

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Willard D. Hanna, Jr., Special Referee

Case No. 2006-CP-22-422

Leon P. Butler, Jr.

Respondent,

v.

William L. Wilson a/k/a Billy
Wilson

Appellant.

NOTICE OF MOTION AND MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES OR, IN THE ALTERNATIVE, TO STRIKE FROM APPELLANT'S INITIAL BRIEF, APPELLANT'S INITIAL REPLY BRIEF, AND APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL DOCUMENTS AND/OR STATEMENTS WHICH WERE NOT PRESENTED TO THE TRIAL COURT AND MATTER WHICH IS NOT RELEVANT TO THE APPEAL

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MAY 02 2012

SC Court of Appeals

NOTICE OF MOTION AND MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES OR, IN THE ALTERNATIVE, TO STRIKE FROM APPELLANT'S INITIAL BRIEF, APPELLANT'S INITIAL REPLY BRIEF, AND APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL DOCUMENTS AND/OR STATEMENTS WHICH WERE NOT PRESENTED TO THE TRIAL COURT AND MATTER WHICH IS NOT RELEVANT TO THE APPEAL.

Now comes the Respondent who moves this Honorable Court for an Order that dismisses Appellant's appeal for failure to comply with the South Carolina Appellate Court Rules or, in the alternative, strikes from Appellant's Initial Brief, Appellant's Initial Reply Brief, and Appellant's Designation of Matter to be Included in the Record on Appeal documents and/or statements which were not presented to the trial court and matter which is not relevant to the appeal. This motion is made pursuant to Rule 240 SCACR, Rule 260(a) SCACR, Rule 208(b)(4) SCACR, Rule 209(b) SCACR, Rule 210(c) SCACR, and relevant South Carolina case law set forth in the attached memorandum of authorities in support of Respondent's motion.

The **STATEMENT OF FACTS** set forth in the Appellant's Initial Brief contains references to material that was not presented to the lower court in violation of Rule 210(c) SCACR and Rule 208(b)(4) SCACR, including the following:

1. The last line of page 3 of Appellant's Initial Brief contains a reference to "Dep. of Ray, p. 11". The transcript of the trial proceedings conducted by the Special Referee on October 26, 2007, a copy of which is attached hereto and designated as Exhibit "A" (hereinafter referred to as the "Trial Transcript"), reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28

of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.

2. The second line of page 4 of Appellant's Initial Brief contains a reference to "Dep. of Ray, p. 6". The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.
3. The fifth line of page 4 of Appellant's Initial Brief contains a reference to "Dep. of Ray, pp. 9, 11". The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.
4. The sixth and seventh lines of page 4 of Appellant's Initial Brief contain the following assertion of fact by the Appellant that is based upon a reference to "Dep. of Ray, pp. 12-13": "Ray stated the Property was desirable, and that he fielded many inquiries to rent the Property." The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15. "Where there is no stipulation, a representation of fact by counsel in written briefs, memoranda or made during

oral argument may not be considered by the Court where it is unsupported by the record.” Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984); First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989).

5. The fifth line of page 6 of Appellant’s Initial Brief contains a reference to “Dep. of Ray, pp. 29-30”. The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray’s deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.
6. The sixth line of page 6 of Appellant’s Initial Brief contains a reference to “Dep. of Wilson, pp. 86-90”. The Trial Transcript reflects that no deposition testimony of the Appellant Wilson was called to the attention of the Special Referee at the trial in the lower court. A fully executed copy of the Ground Lease Agreement, which was attached to the transcript of the deposition of Appellant Wilson and designated as Plaintiff’s Exhibit 12, was removed from Appellant Wilson’s sealed deposition and entered into the record as the Court’s Exhibit. Please see the attached Trial Transcript at Page 4, Line 1 through Page 5, Line 24.
7. The ninth line of page 6 of Appellant’s Initial Brief contains a reference to “Dep. of Ray, pp. 29-30”. The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley

Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.

8. The fourth and fifth lines of page 7 of Appellant's Initial Brief contain a reference to "Dep. of Wilson, pp. 86-90". The Trial Transcript reflects that no deposition testimony of the Appellant Wilson was called to the attention of the Special Referee at the trial in the lower court.
9. The sixth line of page 8 of Appellant's Initial Brief contains a reference to "Dep. of Wilson, p. 78". The Trial Transcript reflects that no deposition testimony of the Appellant Wilson was called to the attention of the Special Referee at the trial in the lower court.
10. The second, third, and fourth lines of page 9 of Appellant's Initial Brief contain the following assertion of fact by the Appellant that is based upon a letter from Robert Maring, trial counsel for the Appellant, to counsel for the Respondent: "Wilson has always agreed to pay rent and incidental expenses for this time period." The referenced letter, dated October 25, 2007, was delivered by Robert Maring to counsel for the Respondent as an offer of settlement on the day of the trial. The letter referenced by the Appellant was not called to the attention of the Special Referee at the trial in the lower court. Following the trial, the Special Referee requested that counsel for the Respondent provide an Affidavit concerning attorney fees incurred by the Respondent in the matter and awarded Respondent attorney fees in the Final Order Ending Action. Appellant thereafter filed a Motion for Reconsideration which, among other things, challenged the Special Referee's award of attorney fees as excessive and unreasonable. (Please

