DID YOU EVER INTEND TO STEAL ANYTHING FROM HIM?

A. NO, SIR. I NEVER HAVE.

Q. HAVE YOU EVER INTENDED TO STEAL ANYTHING FROM HIM?

A. NO, SIR.

Q. IS IT YOUR CONTENTION IN THIS CASE THAT YOU TRIED TO STEAL FROM YOUR BROTHER?

A. NO, SIR.

Q. IS IT YOUR CONTENTION IN THIS CASE THAT YOU TRIED TO TAKE SOMETHING FROM YOUR BROTHER, TAKE ANYTHING FROM YOUR BROTHER THAT WAS NOT YOURS, WAS NOT RIGHTFULLY YOURS?

A. NO, SIR.

Q. IF YOU OBTAINED SOMETHING, AND I AM GOING TO BE TALKING, I BELIEVE, SPECIFICS ABOUT THE TWO NOTCH PROPERTY, IF YOU GOT IT SOMEHOW BY MISTAKE, SINCE YOU HAVE SAID YOU NEVER INTENDED TO STEAL, WOULD YOU WANT TO RETURN IT IF YOU DIDN'T GET IT HONESTLY AND PROPERLY?

A. IF IT WAS A MISTAKE, YES.

Q. IF IT WAS AN ACCIDENT, A GOOD FAITH ACCIDENT, YOU WOULD WANT TO RETURN IT TO YOUR BROTHER, IS THAT CORRECT?

A. YES, SIR.

Q. LET'S GO BACK A LITTLE FURTHER IN THE BACKGROUND. YOUR MOTHER AND FATHER HAD A LONG-TERM MARRIAGE AND YOU AND JIM WERE THE PRODUCTS OF THAT MARRIAGE?

A. YES, SIR.

Q. IT WAS A HAPPY MARRIAGE, IS THAT CORRECT?

A. IT WAS.

Q. YOUR MOTHER PREDECEASED YOUR FATHER, IS THAT CORRECT?

A. YES, SIR.

Q. AND THEN THAT LEFT YOU, JIM, AND YOUR DAD OUT?

A. YES, SIR.

Q. WERE YOU AND JIM CLOSE GROWING UP?

A. WE WERE.

Q. YOU LOVE JIM?

A. I DO.

Q. DOES HE LOVE YOU?

A. I DON'T KNOW.

Q. DO YOU THINK HE DOES?

A. I HOPE HE DOES.

Q. DID YOU EVER TALK TO HIM BEFORE, SAY, 2002, SAY FROM 1993 TO 2002, DID YOU ALL EVER TALK ON THE TELEPHONE?

A. YES.

Q. ---DID HE LOVE HIM AS MUCH JUST PRIOR TO THE TIME OF HIS DEATH AS HE HAD THROUGHOUT HIS LIFE?

A. HE DID.

Q. SO THEY CONTINUED, EXCEPT FOR JIM NOT BEING HERE, THEY CONTINUED TO HAVE A GOOD RELATIONSHIP AS FAR AS COMMUNICATION AND CARDS AND THAT SORT OF THING?

A. YES, SIR.

Q. IN FACT, YOU SAID YOU HAD BEEN OVER TO YOUR FATHER'S HOUSE WHEN EITHER JIM WOULD CALL OR YOUR FATHER WOULD CALL HIM?

A. YES, SIR.

Q. YOU WOULD SEE CARDS THAT CAME FROM JIM?

A. YES.

Q. OF COURSE, AS YOUR BROTHER, YOU WOULD RECOGNIZE THAT THEY WERE FROM YOUR BROTHER?

A. YES, SIR.

Q. SO YOUR FATHER WASN'T ANTAGONISTIC TO JIM AFTER HE LEFT AT ALL, WAS HE?

A. NO, SIR.

Q. YOU WEREN'T EITHER?

A. NO.

Q. I AM GOING TO TRY TO SEE IF YOU CAN ANSWER THIS, AND IF YOU CAN'T, YOU CAN TELL ME. GIVEN YOUR RELATIONSHIP AT THAT POINT IN TIME, AT THE TIME OF YOUR FATHER'S DEATH,

DO YOU THINK JIM WOULD TRUST YOU TO DO WHAT WAS RIGHT, TO BE HONEST?

A. I WOULD THINK SO, YES, SIR.

Q. UP UNTIL 2002, WOULD YOU SAY THAT CONTINUED THAT HE WOULD THINK THAT YOU WOULD BE AN HONEST PERSON?

A. YES, SIR.

Q. DID YOU EVER UP UNTIL THAT POINT IN TIME, DID YOU EVER DO ANYTHING FROM YOUR WAY OF THINKING THAT WOULD MAKE YOUR BROTHER, JIM ANASTI, THINK THAT YOU WERE NOT AN HONEST PERSON?

A. NO, SIR.

Q. I KNOW THE ANSWER TO THIS ALREADY, BUT WOULD YOU IN YOUR OWN MIND HAVE EVER DONE ANYTHING TO LEAD YOUR BROTHER TO THINK THAT YOU WERE NOT COMPLETELY HONEST IN DEALING WITH HIM?

A. NO, SIR.

Q. HAVE YOU EVER DONE ANYTHING TO PUT HIM ON NOTICE OR MAKE HIM, TO YOUR WAY OF THINKING, MAKE HIM BELIEVE OR PUT HIM ON NOTICE THAT YOU HAD EVER DONE ANYTHING THAT WAS LESS THAN HONEST AS IT RELATES TO HIM?

A. NO, SIR.

Q. NOW I AM GOING TO FOCUS ON AFTER YOUR FATHER DIED. HE HAD A HOUSE ON PINE STRAW?

A. YES, SIR.

Q. IS THAT CORRECT?

Q. JUST SO THE RECORD WILL BE CLEAR. I KNOW YOU AND I KNOW WHAT WE ARE TALKING ABOUT, BUT WHEN SOMEBODY READS THIS, THEY'LL KNOW WHAT WE ARE TALKING ABOUT. TELL ME WHAT YOU UNDERSTAND TO BE THE PROPERTY, I AM TALKING ABOUT THE REAL PROPERTY ON TWO NOTCH ROAD, WHAT IT IS AND WHAT WE ARE TALKING ABOUT.

A. IT'S A CLUB. MY DAD LEFT IT IN HIS WILL TO ME.

Q. BUT WHAT IS THE TWO NOTCH PROPERTY?

A. IT'S A CLUB.

Q. WHERE IS IT LOCATED?

A. 2325 TWO NOTCH.

Q. PRIOR TO THE TIME OF YOUR FATHER'S DEATH, FOR A LONG TIME, YOUR FATHER AND MOTHER HAD RUN THAT AS THE AMVETS?

A. YES, SIR.

Q. IS THAT CORRECT?

A. YES, SIR.

Q. IT WAS KIND OF A -- THE WORD BAR ISN'T A CORRECT WORD. THAT DOESN'T COME TO MY MIND.

A. I ALWAYS SAY RESTAURANT/LOUNGE. BECAUSE DADDY COOKED IN IT AND STUFF.

Q. YOUR PARENTS COOKED AND THEY HAD A REGULAR GROUP OF PEOPLE THAT---

A. CAME EVERY WEEK.

Q. REGULARS?

A. I WOULD SAY EARLIER THAN THAT.

Q. IT HAD STARTED GOING DOWNHILL IN THE SEVENTIES?

A. (NODDING.)

Q. THIS HAS NOTHING, I DON'T THINK THIS HAS ANYTHING TO DO WITH ANYTHING, BUT IT HAD GONE FROM THE COMMUNITY HAD BEEN MORE COMPOSED OF CAUCASIANS AND THEN HAD GONE, IT WAS CHANGING TO ALMOST EXCLUSIVELY AFRICAN AMERICAN, IS THAT A FAIR STATEMENT?

A. YES, SIR.

Q. SO SOMETIME IN THE EARLY EIGHTIES, I AM NOT GOING TO TIE YOU TO THE DATE, I THINK IT WAS ABOUT 1980, YOUR FATHER HAD STOPPED OPERATING THE CLUB, PER SE?

A. YES.

Q. AND WHO WAS OPERATING IT THEN?

A. I THINK LANCE TOOK OVER THEN OR MIGHT HAVE BEEN DAVE. BECAUSE I THINK DAVE DIED, FROM WHAT I CAN REMEMBER.

Q. THERE WAS SOMEBODY NAMED DAVE AND SOMEBODY NAMED LANCE GOODWIN, I THINK?

A. NO. THAT'S WILLIS.

Q. WILLIS GOODWIN. WAS IT LANCE WILSON?

A. YES, SIR.

Q. SO LANCE WAS RUNNING THE CLUB SOMETIME TO YOUR KNOWLEDGE AS OF THE 1980'S?

A. PROBABLY. I'M TRYING TO THINK. YES, PROBABLY THE MIDDLE EIGHTIES.

Q. SO YOUR FATHER NEVER RAN THE CLUB AFTER AT LEAST BY THE MID EIGHTIES, CORRECT?

A. YES. HE HAD IT THE BEGINNING OF THE EIGHTIES.

Q. BUT BY THE MID EIGHTIES UP UNTIL THE TIME OF HIS DEATH HE CERTAINLY WAS NOT OPERATING IT?

A. NO, SIR.

Q. AND JIM WAS NOT OPERATING IT?

A. NO, SIR.

Q. PRIOR TO THE TIME OF EITHER LANCE WILSON OR WILLIS OR DAVE TAKING OVER, HAD YOU GONE IN TO THE RESTAURANT/LOUNGE?

A. I DIDN'T WHEN THEY TOOK IT OVER. THAT WASN'T A PLACE FOR ME.

Q. BEFORE THEN?

A. BEFORE THEN?

Q. YES. BUT YOU HAD, CORRECT?

A. OH, YES, SIR.

Q. JIM LIKEWISE, JIM HAD BEEN IN THERE ON A REGULAR BASIS HELPING YOUR FATHER, CORRECT?

A. HE WOULD COME BY.

Q. HE WOULD COME HELP YOUR FATHER, CORRECT, AND YOU WOULD HELP YOUR FATHER ON OCCASION, WOULDN'T YOU?

A. YES, SIR.

Q. SO THE ANSWER TO BOTH OF THOSE WOULD BE YES?

A. YES.

Q. IN THE TWO NOTCH PROPERTY, THE REAL PROPERTY, THE CLUB, THE LOUNGE, RESTAURANT, WAS THERE ANY PERSONALTY IN IT?

A. WHAT DO YOU MEAN?

Q. PERSONAL PROPERTY AS COMPARED TO REAL PROPERTY?

A. LIKE MY---

Q. STUFF. LIKE STUFF.

A. YES. MY DAD'S STUFF STAYED IN THERE. IS THAT WHAT YOU'RE TALKING ABOUT?

Q. YES. WHEN WE'RE TALKING ABOUT STUFF, I AM TALKING ABOUT PERSONAL PROPERTY. DO YOU UNDERSTAND WHAT I MEAN?

A. YOU'RE TALKING ABOUT LIKE THE BAR AND TABLES?

Q. YES.

A. YES.

Q. ANY ITEMS THAT WERE NOT LAND OR PERMANENTLY AFFIXED TO LAND?

A. HE EVEN HAD A PIANO IN THERE AT ONE TIME.

Q. WHAT HAPPENED TO THE PIANO?

A. I HAVE NO CLUE. I DON'T KNOW. I DON'T KNOW.

Q. TELL ME SOME OF THE ITEMS OF PERSONALTY THAT WERE IN THE RESTAURANT/LOUNGE?

A. HE HAD A JUKEBOX. OF COURSE ALL OF YOUR KITCHEN ITEMS.

Q. CHAIRS AND TABLES?

A. YES. CHAIRS AND TABLES. A BANDSTAND.

Q. CABINETS?

A. YES, SIR.

Q. I AM NOT TRYING TO TIE YOU DOWN TO EVERYTHING.

A. NO. I AM JUST TRYING TO---

Q. DID THOSE ITEMS OF PERSONALTY REMAIN ON THE REAL PROPERTY AFTER DAVE TOOK OVER OR LANCE OR WILLIS?

A. YES, SIR.

Q. SO IT WAS JUST LEFT IN THERE AND THEY USED IT?

A. YES, SIR.

Q. TO THE BEST OF YOUR KNOWLEDGE?

A. YES.

Q. SO AFTER YOUR FATHER'S DEATH YOU DIDN'T TAKE ANY ITEMS OF PERSONALTY OUT?

A. NO, SIR.

Q. DIDN'T INVENTORY THOSE, IS THAT CORRECT?

A. YES, SIR. THEY STAYED IN THERE.

Q. WHY NOT?

A. I JUST---

Q. JUST DIDN'T?

A. I JUST DIDN'T DO IT.

Q. ANY REASON WHY YOU DIDN'T?

A. WELL, I DIDN'T KNOW THAT IT WAS SUPPOSED TO HAVE BEEN DONE. THAT WAS HIS PROPERTY. OR LANCE AND THEM WERE LEASING IT, WHATEVER.

(PLAINTIFF'S EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

Q. I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER ONE. I AM GOING TO ASK YOU DO YOU KNOW WHAT THAT IS?

A. IT WAS ANOTHER DEED.

Q. YOU SAY IT'S A DEED?

A. IT SAYS WARRANTY DEED.

Q. IT'S A DEED, CORRECT?

A. YES, SIR.

Q. PLAINTIFF'S NUMBER ONE INDICATES THAT LAURA CORVI IS SELLING THE PIECE OF PROPERTY OR TRANSFERRING, DEEDING OVER A PIECE OF PROPERTY?

A. YES. I MEAN I DON'T KNOW HOW THAT ONE WAS DONE. SO I DON'T KNOW.

Q. LAURA CORVI IS YOUR AUNT?

A. YES, SIR.

Q. WHAT IS THE DATE OF THIS PLAINTIFF'S EXHIBIT NUMBER ONE?

A. IS IT RIGHT HERE (POINTING)?

Q. THAT'S THE FILING DATE. WHAT DATE IS IT FILED?

A. NOVEMBER 17TH OF '78.

Q. SO YOU CAN LOOK AND YOU CAN SEE THAT THIS HAS BEEN FILED IN THE COURT HOUSE?

A. YES, SIR.

Q. YOU CAN LOOK AT THIS, AND LOOKING AT PLAINTIFF'S EXHIBIT NUMBER ONE, YOU CAN SEE THAT THAT IS A DEED FROM LAURA CORVI TO WHOM?

A. JAMES ANASTI, ALBERT AND JAMES ANASTI.

Q. ARE THERE ANY OTHER TERMS THAT ARE SIGNIFICANT THAT YOU SEE THAT ARE ON THERE LIKE JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP?

A. I DON'T KNOW. I CAN'T HALF SEE THAT.

Q. DO YOU WEAR GLASSES?

A. WELL, I HAD THEM AND I LOST THEM.

Q. I WILL HELP YOU. I'LL FLIP THIS THING AROUND AND ASK -- IF YOU CAN, UNDER THE NAME ALBERT ANASTI AND JAMES ANASTI, YOU CAN SEE A PARAGRAPH WHERE IT SAYS RELEASES UNTO SAID, THIS IS FOR THEM, AND READ THE NEXT SENTENCE "FOR AND DURING."

A. THEIR JOINT LIVES AND UPON THE DEATH OF EITHER OF THEM, THEN TO THE SURVIVOR OF THEM, HIS OR HER HEIRS.

Q. FOREVER?

A. I'M SORRY?

Q. FOREVER.

A. (READING.) FOREVER, IN FEE SIMPLE, TOGETHER WITH EVERY CONTINGENT REMAINDER AND RIGHT OF REVERSION, THE FOLLOWING-DESCRIBED PROPERTY.

Q. YOU CAN LOOK AT THAT DEED AND IDENTIFY IT AS PLAINTIFF'S EXHIBIT ONE AND SEE THAT IN 1978, THE TWO NOTCH

REAL PROPERTY WAS DEEDED OVER TO ALBERT ANASTI AND JAMES ANASTI AS JOINT TENANTS, IN FEE SIMPLE, WITH RIGHT OF SURVIVORSHIP, CORRECT?

A. YES, SIR.

(PLAINTIFF'S EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

Q. I AM GOING TO SHOW YOU WHAT'S GOING TO BE MARKED AS PLAINTIFF'S TWO. I HAVE SHOWN YOU PLAINTIFF'S TWO. TELL COURT WHAT THAT IS.

