

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

JUN 16 2017

The Honorable Charles B. Simmons, Jr., Master-in-Equity

SC Court of Appeals

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

83725

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants

APPELLANT/RESPONDENT'S MOTION TO SETTLE RECORD ON APPEAL

Appellant/Respondent China Construction America of South Carolina, Inc. ("CCA"), by and through its undersigned counsel, hereby moves pursuant to Rule 240, SCACR for an Order Settling the Record on Appeal (the "Record") and excluding the last page of Defendants' Exhibit 14 from the Record, which was admitted into evidence at the March 2, 2016 hearing before the Master-in-Equity and previously designated by Respondents/Appellants in Appellants' Initial Brief of Respondents/Appellants.

BACKGROUND AND PROCEDURAL HISTORY

Appellants/Respondents were represented by Rhett D. Burney, Esq. throughout supplemental the proceeding before the Master-in-Equity that is the subject of this Appeal. A final hearing on the merits in this matter was heard on March 2, 2016 (the "March 2016

hearing”). Robert C. Osborne, Esq. represented CCA at that hearing. Prior to the March 2016 hearing, counsel for CCA was provided a document entitled “Benefit Agreement between MSPS and Manfred Sprenger” for the first time,¹ after discovery and depositions concluded, after CCA filed a Motion to Execute and Set Aside Fraudulent Transfers, and after Manfred Sprenger testified at three separate hearings regarding the fraudulent transfers.

Counsel for CCA was alerted by the document and intended to object to it because its admission into evidence would result in substantial prejudice to CCA for several reasons. Manfred Sprenger is the sole principal and owner of MS Production Solutions, LLC, and the Benefit Agreement appeared to be created and signed by him. The Benefit Agreement was not produced until after Respondents/Appellants were on notice of CCA’s position that the transfers to Patricia Sprenger lacked consideration. CCA was not provided a copy of the Agreement in native format to confirm its authenticity. The document is dated August 2007, and without the metadata Counsel could not verify if it was indeed created in 2007 or sometime after. Moreover, the Agreement was not provided in Respondents/Appellants responses to CCA’s subpoenas or post-judgment requests for production. Most concerning was that the Benefit Agreement directly contradicted Mr.

¹ The final hearing on the merits was originally scheduled for February 3, 2016. Caitlin Heyward, Esq. was scheduled to attend on behalf of CCA. On February 2, 2016, Mr. Burney provided Caitlin Heyward, Esq. with documents he intended to introduce at the February 3, 2016 hearing. (See email attached as **Exhibit 1**). The “Benefit Agreement” was included in those documents, and that was the first time counsel for CCA was provided a copy of the same. On February 3, 2016, Ms. Heyward was admitted to the hospital due to false labor contractions and the hearing was re-scheduled for March 2, 2016. Mr. Osborne attended that hearing on behalf of CCA while Ms. Heyward was on maternity leave.

Sprenger's prior sworn testimony that he did not pay himself a salary but instead would pay himself bonuses when the company was doing well.

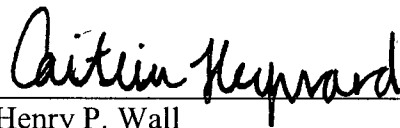
Before the March 2016 hearing began, Mr. Osborne notified Mr. Burney of CCA's intent to object to the admission of the Benefit Agreement into evidence, and Mr. Burney agreed to exclude it from Defendants' Exhibit Notebook. (See Affidavit of Robert Osborne, Esq. attached as **Exhibit 2**). The parties agreed that Mr. Sprenger could testify as to his salary but not the Agreement, and whether his testimony contradicts prior testimony would be a matter of credibility to be considered by the Master-in-Equity.

At the hearing Mr. Burney moved Exhibit 14 into evidence, which Mr. Burney identified as a "Summary from 2013 through 2015" of payments from MSPS to Mr. Sprenger. (Hearing Tran. 19:10-20:7, Transcript of March 2016 attached as **Exhibit 3**). Mr. Burney did not question Mr. Sprenger about the Benefit Agreement itself. Counsel for CCA reasonably assumed that the Exhibit 14 provided to the Court included only the summary prepared by Mr. Sprenger.

At the conclusion of the matter before the Master-in-Equity, Respondents/Appellants retained Mr. Wilkes as appellate counsel and Mr. Burney was no longer involved in the case. It was not until counsel for CCA received a copy of Appellants Initial Brief of Respondents/Appellants that counsel became aware that the Benefit Agreement was inadvertently included in the notebook provided to the Court, behind the summary of payments in Exhibit 14. Appellant's Initial Brief of Respondents/Appellants repeatedly cites to the Benefit Agreement, which CCA contends is not a part of the Record. Because Mr. Wilkes was not involved in this matter at the trial level, he was not aware of the agreement between counsel regarding that document or that it was not considered by

Master-in-Equity at the hearing. While the confusion is clearly not a result of any malfeasance, CCA believes the Benefit Agreement must be stricken from the Record, and Appellants Initial Brief of Respondents/Appellants must be amended to exclude any reference to the same.

June 16, 2017



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EXHIBIT 1

Caitlin Heyward

From: Caitlin Heyward
Sent: Thursday, June 15, 2017 5:03 PM
To: 'rdburney@turnerandburney.com'; 'rdburney@gmail.com'
Cc: Robert Osborne
Subject: FW: Documents
Attachments: sprengerbates.pdf

Caitlin C. Heyward

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From: rdburney@gmail.com [mailto:rdburney@gmail.com] **On Behalf Of** Rhett Burney
Sent: Tuesday, February 02, 2016 3:38 PM
To: Caitlin Heyward <cheyward@brunerpowell.com>
Subject: Documents

I've attached bates stamped documents 1-56 Sprenger that I might use tomorrow. Let me know if you have any questions please.

Rhett D. Burney | Attorney | Turner & Burney, P.C.

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EXHIBIT 2

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and Patricia Sprenger Respondents/Appellants

AFFIDAVIT OF ROBERT C. OSBORNE, III

PERSONALLY APPEARED BEFORE ME, Robert C. Osborne III, attorney for the above-named Appellant/Respondent, China Construction America of South Carolina, Inc. (“China Construction”), being first duly sworn, deposes and states as follows:

1. I am an attorney with the firm Bruner, Powell, Wall & Mullins, LLC, in Columbia, South Carolina, and this firm represents the Appellant/Respondent, China Construction, in the above-captioned appeal and in the underlying civil action subject of this appeal.

2. On March 2, 2016, I attended a supplemental proceedings hearing (the “Hearing”) before the Honorable Charles B. Simmons, Master-In-Equity for Greenville County, on behalf of China Construction.

3. The above-named Respondents/Appellants were represented by Rhett D. Burney at the Hearing.

4. Immediately prior to the Hearing, Mr. Burney and I reviewed and discussed documents that each attorney planned to introduce into evidence at the Hearing.

5. Mr. Burney and I exchanged notebooks containing our respective documents/exhibits.

6. Mr. Burney and I specifically discussed a document in Defendants' exhibit notebook entitled "Benefit Agreement between MSPS and Manfred Sprenger" (hereinafter the "Benefit Agreement"), the document subject of China Construction's Motion to Settle the Record on Appeal.

7. I indicated to Mr. Burney that I would object to the introduction of the Benefit Agreement into evidence as it was not produced during prior discovery, not discussed at previous depositions and hearings and it contradicted previous sworn testimony by Manfred Sprenger and Patricia Sprenger.

8. Following our discussion, Mr. Burney agreed that he would not move to introduce the Benefit Agreement into evidence at the Hearing.

9. At the Hearing, Mr. Burney introduced a number of exhibits into evidence.

10. Upon review of the admitted exhibits from the Hearing, I discovered the Benefit Agreement was included as the last page of Defendants' Exhibit 14. (Attached hereto as Exhibit A)

11. The preceding pages of Defendants' Exhibit 14 contains separate document entitled "Summary 2013 through 2015" which contains a summary of transfers or payments from MS

Production Solutions LLC a/k/a MSPS Steel Fabricators (“MSPS”) to Manfred Sprenger and/or Patricia Sprenger.

12. My review of the Hearing transcript reveals that Mr. Burney’s questioning of Manfred Sprenger relating to Defendants’ Exhibit 14 on addresses items contained in the document entitled “Summary 2013 through 2015”.

13. Mr. Burney posed no questions relating to the Benefit Agreement and Manfred Sprenger provided no testimony relating to the Benefit Agreement.

14. Mr. Burney agreed that it would be removed prior to the admission of Defendants’ Exhibit 14 into evidence.

15. However, it appears that the Benefit Agreement was inadvertently included in the copy of Defendants’ Exhibit 14 handed to the court reporter and admitted into evidence. Had the Benefit Agreement been included in the copy of Defendants’ Exhibit 14 I reviewed, I would have objected to its introduction into evidence for the reasons set forth above.