see Pages 7-11 of Order Granting Plaintiff's Motion to Alter or Amend Final Order Pursuant to Rule 60(A) SCRPC to Identify the Defendant as William L. Wilson a/k/a Billy Wilson and Denying Plaintiffs Motion to Reconsider and Alter or Amend Pursuant to Rules 52(B) and 59(E) SCRPC and Denying Defendant's Motion for Reconsideration Pursuant to Rule 59(E) SCRPC and Granting Defendant's Motion for Deposit of Funds with Clerk, filed August 23, 2011, which is attached hereto and designated as Exhibit "B".) The Special Referee conducted an evidentiary hearing on the issue of attorney fees on June 2, 2009 and afforded Appellant's trial counsel an opportunity to examine Respondent's counsel concerning the professional services performed for the Respondent and counsel's charges for those services. During that hearing, Robert Maring's letter of October 25, 2007 setting forth Appellant's offer of settlement was called to the attention of the Special Referee for the limited purpose of demonstrating the beneficial outcome produced by the efforts of Respondent's counsel. (Please see Page 21, Line 10 through Page 25, Line 12 of the transcript of the Motion Hearing conducted by the Special Referee on June 2, 2009, a copy of which is attached hereto and designated as Exhibit "C".) Appellant has not challenged the Special Referee's award of attorney fees to the Respondent in his appeal. The issue of attorney fees is not properly before this Court, as: (1) no exception was taken to this portion of the trial court's Order Odom v. County of Florence, 258 S.C. 480, 189 S.E.2d 293 (1972) (in absence of a proper exception there is nothing for an appellate court to review); and (2) the Appellant did not argue the issue of attorney fees in his Initial Brief. First State Savings & Loan v. Phelps, 299 S.C.

441, 385 S.E.2d 821 (SC 1989). Robert Maring's letter of October 25, 2007, which was referenced solely with respect to the issue of the attorney fees awarded to the Respondent, is not relevant to the appeal and any argument based upon that letter must be stricken from the Appellant's briefs.

11. The last three lines of page 10 of Appellant's Initial Brief contain the following assertions of fact by the Appellant that are based upon a reference to "Dep. of Ray, pp. 12-13": "According to Ray's prior sworn testimony, the Property was very desirable, and such efforts had previously generated many inquiries for the rental of the Property." The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15. "Where there is no stipulation, a representation of fact by counsel in written briefs, memoranda or made during oral argument may not be considered by the Court where it is unsupported by the record." Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984); First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989).

The **STATEMENT OF FACTS** set forth in the Appellant's Initial Brief also contains an obvious misstatement of the documentary evidence included in the record. Beginning on the twentieth line of page 5 of the Appellant's Initial Brief, the following false assertion of fact appears:

“For each of the first three years of the Lease, Ray's office forwarded a rent invoice letter to Wilson prior to the next one (1) year term of the Lease, which instructed Wilson to make checks payable directly to Ray Realty. (See, e.g., Rent Invoice letters from Ray Realty of May 1, 2000 & April 16, 2001).” The rent invoice letters referenced by the Appellant are included in the trial record as a two page, stipulated exhibit designated as Plaintiff's Exhibit 15. (Please see Rent Invoice letters from Ray Realty of May 1, 2000 & April 16, 2001 attached hereto and designated as “Plaintiff's Exhibit 15”). Contrary to the Appellant's misstatement of fact, the attached letters clearly reflect that the Appellant was instructed to send his rent payments to the Respondent, Leon P. Butler. The Appellant's obvious misstatement of the documentary evidence is repeated in the **ARGUMENT** section of Appellant's Initial Brief where the Appellant attempts to fashion an argument that attacks the credibility of witness Charley Ray based upon the same misstatement of the documentary evidence. The following appears on page 13 of the Appellant's Initial Brief:

**“2. Charlie Ray's Testimony is Inherently Biased
and Contradictory, and Therefore Not
Competent or Credible.**

There is no question that Ray was Butler's exclusive agent, that all payments were directed to and made payable to Ray Realty, Inc., and that Ray was paid by Butler from rent proceeds. (See Rent Invoice letters from Ray Realty of May 1, 2000 & April 16, 2001).” As noted above, the attached letters clearly reflect that the Appellant was not instructed to send his rent payments to Ray Realty, Inc. Rather, the Appellant was instructed to send his rent payments to the Respondent, Leon P. Butler.