A. MY DAD'S DEATH CERTIFICATE.

Q. YOUR FATHER DIED ON OCTOBER 24, 1995, IS THAT CORRECT?

A. YES, SIR.

Q. YOU'RE CERTAIN HE DIED THAT DAY, CORRECT?

A. YES, SIR.

Q. IN FACT, I THINK YOUR AUNT LAURA CORVI AND YOU BASICALLY PLANNED THE FUNERAL, DIDN'T YOU?

A. I PLANNED THE FUNERAL.

Q. DID SHE ASSIST YOU?

A. NO, SIR.

Q. DID ANYBODY ASSIST YOU?

A. NO, SIR.

Q. DID YOU ASK FOR ANY ASSISTANCE?

A. NO. I PRETTY MUCH DID IT MYSELF. DAD'S SISTERS AND THEM CAME DOWN AND THEY HELPED ME DO THE OBITUARY.

Q. WE KNOW THAT YOUR FATHER DIED OCTOBER 24, 1995?

A. YES, SIR.

Q. THERE'S A DEED INDICATING THAT YOUR FATHER AND YOUR BROTHER ARE JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP AND YOU KNOW THAT YOUR FATHER DIED ON OCTOBER 25TH, AND YOU KNOW THAT YOUR BROTHER IS HERE IN THIS ROOM WITH YOU, YOU KNOW YOUR BROTHER SURVIVED YOUR FATHER?

A. YES, SIR.

Q. SO IF YOU LOOK AT THIS DEED, DO YOU KNOW ONE WAY OR THE OTHER, DO YOU KNOW OF ANY DEED WHERE YOUR BROTHER JIM ANASTI RELINQUISHED ANY AND ALL RIGHTS HE HAD OF THE PROPERTY BY WAY OF A DEED TO YOUR FATHER? HAVE YOU EVER SEEN SUCH A DOCUMENT?

A. NO, SIR.

Q. SO IF YOU LOOK AT THIS DEED FROM 1978, AND YOU LOOK AT THIS DEATH CERTIFICATE, YOU KNOW THAT YOUR BROTHER SURVIVED YOUR FATHER?

A. YES, SIR.

Q. SO YOU NOW KNOW THAT YOUR BROTHER, BY VIRTUE OF THIS DEED AND THIS DEATH CERTIFICATE, THE PROPERTY SHOULD RIGHTFULLY BE YOUR BROTHER'S?

MR. MEGNA: OBJECT. YOU'RE ASKING FOR A LEGAL CONCLUSION.

BY MR. TRUSLOW:

Q. GO AHEAD.

HERE IN COLUMBIA THAT I DON'T OWN AT THE CORNER OF MAIN STREET AND GERVAIS. IF I DIDN'T OWN IT AND I PUT IN MY WILL I GIVE IT TO MR. TOM EARLE OVER HERE, WOULD YOU THINK THAT WOULD BE VALID?

A. IF IT'S IN HIS MIND, I WOULD THINK IT WOULD BE.

Q. AND THEN SO MR. EARLE WOULD THEN OWN THE STATE HOUSE? IS THAT WHAT YOUR UNDERSTANDING -- I AM JUST TRYING TO FIGURE OUT WHERE YOU'RE COMING FROM AND YOUR UNDERSTANDING THAT---

A. ALL I KNOW IS MY DAD DID THE WILL AND I PUT IT UP AND HE WILLED THE CLUB TO ME.

Q. YOU REMEMBER WHEN I FIRST STARTED THIS DEPOSITION I WAS ASKING WHETHER YOU INTENDED TO TAKE SOMETHING THAT WASN'T YOURS, AND YOU SAID NO, YOU WEREN'T A THIEF, YOU WEREN'T TRYING TO STEAL, YOU STATED YOU WOULD WANT TO BE HONEST AND WOULDN'T WANT TO TAKE SOMETHING THAT WAS NOT LEGALLY YOURS, CORRECT?

A. EXACTLY.

Q. I AM TRYING TO UNDERSTAND WHERE YOU ARE COMING FROM. IF YOUR FATHER DIDN'T OWN THE PROPERTY---

A. RIGHT.

Q. ---I AM TALKING ABOUT THE REAL PROPERTY.

A. YES, SIR.

Q. IF HE DIDN'T OWN THE REAL PROPERTY AT THE TIME OF HIS DEATH, THEN AT THE TIME OF HIS DEATH, HIS INTEREST IN

THAT PROPERTY WAS EXTINGUISHED, HOW IN YOUR MIND COULD HE HAVE WILLED IT TO YOU IF HE DIDN'T OWN IT AT THE TIME OF THE DEATH?

A. WELL, HE PROBABLY -- I DON'T KNOW. I COULDN'T TELL YOU.

Q. CAN I COUNT ON THAT BEING YOUR FULL ANSWER, THE TRUTH, WHOLE TRUTH AND NOTHING BUT THE TRUTH?

A. YES, SIR.

Q. I NOTICED IN THIS WILL THAT THERE ARE, AS IT RELATES TO, AND I HAVE CIRCLED SOME OF THEM, SO IF YOU WOULD, WHERE IT HAS PARAGRAPH TWO AND THREE, IF YOU CAN READ THESE TWO PARAGRAPHS TO YOURSELF AND I AM GOING TO TALK TO YOU ABOUT THEM.

A. (READING.)

Q. HAVE YOU HAD A CHANCE TO READ THEM?

A. IS THIS WHAT YOU ARE TALKING ABOUT RIGHT HERE (POINTING)?

Q. YES, MA'AM.

A. YES.

Q. HAVE YOU HAD SUFFICIENT TIME TO READ IT CAREFULLY?

A. YES. I THINK SO.

Q. I DON'T WANT TO TRY TO TRICK YOU. I WANT TO MAKE SURE YOU UNDERSTAND BEFORE I ASK QUESTIONS.

A. I THINK DID.

A. YES, SIR. I MEAN, YES, BECAUSE IT REALLY WASN'T THAT MUCH IN THERE BUT A BED.

Q. THAT WAS YOURS AND YOUR HUSBAND'S?

A. YES, SIR.

Q. IT WASN'T YOUR FATHER'S, CORRECT?

A. YES, SIR.

Q. WE CAN GO TO THE NEXT, AND IT SAYS AND THE LOTS "IN" BERKELEY COUNTY, CORRECT?

A. YES, SIR.

Q. DID IT EVER CROSS YOUR MIND UNTIL TODAY THE REASON WHY YOUR FATHER USED THE WORDS PROPERTY "ON" TWO NOTCH ROAD VERSUS RELATING TO PROPERTY "IN" FAIRFIELD COUNTY AND "IN" BERKELEY COUNTY?

A. NO, SIR.

Q. DID YOU NOTICE THAT AT THE TIME WHEN YOU WERE PROBATING THE WILL?

A. NO, SIR.

Q. DID IT EVER COME TO YOUR ATTENTION EVER BEFORE I JUST ASKED THOSE QUESTIONS ABOUT THE CHOICE OF THE WORDS, "IN" VERSUS "ON?"

A. NO, SIR. NEVER PAID IT ANY ATTENTION.

Q. THAT WAS BECAUSE YOU WERE TRYING TO ACT IN GOOD FAITH, CORRECT?

A. I WAS TRYING TO.

Q. BUT IF YOUR FATHER DIDN'T OWN THE LAND AT THE

TIME OF HIS DEATH, AND THE BUILDING, HE COULDN'T WILL AWAY SOMETHING HE DIDN'T OWN, COULD HE?

A. I DON'T GUESS SO.

Q. LET'S GO ON TO SOMETHING ELSE. YOUR FATHER DIED IN, WHAT DID YOU SAY, OCTOBER, OCTOBER 24, 1995?

A. YES.

Q. AND THEN YOU WERE APPOINTED AS A PERSONAL REPRESENTATIVE WHEN, IF YOU RECALL?

A. I DON'T RECALL.

Q. I'M NOT GOING TO MAKE IT HARD ON YOU.

(PLAINTIFF'S EXHIBIT NO. 4 WAS MARKED FOR IDENTIFICATION.)

Q. I AM GOING TO SHOW YOU PLAINTIFF'S EXHIBIT NO. 4. JUST SO THE RECORD WILL BE CLEAR, TELL THE COURT WHEN YOU GOT APPOINTED AS PERSONAL REPRESENTATIVE.

A. NOVEMBER 16TH.

Q. OF WHAT YEAR?

A. NINETY-FIVE.

Q. SO YOU ARE THE PERSONAL REPRESENTATIVE OF YOUR FATHER'S ESTATE AS OF NOVEMBER 1995, CORRECT?

A. YES, SIR.

Q. SO AT THAT TIME YOU WOULD HAVE READ THE WILL, CORRECT?

A. YES.

Q. YOU WOULD HAVE SUBMITTED IT TO PROBATE?

A. YES, SIR.

Q. AND WAS IT ALWAYS YOUR INTENT TO BE HONEST AND COMPLY WITH THE LAW?

A. YES, SIR.

Q. I AM GOING TO ASK YOU WHAT I CONSIDER TO BE AN IMPORTANT QUESTION NOW, SO THINK ABOUT IT CAREFULLY IF YOU WILL. I DON'T THINK IT WILL TAKE YOU LONG. HAS IT EVER BEEN YOUR INTENTION TO DO ANYTHING THAT WAS ILLEGAL IN THE PROBATE OF YOUR FATHER'S ESTATE?

A. NO, SIR.

Q. IF YOU DID ANYTHING THAT WAS INCORRECT OR INACCURATE, WOULD IT HAVE BEEN A SIMPLE ACCIDENT OR MISTAKE?

A. YES, SIR.

Q. WOULD YOU LIKE TO HAVE IT CORRECTED IF YOU DID SOMETHING WRONG?

A. OH, YES.

Q. I APPRECIATE THAT. I DIDN'T THINK IT WOULD TAKE YOU LONG TO ANSWER THE QUESTION, BUT THERE ARE REASONS WHY I WAS ASKING. DID YOU EVER HAVE A LAWYER ASSIST YOU IN THE PROBATE?

A. NO, SIR.

Q. DID YOU EVER HAVE AN ACCOUNTANT ASSIST YOU IN THE PROBATE?

A. MY TAX ACCOUNTANT HELPED ME.

Q. YES.

A. HE SHOULD HAVE.

Q. YOU MAY OR YOU MAY NOT UNDERSTAND THE SIGNIFICANCE OF THIS, BUT DO YOU KNOW HOW IN THE WORLD SOMEBODY CAN PUT THEIR OWN SELF UNDER OATH AND NOTARIZE THEIR OWN SIGNATURE?

A. NO, SIR.

Q. AS PERSONAL REPRESENTATIVE, DID THAT NOT CAUSE YOU ANY CONCERN?

A. EVIDENTLY I DIDN'T READ IT.

Q. IF YOU HAD READ IT, YOU WOULD HAVE KNOWN THAT THAT DEED OF DISTRIBUTION WASN'T NOTARIZED PROPERLY, WOULDN'T YOU?

A. YES, SIR.

Q. AND YOU KNOW NOW THAT IT WASN'T PROPERLY NOTARIZED?

A. BY LOOKING AT THAT, YES.

Q. IT ALSO SAYS IT'S ON THE 25TH, DOESN'T IT? YOU CAN LOOK AT IT AGAIN.

A. YES.

Q. IS THE ANSWER YES?

A. YES.

Q. SO YOU SWORE THAT THIS HAPPENED ON THE 18TH OF OCTOBER, THERE IS A WITNESS NAMED ROBERT JOHNSON THAT SAYS YOU SIGNED IT ON THE 18TH OF OCTOBER BUT JAMES RIMER

MAKE SURE THAT IT WAS DONE RIGHT, IS THAT WHAT YOU ARE TELLING ME?

A. I THOUGHT IT WAS BEING DONE RIGHT.

Q. PARDON ME?

A. I THOUGHT IT WAS BEING DONE RIGHT.

Q. BUT YOU NOW KNOW THAT IT WASN'T, DON'T YOU?

A. WELL, I REALLY DON'T KNOW, BUT I MEAN I STILL HAVE IN MIND THAT IT WAS DONE RIGHT.

Q. HAD YOU SEEN THAT DEED WHEREBY LAURA CORVI DEEDED THE PROPERTY OVER TO YOUR FATHER AND YOUR BROTHER AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AND KNOWING THAT JIM SURVIVED YOUR FATHER YOU WOULD HAVE DONE THINGS DIFFERENTLY, WOULDN'T YOU?

A. OH, YES.

Q. BECAUSE YOU WOULD WANT TO BE HONEST?

A. YES.

Q. AND YOU STILL WANT TO BE HONEST TODAY?

A. YES.

Q. THAT LEADS ME TO THE NEXT QUESTION. HAVING NOW SEEN THE DEED FROM LAURA CORVI TO YOUR BROTHER AND TO YOUR FATHER KNOWING YOUR BROTHER SURVIVED YOUR FATHER AND SAYING THAT YOU WANT TO DO THE HONEST THING EVEN NOW, ISN'T THE PROPERTY JIM'S, THE REAL PROPERTY?

A. I WOULD SAY HALF OF IT IS BECAUSE I STILL THINK MY DAD DEEDED ME THE OTHER PART, HIS PART.

TAXES?

A. HE WAS PAYING THEM, YES, AND THEN, YES, AND THEN MY HUSBAND DID MOST OF THE REPAIRS ON IT.

Q. AFTER YOUR FATHER PASSED, IN 1995, OCTOBER OF 1995, WHO WAS THE PERSON THAT COLLECTED RENT?

A. I DID.

Q. HOW MUCH RENT WERE YOU GETTING?

A. I WANT TO SAY IT WAS $1,200. I THINK THAT IS WHAT IT WAS.

Q. A WEEK, MONTH OR YEAR?

A. A MONTH.

Q. PER MONTH?

A. YES, SIR.

Q. AND AFTER YOUR FATHER PASSED, FROM OCTOBER 24TH, I GUESS WE HAVE BEEN TALKING ABOUT NOVEMBER OF '05 RENT, $1,200 PER MONTH?

A. YES, SIR.

Q. DID IT REMAIN THE SAME?

A. YES, SIR. FOR A WHILE.

Q. FOR HOW LONG DID YOU COLLECT THE RENT?

A. I DON'T KNOW. IT WAS TWO OR THREE YEARS. I THINK. SEEMS LIKE TWO OR THREE YEARS.

Q. DID THEY PAY EVERY MONTH?

A. YES, SIR.

Q. WHAT HAPPENED AFTER TWO OR THREE YEARS?

A. I DECIDED TO SELL IT.
Q. WHAT DID YOU DO?
A. WELL, WE WENT TO LANCE'S LAWYER AND HAD ALL THE PAPERWORK DONE.
Q. SO YOU WERE BASICALLY GETTING $14,400 A YEAR?
A. PRETTY MUCH, YES.
Q. AND WERE YOU DECLARING THAT ON YOUR INCOME TAXES?
A. YES, SIR.
Q. SO I WOULD BE ABLE TO GET YOUR INCOME TAXES AND---
A. YES, SIR.
Q. AND BE ABLE TO CORROBORATE THE ACCURACY OF THAT, CORRECT?
A. YES, SIR.
Q. WHEN YOU SAY INCOME TAX, IT WENT INTO YOUR PERSONAL ACCOUNT?
A. YES.
Q. DIDN'T GO INTO AN ESTATE ACCOUNT?
A. NO.
Q. SO YOU TOOK IT ALL?
A. YES, SIR. AND DID ALL THE UPKEEP AND THE TAXES ON IT.
Q. DO YOU HAVE RECORDS REFLECTING WHAT UPKEEP WAS DONE AND WHAT TAXES WERE PAID?
A. SOME OF IT, I DO, BUT MY HUSBAND DID SOME OF THE

A. NO, SIR.

Q. HAVING LOOKED AT THIS NOW, DOESN'T IT APPEAR THERE WAS NO PROPER DEED OF DISTRIBUTION BY YOU?

A. I MEAN I STILL THINK, YOU KNOW, I STILL THINK THAT, BUT I THINK THE DATE IS ON THERE WRONG. I THINK WILLIS HAD THAT TYPED UP.

Q. BUT WHO IS THE PERSON THAT SIGNED IT UNDER OATH?

A. I DID. I DIDN'T READ IT WELL.

Q. THAT IS NOT JIM ANASTI'S FAULT, IS IT?

A. NO. THAT'S NOT.

Q. IT'S NOT MY FAULT OR YOUR LAWYER'S FAULT?

A. NO, SIR.

Q. IT'S YOUR FAULT?

A. YES, SIR. IT IS.

Q. SO WE GO FROM NOVEMBER OF '95 TO JANUARY OF 2000. THAT WOULD HAVE BEEN HOW MANY YEARS OF RENT?

A. I DON'T KNOW.

Q. NOVEMBER. NINETY-SIX, NINETY-SEVEN, NINETY-EIGHT, NINETY-NINE. AT LEAST FOUR YEARS AND ONE MONTH, IS THAT CORRECT?

A. COULD BE.

Q. WE ARE GOING TO HAVE TO TAKE A BREAK HERE AND SEE IF I AM RIGHT OR NOT. I'M TRYING TO BE POLITE, AND WITH ALL DEFERENCE TO YOU, WE ARE GOING TO HAVE TO PLOW THAT FIELD A LITTLE BIT MORE. YOU SAID YOU GOT RENT OF $1,200 A

MONTH UP UNTIL THE TIME IT WAS SOLD, AND I AM JUST COUNTING ON MY FINGERS.