16. During a telephone conference with Mr. Burney on June 15, 2017, Mr. Burney indicated that he recalled discussing documents/exhibits immediately prior to the Hearing and my objection to select documents/exhibits. However, Mr. Burney could not recall specifics of our March 2, 2016 conversation.

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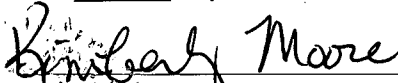
17. I believe the Benefit Agreement was mistakenly and/or improperly introduced into evidence at the Hearing and was not considered by Judge Simmons at the Hearing.

18. The Benefit Agreement is not a part of the Record on Appeal.

FURTHER AFFIANT SAYETH NOT.


Robert C. Osborne III

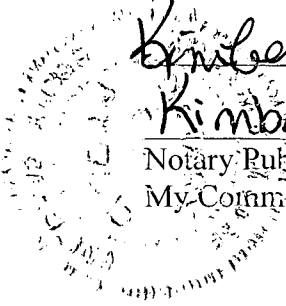
SWORN TO BEFORE ME
this 16th day of June, 2017

 (L.S.)

Kimberly Moore (Printed Name)

Notary Public for South Carolina

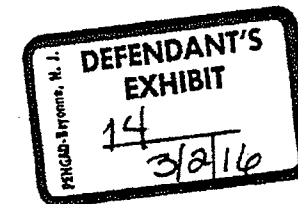
My Commission expires March 29, 2024 (SEAL)



**EXHIBIT A TO AFFIDAVIT OF ROBERT C.
OSBORNE**

Summary 2013 through 2015

	2013	2014	2015	Total
Salaries and benefits agreed between MSPS and Manfred	\$ 144,000.00	\$ 144,000.00	\$ 144,000.00	\$ 432,000.00
MSPS paid Manfred (actually) for Salaries and cars	\$ 56,000.00	\$ 186,000.00	\$ 122,000.00	\$ 364,000.00
MSPS does owe salaries and car lease payments to Manfred	\$ 88,000.00	\$ (42,000.00)	\$ 22,000.00	\$ 68,000.00
Manfred gave MSPS to be able to pay employees/cashflow		\$ 50,000.00	\$ 65,000.00	\$ 115,000.00
Total MSPS does owe Manfred				\$ 183,000.00



Jan 1st 2013 to December 2013

Month	Benefit agreement		Bank of America account			Description
			check #	Date	Manfred to MSPS	
January	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
February	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
March	\$	12,000.00	53426			salary for Manfred
April	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
May	\$	12,000.00	53477			salary for Manfred
June	\$	12,000.00	53534			salary for Manfred
July	\$	12,000.00	53572			salary for Manfred
			53617			salary for Manfred
August	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
Sept	\$	12,000.00	53663			salary for Manfred
Oct	\$	12,000.00	53716			salary for Manfred
Nov	\$	12,000.00	53751			salary for Manfred
Dec	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
	\$	144,000.00		\$	\$	(56,000.00)
Manfred should have received			\$ 144,000.00	salary	Jan throuh Dec	
Manfred received salary			\$ (56,000.00)			
MSPS does owe Salary to Manfred			\$ 88,000.00			

Jan 1st 2014 to December 2014

Month	Benefit agreement		Bank of America account			Description
			check #	Date	Manfred to MSPS	
January	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
February	\$	12,000.00			\$ 10,000.00	Manfred to MSPS cash from home to cover cashflow
March	\$	12,000.00				\$ (7,000.00) salary for Manfred
April	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
May	\$	12,000.00				\$ (40,000.00) salaries owed to Manfred
June	\$	12,000.00				\$ (7,000.00) salary for Manfred
July	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
August	\$	12,000.00				\$ (14,000.00) salary for Manfred
Sept	\$	12,000.00				no deposit and no credit (Manfred did not receive salary)
Oct	\$	12,000.00				\$ (27,000.00) Salaries to Manfred
Nov	\$	12,000.00	1116	24-Nov	\$ 40,000.00	no deposit and no credit (Manfred did not receive salary)
Dec	\$	12,000.00				\$ (70,000.00) from MSPS to Manfred to cover for short paid salaries
						\$ (7,000.00) salary for Manfred
						\$ (7,000.00) salary for Manfred
	\$	144,000.00			\$ 50,000.00	\$ (186,000.00)

Manfred should have received \$ 144,000.00 salary Jan through Dec

Manfred received salary \$ (186,000.00)

MSPS does owe Salary and car to Manfred \$ (42,000.00)

Manfred paid to MSPS to cover cashflow \$ 50,000.00

Balance that year owed by MSPS to Manfred \$ 8,000.00

Jan 1st 2015 to Dec 31st 2015

Month	Benefit agreement	Bank of America account		Manfred to MSPS	MSPS payments to Manfred	Description
		check #	Date			
January	\$ 12,000.00					no deposit and no cre Manfred did not receive salary
February	\$ 12,000.00	1421	2/26/2015	\$ 40,000.00		check from First Citize
March	\$ 12,000.00					no deposit and no cre
April	\$ 12,000.00					no deposit and no cre
May	\$ 12,000.00					no deposit and no cre
June	\$ 12,000.00	54522	6/1/2015		\$ (60,000.00)	Salaries for Manfred <i>pd to Patricia</i>
		54548	6/26/2015		\$ (7,000.00)	salary for Manfred
July	\$ 12,000.00		7/15/2015	\$ 25,000.00		Manfred did give MSF asn into account
August	\$ 12,000.00	54598	8/19/2015		\$ (7,000.00)	salary for Manfred
September	\$ 12,000.00				\$ (28,000.00)	Salaries for manfred
October	\$ 12,000.00					
November	\$ 12,000.00				\$ (10,000.00)	
December	\$ 12,000.00				\$ (10,000.00)	
				\$ 65,000.00	\$ (122,000.00)	
Manfred should have received	\$ 144,000.00	salary	Jan through Dec			
Manfred received salary	\$ (122,000.00)					
MSPS does owe Salary to Manfred	\$ 22,000.00					
Manfred paid MSPS to cover cashflow	\$ 65,000.00					
Balance this year owed to Manfred by MSPS	\$ 87,000.00					



MS Production Solution LLC

August 23rd 2007

Benefit Agreement between MSPS and Manfred Sprenger

MSPS does acknowledge to pay Manfred Sprenger President of MSPS for his duties a monthly salary and benefits. Bonuses might be paid based on company's performance.

Duties:

1. Hire employees to fulfill the necessary functions to allow MSPS to grow.
2. Set up computer system and network
3. Implement accounting software
4. Establish safety procedures
5. Generate estimates to receive orders
6. Manage projects

Salary and benefit:

1. MSPS will pay monthly \$ 12,000.00 to Manfred Sprenger
2. MSPS will pay health insurance for Manfred Sprenger and his wife Patricia Sprenger
3. MSPS will determine frequently if a bonus can be paid to Manfred Sprenger

Sincerely

Manfred Sprenger
President MSPS

Manfred Sprenger

8-23-07

EXHIBIT 3

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1 BY THE COURT: Anything we need to discuss before we go on
2 record?

3 MR. OSBORNE: No, sir, Your Honor.

4 MR. BURNEY: No, Your Honor.

5 BY THE COURT: Okay. All right. This is 2014-01871, the
6 matter of China Construction versus MS Production and others.

7 Gentlemen, from what I understand, the motion today that's
8 being heard was the one that was filed September 23, 2015 to set
9 aside transfers?

10 MR. OSBORNE: Yes, sir.

11 BY THE COURT: Okay.

12 MR. BURNEY: Your Honor, I thought this was the final
13 hearing for the supplemental proceedings.

14 BY THE COURT: Well, I think we probably end up at the same
15 place.

16 MR. OSBORNE: I think so. I think -- we -- it was my
17 understanding this would, you know, be the final hearing and we
18 would make arguments about the fraudulent conveyances.

19 BY THE COURT: Okay. Are you wanting to take some testimony
20 here this morning?

21 MR. OSBORNE: Your Honor, I think -- he's sworn testimony
22 three times. I wasn't planning to put him on the stand. I think
23 we've had enough, if I can just go right into my argument.

24 BY THE COURT: Anything you want to have on the record via
25 testimony?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 MR. BURNEY: Yes, sir.

2 BY THE COURT: Okay. You can go ahead and call your
3 witness.

4 MR. BURNEY: Thank you. I call Manfred Sprenger.

5 MANFRED SPRENGER, BEING FIRST DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 BY THE COURT: Thank you, if you would come around and have
8 a seat, please, sir. (complies)

9 And if you'll state your full name, please.

10 THE WITNESS: Manfred Sprenger.

11 BY THE COURT: All right. Your witness.

12 MR. BURNEY: Thank you.

13 DIRECT EXAMINATION BY MR. BURNEY:

14 Q Mr. Sprenger, you are the owner of MS Productions, LLC?

15 A That's correct.

16 Q I show you -- you are the owner of MS Productions, LLC?

17 A Yeah.

18 Q Let me show you what's been marked as Defendant's Exhibit
19 No. 1. Is that the mortgage to the Small Business
20 Administration?