The **ARGUMENT** section of Appellant's Initial Brief continues the pattern of references to material that was not presented to the lower court in violation of Rule 210(c) SCACR and Rule 208(b)(4) SCACR, including the following:

12. Footnote 4, set forth on page 15 of Appellant's Initial Brief, contains a reference to "Dep. of Ray, pp. 29-30". The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.
13. The sixteenth line of page 17 of Appellant's Initial Brief contains a reference to "Dep. of Wilson, pp. 86-90". The Wilson deposition is not properly included in the record. The Trial Transcript reflects that no deposition testimony of the Appellant Wilson was called to the attention of the Special Referee at the trial in the lower court.
14. The seventh and eighth lines of page 23 of Appellant's Initial Brief contain the following argument by the Appellant that is based upon a letter from Robert Maring, trial counsel for the Appellant, to counsel for the Respondent, which letter is not properly included in the record. "Wilson has always been willing to pay these amounts. (.....; Ltr. Of Maring, Oct. 25, 2007)" As noted above (please see discussion of Reference 10 above), the referenced Maring letter dated October 25, 2007 was not called to the attention of the Special Referee at the trial in the lower court. Robert Maring's letter of October 25, 2007, which was referenced during the motion hearing of June 2, 2009 solely with respect to the issue of the

attorney fees awarded to the Respondent, is not relevant to the appeal and any argument based upon that letter must be stricken from the Appellant's briefs.

15. The first and second lines of page 30 of Appellant's Initial Brief contain the following argument by the Appellant that is based upon a letter from Robert Maring, trial counsel for the Appellant, to counsel for the Respondent, which letter is not properly included in the record. "Wilson had vacated the Property by July 31, 2002, and was willing to pay rent and incidental expenses for this time period." As noted above (please see discussion of Reference 10 and Reference 14 above), the referenced Maring letter dated October 25, 2007 was not called to the attention of the Special Referee at the trial in the lower court. Robert Maring's letter of October 25, 2007, which was referenced during the motion hearing of June 2, 2009 solely with respect to the issue of the attorney fees awarded to the Respondent, is not relevant to the appeal and any argument based upon that letter must be stricken from the Appellant's briefs.
16. The seventeenth, eighteenth, nineteenth and twentieth lines of page 30 of Appellant's Initial Brief contain the following argument by the Appellant that is based upon a reference to deposition testimony of Charley Ray that is not properly included in the record: "Ray further acknowledged that he did not undertake reasonable efforts to Lease the Property by using the Multiple Listing Service or publicly advertising the Property, which had previously generated many inquiries for the rental of this 'desirable' Property. (...; Dep. of Ray, pp. 12-13)". The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special

Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15. "Where there is no stipulation, a representation of fact by counsel in written briefs, memoranda or made during oral argument may not be considered by the Court where it is unsupported by the record." Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984); First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989).

17. The eleventh and twelfth lines of page 33 of Appellant's Initial Brief contain the following argument by the Appellant that is based upon a reference to deposition testimony of Charley Ray that is not properly included in the record: "Ray is a licensed commercial real estate broker with 36 years experience who owns Ray Realty, Inc. (Dep. of Ray, p. 6)". The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15.
18. The fourteenth, fifteenth, and sixteenth lines of page 33 of Appellant's Initial Brief contain the following argument by the Appellant that is based upon a reference to deposition testimony of Charley Ray that is not properly included in the record: "According to Ray, these steps generated many inquiries for the rental of this 'desirable' Property. (...; Dep. of Ray, pp. 12-13)". The Trial Transcript reflects that the only portion of the transcript of the deposition of Charley Ray

which was called to the attention of the Special Referee at the trial in the lower court was pages 26-28 of Charley Ray's deposition transcript. Please see the attached Trial Transcript at Page 30, Line 6 through Page 32, Line 15. "Where there is no stipulation, a representation of fact by counsel in written briefs, memoranda or made during oral argument may not be considered by the Court where it is unsupported by the record." Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984); First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989).

19. The twenty-third and twenty-fourth lines of page 35 of Appellant's Initial Brief contain the following argument by the Appellant that is based upon a letter from Robert Maring, trial counsel for the Appellant, to counsel for the Respondent, which letter is not properly included in the record. "Wilson has always been willing to pay these amounts." As noted above (please see discussion of Reference 10, Reference 14, and Reference 15 above), the referenced Maring letter dated October 25, 2007 was not called to the attention of the Special Referee at the trial in the lower court. Robert Maring's letter of October 25, 2007, which was referenced during the motion hearing of June 2, 2009 solely with respect to the issue of the attorney fees awarded to the Respondent, is not relevant to the appeal and any argument based upon that letter must be stricken from the Appellant's briefs.