A. YES, SIR.

Q. BY YEARS, NOVEMBER '96, NOVEMBER '97, NOVEMBER '98, NOVEMBER '99, AND THEN DECEMBER WOULD BE ONE MORE MONTH, SO FOUR YEARS AND ONE MONTH OF PAYMENTS THAT YOU GOT?

A. SOMEWHERE AROUND THERE.

Q. THAT IS CORRECT, ISN'T IT, FOUR YEARS AND ONE MONTH?

A. IT SHOULD BE SOMEWHERE AROUND THERE.

Q. DURING THOSE FOUR YEARS AND ONE MONTH, GINA LEE RECEIVED $58,800 IN RENT?

A. IT COULD BE SOMEWHERE AROUND THERE.

Q. IF YOU WRONGFULLY GOT RENT THAT YOU WEREN'T ENTITLED TO, AND LISTENING TO WHAT YOU HAVE SAID ABOUT WANTING TO DO THE RIGHT THING ALWAYS, IF YOU ARE INCORRECT IN THIS CASE, AND JIM IS CORRECT, YOU OWE HIM $58,800 PLUS INTEREST, CORRECT?

A. YES, SIR.

Q. I AM GOING ON TO SOMETHING ELSE FOR A MOMENT AND THEN WE'LL DEAL WITH IT. THIS IS UNPLEASANT. DO YOU NEED TO TAKE A BREAK OR ARE YOU OKAY?

A. I HAVE TO GO TO THE BATHROOM.

(BREAK AT 10:35 A.M.)

STILL THERE?

A. YES, SIR.

Q. YOU'RE STILL PAYING TAXES ON IT?

A. YES, SIR.

Q. DO YOU HAVE ANY SAVINGS?

A. NO, SIR.

Q. DO YOU HAVE ANY INVESTMENTS?

A. NO.

Q. IF THE COURT DETERMINED THAT YOU OWED JIM ANASTI $58,800 PLUS INTEREST, HOW ARE YOU GOING TO PAY THAT?

A. I DON'T KNOW.

Q. YOU DON'T HAVE ANY MONEY?

A. NO. I JUST LIVE DAY TO DAY.

Q. THAT IS WHAT I WAS GOING TO ASK. I DIDN'T KNOW HOW TO POLITELY ASK IT. THAT IS THE WAY A LOT OF PEOPLE LIVE AND HOPE FOR A BETTER DAY TOMORROW.

A. YES.

Q. WHAT YOU ARE TELLING ME IS IF WE GOT A $58,000 VERDICT YOU JUST DON'T HAVE ANY MONEY TO PAY IT?

A. NO, SIR.

Q. IF IN FACT THIS $58,800 THAT YOU COLLECTED IN RENT WAS, IN FACT, OWED TO THE LEGAL ENTITLEMENT OF JIM, IS IT YOUR TESTIMONY THAT YOU JUST SPENT IT?

A. NO. I PAID BILLS WITH IT.

Q. YOU SPENT IT?

A. WELL YES, I GUESS YOU HAVE TO SPEND TO PAY BILLS.

Q. BUT IF IT WASN'T YOURS, YOU WOULDN'T WANT TO TAKE MONEY THAT DIDN'T BELONG TO YOU, IS THAT CORRECT?

A. CORRECT.

Q. YOU WOULD WANT TO PAY HIM BACK IF YOU COULD?

A. OH, YES.

Q. YOU JUST CAN'T?

A. RIGHT.

Q. NOT THAT YOU DON'T WANT TO, YOU JUST CAN'T. YOU DON'T HAVE THE MONEY?

A. RIGHT.

Q. IN 2002, THE HIGHWAY DEPARTMENT BROUGHT A LEGAL ACTION, DO YOU RECALL THAT?

A. YES, SIR. THAT'S WHEN THEY PULLED UP THE OTHER DEED.

Q. THE OTHER DEED, WE ARE TALKING ABOUT---

A. JIM'S. JIM'S DEED.

Q. PLAINTIFF'S EXHIBIT NUMBER ONE, CORRECT?

A. YES, SIR.

Q. I AM JUST TRYING TO GET THIS TIME LINE BACK.

A. YES.

Q. YOU DID A DEED OF DISTRIBUTION THAT WAS FILED SOMETIME IN NOVEMBER OF '06, CORRECT?

A. I THINK SO.

Q. YOU CAN LOOK ON EXHIBIT SIX AND SEE, I THINK.

DID I SAY 2006? I MEANT 1996. I APOLOGIZE. YOU CAN SEE WHEN THIS WAS FILED. I HAD THE WRONG EXHIBIT. IT WAS EXHIBIT FIVE. YOU CAN LOOK UP HERE AND YOU CAN SEE THAT THIS DEED OF DISTRIBUTION WAS FILED ON NOVEMBER 7?

A. I THINK SO, YES.

Q. AND WE DON'T KNOW WHEN YOU ACTUALLY SIGNED THIS BUT MAYBE AS EARLY AS OCTOBER OF 1996, BUT FILED IN NOVEMBER OF 1996?

A. YES, SIR.

Q. AND THEN YOU SOLD IT IN JANUARY OF THE YEAR 2000, CORRECT?

A. I THINK THAT WAS THE YEAR.

Q. YOU CAN LOOK AT EXHIBIT SEVEN AND SEE THAT. LOOK ON THE THIRD PAGE AND SEE NOVEMBER 6, 2000.

A. YES, SIR.

Q. SO AFTER NOVEMBER 6, 2000, YOU DIDN'T OWN IT ANYMORE?

A. NO, SIR.

Q. THE ONLY WAY YOU COULD EVER REACQUIRE PROPERTY WOULD BE BY WAY OF FORECLOSING ON A -- I THINK THAT MIGHT BE THE RIGHT WORD, FORECLOSE ON A DEBT THAT YOU MIGHT BE OWED IF, IN FACT, IT WAS OWED TO YOU, CORRECT?

A. YES, SIR.

Q. YOU HAD RELINQUISHED, SOLD COMPLETELY YOUR INTEREST IN THIS PROPERTY AS OF JANUARY 6, 2000?

A. YES, SIR.

Q. I HAVE NOTICED AND YOU MIGHT KNOW THIS AND YOU MIGHT NOT KNOW IT, BUT DO YOU KNOW WHAT ADVERSE POSSESSION IS?

A. I HAVE HEARD OF IT, YES.

Q. DO YOU KNOW WHAT IT MEANS?

A. SOMETHING LIKE PROPERTY THAT'S RIGHTFULLY YOURS GOES BACK TO YOU.

Q. YOU DIDN'T OWN THIS PROPERTY FOR TEN YEARS, DID YOU, BECAUSE YOU SOLD IT IN 2000?

A. YES.

Q. SO AT THE MOST YOU OWNED IT ABOUT FOUR YEARS AND A COUPLE OF MONTHS?

A. YES, SIR.

Q. AS OF THE YEAR 2002, YOU ARE AWARE THAT THE HIGHWAY DEPARTMENT ASSERTED THAT THERE WERE ISSUES RELATING TO THE OWNERSHIP, CORRECT?

A. YES, SIR.

Q. IS THAT THE FIRST TIME YOU WERE AWARE THAT THERE MIGHT HAVE BEEN A PROBLEM?

A. YES, SIR.

Q. IN ADDITION TO THAT, THOSE PAYMENTS OF $58,800, AFTER THE DATE OF SALE, WERE PAYMENTS MADE TO YOU AFTER THAT IN RELIANCE ON THE SALE OF THE PROPERTY?

A. YES.

Q. FOR HOW MANY YEARS WERE THEY PAID TO YOU? WAS IT FROM 2000 TO---

A. I THINK 2002.

Q. WHEN THE ISSUE CAME UP ABOUT WHO WAS THE RIGHTFUL OWNER OF THE PROPERTY, LANCE AND/OR DAVE OR WHOEVER, OR WILLIS STOPPED PAYING, CORRECT?

A. YES, SIR.

Q. SO IN ADDITION TO $58,800, YOU ALSO GOT WHAT PURPORTED TO BE MORTGAGE PAYMENTS OF $1,519.02?

A. YES, SIR.

Q. SO YOU GOT THOSE FOR AT LEAST---

A. TWO YEARS.

Q. DID YOU GET ANY OTHER MONEY?

A. I GOT A DOWN PAYMENT ON IT.

Q. HOW MUCH?

A. I THINK IT WAS TWENTY-FIVE. TWENTY-FIVE OR THIRTY-FIVE THOUSAND.

Q. YOU GOT AT LEAST TWO YEARS OF PAYMENTS AT MORE THAN FIFTEEN HUNDRED A MONTH?

A. YES, SIR.

Q. SO THAT COMES OUT, THAT WOULD BE ABOUT THIRTY-SIX THOUSAND DOLLARS?

A. YES, SIR.

Q. AND IN ADDITION TO THAT YOU GOT THE TWENTY-FIVE THOUSAND DOWN PAYMENT, AT LEAST TWENTY-FIVE THOUSAND?

A. YES.

Q. SO WE ARE UP TO $61,000, AND IF YOU ARE NOT CORRECT IN THIS CASE WE HAVE GOT $61,000 PLUS INTEREST PLUS $58,800 PLUS INTEREST, CORRECT?

A. YES, SIR.

Q. AND YOU DON'T HAVE THE ABILITY TO PAY IT?

A. NO, SIR.

Q. BUT IF YOU OWED IT, YOU WOULD WANT TO PAY IT?

A. SIR?

Q. IF YOU GOT MONEY WRONGFULLY, YOU WOULD WANT JIM TO BE REPAID?

A. YES, SIR.

Q. YOU JUST CAN'T PAY HIM BACK?

A. YES.

Q. HAVE YOU EVER CALLED HIM AND WRITTEN HIM AND TOLD HIM THAT YOU WERE SORRY?

A. NO, SIR. BECAUSE I DIDN'T KNOW THAT -- I DIDN'T EVEN KNOW WHERE HE WAS AT.

Q. I DON'T KNOW WHETHER IT HAS OR HASN'T, BUT HAS THIS DEPOSITION BEEN AN EYE OPENER FOR YOU ABOUT WHAT HAPPENED?

A. YES.

Q. TELL ME WHY YOU FEEL THAT WAY. I KNOW THE ANSWER, BUT GO AHEAD.

A. I WOULD GO ABOUT IT DIFFERENTLY.

A. LACHES?

Q. YOU HAVE ALLEGED THAT ALL CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES, L-A-C-H-E-S. DO YOU KNOW WHAT THAT MEANS?

A. NO, SIR.

Q. DO YOU KNOW WHAT FACTS YOU RELY ON?

A. NO.

Q. DO YOU RELY ON ANY FACTS IN ASSERTING THAT?

A. NO.

Q. SAME FOR ESTOPPEL?

A. I DON'T KNOW WHAT YOU MEAN.

Q. TELL ME WHAT YOU DON'T UNDERSTAND AND I WILL TRY TO CLEAR IT UP.

A. I DON'T KNOW WHAT YOU ARE GETTING AT. I DON'T KNOW WHAT THESE WORDS ARE.

Q. YOU ARE THE ONE THAT ASSERTED THEM AND FILED AN ANSWER WITH THE COURT, SO I'M TRYING TO FIND OUT WHAT YOU MEANT. YOU HAVE VOUCHED THAT THIS IS CORRECT AND I WANT TO KNOW WHAT FACTS YOU ARE RELYING ON. IF YOU SAY YOU ARE NOT RELYING ON ANYTHING, THAT'S OKAY.

A. I GUESS THIS RIGHT HERE. THE DEEDS AND STUFF. THE DEEDS OF DISTRIBUTION.

Q. SO WHAT YOUR WHOLE CASE WOULD BE BASED ON IS THE DEED OF DISTRIBUTION?

A. AND THE WILL.

Q. AND THE WILL?

A. AND THE WILL.

Q. AND THAT'S IT?

A. AND MY DAD, WHAT MY DAD TOLD ME. I MEAN, BUT THAT'S NOT RECORDED.

Q. DID WE CALL IT DAVE'S PLACE AFTER THE EIGHTIES?

A. YES.

Q. IN MY MIND, BECAUSE I AM OLDER THAN YOU ARE, IT WAS ALWAYS AMVETS FOR US.

A. AMVETS.

Q. BUT THEN IT BECAME DAVE'S IN THE EIGHTIES THAT WE TALKED ABOUT?

A. YES.

Q. BEFORE, WHEN IT WAS AMVETS, TO YOUR KNOWLEDGE WAS JIM EVER BARRED, PROHIBITED FROM GOING ON THE PROPERTY OF THE AMVETS?

A. NO, SIR.

Q. SO HE WAS NEVER OUSTED FROM THE PROPERTY?

A. NO, SIR.

Q. NEVER PROHIBITED FROM GOING THERE?

A. NO.

Q. AFTER IT BECAME DAVE'S AND KIND OF THE DEMOGRAPHICS CHANGED YOU JUST CLOSE NOT TO GO THERE, CORRECT?

A. YES, SIR.

Q. BUT YOU COULD HAVE GONE THERE IF YOU HAD CHOSEN?

A. YES. BUT IT WASN'T A PLACE FOR ME TO GO.

Q. I UNDERSTAND WITH RESPECT TO WHAT YOU'RE SAYING FOR A LADY TO GO YOU WOULDN'T HAVE FELT UNCOMFORTABLE GOING IN THERE ALONE, WOULD YOU?

A. NO. NOT IN THERE.

Q. TO YOUR KNOWLEDGE AFTER IT BECAME DAVE'S WAS JIM EVER OUSTED OR PROHIBITED FROM GOING IN THERE?

A. NOT THAT I KNOW OF.

Q. I THINK YOU HAVE ALREADY TOLD ME THAT YOUR FATHER AND YOUR BROTHER ENJOYED A VERY GOOD RELATIONSHIP UP UNTIL THE TIME HE DIED TO THE BEST OF YOUR KNOWLEDGE?

A. YES.

Q. SO HE NEVER FORBADE JIM FROM COMING ABOUT THE PROPERTY OR GOING ON THERE OR DOING ANYTHING ELSE?

A. NO.

Q. YOU HAVE ALLEGED IN YOUR ANSWER THAT, I THINK YOU HAVE ALREADY ANSWERED ALL MY QUESTIONS I NEED FOR THIS, BUT IN YOUR EIGHTH DEFENSE YOU HAVE SAID THAT JIM WAS OUSTED FROM THE PROPERTY.

A. NO.

Q. IF I CAN, I WILL SHOW YOU, I KNOW YOU DON'T BELIEVE ME WHEN I SAY IT, BUT THIS IS WHAT YOU SAID. IF YOU WILL LOOK AT PARAGRAPH EIGHT, THE EIGHTH DEFENSE, ALL CLAIMS ARE -- (READING.) HOWEVER, TO FIND AGAINST LEE ARE

BARRED BY THE DOCUMENT OF THE OUSTER.

IS THERE ANYTHING THAT YOU CAN TELL ME THAT INDICATES THAT JIM WAS BARRED FROM THE PROPERTY, PROHIBITED FROM COMING TO THE PROPERTY, KICKED OFF THE PROPERTY?

A. NO.

Q. NOT ALLOWED TO BENEFIT IN ANY WAY WHATSOEVER?

A. NO, SIR.

Q. YOU MIGHT THINK I'M SKIPPING AROUND, BUT I'M NOT, BECAUSE LAWYERS ALWAYS KNOW WHAT QUESTIONS THEY ARE GOING TO ASK IN LINE, OR THEY SHOULD. YOU HAD HAD A DISCUSSION AT SOME POINT IN TIME WITH YOUR FATHER ABOUT AN ATTORNEY NAMED JOHN DELGADO?

A. YES, SIR.

Q. JOHN DELGADO IS A WELL-KNOWN CRIMINAL DEFENSE ATTORNEY?

A. YES, SIR.

Q. WAS IT YOUR UNDERSTANDING THAT JOHN DELGADO WAS EMPLOYED BY YOUR FATHER ON JIM'S BEHALF?

A. YES, SIR.

Q. YOUR FATHER PAID FOR THE LEGAL FEES?

A. THAT I KNOW OF, YES.

Q. AND YOU WERE ABLE TO LOOK THROUGH THE FINANCIAL RECORDS AND SEE, IN FACT, HE HAD PAID MR. DELGADO?

A. I THINK IT WAS BY A LETTER THAT JIM WROTE.

Q. BUT I WASN'T ASKING ABOUT THAT. I WAS ASKING

THAT YOUR FATHER USED PROCEEDS TO PAY FOR AN ATTORNEY FOR JIM?

A. AS FAR AS I KNOW.

Q. I HOPE YOU HAVE NEVER HAD TO EMPLOY AN ATTORNEY FOR A CRIMINAL CASE, BUT YOU UNDERSTAND IT CAN BE VERY, VERY EXPENSIVE?