21 A Yes, sir.

22 Q Is that mortgage currently in place where you owe money or
23 your company owes money to the Small Business Administration?

24 A Yes, sir.

25 Q And the original amount of the mortgage, was it \$1,457,000?

1 A Yeah. Roughly, yeah.

2 Q What is the balance now?

3 A Approximately \$1,000,000.

4 MR. BURNEY: Your Honor, I would move at this time to
5 introduce Defendant's Exhibit No. 1.

6 BY THE COURT: All right.

7 MR. OSBORNE: No objection.

8 (Mortgage, Security Agreement for the Small Business Loan
9 Source, LLC, filed copy entered into evidence as Defendant's
10 Exhibit No. 1)

11 Q You and your wife both signed this mortgage as well; is that
12 correct?

13 A That's correct.

14 Q Is that because the two of you put up one of your houses -- or
15 your house as collateral?

16 A Yes, sir.

17 Q You also signed personal Guaranties for this loan?

18 A That's correct.

19 Q Under the terms of the mortgage, did you give the Federal
20 Government, the SBA, a security interest in the real estate from
21 which your business is situated?

22 A That's correct. Yes.

23 Q Turn to page 3 of the mortgage -- I've highlighted some
24 portions for you -- on page 3 does it set out what types of
25 property the SBA has a security interest in?

1 A Yes, it does.

2 Q Go down to the first full paragraph 3, can you read that to
3 me as far as what the bank has a security interest in?

4 A "Together with all rents, revenues, issues, profits,
5 proceeds, income, royalties, accounts, including health-care
6 insurance receivables, escrows, letter-of-credit rights (each as
7 defined in the Code hereinafter defined), security deposits,
8 impounds, reserves, tax refunds and other rights to monies from
9 the Premises and/or the businesses and operations conducted by
10 Mortgagor thereon, to be applied against the Indebtedness
11 (hereinafter defined); provided, however, that Mortgagor, so long
12 as no Event of Default (as hereinafter defined) has occurred
13 hereunder, may collect rent as it becomes due, but not more than
14 one (1) month in advance thereof."

15 Q And then the last paragraph, does it further set out what
16 the bank has a security interest in?

17 A "Together with all fixtures"---

18 Q Just answer that and then---

19 A Oh, yes, yes. Sorry.

20 Q And does it give the Federal Government a security interest
21 in the equipment?

22 A Yes, sir.

23 Q Machinery, lighting, and goes through a whole litany of
24 other property?

25 A Yes, sir.

1 Q Let's turn to page 4, the second full paragraph or the third
2 paragraph on the page, what else do you -- does MS Productions,
3 LLC give the SBA a security interest in? Can you read that for
4 me as well?

5 A This paragraph?

6 Q Yes.

7 A "Together with all Mortgagor's accounts now owned or
8 hereafter created or acquired as relate to the Premises,
9 including, without limitation, all of the following now owned or
10 hereinafter created or acquired by Mortgagor: (i) accounts,
11 contract rights, health-care-insurance receivables, book debts,
12 notes, drafts, and other obligations or indebtedness owing to the
13 Mortgagor arising from the sale, lease or exchange of goods or
14 other property and/or the performance of services; (ii) the
15 Mortgagor's rights in, to and under all purchase orders for
16 goods, services or other property; (iii) the Mortgagor's rights
17 to any goods, services or other property represented by any of
18 the foregoing; (iv) monies to become due to the Mortgagor under
19 all accounts (sic) for the sale, lease or exchange of goods or
20 other property and/or the performance of the services including
21 the right to payment of any interest or finance charges in
22 respect thereof (whether or not yet earned by performance on the
23 part of the Mortgagor)."

24 Q So, even contracts that the company had---

25 A Yes, sir.

1 Q Now, when you purchased the land and you purchased the
2 company was that at the same time that this document was signed?

3 A This here?

4 Q Yes, the mortgage.

5 A Yes, sir.

6 Q Turn to page 33 of this document -- page 43, it's entitled
7 Purchase Money Mortgage.

8 BY THE COURT: I'm sorry, what page?

9 MR. BURNEY: I'm sorry, Your Honor, page 33, paragraph 43.

10 BY THE COURT: Page 33?

11 MR. BURNEY: Yes, sir.

12 BY THE COURT: All right. Help me out.

13 MR. BURNEY: I will substitute this mortgage for that one.

14 BY THE COURT: All right.

15 MR. OSBORNE: I think I'm missing a full copy as well.

16 MR. BURNEY: It's the same copy.

17 MR. OSBORNE: Okay.

18 THE WITNESS: You can read mine.

19 BY THE COURT: All right.

20 Q Please read paragraph 43.

21 A "Purchase Money Mortgage. (As to Tract I): This Mortgage
22 is given, at least in part, to secure a loan for the purchase
23 money for the Mortgaged Property. As a purchase money mortgage
24 it is entitled to all privileges afforded such under Applicable
25 Law."

1 Q And it's Tract I is that the business? You have two tracts.
2 Is Tract I the business property?

3 A Yes, sir.

4 Q Tract II is your personal home?

5 A Yes, sir.

6 MR. BURNEY: Your Honor, I don't know how you want to handle
7 this as far as marking it into evidence. That's evidentially a
8 portion of the mortgage that is recorded. This is the entire
9 mortgage. We can put them both in if the Court desires.

10 BY THE COURT: What's your preference?

11 MR. BURNEY: I realize it didn't print out that way.

12 MR. OSBORNE: I guess we'll---

13 MR. BURNEY: Put both in.

14 BY THE COURT: Let's just put the full copy. I'm going to
15 return this to you and have my court reporter mark what you have
16 now as Defendant's 1.

17 MR. BURNEY: That is showing that it's recorded. This is
18 the unrecorded one they executed at the time of closing.

19 BY THE COURT: All right. Do you need a recorded copy?

20 MR. OSBORNE: We can stipulate to it.

21 BY THE COURT: Okay.

22 MR. BURNEY: My apologies.

23 BY THE COURT: That's fine. So, Wanda, if you will -- let's
24 go ahead and mark the copy as Defendant's 2 since Defendant's 1
25 has some recording information on it.

1 (Mortgage, Security Agreement for the Small Business Loan
2 Source, LLC, certified copy entered into evidence as Defendant's
3 Exhibit No. 2)

4 Q Mr. Sprenger, I'm going to show you what's been marked as
5 Defendant's Exhibit No. 3. Is that the UCC Statement?

6 A That's correct.

7 Q Financing Statement?

8 A That's correct.

9 Q At the very bottom I've highlighted what the bank has a
10 security interest in. Can you read that for me, please?

11 A The whole paragraph?

12 Q Yes, sir.

13 A "All of the business personal property of the debtor at or
14 arising out of the following location, or wherever located
15 including without limitation all accounts, chattel paper,
16 inventory, equipment, instruments, investment property,
17 documents, deposit accounts, letter of credit rights, general
18 intangibles, furniture, building materials and fixtures at or
19 arising out of that location, whether any of the foregoing is
20 owned now or acquired later; all accessions, additions,
21 replacements and substitutions relating to any of the foregoing;
22 all records of any kind relating to the foregoing; all proceeds
23 relating to any of the foregoing (including insurance, lawsuits,
24 general intangibles, and account proceeds) and all remedies or
25 claims with respect to any thereof."

1 MR. BURNEY: Your Honor, I would move at this time to
2 introduce Defendant's Exhibit No. 3,

3 BY THE COURT: All right.

4 (UCC Financing Statement entered into evidence as
5 Defendant's Exhibit No. 3)

6 Q Mr. Sprenger, I'm going to show you Defendant's Exhibit 4,
7 5, 6 and 7. As far as 6 and 7, are those the personal Guaranties
8 signed by you and your wife in order to get this loan from the
9 SBA?

10 A Yes, sir.

11 Q You understand how a personal Guarantee works?

12 A Yes, sir.

13 Q How does it work?

14 A If left unpaid, the Small Business loan, it would be all of
15 my personal property in jeopardy.

16 Q So, the bank required you and your wife to give a personal
17 Guarantee in order for extra backing of this loan?

18 A That's correct.

19 Q And Exhibit No. 5, is that the note to the United States
20 Small Business Administration?

21 A That's correct, yes.

22 Q And that is dated August of 2007?

23 A That's correct.

24 MR. BURNEY: Your Honor, I would move at this time to
25 introduce Defendant's Exhibits 4, 5, 6, and 7.

1 BY THE COURT: All right. Thank you, sir.

2 (Guaranty Agreement of Patricia Sprenger entered into
3 evidence as Defendant's Exhibit No. 4)

4 (Small Business Administration Note entered into evidence as
5 Defendant's Exhibit No. 5)

6 (Guaranty Agreement of Manfred Sprenger entered into
7 evidence as Defendant's Exhibit No. 6)

8 (Small Business Administration Unconditional Limited
9 Guarantee entered into evidence as Defendant's Exhibit No. 7)

10 Q Now, when did MS Productions get involved with China
11 Construction?

12 A The contract -- I go by memory now, I don't have it in front
13 of me -- but the contract, as far as I recall, was signed
14 December 22, 2012.