The Appellant's Initial Reply Brief continues the Appellant's pattern of references to material that was not presented to the lower court in violation of Rule 210(c) SCACR and Rule 208(b)(4) SCACR, including the following:

20. The last line of page 6 of Appellant's Initial Reply Brief and the first line of page 7 of Appellant's Initial Reply Brief reference the following: "(See Ltr. to Sp. Referee, dated Feb. 18, 2009; Email Ruling from Sp. Referee dated Feb 19, 2009..)" The referenced documents are not included in the Designation of Matter to be Included in the Record on Appeal by the Appellant and the Respondent.
21. The third through the sixth lines of page 9 of Appellant's Initial Reply Brief set forth the following argument:

"Further, at the June 2, 2009 Hearing on the Motions for Reconsideration of the Parties, Counsel for Wilson specifically argued that a portion of the fees and costs asserted as damages in this Action were actually and unilaterally caused by Butler's delay in pursuing this Action. (Hr'g Trans. At 10)"

A fair review of the transcript of the Motion Hearing conducted by the Special Referee on June 2, 2009, a copy of which is attached hereto and designated as Exhibit "C", reflects that the matter which is the subject of argument at the referenced section of the Motion Hearing transcript is the Special Referee's award of attorney fees to the Respondent. As noted above (please see discussion of Reference 10 above), the Appellant has not challenged the Special Referee's award of attorney fees to the Respondent in his appeal. This issue is not properly before this Court, as: (1) no exception was taken to this portion of the trial court's Order Odom v. County of Florence, 258 S.C. 480, 189 S.E.2d 293 (1972) (in

absence of a proper exception there is nothing for an appellate court to review); and (2) the Appellant did not argue the issue of attorney fees in Appellant's Initial Brief First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989). The argument made by the Appellant is not relevant to the appeal and must be stricken from the Appellant's Initial Reply Brief.

The Appellant's Designation of Matter to be Included in the Record on Appeal reflects the Appellant's attempt to include in the Record on Appeal material that was not presented to the lower court in violation of Rule 210(c) SCACR and Rule 208(b)(4) SCACR, as well as matter that is not relevant to the appeal in violation of Rule 209(b) SCACR. The numerous references to the deposition testimony of witness Charley Ray, the numerous references to the deposition testimony of the Appellant, and the numerous references to the Maring letter of October 25, 2007 which are located throughout the Appellant's Initial Brief demonstrate a determined effort by the Appellant to argue matters that were not presented to the lower court at trial in violation of Rule 210(c) SCACR and Rule 208(b)(4) SCACR. Furthermore, the Appellant's attempt to include in the Record on Appeal pages 1 through 35 of the transcript of the hearing conducted by the Special Referee on June 2, 2009 violates Rule 209(b) SCACR as that matter is clearly not relevant to the appeal. Pages 1 through 35 of the transcript of the hearing on June 2, 2009 contain the arguments of counsel concerning the Special Referee's award of attorney fees to the Respondent, which award has not been challenged by the Appellant in his appeal and is not properly before this Court. The Appellant must not be permitted to flagrantly violate the South Carolina Appellate Court Rules. As declared in Henning

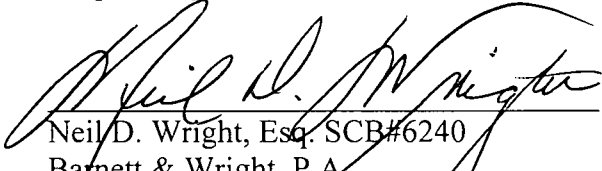
v. Kaye, 307 S.C. 436, 415 S.E.2d 794 “...the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with Rules and facilitates appellate review..... Appellant is reminded that the Record on Appeal shall not contain any matter not presented to the trial court.”

As current counsel for the Appellant correctly points out on pages 9 and 10 of Appellant’s Initial Reply Brief, he did not represent the Appellant at the trial and was not present at the trial. Counsel’s lack of familiarity with the proceedings at the trial level, his admission of confusion (see page 10 of Appellant’s Initial Reply Brief) concerning the appropriate designation of stipulated trial exhibits, and his apparent lack of understanding concerning the documentary evidence considered by the Special Referee raise a serious question concerning his ability to prepare an accurate Record on Appeal. Accordingly, in the event that this Honorable Court declines to dismiss the Appellant’s appeal, the Respondent respectfully requests that this Honorable Court instruct the Special Referee to settle the Record on Appeal before the appeal moves forward.

Based upon the foregoing demonstration of Appellant’s determined effort to: (1) represent as “facts” matters that were not presented to the lower court; and (2) present arguments to this Honorable Court based upon “facts” that were not presented to the lower court, in flagrant violation of Rule 209(b) SCACR, Rule 210(c) SCACR, and Rule 208(b)(4) SCACR, the Respondent respectfully requests that this Honorable Court dismiss the Appellant’s appeal pursuant to Rule 260(a) SCACR for failure to comply with the South Carolina Appellate Court Rules. In the event that this Honorable Court

declines to dismiss the Appellant's appeal, the Respondent requests that this Honorable Court issue an Order that strikes from Appellant's Initial Brief, Appellant's Initial Reply Brief, and Appellant's Designation of Matter to be Included in the Record on Appeal the documents and/or statements referenced hereinabove which were not presented to the trial court as well as matter set forth in the Appellant's Designation of Matter to be Included in the Record on Appeal which is not relevant to the appeal. Further, in the event that this Honorable Court declines to dismiss the Appellant's appeal, the Respondent respectfully requests that this Honorable Court instruct the Special Referee to settle the Record on Appeal before the appeal moves forward.