A. YES, SIR.

Q. DO YOU KNOW HOW MUCH YOUR FATHER PAID MR. DELGADO ON JIM'S BEHALF?

A. NO, SIR.

Q. WAS IT YOUR UNDERSTANDING THOUGH THAT IT WAS SUBSTANTIAL, OR DO YOU HAVE ANY KNOWLEDGE?

A. I DON'T KNOW.

Q. IN YOUR NINTH DEFENSE, AND I AM READING HERE AGAIN, THAT YOU WERE CERTAIN THAT JIM DOESN'T HAVE A CLAIM AGAINST YOU OR THIS PROPERTY BECAUSE THERE IS A PRESUMPTION OF GRANT. I AM READING THE EXACT WORDS THAT YOU ALLEGED IN PARAGRAPH TEN. WHAT IN THE WORLD DOES THAT MEAN?

A. I HAVE NO CLUE.

Q. DO YOU KNOW WHAT FACTS YOU RELY ON, IF ANY?

A. NO.

Q. ARE THERE ANY FACTS TO YOUR KNOWLEDGE TO SUPPORT SUCH A CLAIM?

A. EXCEPT THE DEED AND THE WILL.

Q. IF YOU RECALL, I ASKED YOU SEVERAL TIMES HOW

SOMEBODY COULD WILL AWAY PROPERTY THEY DIDN'T OWN AT THE TIME OF DEATH?

A. YES, SIR.

Q. DO YOU RECALL ME ASKING YOU THAT?

A. YES, SIR.

Q. AND IN FACT, I WAS ASKING YOU IF I WANTED TO, IN A WILL, I WANTED TO DEED AWAY TO MR. EARLE THE STATE HOUSE THAT I DIDN'T OWN, IT COULDN'T BE DONE, COULD IT?

A. I DON'T GUESS SO.

Q. YOU CAN'T WILL AWAY SOMETHING YOU DON'T KNOW DON'T OWN, CAN YOU?

A. EXACTLY.

Q. TO WRAP UP EVERYTHING AND MOVE ON TO ANOTHER POINT, YOU ARE NOW AWARE THAT TO THE EXTENT IF, IN FACT, YOUR FATHER WAS INTENDING TO WILL YOU REAL PROPERTY ON TWO NOTCH ROAD AS COMPARED TO PERSONAL PROPERTY, YOU NOW KNOW THAT HE DIDN'T OWN IT AT THE TIME OF HIS DEATH?

A. WELL, I STILL THINK HE WOULD OWN A PART OF IT.

Q. HOW WOULD HE OWN IT AFTER HE WAS DEAD GIVEN THE WILL FROM LAURA CORVI WHERE IT WAS JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP?

A. I GUESS THAT'S LIKE A PIECE OF PROPERTY THAT YOU WOULD HAVE AND DIDN'T WILL IT TO ANYBODY AND YOU DIED. IT SHOULD EVENTUALLY GO TO SOMEBODY.

Q. SPECULATION?

A. YES.

Q. AGAIN, YOU CHOSE NOT TO GET AN ATTORNEY TO ADVISE YOU ABOUT ANY OF THAT?

A. NO, SIR.

MR. TRUSLOW: NOW IS THE TIME FOR US TO TAKE A BREAK AND POW-WOW. I HOPE I HAVE BEEN PRETTY ORGANIZED, BUT WE ARE GOING TO TAKE A BREAK AND TALK ABOUT IF THERE ARE ANY OTHER QUESTIONS WE NEED TO ASK AND WE OUGHT TO BE DONE.

(BREAK AT 11 A.M.)

(BACK ON THE RECORD.)

BY MR. TRUSLOW:

Q. WE'RE ABOUT DONE. IT WASN'T AS BAD AS YOU EXPECTED, WAS IT?

A. NO, SIR.

Q. A COUPLE OF THINGS JUST TO CLEAN UP. SEE IF THIS REFRESHES YOUR MEMORY. IS IT CORRECT THAT THE DOWN PAYMENT THAT WAS PAID TO YOU PURPORTEDLY FOR THE SALE OF THE TWO NOTCH ROAD REAL ESTATE WHETHER YOU GOT $50,000 RATHER THAN $25,000?

A. I DON'T THINK IT WAS FIFTY. I THINK IT WAS EITHER TWENTY-FIVE OR THIRTY-FIVE.

Q. A COUPLE OF OTHER THINGS AND WE'LL CLEAN UP AND WE'LL BE DONE. BECAUSE WE ALWAYS HAVE TO ASK THIS, TELL ME WHAT YOU ALL TALKED ABOUT OUTSIDE.

A. THAT I WAS DOING A GOOD JOB.

Q. WHAT ELSE? DID YOU DISCUSS ANY QUESTIONS THAT MIGHT BE ASKED?

MR. MEGNA: JUST TELL HIM THE TRUTH. IT'S NO BIG DEAL.

A. ABOUT THE DEED, THE DATE ON THAT. THAT THE DATE WAS NO GOOD. I ASKED HIM ABOUT THAT.

MR. MEGNA: I WILL ASK SOME QUESTIONS, TOO.

BY MR. TRUSLOW:

Q. SO WHAT WAS ASKED, WHAT DID HE SAY, WHAT DID YOU SAY?

A. ABOUT THE DEED, THE DATE ON IT THAT WASN'T ANY GOOD.

Q. WHAT DID HE SAY AND WHAT DID YOU SAY?

A. THAT THE DEED JUST IS NO GOOD.

Q. HE TOLD YOU THE DEED IS NO GOOD?

A. WE WERE TALKING ABOUT THE DATES ON IT.

Q. WHAT DID HE SAY AND WHAT DID YOU SAY?

A. THAT WAS ABOUT IT.

Q. DID HE SAY THE DEED WAS NO GOOD OR DID YOU SAY THE DEED WAS NO GOOD OR DID HE SAY WHAT HAPPENED?

A. I DON'T KNOW.

Q. GO AHEAD.

A. AND WHAT IS ADVERSE POSSESSION.

MR. MEGNA: JUST TELL HIM I ASKED ABOUT -- I'LL

A. YES, SIR.

Q. I DON'T WANT TO PUT WORDS IN YOUR MOUTH. I'M JUST TRYING TO CUT TO THE CHASE. IS IT YOUR POSITION THAT IF THERE WAS AN ERROR IT WAS A GOOD FAITH ERROR AND PART OF IT WAS PRECIPITATED BY THE LAWYER IN NOT DOING A PROPER TITLE SEARCH?

A. YES, SIR.

Q. YOU STILL FEEL THAT WAY, DON'T YOU?

A. YES, SIR.

Q. FOR WHAT IT'S WORTH, I DON'T KNOW HOW THEY DID IT.

A. I DON'T KNOW.

Q. DO YOU KNOW HOW IN THE WORLD -- I AM NOT ASKING YOU WHAT YOU DISCUSSED WITH YOUR ATTORNEY, I RESPECT THAT, BUT CAN YOU FIGURE OUT HOW IN THE WORLD THE ATTORNEY MISSED JIM'S TITLE?

A. I HAVE NO CLUE.

Q. WE ARE ABOUT DONE. IS THERE ANYTHING THAT YOU CAN THINK OF THAT IS IMPORTANT TO THIS CASE? DO YOU REMEMBER WHEN YOU PROMISED UNDER OATH TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP ME GOD?

A. YES.

Q. IS THERE ANYTHING AT ALL THAT YOU CAN THINK OF THAT YOU WOULD LIKE TO ADD?

A. I JUST WANT TO DO EVERYTHING THE RIGHT WAY.

BEFORE IT WOULD HAVE GOTTEN THIS FAR. BUT OTHER THAN THAT, I DON'T KNOW WHY THE LAWYERS DIDN'T DO THE TITLE SEARCH SO IT WOULDN'T HAVE GOTTEN THIS FAR.

Q. IF THEY HAD DONE A PROPER TITLE SEARCH WE WOULDN'T BE HERE, RIGHT?

A. RIGHT.

Q. YOU WOULDN'T HAVE INCURRED THE LEGAL FEES YOU'RE INCURRING?

A. RIGHT.

Q. IF, WHEN THEY HAD DONE THE TITLE SEARCH, I GUESS BACK IN THE YEAR 2000, IF THEY HAD FOUND ALL OF THIS, YOU WOULD HAVE MADE IT RIGHT AT THAT TIME, WOULDN'T YOU?

A. YES, SIR.

Q. YOU WOULDN'T HAVE SOLD THE PROPERTY IF YOU HAD KNOWN ABOUT JIM'S TITLE, WOULD YOU?

A. NO, SIR.

MR. TRUSLOW: THAT'S ALL I HAVE. THANK YOU. I APPRECIATE YOU BEING HERE AND I KNOW IT'S NEVER PLEASANT. KIND OF LIKE WHEN YOU GO TO THE DOCTOR, THE DOCTOR DOES IT FOR A LIVING, AND YOU ARE HURTING.

WITNESS: YES.

MR. TRUSLOW: WE UNDERSTAND THAT. THANK YOU.

EXAMINATION

BY MR. EARLE:

Q. I HAVE JUST ONE QUESTION. ON THE CLOSING OF THE TRANSACTION YOU RECEIVED $36,964.31?

A. OKAY. I SAID IT WAS TWENTY-FIVE OR THIRTY-FIVE.

Q. AT THE CLOSING. AND YOU ALSO HAD SETTLEMENT CHARGES OF $7,995.04. SO YOU RECEIVED A NOTE AND MORTGAGE FOR $127,000 EVEN MONEY?

A. NO. I DIDN'T GET THAT EVEN MONEY.

Q. PROMISSORY NOTE?

A. NO. I MEAN I ONLY GOT -- I HAD THAT NUMBER IN MY SAVINGS ACCOUNT BOOK.

Q. I MEAN THE PROMISSORY NOTE. THE MORTGAGE HE GAVE YOU WAS FOR $127,000?

A. OH, OKAY, YES.

Q. SO YOU NETTED $36,964.31 PLUS YOU HAD EXPENSES OF $7,995.04. THAT WAS ABOUT $45,000 THERE AND IT WAS $5,000 EARNEST MONEY THAT WAS FLOATING IN THE TRANSACTION, SO IN GENERAL TERMS, YOU HAD $127,000 PLUS ROUGHLY $50,000, YOU PRICED IT AT $177,000?

A. YES. THAT WAS THE WHOLE PRICE, YES.

MR. EARLE: THAT'S ALL I HAVE.

RE-EXAMINATION

BY MR. TRUSLOW:

Q. USING THOSE FIGURES IN ROUGH TERMS, IF YOU ARE

INCORRECT IN THIS CASE AND IN FACT THE PROPERTY BELONGS TO JIM, YOU OWE HIM SOMEWHERE $131,700 PLUS, PLUS INTEREST, AND YOU DON'T HAVE THE ABILITY TO PAY IT, DO YOU?

A. NO, SIR.

Q. BUT THAT'S WHAT YOU WOULD OWE HIM, IN EXCESS OF $131,000, IS THAT CORRECT?

A. IT SHOULD BE AROUND THAT, IF, IF IT TURNS OUT TO BE ALL HERE.

MR. TRUSLOW: THAT'S ALL.

(AT 11 A.M., THE DEPOSITION WAS CONCLUDED.)

South Carolina Form (Revised)

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FILED

Warranty Deed

Nov 17 4 10 PM '78

The State of South Carolina,
COUNTY OF RICHLAND

KNOW ALL MEN BY THESE PRESENTS, THAT CLARA L. BARTLETT

Laura Corvi, a woman

in the State aforesaid, for and in consideration of the sum of Five Dollars and Love and affection Dollars,

to me in hand paid at and before the sealing of these presents by

Albert A. Anasti and James A. Anasti, both unmarried men

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto said

for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

All that certain piece, parcel or lot of land with the improvements thereon situate, lying and being on the western side of Two Notch Road (U. S. #1) in the City of Columbia, County of Richland, State of South Carolina and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the western side of Two Notch Road (U. S. Highway No. 1), and thence running north sixty-seven degrees nine minutes west a distance of 127.6 feet to an iron pin; thence turning and running north twenty-seven degrees fifty-four minutes east for a distance of 25.4 feet to an iron pin; thence turning and running north sixty-seven degrees seventeen minutes west a distance of 81.9 feet to an iron pin, thence turning north twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running south sixty-seven degrees 00 minutes east for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road south thirty degrees one minute west for a distance of 18.5 feet to the point of beginning.

This being the identical property conveyed by Anne M. Hunter to Albert A. Anasti and Lillian L. Anasti as recorded in the RMC Office for Richlan County in Deed Book D198 at page 411.

GRANTEE'S MAILING ADDRESS: 6446 Pinestraw Road, Columbia, South Carolina 29206

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PLAINTIFF'S EXHIBIT 1 Lee

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said Albert A. Anasti and James A. Anasti, BOTH unmarried man for and during their joint lives and upon the death of either of them then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, and we do hereby bind our Heirs Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said Albert A. Anasti and James A. Anasti as hereinabove provided, against us and our Heirs and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS our hand and seal this day of November in the year of our Lord one thousand nine hundred and seventy-eight

Signed, Sealed and Delivered in the Presence of:

Laura Corvi (SEAL)
Laura Corvi
Debra Watts (SEAL)
Debra Watts
(SEAL)

Gary M. Wheat
Notary Public for S.C.
MCX 1-10-86

THE STATE OF SOUTH CAROLINA,
County of RICHLAND

PERSONALLY appeared before me Debra Watts and made oath that she saw the within-named Laura Corvi sign, seal, and as her Act and Deed, deliver the within-written Deed; and that she with Gary Watts witnessed the execution thereof.

SWORN to before me this 12th day of November, A. D. 1978

(SEAL) Gary M. Wheat
Notary Public for S.C.
MCX 1-10-86

Debra Watts

2007028795 Richard W. Rodden Richland County ROD

Death Certificate
State Tax: $0.00

Book 1300-34
2007028795 04/05/2007 14:54:16:357
Fee:$10.00 County Tax:$0.00

PLAINTIFF'S EXHIBIT 2

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CERTIFICATE OF DEATH

95 028773

STATE FILE NUMBER

1. NAME First	Middle	Last	2. SEX	3. DATE OF DEATH (Month, Day, Year)
ALBERT	ANTHONY	ANASTI	male	October 24, 1995

4. SOCIAL SECURITY NUMBER	5a. AGE - Last Birthday (Years)	UNDER 1 YEAR: 5b. Months / Days	UNDER 1 DAY: 5c. Hours / Minutes	6. DATE OF BIRTH (Mo., Day, Year)	7. BIRTHPLACE (City, and State or Foreign Country)
710-09-6095	79			Mar. 17, 1916	Sykesville, PA

8. WAS DECEDENT EVER IN U.S. ARMED FORCES? (Yes or No)	9a. PLACE OF DEATH (Check only one; see instructions on other side) HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA	OTHER: ☐ Nursing Home ☒ Residence ☐ Other (Specify)
Yes		

9b. FACILITY NAME (If not institution, give street and number)	9c. CITY, TOWN, OR LOCATION OF DEATH	9d. COUNTY OF DEATH
5446 Pinestraw Road	Columbia	Richland

10. MARITAL STATUS - Married, Never Married, Widowed, Divorced (Specify)	11. SURVIVING SPOUSE (If wife, give maiden name)	12a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.)	12b. KIND OF BUSINESS/INDUSTRY
Widowed	None	Owner/Manager	AMVETS Club

13a. RESIDENCE - STATE	13b. COUNTY	13c. CITY, TOWN, OR LOCATION	13d. STREET AND NUMBER	13e. INSIDE CITY LIMITS? (Yes or No)
S.C.	Richland	Columbia	5446 Pinestraw Road	No

13f. ZIP CODE	14. Was Decedent of Hispanic Origin? (Specify Yes or No - If yes, specify Cuban, Mexican, Puerto Rican, etc.)	15. RACE - American Indian, Black, White, etc. (Specify)	16. DECEDENT'S EDUCATION (Specify only highest grade completed) Elementary/Secondary (0-12) / College (1-4 or 5+)
29206	☐ Yes ☒ No (Specify)	White	6

17. FATHER'S NAME First	Middle	Last	MOTHER'S NAME First	Middle	Maiden Surname
Francisco		Anasti	Josephine		Manarino

19a. INFORMANT'S NAME (Type/Print)	19b. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code)
Gina L. Anasti Lee	100 Rimers Pond Road, Blythewood, S.C. 29016

METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Removal from State ☐ Donation ☐ Other (Specify)	20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place)	20c. LOCATION - (City or Town, State)
	Crescent Hill Memorial Gardens	Columbia, S.C.

21a. FUNERAL DIRECTOR OR PERSON ACTING AS SUCH (Signature)	21b. FUNERAL DIR. LICENSE NO.	NAME AND ADDRESS OF FACILITY	22b. LICENSE NUMBER (of facility)
William V. Shives	890	Shives Funeral Home 5202 Colonial Drive Columbia, South Carolina 29203	102

21c. EMBALMER (Signature)	21d. EMBALMER LICENSE NO.
Thomas M. [illegible]	1651

Complete items 23a-c only when certifying physician is not available at time of death to certify cause of death.	To the best of my knowledge, death occurred at the time, date, and place stated. 23a. Signature and Title	23b. LICENSE NUMBER	23c. DATE SIGNED (Month, Day, Year)

24. TIME OF DEATH	25. DATE PRONOUNCED DEAD (Month, Day, Year)	26. WAS CASE REFERRED TO MEDICAL EXAMINER/CORONER? (Yes or No)
9:25 am M	october 24, 1995	Yes

27. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.