15 Q When did you start doing work for China Construction?

16 A Right about the, in the new year of 2013, right immediately
17 because the project was already late.

18 Q Let's get to payments to your wife, Patricia. She's here
19 with us today?

20 A Yes, sir.

21 Q Now, MS Productions has made payments to your wife; is that
22 correct?

23 A That's correct.

24 Q During the time that MS Productions was making payments to
25 your wife was it also making payments to you?

1 A No, sir.

2 Q Why is that?

3 A Well, now I guess I get to embarrass myself, I was just too
4 lazy to go to the bank and get the money -- deposit the money
5 myself. So, for me it was just easier to write the check
6 directly to her and she brought it to the bank. It was our
7 personal joint checking account.

8 Q How long was your company writing checks to Patricia rather
9 than to you?

10 A Well, I wrote the checks from the beginning of the business
11 in 2007 to myself, probably around -- I went back and looked --
12 September of 2011.

13 Q Let me show you what has been marked as Defendant's Exhibit
14 No. 8 and 9. Are these the documents provided by your CPA to the
15 subpoena issued by China?

16 A Yeah.

17 Q Is this the ledger from your company?

18 A Yes, sir.

19 Q Now, Defendant's Exhibit No. 8 is that the ledger for the
20 year of 2012?

21 A Yes.

22 Q And Exhibit No. 9 is that the ledger for December -- excuse
23 me -- through the year of 2013?

24 A That's correct.

25 Q These documents were kept in the course of your business?

1 A Yes, sir.

2 MR. BURNEY: Your Honor, I would move at this time to
3 introduce Defendant's Exhibit Nos. 8 and 9.

4 BY THE COURT: All right. Thank you.

5 (General Ledger for MSPS as of December 31, 2012 entered
6 into evidence as Defendant's Exhibit No. 8)

7 (General Ledger for MSPS as of December 31, 2013 entered
8 into evidence as Defendant's Exhibit No. 9)

9 Q And we've highlighted those checks written to Patricia in
10 both of these exhibits. Do you see these highlights?

11 A Yes..

12 Q If we would look through both ledgers would you see any
13 checks written to Manfred Sprenger?

14 A No, none whatsoever.

15 Q Was it customary, even before you got involved with China to
16 write checks to Patricia Sprenger?

17 A Yes..

18 Q How many owners are there of MS Productions?

19 A One.

20 Q And that is you?

21 A That is me, yes.

22 Q How many employees do you have at any given time?

23 A I would say average eight, depends on the workload.

24 Q Tell the Court briefly what type of business you are in.

25 A I fabricate steel, structural steel for a building. Just

1 one example for the Court, I built the Croc Center here in town,
2 all of the steel inside the building.

3 Q So, people come to you, and builders, and contractors come
4 to your company and they need steel to make a structure?

5 A Yes, sir.

6 Q Then you go and buy steel and manufacture it to fit the
7 specifications that the structure needs?

8 A Yes, sir.

9 Q And you sell the steel to the contractor or builder?

10 A Yes, sir.

11 Q Now, is it uncommon for you to put money into your business
12 from your own personal account?

13 A No. It's not uncommon.

14 Q Why would you have to put money in from your own personal
15 account into the business?

16 A Usually when there's high cash flow due to different things;
17 when contractors don't pay, which is very common, on time and
18 stretch out the payment to me, and to keep the cash flow going
19 and to keep the payroll paying and my suppliers. They don't wait
20 for me. I have terms with them and me telling them I haven't
21 gotten paid yet won't fly with them. So, I have to put money for
22 my cash flow purpose.

23 Q Let me show you what's been marked as Defendant's Exhibit
24 No. 10 and 11. Is Defendant's Exhibit No. 10, is that a bank
25 statement from your account that you have with Patricia, your

1 wife?

2 A That's correct.

3 Q That's at First Citizens?

4 A That's correct.

5 Q Is Defendant's Exhibit No. 11 the Bank of America account
6 that your company has?

7 A That's correct.

8 MR. BURNEY: Your Honor, I would move at this time to
9 introduce Defendant's Exhibit No. 10 and 11.

10 BY THE COURT: All right.

11 (First Citizens Bank Statement entered into evidence as
12 Defendant's Exhibit No. 10)

13 (Bank of America Bank Statement entered into evidence as
14 Defendant's Exhibit No. 11)

15 Q So, both of these statements are they for the month of May
16 -- excuse me -- March of 2014 -- February through March 2015?

17 A That's correct.

18 Q The first statement shown as Defendant's Exhibit No. 10 from
19 First Citizens, on the second page does it show a check written
20 from your account, check number 1421 on February 26th in the
21 amount of \$40,000?

22 A That's correct.

23 Q And that's from your own personal account?

24 A That's correct.

25 Q If we look at Defendant's Exhibit No. 11 which is the Bank

1 of America account on the second page of that document, there was
2 \$40,000 deposited into the Bank of America account for your
3 business?

4 A Yes, sir.

5 Q So, is it your position that the money was transferred from
6 your personal account to the business account?

7 A That's correct.

8 Q Is that common or uncommon?

9 A That is common.

10 Q Let's look at the balance of that Bank of America account,
11 the business account, ending balance of that, was it \$39,380.88?

12 A Yes.

13 Q If you had not put the \$40,000 into the business account
14 that month, what would your balance have been?

15 A Negative a thousand, roughly.

16 Q Let me show you Defendant's Exhibit No. 12 and 13. Is
17 Defendant's Exhibit No. 12 a deposit slip from the Bank of
18 America for \$25,000?

19 A Yes, sir.

20 Q And if we look at Defendant's Exhibit No. 13, is that the
21 bank statement from MS Production Solutions?

22 A That's correct.

23 MR. BURNEY: Your Honor, I would move at this time to
24 introduce Defendant's Exhibit No. 12 and 13.

25 BY THE COURT: All right.

1 (Bank of America Deposit Slip entered into evidence as
2 Defendant's Exhibit No. 12)

3 (Bank of America Bank Statement for July 2015 entered into
4 evidence as Defendant's Exhibit No. 13)

5 Q And if we look at Defendant's Exhibit No. 13, do you see the
6 \$25,000 being deposited on July 15, 2015?

7 A Yes, sir.

8 Q Was that cash that was put into the business?

9 A Yes, sir.

10 Q And where did that cash come from?

11 A Famously called under the mattress.

12 Q Explain that for me. Is this cash that you kept at your
13 house?

14 A We keep cash at our house.

15 Q If we look at the balance of the company's account at Bank
16 of America as shown on Defendant's Exhibit No. 13 for the month
17 July 15 through July 31st, what is the ending balance?

18 A \$21,759 (sic).

19 Q If you had not put in the \$25,000 would your company have
20 had a negative balance?

21 A Yes, sir.

22 Q Now, do you pay yourself?

23 A Yes, I do.

24 Q What is your -- do you have a set draw or set payment that
25 you pay yourself every month?

1 A An agreement I made at the very beginning of when I
2 purchased the business, agreement with MSPS, that I should get --
3 it lies out what my duties are, and my benefits, and pay, and in
4 there it states I should get \$12,000 per month plus health
5 insurance and vacation and the whole -- whatever an employee
6 expects to get paid. The \$12,000 I can't pay myself that every
7 month or at all in the last couple of years due to the economy as
8 we all know. So, at this point it is, I think, \$7- or \$8,000,
9 \$10,000. It changes, varies.

10 Q Let me show you Defendant's Exhibit No. 14. Did you prepare
11 this?

12 A Yes, sir.

13 Q Does this show a summary of your payments throughout the
14 past couple of years from your company to you?

15 A Yes, sir.

16 Q You mentioned that you had a salary of \$12,000 a month?

17 A Yes, sir.

18 Q Have you been taking that salary of \$12,000 a month?

19 A Not lately, no.

20 Q The past couple of years approximately how much have you
21 been paying yourself monthly?

22 A Average, I would say about eight-and-a-half, \$9,000,
23 average. On average, yeah.

24 MR. BURNEY: Your Honor, I would move at this time to
25 introduce Defendant's Exhibit No. 14.

1 BY THE COURT: All right. Thank you.

2 (Summary From 2013 through 2015 entered into evidence as
3 Defendant's Exhibit No. 14)

4 Q Defendant's Exhibit No. 14 does it set out how much your
5 company should have paid you and how much you have actually been
6 paid?