Respectfully submitted,


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Attorneys for Respondent
Leon P. Butler, Jr.

This 2nd day of May, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Willard D. Hanna, Jr., Special Referee

Case No. 2006-CP-22-422

Leon P. Butler, Jr. Respondent,
v.

William L. Wilson a/k/a Billy Wilson Appellant.

MEMORANDUM OF AUTHORITIES IN SUPPORT OF RESPONDENT'S NOTICE OF MOTION AND MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES OR, IN THE ALTERNATIVE, TO STRIKE FROM APPELLANT'S INITIAL BRIEF, APPELLANT'S INITIAL REPLY BRIEF, AND APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL DOCUMENTS AND/OR STATEMENTS WHICH WERE NOT PRESENTED TO THE TRIAL COURT AND MATTER WHICH IS NOT RELEVANT TO THE APPEAL

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MEMORANDUM OF AUTHORITIES IN SUPPORT OF RESPONDENT'S NOTICE OF MOTION AND MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES OR, IN THE ALTERNATIVE, TO STRIKE FROM APPELLANT'S INITIAL BRIEF, APPELLANT'S INITIAL REPLY BRIEF, AND APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL DOCUMENTS AND/OR STATEMENTS WHICH WERE NOT PRESENTED TO THE TRIAL COURT AND MATTER WHICH IS NOT RELEVANT TO THE APPEAL.

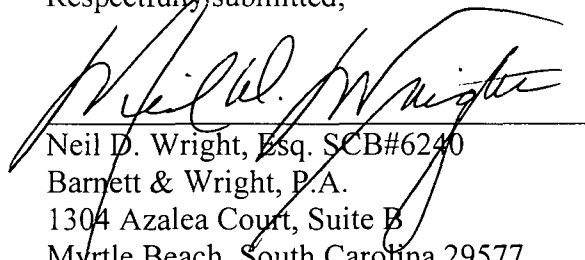
Now comes the Respondent who submits the following memorandum of authorities in support of Respondent's Notice of Motion and Motion to Dismiss Appellant's Appeal for failure to comply with the South Carolina Appellate Court Rules or, in the alternative, to strike from Appellant's Initial Brief, Appellant's Initial Reply Brief, and Appellant's Designation of Matter to be Included in the Record on Appeal documents and/or statements which were not presented to the trial court and matter which is not relevant to the appeal.

1. The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with Rules and facilitates appellate review. Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794.
2. The Record on Appeal shall not contain any matter not presented to the trial court. Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794.
3. Where there is no stipulation, a representation of fact by counsel in written briefs, memoranda or made during oral argument may not be considered by the Court where it is unsupported by the record. Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997); Bilton v. Best Western Royal Motor Lodge, 282 S.C.

634, 321 S.E.2d 63 (Ct. App. 1984); First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989).

4. In the absence of a proper exception there is nothing for an appellate court to review. Odom v. County of Florence, 258 S.C. 480, 189 S.E.2d 293 (1972); First State Savings & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (SC 1989).

Respectfully submitted,



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Attorneys for Respondent
Leon P. Butler, Jr.

This 2nd day of May, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Willard D. Hanna, Jr., Special Referee

Case No. 2006-CP-22-422

Leon P. Butler, Jr.

Respondent,

v.

William L. Wilson a/k/a Billy
Wilson

Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Notice of Motion and Motion to Dismiss Appellant's Appeal for Failure to Comply with the South Carolina Appellate Court Rules or, in the Alternative, to Strike from Appellant's Initial Brief, Appellant's Initial Reply Brief, and Appellant's Designation of Matter to be Included in the Record on Appeal documents and/or statements which were not presented to the trial court and matter which is not relevant to the appeal on the Defendant/Appellant William I. Wilson a/k/a Billy Wilson by hand delivering a true and correct copy thereof, together with Exhibits and Memorandum of Authorities in Support of Motion, to the office of his attorneys of record, Howell V. Bellamy, Jr., and George W. Redman, III, Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., 1000 29th Avenue North, Myrtle Beach, SC 29577 on May 2, 2012.

May 2, 2012

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MAY 02 2012

SC Court of Appeals

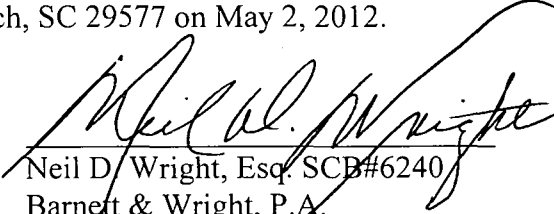

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EXHIBIT "A"

TRIAL TRANSCRIPT

OCTOBER 26, 2007

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON
COUNTY OF GEORGETOWN PLEAS
FIFTEENTH JUDICIAL
CIRCUIT
06-CP-22-422

LEON P. BUTLER, JR.
PLAINTIFF,
-VS-
BILLY WILSON,
DEFENDANT.