		Approximate Interval Between Onset and Death
IMMEDIATE CAUSE (Final disease or condition resulting in death) → a.	Ischemic Cardiomyopathy DUE TO (OR AS A CONSEQUENCE OF):	
b.	Coronary Heart Disease DUE TO (OR AS A CONSEQUENCE OF):	
Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST c.	DUE TO (OR AS A CONSEQUENCE OF):	
d.		

PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.

	28a. AUTOPSY (Yes or No)	28b. IF YES, WERE AUTOPSY FINDINGS CONSIDERED IN DETERMINING CAUSE OF DEATH? (Yes or No)
	No	

29. MANNER OF DEATH	30a. DATE OF INJURY (Month, Day, Year)	30b. TIME OF INJURY	30c. INJURY AT WORK? (Yes or No)	30d. DESCRIBE HOW INJURY OCCURRED
☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be Determined		M		

30e. PLACE OF INJURY - (Home, Farm, Street, Factory, Office, etc.) (Specify)	30f. LOCATION (Street and Number or Rural Route Number, City or Town, State)

31. CERTIFIER (Check only one)	32. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
☒ CERTIFYING PHYSICIAN (Physician certifying cause of death) ☐ MEDICAL EXAMINER ☐ CORONER ☐ PRONOUNCING AND CERTIFYING PHYSICIAN (Physician both pronouncing death and certifying to cause of death)	

33a. SIGNATURE, TITLE OF CERTIFIER - To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.	33b. LICENSE NUMBER	33c. DATE SIGNED (Month, Day, Year)
[signature]	9095	10/31/95

33d. NAME AND ADDRESS OF PERSON WHO SIGNED IN 33a. (Type/Print)
Robert E. Smith, M. D., 219 Spring Valley Road, Cola, S. C. 29223

REGISTRAR'S SIGNATURE	DATE FILED (Month, Day, Year)
[signature]	Oct 31 1995

D1347/991

D: 10/18/96
R: 11/7/96

FILED
95 NOV -7 PM 12:36
REGISTER OF MESNE CONVEYANCE
RICHLAND CO., S.C.

PROBATE COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MATTER OF ALBERT A ANASTI

CASE NUMBER 95 ES 4081176

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 24 day of OCTOBER, 19 95; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for RICHLAND County, South Carolina in File # 95ES 4081176; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: GINA L ANASTI LEE AND HER HEIRS
Address: P.O. BOX 655
BLYTHEWOOD SOUTH CAROLINA 29016

the following described property: TWO NOTCH ROAD, COMMERCIAL BUILDING

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND WITH THE IMPROVEMENTS THEREON SITUATE, LYING AND BEING ON THE WESTERN SIDE OF TWO NOTCH ROAD (U.S.#1) IN THE CITY OF COLUMBIA, COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA AND BEING MORE FULLY SHOWN ON A PLAT PREPARED FOR FERRIS HUNTER BY WILLIAM WINGFIELD, REGISTERED SURVEYOR, DATED FEBRUARY 18, 1958, AND MEASURING AND BOUNDING AS FOLLOWS: BEGINNING AT AN IRON PIN ON THE WESTERN SIDE OF TWO NOTCH ROAD (U.S. HIGHWAY NO. 1), AND THENCE RUNNING NORTH SIXTY-SEVEN DEGREES NINE MINUTES WEST A DISTANCE OF 127.6 FEET TO AN IRON PIN; THENCE TURNING AND RUNNING NORTH TWENTY-SEVEN DEGREES FIFTY-FOUR MINUTES EAST FOR A DISTANCE OF 25.4 FEET TO AN IRON PIN; THENCE TURNING AND RUNNING NORTH SIXTY-SEVEN DEGREES SEVENTEEN MINUTES WEST A DISTANCE OF 81.9 FEET TO AN IRON PIN, THENCE TURNING NORTH TWENTY-SIX DEGREES FORTY MINUTES A DISTANCE OF 92.7 FEET TO AN IRON PIN, THENCE TURNING AND RUNNING SOUTH SIXTY-SEVEN DEGREES 00 MINUTES EAST FOR A DISTANCE OF 222.9 FEET TO AN IRON PIN, THENCE TURNING AND RUNNING ALONG TWO NOTCH ROAD SOUTH THIRTY DEGREES ONE MINUTE WEST FOR A DISTANCE OF 118.5 FEET TO THE POINT OF BEGINNING.

THIS BEING THE IDENTICAL PROPERTY INHERITED BY ANNE M. HUNTER FROM FERRIS HUNTER AS RECORDED IN THE OCC FOR RICHLAND COUNTY IN DEED BOOK 300 AT PAGE 409.

FURTHER REFERENCE MAY BE HAD TO PLAT BOOK 11 PAGE 223.

TMS# 11510 0303

PLAINTIFF'S EXHIBIT 5 Lee

PAGE 1 OF 2

FORM 440000 (1/89)

D 1347 P 0992

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said GINA L ANASTI LEE

their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 18 day of OCTOBER 19 96

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Estate of: ALBERT A ANASTI

by Signature: Gina L Anasti Lee

Witness:

Witness:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY appeared before me

and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with

witnessed the execution thereof.

SWORN to before me this 25 day of 19

Witness Signature:

Notary Public for South Carolina
My Commission Expires:

Notary Public, South Carolina State at Large
My Commission Expires

I hereby certify that the within Deed was recorded in the office at 7 day of 19 90 as Deed Book D 1347 page 992

Register of Mesne Conveyance, Richland County, S. C.

RECORDED THIS 18th DAY OF 19 96 D

REGISTER OF MESNE CONVEYANCE FOR RICHLAND COUNTY, S.C.

PLAINTIFF'S EXHIBIT 6

Ex. 7

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT TO BUY AND SELL

WHEREAS, the undersigned buyer ("Buyer") wishes to purchase the Property described below from the undersigned seller ("Seller") and Seller wishes to sell the property described below (the "Property") to Buyer under the terms and conditions stated below; now, therefore,

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the above recitals, the mutual and dependent covenants recited below, and the sum of One ($1.00) Dollar, each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree as follows:

1. Price. The purchase price for the property shall be One Hundred Seventy-Seven Thousand and No/100 ($177,000.00) Dollars and shall be paid in the following manner: earnest money down payment of Five Thousand and N0/100 ($5,000.00) Dollars deposited herewith to be held in trust by: Gina Lee, a first mortgage loan from Buyer to Seller in the amount of One Hundred Twenty-Seven Thousand and No/100 ($127,000.00) Dollars calling for repayment over (11) years at an interest rate of Nine (9%) percent with payments of $1,519.02, and the balance of Forty-Five Thousand and No/100 ($45,000.00) Dollars at Closing.

2. Property. The property is described as follows: 2325 Two Notch Rd., ~~Blythewood~~ SC ~~29016~~, in Richland County.
Columbia 29204

3. Closing Costs. Closing Costs shall be paid as follows:
a. Seller shall provide or pay for all closing costs including but not limited to, any commission due upon this sale, cost of deed stamps, cost of deed preparation, title examination, recording fees, Buyer's attorney fees in the amount of $300.00, and any cost necessary to provide marketable title, including recording of any satisfactions and payment of all property taxes due and payable.
b. Buyer shall not pay any closing costs.

4. Closing Date and Agent. Closing shall be on or before ~~November~~ JANUARY 5TH ~~15~~, ~~1999~~. The closing attorney and agent shall be Dallis Law Firm, P.A., and the closing should take place at such firm's offices at 1925 Marion Street, Columbia, South Carolina, 29201.
1000

5. Contingencies. This contract is contingent upon (a) the Buyer's obtaining financing as specified in Paragraph 1 above, (b) the Property remaining in its current condition, normal wear and tear excepted.

6. Special Stipulations. BUYER AGREES TO PAY 1998 TAXES OF $3,755.97 TO AUDID TAX SALE OF PROPERTY. MONEY TO BE REFUNDED TO BUYER AT

Time of Closing. x ___
x ___

7. Possession. Buyer will receive possession at Closing.

8. Title Warranty. Seller shall deliver to Buyer at closing a general warranty deed to the Property and at such time title to the Property shall be free and clear of all liens and encumbrances other than such liens as Buyer shall specifically agree to assume as stated herein, taxes for the current year, if not yet due and payable, existing zoning and governmental land use restrictions, and reasonable restrictive covenants and easements to which like properties in the neighborhood are also subject. Those additional liens or encumbrances to which title shall be subject as follows:
Leasehold interest of current tenant.

9. Property Condition. Buyer has inspected the premises and is purchasing the property in its present "as is" condition.

10. Maintenance. Seller shall maintain the Property, including any improvements thereon, in a state of good repair and condition, normal wear and tear excepted, until the later of closing or delivery of possession to Buyer, unless the parties agree otherwise, and Seller shall not sell or otherwise dispose of any article of personal property or fixtures located upon the Property at the time of execution of this Agreement except for necessary replacements.

11. Prorations: Closing agent shall prorate for all taxes, rents, water, sewer, and any other items requested by Buyer and Seller prior to Closing. All other prorations, if any, will be handled in a fair manner by the Buyer and Seller outside of closing.

12. Risk of Loss. Risk of loss or damage to any improvements located upon the Property until the day of closing shall be the responsibility of Seller. In the event of any loss, Seller shall have the option of restoring improvements their condition as of the date hereof within thirty (30) days after such loss, with date of closing and possession to be extended accordingly. If improvements are not restored within said period, either party shall have the right to terminate this Agreement by written notice to the other. In such case, both parties shall execute a written release of the other from this Agreement, and Seller shall pay the actual cost incurred as defined below.

13. Default. If Buyer or Seller fails to perform any covenant to this Agreement, the other may elect to seek any remedy provided by law or to terminate this Agreement with a thirty (30) day written notice. If this Agreement is terminated, both parties shall execute a written release of the other from this Agreement. If termination is because of default by Buyer, any moneys held in escrow shall, after paying actual cost incurred as defined below, shall be paid to seller. If termination is because of default by Seller, Seller

shall pay the actual cost incurred as defined below, and any moneys held in escrow shall be returned to the Buyer. If either Buyer or Seller refuses to execute releases, any escrow agent holding moneys in escrow may elect to hold the money in trust in a non-interest bearing account until such time as all releases are signed or a court of competent jurisdiction shall direct some other disposition of such funds.

14. Actual Cost. Actual Cost incurred shall include all costs and expenses incurred or obligated for by Buyer or Seller in an effort to consummate this sale. Such costs shall include without limitation credit reports, appraisals, surveys, inspections, title examinations, deed and other document preparations, and the like.

15. Applicable Law. The parties hereto acknowledge and agree that a substantial portion or all of the performance contemplated hereunder shall be performed within the State of South Carolina and, therefore, stipulate that this Agreement shall be enforced and construed in accordance with the laws of the State of South Carolina and jurisdiction and venue shall lie with the courts of Richland County, South Carolina.

16. Merger. This Agreement represents the entire agreement between the parties and supersedes any prior agreements or negotiations, oral or written, between the parties hereto.

17. Assignment. Neither this Agreement, nor any rights hereunder, may be assigned or transferred without the prior written consent of the other party.

18. Binding Nature. This Agreement binds and inures to the benefit of the heirs, successors, representatives and permitted assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the dated stated below.

Date: November ____, 1999

Witness:

Seller:

Gina Lee

Buyer:

As to Both Parties

Willis S. Goodwin

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT, Defendants.	COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Docket Number: 2007-CP-40-0576 NOTICE OF MOTION AND MOTION PURSUANT TO SCRCP 56(G), 30 AND 11

FILED
2007 NOV -7 AM 11:47
BARBARA A. SCOTT
C.C.C. & G.S.C.

TO: TONY R. MEGNA, ATTORNEY FOR DEFENDANT GINA L. ANASTI LEE:

PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned attorney, on the 10th day after service hereof or at such time and place as the Court may set, will move before the Court for an assessment of fees and costs against Defendant Lee and/or her attorney for the reasons set forth in a Memorandum to be submitted to the Court.

The undersigned counsel for Plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax (803) 256-7659

Columbia, South Carolina

Nov 7, 2007

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES ANASTI Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, AND RICHLAND COUNTY CLERK OF COURT Defendant.	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2007-CP-40-0516 COPY **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

JEANETTE W. McBRIDE C.C.P. & G.S.
2011 NOV 28 AM 11:34
RICHLAND COUNTY FILED

Plaintiff's Attorney:	Defendant's Attorney:
Douglas N. Truslow, Bar No. 5642 Address: P.O. Box 1465, Columbia, SC 29202 Phone: 803-256-6276Fax 803-256-7659 E-mail: douglastruslow@truslowlaw.comOther:	Tony Megna, Bar No. _____ Address: 3400 West Ave., Columbia, SC 29203 Phone: 799-1700 Fax_____ E-mail: _____Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Amended Motion for Rule 11, SCRCP
Estimated Time Needed: 10 minutes Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 11/22/11
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $_____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
Plaintiff,	)	
vs.	)	**AMENDED MOTION FOR RULE 11, SCRCP[1]**
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT,	)	
Defendants.	)	

2011 NOV 28 AM 11:34
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO: TONY R. MEGNA, BENJAMIN R. MATTHEWS, and MATTHEWS AND MEGNA, LLC, ATTORNEYS FOR DEFENDANT GINA L. ANASTI LEE:

PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned attorney, on the 10th day after service hereof or at such time and place as the Court may set, will move for Rule 11, SCRCP sanctions to the be rendered against Defendant Lee's counsel.[2]

The grounds for the Motion are, *inter alia*, that;

1. Lee's counsel interjected frivolous defenses, pleadings and Affidavits and otherwise engaged in wrongful conduct, the result of which has been to harm Plaintiff.
2. Summary Judgment has been granted and Lee's appeals and other actions by her attorneys have been determined with finality adverse to their claims (excepting a damages hearing against Defendants Wilson and Goodwin).
3. Damages and sanctions are expected to exceed $500,000.00 and a status conference needs to be conducted before hearings are held.

The undersigned counsel for Plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

(Signature on following page.)

[1] The original Motion was filed November 7, 2007 and has not yet been heard (because of Lee's Appeal -- dismissed and remitted October 7, 2011). This motion is intended to supplement the prior motion so as to make clear that sanctions are not sought against Defendant Lee at this juncture and to make clear that sanctions are sought against Lee's attorneys only.

[2] Defendant Lee is in bankruptcy and she is therefore not a necessary party to these proceedings at this juncture.

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax (803) 256-7659

Columbia, South Carolina

NOV 21, 2011

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND In Re: Tony R. Megna, Benjamin R. Matthews, and Matthews and Megna, LLC James A. Anasti Plaintiff, vs. Gina L. Anasti, Lance Wilson, Willis Goodwin, and Richland County Clerk of Court Defendant.	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2007-CP-40-0576 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney: Douglas N. Truslow, Bar No. _____ Address: P.O. Box 1465, Columbia, SC 29202 Phone: 803-256-6276Fax _____ E-mail: _____Other: _____	Defendant's Attorney: Thomas Earle, Bar No. _____ Address: 1735 St. Julian Place, Suite 103, Columbia, SC 29204 Phone: _____ Fax_____ E-mail: _____Other: _____

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

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 10-24-2013
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS
In Re: Tony R. Megna, Benjamin R. Matthews, and Matthews and Megna, LLC James A. Anasti Plaintiff, vs. Gina L. Anasti, Lance Wilson, Willis Goodwin, and Richland County Clerk of Court, Defendants.	Civil Action No.: 2007-CP-40-0576 **NOTICE OF MOTION TO DISMISS PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS**

PLEASE TAKE NOTICE that Counsel for Respondents Tony R. Megna, Benjamin R. Matthews, and Matthews and Megna, LLC will move before the Court at the hearing scheduled upon Plaintiff's Motion for Rule 11 Sanctions to dismiss such motion. In support of this requested relief, Respondents allege as follows:

1. On November 7, 2007 Plaintiff filed a Notice of Motion and Motion Pursuant to SCRCP 56(G), 30 and 11 "for an assessment of fees and costs against Defendant Lee and/or her attorney for the reasons set forth in a Memorandum to be submitted to the Court." A copy of Motion is attached as Exhibit A.

2. On or after November 21, 2011, Plaintiff filed an Amended Motion "For Rule 11, SCRCP." In the Amended Motion Plaintiff states that the Amendment is "intended to supplement the prior motion so as to make clear that sanctions are not sought against Defendant Lee." The Amended Motion further states that "Lee's counsel interjected frivolous defenses,

pleadings and Affidavits and otherwise engaged in wrongful conduct, the result of which has been to harm Plaintiff." The Amended Motion is attached hereto as Exhibit B.