7 A That's correct.

8 Q When it shows how much you have been paid, are those the
9 checks that were written to Patricia Sprenger?

10 A Those are the checks written to Patricia, yes, sir.

11 Q And have you calculated on the first page how much the
12 company actually owes to you?

13 A At this point, roughly, \$180,000.

14 Q Is that through the years 2013, '14 and '15?

15 A Yes, sir.

16 Q Is that because the months that the company did not pay you
17 a salary?

18 A That's correct.

19 Q If you look at page 2 of that document, it shows the year
20 January 2015 through December 2015, does it show the money going
21 into MS Productions from you?

22 A From me, yes, the \$40,000 we talked about earlier which I
23 put in.

24 Q Is that in the column that says "Manfred"?

25 A It says the column "Manfred to MSPS."

1 Q And then in the next column, it says payments to Manfred?

2 A Yes, sir.

3 Q It has a payment to you of \$60,000?

4 A Back in June.

5 Q That check was actually written to Patricia?

6 A Written to Patricia, yes.

7 Q It was deposited into your account?

8 A Into the First Citizens joint account, yes, sir.

9 Q What does that \$60,000 represent?

10 A That \$60,000 represents the salary payment which I haven't

11 received from January until June plus the \$40,000 I put in in

12 March which is not even enough for that to cover that.

13 Q So, does your company often play catch-up with what it
14 should have paid you but was unable to pay because it didn't have
15 the money?

16 A Yes, sir.

17 Q Let me show you Defendant's Exhibit No. 15 and 16. Is
18 Defendant's Exhibit No. 15 your joint account with your wife at
19 First Citizens?

20 A Yes, sir.

21 Q And Defendant's Exhibit 16 the Bank of America account for
22 your company?

23 A Yes, sir.

24 Q If you look at Defendant's Exhibit No. 15 does it show the
25 \$60,000 being deposited into your joint account?

1 A Yes, sir.

2 Q And Defendant's Exhibit No. 16 does it show the \$60,000
3 coming out of the business account?

4 A Yes, sir.

5 Q That's check number 54522?

6 A Yes.

7 MR. BURNEY: Your Honor, I would move at this time to
8 introduce Defendant's Exhibit No. 15 and 16.

9 BY THE COURT: All right.

10 (First Citizens Bank Statement dated June 12, 2015 entered
11 into evidence as Defendant's Exhibit No. 15)

12 (Bank of America Bank Statement dated June 30, 2015 entered
13 into evidence as Defendant's Exhibit No. 16)

14 MR. OSBORNE: Your Honor, this is the first -- we've gone
15 over these checks before and this is the first time they've been
16 indicated that they're salary. Sworn testimony in the past has
17 said these were loan repayments.

18 BY THE COURT: You can certainly cross-examine him on that.

19 MR. BURNEY: I think I moved to introduce---

20 BY THE COURT: Yes, sir.

21 Q Let's go to the \$60,000. What was the \$60,000 for?

22 A The \$60,000 is to catch-up for salaries and the \$40,000 I
23 put back into the company in March.

24 Q So, in June 2015 your company wrote a check out of its
25 account that you deposited into your joint account, \$60,000?

1 A Yes, sir.

2 Q That was in June 2015?

3 A Correct.

4 Q But previously, in February 2015, you put money in of
5 \$40,000?

6 A That's correct.

7 Q If we look at the spreadsheet that you have prepared on page
8 2 where it breaks down the month had you even taken a salary from
9 January through May?

10 A No, nothing.

11 Q It is your contention that your company's playing catch-up?

12 A That's correct.

13 Q If we look again on the pages on this document that you
14 prepared does it go through the years 2014 as well?

15 A Yes.

16 Q And 2013?

17 A Yes.

18 BY THE COURT: Gentlemen, I want us to be mindful of time,
19 but the matter was only set for 45 minutes. That's what the
20 requested time was. I can give you a little more time, but we
21 need to be sensitive.

22 MR. BURNEY: I'm almost done with him. I'm sorry, Your
23 Honor. I thought we had you for the full morning. My apologies.

24 Q Let me show you what's been marked as Defendant's 17 and 18.
25 Do you recognize these documents?

1 A Yes, sir.

2 Q These documents were provided by your CPA to China
3 Construction?

4 A Yes, sir.

5 Q Do they show your employees and what your employees were
6 paid throughout the year?

7 A Yes, sir.

8 MR. BURNEY: Your Honor, I would move at this time to
9 introduce Defendant's 17 and 18 into evidence.

10 BY THE COURT: All right. Thank you, sir.

11 (MS Production Employee Pay Record entered into evidence as
12 Defendant's Exhibit No. 17)

13 (MS Production Employee Quarterly Contribution Report
14 entered into evidence as Defendant's Exhibit No. 18)

15 Q If we look at Defendant's Exhibit 18. This is the year
16 2012? Is this for the year 2012?

17 A Yes, sir.

18 Q Does it show what you paid your employees during that year?

19 A Yes, sir.

20 Q Is Patricia Sprenger listed on there at all?

21 A No, sir.

22 Q And the next Exhibit is for the year 2015?

23 A Yes, sir.

24 Q Does it show Patricia Sprenger as being -- receiving money
25 at that time?

1 A Yes, sir.

2 Q Did you eventually employ Patricia?

3 A Yes, I did.

4 Q When approximately was that?

5 A September or October of last year.

6 Q Why did you employ her?

7 A Because of the time she's spending and we need her there is
8 becoming more and more.

9 Q Let me show you Defendant's Exhibit 19. Do you see the
10 check dated June 4, 2015 in the amount of \$50,000?

11 A Yes, I do.

12 Q Is that for cash?

13 A Yes, it is.

14 Q Is that written out of your account that you have with your
15 wife at First Citizens?

16 A That's correct.

17 Q Did you also write checks for cash out of your individual
18 account that you have with your wife?

19 A Yeah.

20 Q What's the purpose of that?

21 A Just like to keep what I need at home and pay all bills,
22 just for personal bills.

23 Q Would you use this money to help the business?

24 A Also, yes.

25 MR. BURNEY: Your Honor, I would introduce Defendant's

MANFRED SPRENGER-CROSS BY MR. OSBORNE

1 Exhibit No. 19.

2 A Can I add something? 25,000 of this money went back into
3 the business in July of last year.

4 (Copies of Checks entered into evidence as Defendant's
5 Exhibit No. 19)

6 Q Is that the deposit slip that we have---

7 A Yes.

8 Q Is that the deposit shown in Defendant's Exhibit No. 12?

9 A Yes.

10 MR. BURNEY: That's all I have, Your Honor.

11 BY THE COURT: All right. Your witness.

12 CROSS-EXAMINATION BY MR. OSBORNE:

13 Q Mr. Sprenger, where does MS Production bank?

14 A Where?

15 Q What bank?

16 A Bank of America.

17 Q Who holds the mortgage for the property?

18 A Small Business loan.

19 Q It's not Bank of America?

20 A No.

21 Q Does the Small Business loan, do they have any sort of
22 agreement where they have control over your account at Bank of
23 America?

24 A Yes. They have control of all of my receivables and all of
25 my contracts---

1 Q If they -- you're telling me if they wanted to they could
2 talk to Bank of America and they would have the authority to take
3 money out of your account at any point?

4 A I don't think so. That's what we read to them. They have
5 access to all of my cash, my contracts, my equity and all of
6 that.

7 Q Do you have any sort of agreement that has -- between ---
8 that Bank of America has that says you give the SBA the ability
9 to come into your account and take money?

10 A I don't recall a written statement. The mortgage agreement
11 states they have access to all of my receivables and all of my
12 equity.

13 Q It says that but, in practice, if they tried to come in and
14 take money out of your account---

15 A I don't know how the law works in practice with that other
16 than what I signed with the Small Business loan.

17 Q The Small Business loan, they don't have possession of the
18 cash that you keep in your house, do they?

19 A No.

20 Q Mr. Burney brought up a check that was written in May of
21 this year, a \$60,000 check. Do you remember talking about that?