COPY

**CONSENT ORDER OF REFERENCE TO SPECIAL REFEREE
WITH AUTHORITY TO ENTER FINAL JUDGMENT**

TAKEN BY JERRY S. MABRY, VERBATIM REPORTER AND
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA ON
OCTOBER 26, 2007 IN THE OFFICE OF WILLARD D. HANNA,
GLENN'S BAY DRIVE, SURFSIDE BEACH, SOUTH CAROLINA.

****THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY
25A SOUTH CAROLINA CODE ANN. REGS. 67-615D (SUPP.
2000). THE UNAUTHORIZED COPYING OF THIS DOCUMENT
IS DEEMED TO BE CONVERSION OF AN ASSET BELONGING TO
THE COURT REPORTER.**

A P P E A R A N C E S

FOR THE PLAINTIFF: NEIL D. WRIGHT, ESQ.
1304-B AZALEA COURT
MYRTLE BEACH, S.C. 29577

FOR THE DEFENDANT: ROBERT W. MARING, ESQ.
P. O. BOX 478
GEORGETOWN, S.C. 29442

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1 MR. HANNA: ON THE NOTICE FROM THE
2 PLEADINGS THIS MORNING IN THE ORDER OF
3 REFERENCE I DIDN'T GET A SIGNED COPY,
4 BUT THE CONSENT ORDER HAS BEEN SIGNED.
5 I HAVE A COPY IN FRONT OF ME. I'D LIKE
6 TO MAKE THAT A PART OF THE RECORD TO
7 START WITH.

8 MR. HANNA: I NOTICE FROM THE ORDER THAT
9 ALL MOTIONS HAD TO BE FILED PRIOR TO
10 THIS PROCEEDING AND THERE ARE NONE.

11 MR. WARING: I HAVE NONE, YOUR HONOR.

12 MR. WRIGHT: NOR HAVE I, YOUR HONOR.

13 MR. HANNA: I CAN ASSUME FROM THAT I CAN
14 MARK THIS AS COURT'S EXHIBIT NUMBER "1".
15 COURT'S EXHIBIT NUMBER "1" IS BEING THE
16 STIPULATED DOCUMENTS.

17 MR. WRIGHT: THAT'S FINE FROM OUR STAND-
18 POINT.

19 MR. WARING: THAT'S FINE, YOUR HONOR.

20 CONSENT ORDER OF REFERENCE
21 TO SPECIAL REFEREE WITH
22 AUTHORITY TO ENTER FINAL
23 JUDGMENT MARKED FOR IDEN-
24 TIFICATION AND INTRODUCED
25 INTO EVIDENCE AS COURT'S

1 EXHIBIT "1".

2 MR. HANNA: IN MY REVIEW OF THE DOCU-
3 MENTS, I DO NOT SEE AN EXECUTED LEASE
4 AGREEMENT. LET'S MARK THAT AS COURT'S
5 EXHIBIT NUMBER "2". FOR THE RECORD
6 ALSO, WE HAVE OPENED THE ORIGINAL
7 DEPOSITION OF MR. WILLIAM WILSON, AND
8 THE LEASE AGREEMENT THAT IS ATTACHED IS
9 THE AGREEMENT THAT WAS SIGNED BY THE
10 PARTIES. AM I CORRECT, GENTLEMEN?

11 MR. WRIGHT: YES.

12 GROUND LEASE AGREEMENT
13 MARKED FOR IDENTIFICA-
14 TION AND INTRODUCED INTO
15 EVIDENCE AS COURT'S EXHIBIT
16 "2".

17 MR. HANNA: AM I CORRECT IN MY REVIEW OF
18 COURT'S EXHIBIT NUMBER "2" THAT THERE IS
19 NOT AN EXECUTED COPY IN THAT? LET'S
20 MAKE THE LEASE THAT IS ATTACHED TO MR.
21 WILSON'S ORIGINAL DEPOSITION, THE LEASE
22 ITSELF, WHICH MAKES IT COURT'S EXHIBIT
23 NUMBER "3" WITHOUT OBJECTION FROM BOTH
24 PARTIES?

25 MR. WRIGHT: NO OBJECTION, YOUR HONOR.

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MR. HANNA: MR. MARING?

MR. WARING: NO OBJECTION. WHAT THIS IS
IS THE CASE LAW SUPPORTING THE TRIAL
BRIEF, YOUR HONOR.

TRIAL BRIEF MARKED FOR
IDENTIFICATION AND
INTRODUCED INTO EVIDENCE
AS COURT'S EXHIBIT "3".

MR. HANNA: NOW, AS I UNDERSTAND IT, MR.
WARING HAS MOVED TO SEQUESTER THE
WITNESSES. WHAT DO YOU SAY ABOUT THAT,
MR. WRIGHT?

MR. WRIGHT: I HAVE NO PROBLEM WITH
THAT.

MR. HANNA: AS I UNDERSTAND THE RULES,
THAT DOES NOT APPLY TO THE PARTIES BUT
THEY ARE TO BE IN THE ROOM AT ALL TIMES.