3. Rule 7, South Carolina Rules of Civil Procedure, states that "an application to the Court for an Order shall be by Motion which, unless made during a hearing or trial in open Court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." In Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010), the S.C. Supreme Court explained:

> Rule 7(b)(1), SCRCP requires that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The particularity requirement "is to be read flexibly in 'recognition of the peculiar circumstances of the case.' " *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996) (quoting *Registration Control Sys., Inc. v. Compusystems, Inc.*, 922 F.2d 805, 808 (Fed.Cir.1990)).[3] "By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that 'the court can comprehend the basis of the motion and deal with it fairly.' " *Calderon v. Kansas Dept. of Soc. and Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir.1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1192, at 42 (2d ed.1990)). Therefore, when a motion is challenged for a lack of particularity, the court should ask "whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.' " *Registration Control,* 922 F.2d at 807-08 (quoting 5 Wright & Miller, *Federal Practice and Procedure* § 1192, at 42).

4. Neither the Motion nor the Amended Motion sets forth with particularity the grounds to support a claim for sanctions. Rather the first motion merely states that Plaintiff seeks "an assessment of fees and costs against Defendant Lee and/or her attorney for the reasons set forth in a Memorandum." However, no memorandum was filed contemporaneously with the Motion nor has a memorandum been filed in the six years since the motion was filed. The Amended Motion also lacks particularity because it merely alleges that "Lee's counsel interjected frivolous defenses, pleadings and Affidavits and otherwise engaged in wrongful conduct." This completely fails to meet the "particularity" standard under Rule 7.

5. Furthermore, Respondents attempted to serve discovery following service of the Amended Motion to seek the factual basis of the claim of sanctions exceeding "$500,000.00". Plaintiff sought and obtained a Protective Order prohibiting any discovery from being had.

Because Respondents have been unable to conduct discovery and the original and amended motions fail to state the grounds upon which their relief is sought with particularity, Respondents cannot adequately prepare for the hearing and are prejudiced. As a result, the Plaintiff's sanctions motion should be dismissed. Respondents therefore will move before the Court to dismiss the original Notice of Motion and Motion as well as the Amended Motion seeking Rule 11 sanctions.

[SIGNATURE BLOCK IS ON FOLLOWING PAGE]

Respectfully submitted,

A. Camden Lewis
James M. Griffin
Lewis Babcock & Griffin, L.L.P.
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

October 24, 2013
Columbia, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT, Defendants.	COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Docket Number: 2007-CP-40-0576 NOTICE OF MOTION AND MOTION PURSUANT TO SCRCP 56(G), 30 AND 11

FILED
2007 NOV -7 AM 11:47
BARBARA A. SCOTT
C.C.C. & G.S.

TO: TONY R. MEGNA, ATTORNEY FOR DEFENDANT GINA L. ANASTI LEE:

PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned attorney, on the 10th day after service hereof or at such time and place as the Court may set, will move before the Court for an assessment of fees and costs against Defendant Lee and/or her attorney for the reasons set forth in a Memorandum to be submitted to the Court.

The undersigned counsel for Plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax (803) 256-7659

Columbia, South Carolina

Nov 7, 2007

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
Plaintiff,	)	
vs.	)	CERTIFICATE OF SERVICE
LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT,	)	
Defendants.	)	

FILED
2007 NOV -7 AM 11:47
BARBARA A. SCOTT
C.C.C. & G.S.

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail, postage prepaid to the following address:

Tony R. Megna, Esquire
1815 Fulmer Rd.
Blythewood, SC 29016

Thomas G. Earle, Esquire
Seigler Earle and Ellsworth
1735 Saint Julian Place #103
Columbia, SC 29204

DOCUMENT(S): 1. *Notice of Motion and Motion*

Amanda Douglas Hilley

Columbia, South Carolina

11/7, 2007

Exhibit B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES ANASTI Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, AND RICHLAND COUNTY CLERK OF COURT Defendant.	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2007-CP-40-0576 COPY **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: Douglas N. Truslow, Bar No. 5642 Address: P.O. Box 1465, Columbia, SC 29202 Phone: 803-256-6276Fax 803-256-7659 E-mail: douglastruslow@truslowlaw.comOther:	Defendant's Attorney: Tony Megna, Bar No. ____ Address: 3400 West Ave., Columbia, SC 29203 Phone: 799-1700 Fax____ E-mail: ____Other: ____

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

SECTION I: Hearing Information

Nature of Motion: Amended Motion for Rule 11, SCRCP
Estimated Time Needed: 10 minutes Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted: 11/22/11

SECTION III: Motion Fee

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

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ ____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
	)	
Plaintiff,	)	
	)	**AMENDED MOTION FOR**
vs.	)	**RULE 11, SCRCP**[1]
	)	
LANCE WILSON,	)	
WILLIS GOODWIN,	)	
GINA L. ANASTI LEE,	)	
And RICHLAND COUNTY	)	
CLERK OF COURT,	)	
	)	
Defendants.	)	

TO: TONY R. MEGNA, BENJAMIN R. MATTHEWS, and MATTHEWS AND MEGNA, LLC, ATTORNEYS FOR DEFENDANT GINA L. ANASTI LEE:

PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned attorney, on the 10th day after service hereof or at such time and place as the Court may set, will move for Rule 11, SCRCP sanctions to the be rendered against Defendant Lee's counsel.[2]

The grounds for the Motion are, *inter alia*, that;

1. Lee's counsel interjected frivolous defenses, pleadings and Affidavits and otherwise engaged in wrongful conduct, the result of which has been to harm Plaintiff.
2. Summary Judgment has been granted and Lee's appeals and other actions by her attorneys have been determined with finality adverse to their claims (excepting a damages hearing against Defendants Wilson and Goodwin).
3. Damages and sanctions are expected to exceed $500,000.00 and a status conference needs to be conducted before hearings are held.

The undersigned counsel for Plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

(Signature on following page.)

[1] The original Motion was filed November 7, 2007 and has not yet been heard (because of Lee's Appeal -- dismissed and remitted October 7, 2011). This motion is intended to supplement the prior motion so as to make clear that sanctions are not sought against Defendant Lee at this juncture and to make clear that sanctions are sought against Lee's attorneys only.

[2] Defendant Lee is in bankruptcy and she is therefore not a necessary party to these proceedings at this juncture.

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax (803) 256-7659

Columbia, South Carolina

Nov 21, 2011

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JAMES A. ANASTI,	)	Docket Number: 2007-CP-40-0576
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**CERTIFICATE OF SERVICE**
LANCE WILSON,	)	
WILLIS GOODWIN,	)	
GINA L. ANASTI LEE,	)	
And RICHLAND COUNTY	)	
CLERK OF COURT,	)	
	)	
Defendants.	)	

COPY

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail, postage prepaid to the following address:

Tony R. Megna, Esquire
3400 West Ave.
Columbia, SC 29203

Matthews & Megna, LLC
3400 West Ave.
Columbia, SC 29203

Benjamin R. Matthews, Esquire
3400 West Ave.
Columbia, SC 29203

Thomas G. Earle, Esquire
Seigler Earle and Ellsworth
1735 Saint Julian Place #103
Columbia, SC 29204

DOCUMENT(S): 1. ***Amended Motion for Rule 11, SCRCP***

Amanda Douglas Hilley

Columbia, South Carolina

November 22, 2011

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS

In Re: Tony R. Megna, Benjamin R. Matthews, and Matthews and Megna, LLC James A. Anasti Plaintiff, vs. Gina L. Anasti, Lance Wilson, Willis Goodwin, and Richland County Clerk of Court, Defendants.	Civil Action No.: 2007-CP-40-0576 **CERTIFICATE OF SERVICE**

I, Jaime Harmon, the undersigned employee of Lewis Babcock & Griffin LLP, attorneys for Tony R. Megna, Benjamin R. Matthews, and Matthews and Megna, LLC, do hereby certify that I have served a copy of the foregoing **Notice of Motion to Dismiss Plaintiff's Motion for Rule 11 Sanctions** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Douglas Truslow Truslow & Truslow P.O. Box 1465 Columbia, SC 29202	Thomas Earle Seigler Earle & Ellsworth 1735 St. Julian Place #103 Columbia, SC 29204	Aimee Zmroczek A.J.Z. Law Firm, LLC 309 Arstook Ct. Lexington, SC 29072-7779

Jaime Harmon

Columbia, South Carolina
October 24, 2013

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
JAMES A. ANASTI,)
) Case No.: 2007-CP-40-0576
Plaintiff,)
)
vs.) **PLAINTIFF'S MOTION FOR RECONSIDERATION PURSUANT TO SCRCP 59(e)**
)
LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
And RICHLAND COUNTY)
CLERK OF COURT,)
)
Defendants.)

RICHLAND COUNTY FILED
2015 SEP -8 PM 3:07
JEANNETTE W. WALDRIDGE C.C.P. & G.S.

To: TONY MEGNA, ESQUIRE, former counsel of record for Defendant Gina Anasti Lee and JAMES M. GRIFFIN, ESQUIRE and ARIAIL KING, ESQUIRE counsel of record for Tony Megna

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the Court at such time as is proper, pursuant to SCRCP 59(e) for reconsideration of the Court's Order dated August 25, 2015 and received via U.S. Mail on August 31, 2015.

This Motion is made on the grounds that the standard utilized by the Court regarding Megna's knowledge was an improper one.

RESPECTFULLY SUBMITTED,

Truslow & Truslow Law Firm

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
Fax (803) 256-7659
douglastruslow@truslowlaw.com

Sept 8, 2015

Richland County Clerk Of Court
1701 Main Street
PO Box 2766
Columbia, SC 29202

December 11, 2007

Douglas N. Truslow
Post Office Box 1465
Columbia, SC 29202

Case Number: **2007CP4000576**

James A Anasti vs. Lance Wilson

MOTION(S) FILED: **All Pending Motions**

The above referenced case is scheduled for a Motion Hearing on January 8, 2008 at 11:00 AM before Judge G. Thomas Cooper Jr. in Courtroom 3 - A.

The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings.

All requests for continuances must be in writing with a $25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandums the Wednesday before the week of the hearing.

Questions concerning this Notice should be directed to the Chief Administrative Judge.

Judge Alison R. Lee
Chief Administrative Judge

Fax: (803) 576-1768

FORM B9A (Chapter 7 Individual or Joint Debtor No Asset Case) (12/08) Case Number 09-02854-jw

UNITED STATES BANKRUPTCY COURT
District of South Carolina

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor listed below was filed on 4/16/09.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the Bankruptcy Clerk's Office at the address listed below. NOTE: The staff of the Bankruptcy Clerk's Office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):
Gina Anasti Lee
aka Gina A. Lee, aka Gina Lee, aka Gina Louise Lee
PO Box 655
Blythewood, SC 29016

Case Number: 09-02854-jw	**Social Security / Individual Taxpayer ID / Employer Tax ID / Other Nos:** 249-25-6811
Attorney for Debtor(s) (name and address): Benjamin R. Matthews, Matthews and Megna, LLC, 3400 West Avenue, Columbia, SC 29203, Telephone Number: 803-799-1700	**Bankruptcy Trustee (name and address):** Michelle L. Vieira, PO Box 70309, Myrtle Beach, SC 29572, **Telephone Number:** 843-497-9800

Meeting of Creditors:

Date: May 22, 2009 **Time:** 10:00 AM

Location:
U.S. Trustee's Office, Room 557, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on reverse side.

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the Bankruptcy Clerk's Office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor *or* to Determine Dischargeability of Certain Debts:
7/21/09

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the Court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Mailing Address of the Bankruptcy Clerk's Office: United States Bankruptcy Court, J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia, SC 29201-2423, Telephone Number: 1-803-765-5436, www.scb.uscourts.gov	**FILED BY THE COURT ON:** **04/16/09** Tammi M. Hellwig, Clerk U.S. Bankruptcy Court
Public Business Hours: 9:00 AM – 5:00 PM	Date: 4/17/09

BLYTHEWOOD, SOUTH CAROLINA 29016
TELEPHONE: 803-799-1700
tony.megna@scbar.org

January 2, 2006

VIA fax to 803.254.1335

CONFIDENTIAL

Curtis W. Dowling, Esquire
Post Office Box 8448
Columbia, SC 29202

Re: Wilson v. Lee, CA Number 04CP405333

Dear Curtis:

Since I have not heard from you, I wanted to clarify Mrs. Lee's position. Mrs. Lee received the Deed of Distribution to the property in question from the Richland County Probate Court in October, 1995 – more than ten years ago. I have previously sent you the Deed of Distribution and all other documents in my possession. Mrs. Lee respectfully requests [and legally demands]that the Dallis Law Firm, P.A., under their continuing legal and ethical obligations to Mrs. Lee as her attorneys, take no action contrary to her position that she is, and has been [since October, 1995] the rightful owner of the property in question. In addition, Mrs. Lee respectfully requests [and legally demands]that your clients vigorously defend the propriety and legal sufficiency of the documents prepared by them on her behalf, and further vigorously defend her claim as the rightful owner of the property [and/or of the note and mortgage] at the time of the transactions in question, and now. Mrs. Lee also demands to be indemnified of all damages that the Plaintiffs' prove they are entitled to receive. Finally, Mrs. Lee stands ready, able and willing to cooperate and assist your clients in the defense of the lawsuit as you desire.

Please feel free to call me if you wish to discuss the matter prior to tomorrow's meeting. I can be reached on my mobile number – 803.606.5983.

With kind regards, I remain

Sincerely yours,

Tony R. Megna

Cc: Gina L. Lee

COPY

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, and RICHLAND COUNTY CLERK OF COURT, Defendants.	)	COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Case No.: 2007-CP-40-0576 **MEMORANDUM IN REPLY TO "SYNOPSIS" OF TONY MEGNA**

RICHLAND COUNTY
FILED
2012 MAY -9 PM 3:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

INTRODUCTION

Purporting to act on behalf of his former client Gina Lee ("Lee"), Tony Megna ("Megna") is attempting to take depositions and otherwise engage in unauthorized discovery. In conjunction, he has threatened that if his demands are not met, he will commence contempt proceedings. Plaintiff has objected to Megna's demands and has filed a Motion to Quash and for Protection. The motion is ripe for resolution.[1]

Megna is not only acting improperly, but he is also doing so under the guise of this case as a stratagem or subterfuge for use in another case(s) in which he is disqualified and/or is an actual party.[2] Moreover, Megna is utilizing abusive and harassing tactics in an ill-conceived attempt to accomplish his goals.

Megna is conducting himself in this manner despite having repeatedly represented that all discovery had been completed; despite admitting that all Lee's involvement in this case has conclusively ended; and despite having repeatedly acknowledged and represented that the course of action being pursued is unauthorized and prohibited by law.

[1] A Rule 11 South Carolina Rules of Civil Procedure (SCRCP) motion is outstanding, but it is not currently before the Court for resolution.

[2] Megna is obviously acting for selfish, self-serving purposes. Therefore, this memorandum is more direct and descriptively blunt than if Megna had been providing legal services on behalf of an actual client.

Lee has expressed that she does not approve of or condone Megna's behavior – neither do Defendants Wilson and Goodwin. Megna is proceeding herein for his own benefit. He does so at his own peril.

In response to Plaintiff's motion, Megna has emailed to the Court (Judge Baxley) an unsolicited "Synopsis" in which Megna attempts to justify his actions. As well, Megna attempts to blame others for his misconduct, and thereby he seeks to avoid the imposition of sanctions and other, ancillary relief sought by Plaintiff and Ms. Ballard. Megna opines that the Court is legally prohibited from sanctioning him. At the same time, and without formally reserving any jurisdictional objection, Megna seeks affirmative relief. In a rather rambling, inconsistent fashion, Megna alleges "facts" and seeks a resolution that goes far beyond the scope of what is to be appropriately addressed. By responding as he has, Megna has not followed proper procedure. Furthermore, he has waived jurisdictional defenses that he may have, at least theoretically, advanced regardless of their lack of substance, their lack of merit and their lack of relevance.

This memorandum is, unfortunately, long – for reasons that will hereafter be made clear.[3] Plaintiff has attempted to be especially thorough in consideration of the serious implications associated with what Megna has alleged to have occurred. In support of his memorandum, Plaintiff relies on considerable evidence reflecting on the veracity of Megna's arguments. As well, Plaintiff asks that the Court take judicial notice of the Court files in this case (and its appeal); the Darlington case (Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, 2010-CP-16-0332) and any relevant appeal; the Florence cases (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706) and Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); and Lee's bankruptcy case (including all appellate related documents).

Attention is initially drawn to Plaintiff's Exhibits A(1) - (3) – extracts from what Megna has previously represented to be "fact". These exhibits are compared to Plaintiff's Exhibit A(4) – what Megna has in fact actually done. Plaintiff has initially drawn attention to these exhibits because they call into question Megna's compliance with SCRCP as a threshold matter. In consideration of same, the Court may find non-

[3] Ms. Ballard's motion is being heard at the same time as Plaintiff's. Much of what is being asserted herein is applicable to Ms. Ballard's motion. Thus, her memorandum may be more abbreviated.

compliance with SCRCP by Megna; grant Plaintiff's motion and move on to the issue of sanctions. Indeed, much of the remainder of this memorandum and exhibits go to the issue of sanctions.