22 A Yes.

23 Q Do you remember having your deposition taken in September?

24 A Yes, sir.

25 Q You were asked about that check. You were asked by Ms.

1 Heyward: "Do you recall writing a check to your wife in the
2 amount of \$60,000 on May 27, 2015?"

3 What did you answer?

4 A "I do."

5 Q She asked you: "Why did you do that?"

6 A "Like I always do when I take money and frequently do as you
7 probably saw"---

8 THE COURT REPORTER: Can you start over? I can't---

9 THE WITNESS: Oh, the microphone. I'm sorry.

10 THE COURT REPORTER: I couldn't hear you.

11 THE WITNESS: I'm sorry.

12 A Could I take this---

13 Q Yes. So, Ms. Heyward asked you about the check on May 27,
14 2015. And you---

15 A "I do."

16 Q And she asked why you wrote that check. How did you answer?

17 A "Like I always do when I take money and frequently do as you
18 probably saw before."

19 Q So, when you say you "take money", that means you've loaned
20 money to the company and you're taking it back?

21 A No. When I pay myself, I have not received salaries.

22 Q Does this say anything about salary?

23 A No. It doesn't specifically say salary, no.

24 Q It says you were paying yourself back for money you took
25 from -- that you gave to the company?

1 A My services -- that year, as we just went through, I didn't
2 receive any salary from the month January until June.

3 Q But in your deposition you didn't say anything about salary,
4 did you?

5 A Not specifically salary, no.

6 MR. OSBORNE: Your Honor, I think that's all I have for Mr.
7 Sprenger. I would like to get into my argument.

8 BY THE COURT: All right. Any other questions?

9 MR. BURNEY: None of him. I have a quick witness, Your
10 Honor.

11 BY THE COURT: All right. You can have a seat, sir. Yes,
12 sir.

13 (witness excused)

14 BENJAMIN DAVIS O'DELL, BEING FIRST DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 BY THE COURT: Thank you. Come around and have a seat,
17 please.

18 If you'll state your full name.

19 THE WITNESS: Sure. Benjamin Davis O'Dell.

20 DIRECT EXAMINATION BY MR. BURNEY:

21 Q Mr. O'Dell, what do you do for a living?

22 A I am a CPA.

23 Q Are you the person who prepared the tax returns for Mr.
24 Sprenger's company?

25 A Yes, sir.

1 Q Is it your company that responded to the subpoena of China
2 Construction for the records?

3 A Yes, sir.

4 Q Are you familiar with his tax returns?

5 A Yes.

6 Q Does his wife claim any money written to her from the
7 company as income?

8 A No, sir.

9 Q Is she taxed on that?

10 A No, sir.

11 MR. BURNEY: That's all I have of this witness, Your Honor.

12 MR. OSBORNE: Nothing from me, Your Honor.

13 BY THE COURT: All right. I appreciate you coming in.

14 MR. BURNEY: Your Honor, he's under subpoena. I don't think
15 we'll need him anymore, if he may be excused.

16 BY THE COURT: Mr. O'Dell, you're free to go.

17 THE WITNESS: Thank you.

18 BY THE COURT: Yes, sir.

19 (witness excused)

20 BY THE COURT: All right. Anything else then for the record
21 as far as testimony or evidence?

22 MR. OSBORNE: I would like to put this notebook in as an
23 exhibit.

24 BY THE COURT: All right.

25 (Notebook entered into evidence as Plaintiff's Exhibit No.

1 1)

2 BY THE COURT: Just for the record, if you could give a
3 brief explanation of what's in that large notebook.

4 MR. OSBORNE: It has filings from this case, deposition
5 transcripts -- it's also got an index at the front -- but
6 basically filings, deposition transcripts -- a lot of the stuff
7 is duplicate of what Mr. Burney's put in. It's got the UCC
8 Financing Statements, and then there are a couple of cases that
9 I've included that I may reference today.

10 BY THE COURT: Okay. All right.

11 MR. OSBORNE: Your Honor, getting into my argument, as you
12 know, we've been here before, but we contend that since 2013 MSPS
13 has made over \$360,000 in fraudulent transfers to Manfred and
14 Patricia Sprenger.

15 Our motion is based on the Statute of Elizabeth which
16 basically says that transactions or transfers can be set aside in
17 two instances: one, when there's no consideration and second,
18 when there is consideration but there's fraudulent intent.

19 I guess to address first the \$7- and \$14,000 transfer---

20 BY THE COURT: All right. Let me -- and I apologize for
21 interrupting, but I know I'm interrupting you -- Defendant, at
22 least in one of their filings, argues that the Statute of
23 Elizabeth is limited solely to real estate transfers. What's
24 your position on that?

25 MR. OSBORNE: I would agree that most of the time it comes

1 up in real estate transfers, but there's South Carolina case law
2 where it applies to transfers of assets outside of a company. I
3 think it's -- I didn't print that case out. It's Dufresne v.
4 Hilton Head -- it's something with Hilton Head Island, and it
5 dealt with a company that transferred all of their assets out of
6 the company. That case was actually overruled, but it was
7 overruled on other grounds. They had a grossly inadequate
8 standard for consideration. But that's the one offhand I can
9 remember, but they have applied the Statute of Elizabeth outside
10 of real estate transactions.

11 BY THE COURT: Mr. Burney, let me ask you, is it still your
12 client's position that the Statute of Limitation (sic) does not
13 apply to anything other than real estate conveyances?

14 MR. BURNEY: Well, the Statute of Elizabeth has been
15 codified. I think it kind of goes back through the position that
16 the Statute of Elizabeth only applies to real estate conveyances.

17 BY THE COURT: Well, I know you're taking that position. I
18 want to know what the law says.

19 MR. BURNEY: If you look at the statute, it gives a broad
20 explanation of what it applies to.

21 MR. OSBORNE: In the language in the statute, it says goods,
22 chattels -- I mean, the beginning phrase of the statute starts
23 off with about every sort of property that you could have.

24 BY THE COURT: Well, y'all are protected on the record on
25 that. From my independent review of the law, it appears that the

1 case of Gerard which is 365 S.C. 151 -- it was reversed on other
2 grounds -- but in that case it appeared to be a rather broad
3 interpretation of the Statute of Elizabeth including assets other
4 than real property.

5 Then also there is a United States District Court decision
6 that came out in September of 2015, PCS Nitrogen. All I have is
7 a Westlaw cite which is 2015WL5122878 where Judge Seymour, in
8 ruling on any number of other issues, specifically held that cash
9 transfers are avoidable as fraudulent conveyances under the
10 Statute of Limitations (sic) in South Carolina.

11 So, both the state court and federal court -- I'm going to
12 take that issue off the table, but I wanted to make sure that
13 both of y'all had it protected on the record in case this does
14 need to go up.

15 Now, all right.

16 MR. OSBORNE: I'll start with the \$7- and \$14,000 transfers,
17 we heard that these were made to Patricia. They were made when
18 she was not an employee of the company. We would say those are
19 without consideration. That's all we need to prove there. We
20 don't have to prove fraudulent intent. They were made to someone
21 who wasn't an employee of the company and, therefore, they can't
22 have consideration.

23 Then also in supplemental proceedings, Mr. Sprenger
24 testified that he didn't even take a salary. So, how he can say
25 now that those were his salary? It contradicts what he's

1 previously testified to.

2 More importantly, though, I think there are the large
3 transfers, and those tend to happen at opportune times for Mr.
4 Sprenger. The first one that we'll point to was on March 27,
5 2014. He wrote a \$40,000 check to his wife, and that was about
6 four days before China first filed suit against him. There had
7 been correspondence back and forth between our client and Mr.
8 Sprenger. He knew that they were about to file a lawsuit.

9 The next transfer is a \$27,000 check to Patricia, and that
10 was on July 30, 2014. On July 27, our firm sent Mr. Sprenger a
11 copy of our motion for a default judgment. So, it's right around
12 the time he would have received that letter, he makes a \$27,000
13 payment to Patricia. Then there's -- September 29, 2014 there's
14 a \$70,000 check to Patricia and this was---

15 BY THE COURT: I'm sorry, that was when again?

16 MR. OSBORNE: September 29, 2014.

17 BY THE COURT: All right.

18 MR. OSBORNE: That was \$70,000 and that was about two weeks
19 after he received notice of the damages hearing in this case.
20 Then in November 2014 -- these kind of go -- there are the checks
21 and then there are also the cash withdrawals. On November 13,
22 2014 there was the \$20,000 cash withdrawal from the First
23 Citizens account, and that was five days before the damages
24 hearing.

25 Then we have the Rule to Show Cause that was issued on May

1 1st. May 27, 2015 there was a \$60,000 check to Patricia. The
2 supplemental proceedings hearing was 5 days later, on June 2nd---

3 BY THE COURT: Is all of this in Plaintiff's 1?

4 MR. OSBORNE: Yes, sir. I'm not sure if it's all --
5 everything's there. I'm not sure if I, you know, put a timeline
6 actually in there.

7 BY THE COURT: Okay.

8 MR. OSBORNE: Then on June 4th, two days after the
9 supplemental proceedings hearing, that's when a cash withdrawal
10 of \$50,000 was made by Patricia. Then on November 18th, which is
11 the same day that there was the last hearing in which you
12 reminded Mr. Sprenger not to make any transfers out of the
13 ordinary course, he writes a \$10,000 check to himself. Then on
14 December 3, 2015 he also writes a \$10,000 check to himself.

15 So, we submit that all of these transfers, they come at very
16 opportune times for him. There's not a -- looking back -- you
17 know, unless there's something coming up, he's not making these
18 sort of transfers.