MR. WARING: THAT'S MY UNDERSTANDING,
YOUR HONOR.

MR. HANNA: ANY OTHER HOUSEKEEPING
MEASURES WE NEED TO GET INTO BEFORE WE
GET STARTED?

MR. WARING: YOUR HONOR, JUST BRIEFLY
FOR THE DEFENDANT. I JUST WANT THE

1 COURT TO TAKE JUDICIAL NOTICE AS TO THE
 2 LAW ON THE DUTY TO MITIGATE DAMAGES.
 3 IT'S PROVIDED FOR IN MY TRIAL BRIEF.
 4 NOW, THERE IS CASE LAW I SHOULD SUPPLY
 5 TO THE COURT AND TO MR. WRIGHT,
 6 REGARDING NOT ONLY THE DUTY TO MITIGATE
 7 BUT ALSO ON THE INABILITY PARDONS THE
 8 CONTRACT AWAY THE DUTY TO MITIGATE.
 9 CASE LAW HAS BEEN PROVIDED TO THE COURT
 10 THAT TAKES THOSE TWO POSITIONS. THE
 11 COURT WOULD TAKE JUDICIAL NOTICE AS TO
 12 THE LAWS OF THE STATE OF SOUTH CAROLINA.
 13 MR. HANNA: WHEN I RECEIVED YOUR TRIAL
 14 BRIEF THIS MORNING, A COPY HAS BEEN
 15 SUPPLIED TO MR. WRIGHT.
 16 MR. WRIGHT: RECEIVED THAT THIS
 17 MORNING.
 18 MR. HANNA: HE'S NOT HAD A CHANCE TO
 19 REVIEW IT. BECAUSE HE HAS NOT HAD A
 20 CHANCE TO REVIEW IT IN ADVANCE OF THE
 21 HEARING, I'M GONNA GIVE YOU TO THE END
 22 OF NEXT WEEK TO RESPOND TO ANY CASE LAW,
 23 AND THEN I'LL GIVE YOU SEVEN DAYS AFTER
 24 THAT TO RESPOND ONLY TO THE THINGS HE
 25 BRINGS UP NEW IN HIS CASE. SO, Y'ALL

1 CAN ADDRESS THOSE ISSUES AND FLUSH THOSE
2 OUT.

3 MR. WARING: THAT'S FINE. LIKEWISE,
4 YOUR HONOR, THE OTHER ISSUE IS TAKING
5 JUDICIAL NOTICE AS TO THE LAW THAT ALLOWS
6 ORAL MODIFICATION OF CONTRACTS. THE LAW
7 OF SOUTH CAROLINA RECOGNIZES THAT YOU CAN
8 ORALLY MODIFY A WRITTEN CONTRACT.

9 MR. HANNA: BOTH OF THOSE ARE INCLUDED IN
10 THE BRIEF ALSO?

11 MR. WARING: YES, SIR.

12 MR. HANNA: I'M GOING TO DIRECT MR.
13 WRIGHT TO RESPOND TO BOTH THOSE ISSUES OR
14 ANY ISSUES AS CONTAINED IN THE BRIEF
15 WITHIN SEVEN DAYS. AND LIKEWISE, YOU GET
16 A CHANCE TO RESPOND.

17 MR. WARING: THANK YOU, YOUR HONOR.

18 MR. HANNA: ANYTHING ELSE? NO MORE HOUSE
19 KEEPING? ARE YOU READY?

20 MR. WRIGHT: READY, YOUR HONOR.

21 MR. WARING: READY.

22 MR. HANNA: IF YOU WILL CALL THE PARTIES
23 IN, WE WILL CALL YOUR FIRST WITNESS.

24 MR. WRIGHT: YOUR HONOR, AT THIS TIME,
25 THE PLAINTIFF WOULD CALL MR. CHARLEY RAY.

1 CHARLIE RAY, HAVING BEEN DULY SWORN, TESTIFIED AS
2 FOLLOWS:

3 DIRECT EXAMINATION BY MR. WRIGHT:

4 Q MR. RAY, WOULD YOU PLEASE TELL THE COURT WHAT
5 PROFESSION YOU'RE INVOLVED IN?

6 A REAL ESTATE.

7 Q HAVE YOU HAD OCCASION IN YOUR PROFESSION TO
8 PERFORM ANY SERVICES FOR THE PLAINTIFF, MR.
9 LEON BUTLER?

10 A I HAVE.

11 Q WHEN DID YOU FIRST HAVE OCCASION TO PERFORM
12 SERVICES FOR MR. BUTLER?

13 A I CAN'T TELL YOU THE DATE. I NEED REFRESHING.
14 I MAY HAVE WORKED FOR HIM ON SOMETHING PRIOR
15 TO THE MATTER HERE.

16 Q ALRIGHT. LET ME SEE IF THIS WILL REFRESH YOUR
17 RECOLLECTION. I ASK YOU TO LOOK AT DEFEN-
18 DANT'S EXHIBIT NUMBER "9", AND DEFENDANT'S
19 EXHIBIT NUMBER "2".