Plaintiff's Exhibit B (Megna's "Synopsis") has been included (and filed) both because there has been a need to quote from it and, from his email/letter of transmittal, it does not appear that Megna filed it. The remaining documentation relied upon is collectively included as Plaintiff's Exhibit C.

Exhibit C is just as significant, if not more so, than the other exhibits. The inclusion of Exhibits C(7)(f) and (g) is, *inter alia*, for the purpose of comparison to Exhibit A(4) – the addresses and zip codes utilized by Megna since February 28, 2012, in which he purports to send communications to and/or "serve" Plaintiff's counsel with the "discovery" that is the subject of Plaintiff's motion.

The referenced exhibits demonstrate a continuing pattern of inattention to detail on Megna's part that has plagued this case from its inception (See in support the Court's Order dated April 3, 2008). For example, Megna has continued to send communications with wrongfully addressed envelopes, with incorrect zip codes, and he has sent emails to a place where Megna is on notice they were unlikely to ever be seen. These circumstances too provide authority to grant Plaintiff relief pursuant to SCRCP as a threshold matter. This is so because Megna has not properly served "discovery", regardless of the impropriety of attempting to engage in post-appeal, post-bankruptcy submissions. Plaintiff's exhibits overlap, but they are primarily organized so as to correspond to the seven (7), interconnected points being made that follow herein. Supporting affidavits are included at the end of the memorandum.[4]

The evidence presented by Plaintiff meets (and, in fact exceeds) the standard of proof required for the Court to dispositively address and deal with the motion(s) before it. The Court may do so based on Plaintiff's motion and/or also based on its actual and/or inherent authority and/or *sua sponte*.

[4] It is understood that Lee is or has separately filed an affidavit in which she makes clear that she does not support Megna.

ARGUMENT

More profound than its numerous typos and misstatements of fact,[5] Megna's "Synopsis" is in material part meritless. Furthermore, the myriad of arguments he makes are irrelevant. Seven (7) points[6] demonstrate the baselessness of Megna's various claims.

1. RELEVANT MOTION AND ACCUSATIONS OF LACK OF CANDOR

Initially, and repeatedly throughout his "Synopsis", Megna jumbles together and confuses matters that were (and most definitely were not) considered on appeal. In conjunction, he attempts to shift blame. As well, Megna carps about irrelevant matters – matters in which most of the irrelevant assertions made are not only false, but predicated on false assumptions. Megna's "Synopsis" argument is nothing more than a distraction, though a considerable one. Because of the nature and scope of Megna's accusations and allegations, extra time and space have been required to be expended to address them.

Megna's "Synopsis" begins with an assertion that Plaintiff's March 9, 2012 motion is the "same" motion previously "filed in" and "denied" by "unanimous decision of the Court of Appeals". In conjunction, Megna has accused the undersigned (and others) of unethical behavior. Megna's assertion(s) and accusation(s) are addressed immediately below in two overlapping parts (A. and B.).

A. Was the March 9, 2012 motion filed in and denied by the Court of Appeals?

If it is indeed Megna's assertion that the within motion was filed in and denied by the Court of Appeals, then the assertion can only be characterized for what it would be – a prevarication. Such a conclusion is readily ascertainable by even the most cursory inspection of the motion under consideration, juxtaposed against the Richland County Clerk of Court's file and the Court of Appeals' file. The appeal was dismissed as untimely. There was no Motion for Protection from Discovery Abuses filed in the Court

[5] To illustrate a pattern of inattention to detail that has permeated Megna's conduct and his various submissions: nothing occurred on November 22, 2012 (sic); no "status conference" was held in March, 2012; and there have been no "clams" (sic) served up by Plaintiff or Desa Ballard. For other pervasive errors and misstatements by Megna, see the Court's Order dated April 3, 2008 (the last paragraph of the last page of the Order).

[6] By virtue of its placement, the seventh point is no less important than the others.

of Appeals. There was no Motion to Quash Subpoenas filed in the Court of Appeals. There was no damages determination by the Court of Appeals. There was no Rule 11 motion decided by the Court of Appeals. Moreover, an outstanding Rule 11 motion has not yet been scheduled, much less heard, ruled upon by the Court of Common Pleas and/or addressed on appeal. Finally, a Rule 11 motion is not now before the Court.[7, 8] More to the point, no issue of discovery was ever before the Court of Appeals for resolution. Any assertion that it was, or that it was determined favorable to Lee, is completely unsustainable.

Megna alternatively theorizes and opines that, because the Court of Appeals denied one of Plaintiff/Respondent's appellate motions (a Rule 269, SCACR motion), that means that all other matters have automatically and retroactively been resolved in his favor. Megna's reliance on an isolated, readily distinguishable Order in the Court of Appeals is grossly misplaced. Megna has jumbled together and confused matters that were before the Court of Appeals with matters that were not. He has also jumbled together and confused matters conclusively resolved by the Court of Appeals with those that were not. It is unfortunate that Megna has done so because it takes an inordinate amount of time to set the record straight. A review of matters in context provides ample support for what is contended by Plaintiff, and it should dispel any notion that what Megna has argued is in any way correct:

The appeal lasted more than three and a half (3 ½) years from start to finish. Interspersed, there was a bankruptcy. There were a number of contentious motions/responses to motions before the Court of Appeals.[9] There were actually two (2) appeals (involving three (3) separate Orders) filed by Megna. He resoundedly lost both appeals on a jurisdictional basis – failure to timely file the appeal(s). It is notable and significant that the Court of Appeals Ordered that the briefs and appeal(s) be limited to jurisdictional matters only. The merits of the case were never considered. Likewise,

[7] Megna has represented that he will produce all pertinent pleadings. The Court will have an opportunity to inspect and compare the documents to confirm that they belie the veracity of what Megna asserts.
[8] Lee's appeal was dismissed on a jurisdictional basis. A Rule 11 motion's inclusion in the Record on Appeal was to support the lower Court's conclusion that Megna was not credible, that his appeal was untimely and to demonstrate his motive to file an out of time appeal (See Order dated April 1, 2009).
[9] See, for example, Megna's Memorandum in response to Respondent's motion to dismiss; Plaintiff's Exhibit C(7)(e).

motions and issues of damages otherwise before the Lower Court were never considered. Simply stated, the appeal(s) were dismissed on a threshold basis. Megna's reliance on one isolated, out of context and clearly distinguishable Court of Appeals Order in May, 2011 is grossly misplaced for reasons too numerous to list; however, a few of them demonstrate the fallacy of Megna's claim:

(1) The Court of Appeals dismissed the appeal(s) on a jurisdictional basis. It is emphasized that the Court never addressed the merits of the appeal, much less any motions in the Lower Court.

(2) It is both logical and reasonable (and legally compelling) to believe that the Court of Appeals would never have rendered an all-encompassing decision (on the merits and/or involving a discovery-related motion and/or involving damages) over a matter in which there was no jurisdiction.

(3) As is obvious from Respondent's attorney's time sheets, they do not commence until after the appeal was filed. They end before the appeal was definitively concluded and they relate solely to the appeal. They have nothing directly to do with the merits of the underlying case, damages or a pending Rule 11 motion, much less a subsequent motion for protection and motion to quash from subsequent discovery-related abuses since February 28, 2012.

(4) Even if Megna were partially correct, the scope of Rule 269, SCACR, is certainly distinguishable from Rule 11, SCRCP.

(5) If Megna were correct in attributing to the Court of Appeals what he contends, the Court of Appeals would have set aside, reversed, and/or disregarded the Lower Courts' repeated determinations and conclusions (Orders) that the appeal was untimely.[10] Clearly, the Court of Appeals did not agree. It was unnecessary for it to go further, and it did not do so.

[10] In his brief, that is what Megna requested.

(6) In view of the dismissal of Megna's appeals on a jurisdictional basis, it is logical to conclude that the Court of Appeals deferred to the Lower Court, for consideration of matters that are properly to be determined by it and it alone.

(7) This Court is a fact-finding court. It is uniquely qualified, legally authorized and entitled to consider discovery issues and Rule 11 matters. Appellate Courts, by definition, typically deal with appeals from Lower Court proceedings. Issues relating to discovery, damages and Rule 11 initially vest in the Circuit Courts, not in the appellate courts. Since there was no discovery Order, damages or Rule 11 hearing Order addressed on appeal, it would not have been possible for the Court of Appeals to have considered matters that were not before it.

Court records demonstrate that Lee's appeal was dismissed as untimely. Both her Motion for Reconsideration and Megna's Petition for Writ of Certiorari were denied. The case was only then remitted for resolution of outstanding matters. Those matters remaining for resolution are a damages hearing (involving Defendants Wilson and Goodwin alone) and a separate and distinct Rule 11 motion hearing (against Megna, his law firm and his law partner Benjamin Matthews "Matthews").

Incredibly, Megna has repeatedly represented to the Court and many others that he actually won the case on appeal and that it was "over", resolved in his/Lee's favor. He has claimed that the Court of Appeals had reversed and rejected the findings and conclusions contained in the Lower Court's April 1, 2009 Order.[11] Megna's and Matthews' representations were then and remain now untrue. Megna did not win the case – he lost it. And, although he would (and should) have lost the case anyway (see

[11] See Megna' letter to the Court on November 3, 2011 (Exhibit A(2)) and also Megna's emails and Matthews' letter to the Bankruptcy Trustee (with a copy to the Chief Judge of the Bankruptcy Court – Exhibit C (4)).

Summary Judgment Order), it is beyond dispute that he ultimately lost it because of attorney error in failing to timely file Lee's appeal.[12]

B. Megna's accusations of unethical conduct

In association with his false claim that he actually won the case, Megna repeatedly accuses the undersigned and others of ethical violations, "conspiracy" and "collaboration" – that too is untrue.[13]

Given the gravity of what Megna has asserted, it is only fair to those accused by Megna of ethical misconduct for this Court to have the benefit of the relevant history of proceedings. Unfortunately, it takes much time and space to put matters in proper context, but the moving party herein (and Ms. Ballard) is confident that the Court would want no less than a thorough explanation of events under these serious and potentially consequential circumstances.

The history of proceedings disproves what Megna alleges:

(1) The Court granted partial Summary Judgment on October 26, 2007 (with a damages hearing being reserved, to be heard at a subsequent date).

(2) The Summary Judgment Order was forwarded to respective counsel by the Clerk of Court on October 29, 2007.

(3) On November 7, 2007, Plaintiff filed and served a Rule 11 motion. The Rule 11 motion was against Megna personally.[14]

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[12] If he had "won" the appeal, Megna would not need any discovery.

[13] If Megna had genuinely felt that the undersigned had done anything unethical, and he was not merely making idle threats to gain some perceived tactical advantage, then he would have had an obligation to report it. He has not done so, and he has no client upon whom he could rely as a basis for not doing so. To be distinguished from the other cases in which Megna has attempted to smear, denigrate and abuse respective Counsel with false claims of unethical conduct, Megna has merely filed pleadings and emailed letters to Plaintiff's Counsel accusing him of perjury, subornation of perjury, and other unethical conduct. He has in conjunction been sending insulting emails to his paralegal and his son (while he was on active duty, military service and could not respond even if he were otherwise inclined to do so). See Exhibit C(7)(f)'s last three (3) emails for examples of Megna's insults that have plagued this case.

[14] The Rule 11 motion was amended to include Megna's law firm and his law partner, Matthews.

(4) Matthews has averred in an affidavit that he was involved in the case at this point, but he neglected to make his participation known to Plaintiff, the other Defendants, or the Court(s). Megna admits that, despite receiving the Rule 11 motion, he did not complain that he had not received the Court's Order granting Summary Judgment (neither did Matthews). In fact, on December 5, 2007, in a separate and distinct case (what Megna has called the "companion case"), when the specific issue of receipt of the Court's Summary Judgment Order came up, Megna acknowledged that he had received it and that he had received it in a timely fashion – "within a week to ten days" of the day it was signed (see the Court's Order dated April 3, 2008).

(5) The Rule 11 motion was set by the Clerk of Court to be heard on January 8, 2008. However, as the date for the hearing was imminent, Megna filed an appeal in Lee's name on January 4, 2008.

(6) Only then (January 4, 2008) did Megna complain that he had not received the Court's Order granting summary judgment in a timely fashion.

The inescapable conclusion has been that Megna filed the Notice of Appeal at that out of time date to prevent the Rule 11 hearing (i.e. sanctions against him personally) from being addressed.[15] In fact, Megna and Matthews have reiterated in correspondence and pleadings on multiple occasions since that time that neither the pending damages hearing, nor the Rule 11 motion could be conducted because Megna had appealed and his appeal remained outstanding.[16]

Plaintiff/Respondent filed a motion to dismiss the appeal as untimely on January 22, 2008. Upon timeliness of the appeal being contested, that issue was remanded to the Lower Court for a factual determination. Obviously, an evaluation of Megna's credibility was going to be central to resolution of the timeliness issue. The Court of Appeals directed on March 18, 2008 that the remand hearing was to be held "as soon as possible." Megna did not express any concern or make any inquiry at all relative to scheduling the remand hearing. Megna received proper notice under the circumstances of the date, time

[15] The Bankruptcy Court independently came to a similar conclusion.
[16] See for one example Exhibit C(1).

and place set for the remand hearing (April 3, 2008). Megna did not notify the Court or opposing Counsel of any conflict with scheduling. He simply did not appear at the time set for the remand hearing, and he could not be located, even after an initial recess in proceedings for that purpose. Megna was unaccountably absent. Similarly, Matthews failed to appear, although he at least has not attempted to blame his absence on anyone else; he had neglected to make any formal appearance (that would have been required for him to receive notice of court proceedings); he did not appear to be making any effort to inform himself of the case status.

Despite Megna's neglect in failing to attend the remand hearing, the Lower Court nonetheless considered everything Megna had presented, including Megna's affidavit and all of his other submissions. The evidence pertaining to Megna's failure to timely appeal was more than compelling; it was overwhelming. In consideration of all that was "of record" and all that had been filed, the Court properly determined that the appeal was untimely (see Order dated April 3, 2008). The Court also found that Megna had made "repeated and gross misrepresentations to the Court" and that Megna had unjustly attempted to blame Plaintiff's counsel for his (Megna's) own malfeasance and misconduct.[17]

Upon the Court's Order being filed, the Court of Appeals dismissed the appeal. After the Court of Appeals dismissed the appeal, Megna alleged that he had had "no notice whatsoever" of the remand hearing. He sought to reopen the appeal and have the issue of timeliness reconsidered. While Megna's excuse for non-attendance at the remand hearing was dubious at best, he was given another full opportunity to make whatever arguments he might wish to make. It is notable that, in conjunction, Megna was afforded a unique opportunity to be forthright and quietly admit to his multitude of mistakes – he did not avail himself of the opportunity. The appeal was consequently reopened and remanded by the Court of Appeals a second time. Thus, with a second remand, there

[17] In addition to failing to timely appeal, and among other unwarranted *ad hominem* attacks and excuses for his misconduct, Megna claimed that he was intentionally "avoiding" Plaintiff's counsel because he was "stalking" him and/or his family (see Appellant's initial submission to the Court of Appeals in response to Respondent's Motion to Dismiss the appeal as untimely). As well, Megna incongruently claimed that Plaintiff's counsel had "pilfered" a part of his file (establishing that he, Megna, had been unethical).

would not be even the remotest possibility of prejudice or any realistic basis for further *ad hominem* attacks that Megna could advance.

Considerable delays took place thereafter, with both Megna and Matthews claiming that they had vacation conflicts and other scheduling problems. In fact, their collective scheduling conflicts were so substantial that the Court ultimately allowed Lee's counsel to select the time for the second remand hearing. At the second remand hearing (October 2, 2008), Megna once again neglected to heed the Court(s)' prior admonitions and warnings, much less take into consideration his professional responsibilities. Instead, Megna continued to dissemble and once again failed to tell the truth – that is what the Court found. Megna repeated the falsehoods he had previously perpetrated in affidavits, but with a greater vengeance. His *ad hominem* attacks escalated while his conduct otherwise spiraled downward, further out of control. At the second remand hearing, the Court again carefully considered everything that was presented. The Court also specifically considered additional proof relative to whether Megna was truthful in claiming that "no notice whatsoever" had been sent to him and that he had received "no notice whatsoever" of the initial remand hearing. The Court clearly did not take the matter lightly. The Court was very conscientious and at the same time was very accommodating and fair to Megna. Megna had a full opportunity to be heard and to present anything that he wished. Ironically, after claiming as a basis for a second remand hearing that he had not been allowed to argue his position at the original remand hearing, Megna refused the Court's invitation to provide any testimony or even to speak. He also failed to honor the Court's request that he produce the envelope in which he claimed to have received the Order granting Summary Judgment (at a late date – that would justify a facially out of time filing of his appeal). Instead, Megna relied on his own affidavits (determined by the Court to be false) and the unpersuasive affidavits of his business subordinates, his wife, and Matthews. Despite having received continuances because of various conflicts, Matthews neglected to appear at the hearing, much less to provide any excuse whatsoever for his absence. He apparently found it more prudent to remain away than to have to answer to the Court.