19 We understand that he now argues that these are loan
20 repayments, but there's no documentation of the loan. There's no
21 notes evidencing how much he's owed, how much he hasn't been paid
22 back.

23 On that point, he knows he has other judgments against him
24 and even if they are loan repayments, he doesn't have -- it's not
25 his choice to choose who he pays back first. We're a judgment

1 creditor. He basically sits in the shoes of an unsecured
2 creditor. He doesn't have a note. He doesn't have a security
3 interest. We submit our judgment lien has priority over his
4 unsecured loan.

5 Moving into the -- I know Mr. Burney has talked about the
6 SBA Security Agreement, and there is a Security Agreement. We're
7 not going after anything that's inventory, any equipment. We
8 want the money in the deposit accounts and the cash that's in his
9 home. They don't have a perfected security interest over the
10 deposit accounts or the cash. To have a perfected security
11 interest in the deposit account, they have to have control and
12 that means either the secured party has to be the bank itself
13 that holds the mortgage or they have to have some sort of
14 agreement that says, "We, the SBA, can come in at any time and
15 take that money out of the account, no questions asked." They
16 have the agreement -- there's nothing with the Bank of America
17 that says the SBA can come in and take money in and out of the
18 account, and that's the only way to perfect a security interest
19 in the deposit account, is by control.

20 BY THE COURT: So, is it your client's contention that they
21 are not seeking against assets of the LLC, but they are seeking
22 what your client contends are fraudulent conveyances made by the
23 LLC to Patricia Sprenger?

24 MR. OSBORNE: I think we're -- I wouldn't limit it to we're
25 not seeking assets of the LLC, but we're not seeking assets of

1 the LLC that the SBA has a perfected security interest in.

2 BY THE COURT: Well, has there been any evidence that the
3 LLC has any assets?

4 MR. OSBORNE: They transfer money back and forth.

5 BY THE COURT: Well, I'm talking about like fixed assets.
6 Other than the cash that we've been here on, real property,
7 equipment, things of that nature.

8 MR. OSBORNE: Well, they have -- they have the real
9 property. We know that. And I'm sure in his business they have
10 equipment that's used, and we're not going after that. We
11 understand---

12 BY THE COURT: Okay. That's what -- I just wanted to make
13 sure I understood that.

14 MR. OSBORNE: Yes, sir. You know, the SBA they have --
15 their financing statement, that's a perfected security interest
16 in that inventory, or equipment, whatever it is, but even though
17 it says cash deposit accounts, they don't have a perfected
18 security interest in that. The only way they can do that is by
19 having control of the bank account, which they don't. And the
20 only way they can have a perfected security interest in the cash
21 is to have possession of the cash.

22 In your folder that I handed up, I printed out some sections
23 of the UCC, Article 9 that go through those sections.

24 I know it wasn't really mentioned here today, but there's
25 been the argument that because Mr. Sprenger has other judgments

1 out, we have to sit behind those judgments and we can't execute.
2 That's just not the case. There's the Diligent Creditor Rule
3 which says, you know, "We've spent the time trying to find these
4 assets. We don't have to wait behind a judgment that's ahead of
5 us until we can do anything. We put the time in to find the
6 assets, and we're entitled to those." If there was a fight and
7 there were two creditors going over the same pot, you know, that
8 may come into play but that's not the case here.

9 I would also like to -- for evidence of his fraudulent
10 intent, Courts use the badges of fraud. I'm sure you're familiar
11 with those, but if you look at them, there's a case, the Coleman
12 case which is in your notebook, and it goes through seven
13 different factors. I think we hit pretty much nearly all of
14 them. He was indebted at the time to us when he made the
15 transfers. We argued that he didn't receive consideration
16 especially for the \$7,000 transfers. He transferred the funds to
17 a person who he has a close relationship with.

18 He reserved the benefit of those funds because he's
19 testified that he would take the money, the cash, that was
20 sitting in the house and use it as he deemed fit. Then he tried
21 to conceal it from us. I mean, he was taking money out of his
22 bank account and putting them under his mattress.

23 He can say that he doesn't trust banks, but it seems like he
24 only doesn't trust banks when he has somebody coming after him
25 because there are plenty of times where we see, going through

1 these bank records, that he's got a substantial amount of money
2 in the bank. So, I think his argument that he doesn't trust
3 banks doesn't hold much weight.

4 BY THE COURT: All right. What impact, if any, does the
5 fact that the course of conduct prior to the contract with China
6 Construction was these, you know, very loose -- that's probably a
7 generous phrase -- a very loose transfer between the LLC, and
8 himself, and his wife as far as the transfer in and out of funds?

9 MR. OSBORNE: There may be a history of that, but that
10 doesn't change the fact that he -- he basically made unsecured
11 loans to his company. When he incorporates in South Carolina,
12 there are certain formalities that he has to abide by and if he
13 doesn't, he stands to face the consequences of those. So, when
14 he makes a loan to the company, he could have taken a security
15 interest. He could have filed a UCC Filing Statement saying, "I
16 loaned the company money," and he could have taken collateral --
17 he would have been behind to the SBA, but he could have taken
18 collateral and that would have protected his interest.

19 BY THE COURT: And I don't disagree with you at all, but
20 does the fact that they were doing this before the dealings with
21 China impact the Court's interpretation of the badges of fraud or
22 does it at some point -- as you've done such a good job arguing
23 -- that starting, I think, in March of 2014, shortly before the
24 filing of the lawsuit, at that point does what has been just
25 sloppy business then become a fraudulent conveyance moving

1 forward?

2 MR. OSBORNE: I think it's important to note too that he has
3 a history of having judgments against him. He's admitted that he
4 has prior judgments and, you know -- he knows what's going on at
5 this point and, you know, he knows that if he keeps his bank
6 accounts low, that's probably going to keep creditors away
7 because they seem like it's not worth going to chase after. So,
8 I don't think that changes anything. I think he has a history of
9 having judgments and he's probably learned at this point the best
10 way to deal with that and to try to keep creditors from staying
11 off his back.

12 BY THE COURT: All right. Let me ask another question,
13 moving -- let's assume, just for the sake of our question right
14 now, that the evidence supports your client's position.
15 Obviously, the purpose of supplemental proceedings is to locate
16 assets and have them seized and liquidated toward satisfaction of
17 your client's judgment. What happens if there is evidence to
18 support your client's position but the funds are gone? What does
19 the relief look like?

20 MR. OSBORNE: We would like an Order saying that all of the
21 transfers that he made he needs to pay to us.

22 BY THE COURT: What if he didn't -- what if he says, "I
23 don't have any money"?

24 MR. OSBORNE: We would like to have as much as he has.

25 BY THE COURT: But has there been any evidence that funds

1 are still being held -- I know there's deposition testimony, I
2 think, of \$50,000 that's been in controversy. What evidence is
3 there that these monies still exists, this cash still exists?

4 MR. OSBORNE: We can't say that there's, you know, cash in
5 his house. We just -- there's evidence of him moving money from
6 the company continuously. And we think, you know, if he did that
7 and he didn't take -- didn't write a note, didn't secure his loan
8 -- basically, he can't pick and choose to say, "I'm going to pay
9 myself back first."

10 BY THE COURT: I really do, I agree with that. I think
11 that's an accurate statement of law. But let's say that there is
12 an Order, says, "All right, husband and wife, these "x" dollars
13 were inappropriately, improperly given. You've got to give them
14 back." And then if they say, you know, "Not only do we disagree,
15 Simmons, with your ruling, the money's gone."

16 MR. OSBORNE: If that were the case, we would be open to
17 give him a certain amount of time to try to get those funds up
18 under the condition that he have to do more than, you know, maybe
19 write a letter to the company like he did in the past. We want
20 him to make an effort and try to get us the money that we think
21 we're owed. I know, you know, we can't -- if the money's not
22 there, the money's not there. But I think a strong Order from
23 Your Honor saying that he has a certain amount of time to hand
24 over those assets would be enough. We understand we can't say,
25 "You need to give us all of this money tomorrow." But we would

1 be open to allowing him a certain amount of time to hand over the
2 money and if he needs to get a couple contracts, we can make that
3 where money coming into the account -- or to the business is
4 ordered by you to come to us.

5 BY THE COURT: All right. Anything else you want on the
6 record before I hear from opposing counsel?

7 MR. OSBORNE: Nothing, Your Honor, other than, you know,
8 this is -- it's clear -- we understand that there are challenges
9 with small businesses but, you know, that doesn't give him the
10 right to just throw out any sort of corporate formalities. We
11 think the fact that he's picking and choosing to pay himself back
12 while he has other creditors out there, that it's not equitable
13 and it runs contrary to the law.

14 BY THE COURT: All right. Be glad to hear from you.

15 MR. BURNEY: Your Honor, first, they have not pled
16 fraudulent conveyance. All they did was file a supplemental
17 proceedings. So, I don't think the Court can even address that,
18 but we'll act as though the Court can.

19 As far as corporate formalities, this is an LLC. This is
20 nothing other than a sole proprietorship that just has a certain
21 tax status with the government. So, there are no corporate
22 formalities. If it were a corporation, I would agree that he
23 would need to have some type of note signed for tax purposes
24 because the IRS would require that. They don't require that with
25 an LLC, Your Honor.

1 Fraudulent conveyances, they're just -- what they're failing
2 to do is to look at the whole picture. We've handed to the Court
3 the spreadsheet that my client has prepared to show the months
4 that he does not get paid. We've shown that he's had to float
5 this company. Why would there -- if he were trying to defraud
6 anybody, why would he be putting \$40,000 of his own cash into the
7 company to keep it running? Why would he put his own \$25,000 of
8 cash into the company to keep it running? He would just keep it
9 all out if he were trying to defraud the company.

10 We've given you an index of transfers, Your Honor, showing
11 three-hundred-and-something-thousand dollars beginning in 2013
12 going to Patricia Sprenger. Mr. Sprenger testified that he was
13 just too lazy to write himself a check, gave that money to his
14 wife, which she deposited into the exact same account that he
15 would have deposited the money to had he written the check to
16 him.

17 His CPA testified that they didn't even include that money
18 on Mrs. Sprenger's tax return. She wasn't taxed on that and
19 didn't claim it. The reason why is because he has taken that
20 money as his salary; otherwise, they wouldn't have claimed
21 anything.

22 And if you look through -- when we start talking about the
23 badges of fraud and departure -- they have to show departure from
24 the usual method of business. The usual method of business over
25 the years is to write the checks to Patricia Sprenger. They were

1 doing that since 2012. Should they have been doing that? I
2 don't think they're prevented from doing that. But when you
3 start dealing with small businesses that employ very few people,
4 he's having to float his company. There are months that he's not
5 taking any money.

6 BY THE COURT: But yet he didn't -- I mean, he said to the
7 state, "I want you to recognize this business as a separate
8 entity, an LLC."

9 MR. BURNEY: Right..

10 BY THE COURT: "But yet I want to continue treating it like
11 it's my personal bank account, and I don't have notes. I don't
12 have agreements. I don't have corporate minutes that support all
13 of this." Can he have it both ways?

14 MR. BURNEY: Well, he can have it both ways because it's not
15 required. It's a small business. As an LLC, you don't have to
16 have that corporate formality. He's getting that protection as
17 an LLC from lawsuits and such individually that a sole
18 proprietorship wouldn't necessarily have, but he wasn't using
19 that as his own personal bank account. Is he supposed to work
20 for free? He's not working for free. We see where the money's
21 coming out every month. The checks are just written to her, put
22 into their joint account. If you took all of those checks out,
23 he has no income at that point in time. I don't think the Court
24 can force him to work for free. He's entitled to an income.

25 Would I have liked to have all of those checks written to

1 Manfred Sprenger throughout -- yeah, I would have but I don't
2 have that. And if it would have been a corporation, I think we
3 would have a bigger problem with that, Your Honor.

4 But I think it's -- I know -- I understand the position --
5 they want to say all of these transfers are fraudulent because
6 that's all they have to go on because they can't get past the
7 priority of the SBA which has the secured interest in everything.
8 We presented that to the Court. But if you would go back and you
9 see where the accounts are short \$40,000, \$25,000, but for him
10 putting money back in, how can that be fraudulent? When you see
11 that he writes a check back to his wife and to him for \$60,000,
12 if you look through the records, you see where he put \$40,000 in
13 the months before and he hadn't taken a salary for the first six
14 months of that year. So, if they are a fraudulent transfer, he
15 would be doing it a different way than what they're doing at this
16 point in time.

17 Surely, if they were filing taxes to the Federal Government
18 and if that were truly Mrs. Sprenger's income, they would have
19 claimed that as income on the tax returns, not his. So, if
20 there's a fraudulent transfer, who are they defrauding if they're
21 telling the Federal Government that's his money and he's lending
22 money back to the company?

23 BY THE COURT: Is there evidence that these funds are in
24 existence?

25 MR. BURNEY: The funds you're saying he took out of the

1 company? No. There's no evidence that that money's there. He
2 would pay himself. They would put money into the joint account.
3 They would use that for their personal household expenses, and
4 they would take money out as cash. That's how they've done it
5 over the years, and they're entitled to do that because,
6 otherwise, if you found these transfers to Patricia were
7 fraudulent, then you've said that he can't pay himself in any
8 form or fashion and I don't think the Court can say he's got to
9 work for free.

10 If you just switch the names to them, he's paying the
11 income, as he stated, that he would be paying himself just by
12 virtue of being the owner of the company. He's the last person
13 to get fed because he's got to pay for supplies. He's got to pay
14 for his employees. And that's just how they've run the business
15 over the years, not to defraud anybody. If that were to be the
16 case, they wouldn't have started paying Patricia until after they
17 got into trouble. But as Mr. Sprenger told you, since 2011,
18 they've been doing that.

19 BY THE COURT: All right. Anything else then for the
20 record?

21 MR. OSBORNE: I have one more point, Your Honor.

22 BY THE COURT: Yes, sir.

23 MR. OSBORNE: One, there's the \$8,000 in the trust account.
24 So, we know that money's there.

25 BY THE COURT: Is that money still there?

1 MR. BURNEY: It's in my trust account. But again, we take
2 the position that it's his money. That was in their house.

3 BY THE COURT: All right.

4 MR. OSBORNE: Then also -- the thing about the salary is how
5 far back are we going to go? Are we going to go all of the way
6 back to 2007 and say, "You missed a month back then and now we
7 can catch up." I think we've got to draw a line somewhere, and
8 we can't just use the argument that, "I missed a salary here and
9 now I'm going to return it." The fact that he says an LLC
10 doesn't have to have any sort of formalities, I mean, it's
11 separate and distinct. He gets the protection of not being
12 personally liable for things, but now he wants to argue that --
13 he basically can't have his cake and eat it too.

14 I think that's it, Your Honor.

15 BY THE COURT: All right. Gentlemen, if y'all would give me
16 a couple of weeks to look over this small library y'all have been
17 kind enough to bestow upon me, and then probably what I will do
18 is just do a telephone conference call.

19 And I do appreciate having good lawyers and some interesting
20 issues here. So, I will have my docket coordinator get in touch
21 with you soon.

22 Gentlemen, if y'all wouldn't mind going through the exhibits
23 with my court reporter just to make sure that they're all staying
24 here.

25 All right. Thank you so much.

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MR. BURNEY: Thank you, Your Honor.

MR. OSBORNE: Thank you, Your Honor.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

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The undersigned, Wanda E. Fudge, Court Reporter, Office of Master in Equity for Greenville County, South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina on the 2nd of March 2016.

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

October 4, 2016

 _____

Wanda E. Fudge, CCR

Certified Court Reporter

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

JUN 16 2017

SC Court of Appeals

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc..... Appellant/Respondent,

vs.

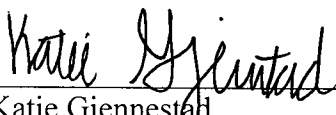
MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants

PROOF OF SERVICE

I, Katie Gjennestad, of Bruner, Powell, Wall & Mullins, LLC, attorneys for the Appellants, do hereby certify that on this 16th day of June 2017, I served the **APPELLANT/RESPONDENTS MOTION TO SETTLE RECORD ON APPEAL** upon the Respondent's attorney of record by depositing a copy of the same in U.S. Mail, first class, postage prepaid and addressed as follows:

J. Falkner Wilkes
Attorney at Law
114 Whitsett Street
Greenville, SC 29601

June 16, 2017


Katie Gjennestad

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** Also Admitted in District of Columbia

June 16, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JUN 16 2017

SC Court of Appeals

Re: China Construction America of S.C., Inc. v. MS Production Solution, LLC
Appellate Case No.: 2016-1787
C/A No.: 2014-CP-23-1871
Our File No.: 9-948.131

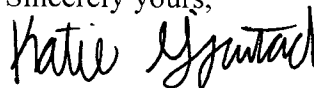
Dear Ms. Kitchings:

I have enclosed the original and seven (7) copies of the **APPELLANT/RESPONDENTS MOTION TO SETTLE RECORD ON APPEAL**, a check in the amount of \$25.00 and a proof of service of this request on counsel for the Respondents/Appellants. Please stamp one copy and return it with our runner who will be waiting.

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

With my kindest regards, I am

Sincerely yours,



Katie Gjennestad

Legal Assistant to Caitlin C. Heyward, Esq.

CCH/kg
Enclosures

cc: J. Falkner Wilkes
Mike Watson, China Construction