After the hearing, Megna and Matthews were afforded even more time to resolve matters before the Court ruled. Megna remained intractable and defiant. He refused to make peace. He refused to address anything in a responsible manner, opting instead for a course of more delay, more personal attacks, and more obfuscation. Based on his failure to attend court, and his lack of responsiveness, Matthews appeared to have abandoned not only the case, but Megna as well. As a result of Megna's recalcitrance and Matthews "no-show" status, the Court was required to issue a second remand Order. In its second remand Order, the Court once again found and concluded that Megna's appeal was untimely. In its Order, the Court gave considerable weight to written documentation, specifically including Megna's own business records, his own court filings and Matthews' letters. Megna was once again overwhelmingly proven not to be believable (see Order filed April 1, 2009). The Court further found that Megna clearly had received notice of the prior (initial) remand hearing. Simply stated, Megna was once again, but with even greater emphasis and reference to specific evidence, demonstrated and determined to be deviously dishonest. Regrettably, there is no other way to describe Megna's conduct and at the same time do justice to the Court's findings and conclusions.

Upon receiving the April 1, 2009 Order establishing that Megna had been untimely in perfecting the appeal and that he had been dishonest (and that Matthews was complicit – he was in business with Megna and had by at least November 10, 2007 joined in with him in the practice of law; he was found to have been engaging in unseemly conduct; he was also found to be not credible),[18] it appeared that Megna and Matthews had exhausted all means to postpone the administration of justice. However, that was not to be. Knowing that upon receipt of the Court's April 1, 2009 Order, the Court of Appeals was going to dismiss the appeal once again (and in fact did so), and knowing that Megna would then be faced with a Rule 11 sanctions hearing, Megna attempted to file yet another appeal on April 15, 2009. The next day, April 16, 2009, Matthews resurfaced and filed a bankruptcy in Lee's name. The net effect of the bankruptcy filing was that the

[18] Matthews has had a history of ethical lapses. (See *In Re Matthews*, opinion 26237 filed December 11, 2006). In his ethics proceedings, Matthews claimed to be abandoning the private practice of law (to go into business with Megna), but given his involvement in this case, that appears to have been a contrived claim.

second dismissal of Lee's appeal had to be set aside and Plaintiff was then subjected to what is commonly known as a "362 stay".

The bankruptcy filing, in conjunction with the second appeal, had the practical effect of even further delaying the case's ultimate resolution because the appeal was stayed. As well, the effect was one that financially put at risk Plaintiff's ability to continue/to preserve his legal rights and property. Whether Megna's and Matthews' conduct was an intentionally orchestrated ploy appears to be in dispute, but it is not necessary to address that issue at this time. In view of Megna's and Matthews' bankruptcy filings, neither the State appeal(s), the Rule 11 motion, nor a damages hearing could be concluded. Plaintiff either had to accede to Megna's and Matthews' methods or else employ bankruptcy counsel. Plaintiff opted to employ bankruptcy counsel.

Megna and Matthews then engaged in numerous other artifices to further delay matters from being concluded. Their actions in the bankruptcy court included, among other things, not proceeding in a timely manner, changing the forms of bankruptcy, repeatedly filing motions (that they lost) and simultaneously and paradoxically opposing all efforts to lift the bankruptcy stay – so that the appeals Megna insisted they would win could be completed. The circumstances surrounding Megna's and Matthews' inapposite positions and motives were not lost on the Bankruptcy Court – the stay was lifted by the Bankruptcy Court on November 9, 2009.[19] It is without coincidence that Megna and Matthews opposed the lifting of the bankruptcy stay so that their own State Court appeal filed on Lee's ostensible behalf could be concluded. Megna even went so far as to repeatedly assert to the Court(s) after the bankruptcy stay was lifted that the case remained stayed, that all prior Court Orders adverse to his position were likely to be set aside, and that the Court of Appeals should not require him to complete his appeal (see Exhibit A(2), the Richland County Clerk of Court's file and the Court of Appeals file).

Obviously, neither the Bankruptcy Court nor the Federal District Court (nor the Court of Common Pleas, the State Court of Appeals, the State Supreme Court, or the 4th Circuit Court of Appeals) agreed with Megna. Megna and Matthews were uniformly unsuccessful. However, their continued, far ranging and extensive legal maneuvering

[19] Upon the Bankruptcy Court lifting the stay, Megna and Matthews filed numerous motions that they lost and then filed numerous appeals. They have now conclusively lost all their appeals.

had its intended result of greater delay. Neither a damages hearing, nor the Rule 11 motion could be heard. The net effect of the Bankruptcy Court's lifting of the bankruptcy stay was that Megna's and Matthews' state appeal was finally required to be abandoned or to be pursued. In that Megna (and most likely Matthews) would then be faced with, at a bare minimum, serious and substantial Rule 11 sanctions if the appeal were abandoned, they chose to proceed with the State appeal.[20] Their actions thereafter resulted in even more tortured legal wrangling and delay. The motives for delay remain quite obvious.

Nonetheless, all of Megna's and Matthews' appeals have now been rejected and dismissed by all Courts. Megna's Petition for Writ of Certiorari was denied, and the case was only then remitted in October, 2011, for resolution of Plaintiff's damages claim against Wilson and Goodwin alone and a separate and distinct Rule 11 sanctions hearing against Lee's (former) attorney(s) Megna and Matthews.

Plaintiff wrote to the Court on November 1, 2011 to request a status conference so that those matters could be scheduled for hearings. Megna wrote to the Court in response on November 3, 2011 (Exhibit A(2)). In his letter, Megna stated that he objected to the Court conducting any status conference. He repeatedly stated that:

> **"the state Court of Appeals actually denied Mr. Anasti's request for damages"** (emphasis added);
> **the Court of Appeals "denied Plaintiff's Rule 11 motion for sanctions"** (emphasis added), and
> **"the state appellate court judgment may, indeed, be void *ab initio*".**

The fact that Megna's quoted statements were and are legally misplaced, inconsistent, and factually untrue did not deter him.[21] Besides, the Fourth Circuit Court of Appeals has denied all Megna's bankruptcy and federal appeal(s) in a *per curium* decision and likewise denied his Petition for Rehearing and his Petition for Rehearing *En*

[20] Given her bankruptcy, Lee would not benefit by any appeal. Neither the Bankruptcy trustee(s) nor any creditors supported or endorsed the conduct of Megna and Matthews. These points were not lost on the Bankruptcy Court (see its Orders and in particular its Order dated January 15, 2010).

[21] While it is beyond incredible if not pathologically illogical to have done, Megna submitted to the Court an "Order" ([sic] – prepared by him or by Matthews) which he claimed proved that he had won the appeal.

Banc as well. Thus, Megna's averments to the Court(s) were and are not only obviously false, but also claiming that the matter remained in limbo in federal court by virtue of his appeals in that venue is moot since Megna has lost all federal appeals.

Plaintiff would crave special reference to the exhibits Megna attached to his November 3, 2011 letter (Plaintiff's Exhibit A(2)). They certainly do not corroborate what Megna contends. Megna's "exhibit A" is NOT a Court Order. Megna's "exhibit B" in particular is NOT a Court Order. Both of the documents he claims to be "Court Orders" are documents prepared by either him or Matthews.

Setting aside Megna's argument that the Court was without jurisdiction and that there were no matters left for resolution, the Court held a status conference on January 18, 2012. The purpose of the status conference was to discuss scheduling both the damages hearing and the Rule 11 motion. Plaintiff requested that the status conference be held with a court reporter "on the record", for obvious reasons. Megna and Matthews appeared, but did so without counsel to represent them. Lee was not present (there was no need since her involvement had ended).

At the status conference, the Court requested that those present confer and make known their scheduling preferences. Everyone present confirmed that the damages hearing would only involve Plaintiff and Defendants Wilson and Goodwin. Wilson and Goodwin did not express a need for further discovery as to damages. In fact, they had already agreed on how the damages hearing would be conducted. At that time, Megna stated unequivocally that neither he nor Lee had any interest in the damages aspect of the case. He stated that a damages hearing did not involve Lee or her former counsel Megna and Matthews. Thus, it is confirmed further that there was no need for discovery as to damages because neither Megna nor Lee would be involved in that process. By his silence, Matthews appears to have concurred.

The Court indicated that the damages hearing would likely be set for some time shortly after March 15, 2012 and that Megna would likely have until the middle of April before the Rule 11 motion would be heard, but that the Clerk of Court scheduling clerk would ultimately determine what time(s) were appropriate. The pending Rule 11 motion hearing was initially anticipated to follow the damages hearing, though no time for it was

set. At that point, and without counsel to represent him and/or Matthews, and being ignorant of, or intentionally disregarding proper legal procedure, Megna attempted to argue the merits of his defenses relative to the pending Rule 11 motion. Matthews did not take an adverse position and appears to have conceded the case status contended by Plaintiff. The transcript reflects that the Court properly and summarily refused to address Megna's argument. The transcript further reflects that the Court specifically advised Megna that he was to make his arguments relative to the Rule 11 motion at the appropriate time in appropriate circumstances – at the Rule 11 hearing.

On February 24, 2012, the scheduling clerk set the damages hearing for March 12, 2012. On February 28, 2012, it was reported that Wilson and Goodwin's attorney Thomas Earle was hospitalized, in a coma, and that his law firm would have to formally withdraw from the case. Megna immediately (that same day), and without Wilson and Goodwin and Lee's knowledge, permission, approval or condonation, began to engage in the discovery related abuses, SCRCP violations and other transgressions that are the subject of the within motion dated March 9, 2012.[22] Megna's reasons to act as he has and to seek "damages discovery" remain quite transparent. Matthews' motives have been less overt.

The history of events establishes that what Megna has asserted relative to the within motion having been "unanimously denied by the Court of Appeals" and that the undersigned has lacked candor (and that he and other attorneys have unethically collaborated and conspired) is not true. Megna's assertions and accusations are in essence very inappropriate, irrelevant, red herring, time-consuming, distractions. With specific reference to Courts' Orders and Court files, it is inexorably confirmed that what Megna has argued is more seriously misplaced than merely being baseless. Megna's "Synopsis" argument is not even a mere reckless disregard for the truth or an inadvertent, harmless series of mistakes made by one new to the practice of the law.

The undersigned realizes that the procedural recap of what has transpired is, perhaps, somewhat tedious to read. Much of it is indeed irrelevant to the core, discovery-

[22] Megna was acutely aware of the seriousness of Mr. Earle's condition in January, 2012, yet he did not claim any right or need to engage in formal discovery at that time or, for that matter, from the time of the Remittitur in October, 2011 until February 28, 2012. Instead, he had stated in writing that all discovery was complete (see Exhibit A(1)).

related issue before the Court at this time. However, it has been necessary to present events in detail and in context, in consideration of the convoluted, fabricated claims and serious ethical violations conjured up by Megna. And, for every misstatement and claim of misconduct averred by Megna, it takes considerably longer to demonstrate why he is so unequivocally wrong. Finally, relevant events have been and are presented in detail to underscore why fees and costs being sought have necessarily been what they are.

2. BANKRUPTCY, IRRELEVANCY AND UNAUTHORIZED CONDUCT

Megna argues that the Court's hands are tied by virtue of Lee's bankruptcy. That argument is another irrelevant, red herring distraction. It is particularly irrelevant because Lee is not the focus of Plaintiff's motion. It is not Lee who is attempting to engage in unauthorized discovery – discovery that Megna has previously and repeatedly affirmed to have been completed. It is not Lee who is engaging in discovery abuses and other misconduct in violation of SCRCP. It is not Lee who is engaging in conduct that has not been authorized by the Bankruptcy Court. And, it is not Lee who has threatened that, if her discovery demands are not met, she will commence contempt proceedings. That misconduct is attributable directly to Megna. He is the focus of Plaintiff's motion.

The within motion for protection from discovery-related abuses has virtually nothing to do with Lee's bankruptcy, with one notable exception: While making abundantly clear that it seriously doubted that Megna would ever be successful on appeal and that Megna and Matthews appeared to be acting for self-serving purposes (because Megna had neglected to timely file an appeal), the Bankruptcy Court made even more explicit in its Order(s) that Lee's bankruptcy stay was lifted only for completion of the State appeal(s) Megna had filed. And, Matthews and Megna were not authorized to be paid from the debtor's (Lee's) estate for pursuing the appeal. Megna and Matthews were not authorized by the Bankruptcy Court to proceed further (See FN 34 herein for a concise excerpt of what the Bankruptcy Court found.). Megna has, nonetheless, opted to ignore the Bankruptcy Court's Order(s), the same as he has ignored the Court's Order(s) disqualifying him in the Darlington case.

Regardless of how Megna may attempt to frame his argument relative to Lee's bankruptcy, he actually makes Plaintiff's point. Megna has unequivocally conceded that;

> **"Plaintiff ([sic] – actually Defendant Lee) is operating under a confirmed Chapter 13 bankruptcy plan of reorganization which prohibits any action being taken against her"** (emphasis added).

Of course, that is accurate as far as it goes. That said, it is stressed that action is not being taken against Lee. The within motion focuses on Megna's (and to a lesser degree Matthews') personal misconduct. Lee's bankruptcy does not act as a shield behind which Megna and/or Matthews may hide, especially in the context of the discovery-related abuses occurring since February 28, 2012, long after Lee's bankruptcy discharge. Megna and Matthews are not in bankruptcy. There is no legal concept of surrogate bankruptcy protection behind which Megna and Matthews can seek asylum.

Moreover, bankruptcy is, in this context, a "two way street" – the debtor (i.e. the debtor alone) has been protected from a continuation of the lawsuit against her individually, and further action by Megna and/or Matthews, selfishly misappropriating Lee's name, is to be treated in a consistent fashion – precisely so as to protect Plaintiff and others against abusive, self-serving schemes. In fact, even Lee is entitled to protection from Megna and Matthews under these circumstances. Megna is certainly entitled to no special treatment by virtue of Lee's bankruptcy and, he is entitled to no special treatment simply because he has possessed a law license. Again, he has willfully chosen to act for his own self-interest. He must suffer the consequences of personally motivated misconduct.

It is stressed that Megna and Matthews have not been authorized by the Bankruptcy Court to proceed as they have, aside from the limited, restricted scope of completing the appeal. The appeal has been completed. Lee's bankruptcy has been concluded. The Bankruptcy Court's Order(s) are abundantly clear. With the loss of Lee's State appeal, Megna and Matthews were not entitled to proceed further in this case. The Bankruptcy Court has not authorized Megna and Matthews to engage in post-appeal,

SCRCP discovery for self-serving purposes, especially after the appeal was lost. Megna's actions have neither been sanctioned by the Bankruptcy Court, nor have they been sanctioned or authorized by any other Court, or by any court rule (or by Lee).

Megna's concession relative to the effects of bankruptcy actually makes Plaintiff's points that (a) by virtue of Lee's bankruptcy, coupled with her loss of all appeals, she clearly has no further interest in this case; Lee has no need to engage in SCRCP discovery; and (b) Megna is pursuing SCRCP discovery under the guise of Lee's name for ulterior, purely personal/selfish purposes.

Lee has completely and with finality lost her case. She/Megna and Matthews have lost all appeals. Any interest Lee may have claimed in the previously disputed property has been conclusively resolved. Given her bankruptcy, neither damages nor sanctions are being sought against Lee, although sanctions were authorized by the Bankruptcy Court (post-bankruptcy filing) if Lee had been the architect of the discovery abuses engineered by Megna. It is abundantly clear that Lee is neither the architect nor the engineer of the discovery abuses complained of herein – it is Megna. Clearly Megna, and to a lesser degree Matthews, is proceeding solely on his own and solely for his own perceived benefit or gain. He has done so at his own peril and to the peril of Matthews.

As further proof of Megna's unauthorized conduct and violation of SCRCP, it has been proven that Megna initially attempted to serve (by "email") Darlington County subpoenas for use in this case. He claims to have served them on February 27, 2012 (see Exhibit A(4) – Megna's March 1, 2012 email). Megna's claimed date of service is inaccurate, but it is readily confirmed that that is what he claimed, and he did unquestionably attempt to serve those Darlington County subpoenas. He only manufactured an excuse for their issuance after he was confronted with the fact that Plaintiff was aware of his repeated violation(s) of the Court's Orders in Darlington. He then further compounded his errors by claiming that his subpoenas were in actuality for use in this case. Megna's discovery (Exhibit A(4)) and his "Synopsis" claims are submitted for comparison to one another and the Court's Darlington Orders. They demonstrate that, regardless of how words may be parsed, Megna's subpoenas, in conjunction with requests to produce and interrogatories, were in fact intended for use in