20 A MAY OF '96.

21 Q WHAT SERVICES, IF ANY, DID YOU AGREE TO PER-
22 FORM FOR MR. BUTLER IN MAY OF 1996?

23 A I AGREED TO WORK TOWARD THE LEASING OF
24 PROPERTY FROM UP IN LITTLE RIVER.

25 Q TO YOUR RECOLLECTION, WAS THAT A TRACT OF

1 UNDEVELOPED LAND?

2 A IT WAS A VACANT TRACT.

3 Q WHAT DID YOU DO FOR MR. BUTLER IN AN ATTEMPT
4 TO MARKET THAT PIECE OF PROPERTY?

5 A I PLACED IT IN THE MULTIPLE LISTING SERVICE.
6 I PLACED A 'FOR SALE' SIGN ON IT AND DID SOME
7 ADVERTISING.

8 Q DID YOU SUBSEQUENTLY RECEIVE ANY INQUIRIES
9 CONCERNING THAT PROPERTY FROM THE DEFENDANT,
10 BILLY WILSON?

11 A YES.

12 Q NOW, WITH RESPECT TO YOUR RELATIONSHIP WITH
13 MR. BUTLER CONCERNING THAT PROPERTY, DID YOU
14 HAVE THE FINAL AUTHORITY TO MAKE AGREEMENTS
15 CONCERNING THAT PROPERTY? OR AS BETWEEN YOU
16 AND MR. BUTLER, WHO RESERVED THE AUTHORITY TO
17 MAKE FINAL AGREEMENTS CONCERNING THE PROPERTY?

18 A WELL, IT WAS A TYPICAL AGENT RELATIONSHIP. I
19 DID NOT HAVE THE AUTHORITY TO MAKE DECISIONS
20 FOR HIM. HE HAD TO ... HE MADE THE DECISIONS.

21 Q IN THE COURSE OF YOUR DEALINGS WITH MR. WILSON
22 ON THIS PROPERTY, COULD YOU TELL THE COURT
23 PLEASE, WHAT YOUR CUSTOM WAS WITH RESPECT TO
24 WHETHER OR NOT YOU REDUCED PROPOSALS TO
25 WRITING?

1 A YES. WE HAD A, WHAT I CALL A SKELETON LETTER
2 OF INTENT. OUTLINING THE TERMS OF THE
3 PROPOSED LEASE AGREEMENT OR OFFER FROM MR.
4 WILSON. THAT WAS SUBMITTED TO MR. BUTLER FOR
5 HIS REVIEW AND HOPEFULLY APPROVAL.

6 Q WOULD YOU LOOK PLEASE AT PLAINTIFF'S EXHIBIT
7 NUMBER "1" AND ASK IF YOU CAN IDENTIFY THAT
8 DOCUMENT?

9 A YES, I CAN.

10 Q WHAT IS THAT DOCUMENT?

11 A OF COURSE, A SURVEY OF THE PROPERTY, SURVEY OF
12 THE PROPERTY, AND THEN A ... AT THAT POINT I'M
13 THINKING, IN LOOKING AT THE FAX COVER SHEET,
14 IT'S A PROPOSED, AT THAT POINT, LETTER OF
15 INTENT TO LEASE THE PROPERTY.

16 Q WHAT IS THE DATE OF THAT CORRESPONDENCE?

17 A THAT IS FEBRUARY 24TH.

18 Q DID YOU SUBSEQUENTLY TAKE THAT PROPOSAL TO MR.
19 BUTLER FOR HIS CONSIDERATION?

20 A THIS ONE IS NOT SIGNED. I DON'T KNOW. I KNOW
21 THERE WERE SOME CHANGES ALONG THE WAY AT SOME
22 POINT. I'M THINKING I PROBABLY DID, BUT THIS
23 ONE IS NOT THE SIGNED COPY AND I'M THINKING IT
24 DID GO TO HIM. I DON'T KNOW IF THERE WERE ANY
25 CHANGES FROM THE PROPOSAL TO WHAT WAS ACTUALLY

- 1 SUBMITTED TO HIM. I RECALL THERE WERE SOME
2 WORKING CHANGES ALONG THE WAY.
- 3 Q AND AGAIN, THE DATE OF THAT INITIAL PROPOSAL?
4 A THE FAX IS DATED FEBRUARY 24TH. THE LETTER OF
5 INTENT IS DATED FEBRUARY 25, '98.
- 6 Q ALRIGHT. I'LL ASK PLEASE IF YOU WOULD TAKE A
7 LOOK AT A DOCUMENT THAT IS PLAINLY STIPULATED
8 EXHIBIT NUMBER "2".
- 9 A OKAY.
- 10 Q CAN YOU IDENTIFY THAT DOCUMENT?
11 A YES. THIS IS A CHECK FOR \$3,000.00 MADE PAY-
12 ABLE TO MY OFFICE FOR PART OF THE DEPOSIT ON
13 THAT LEASE AGREEMENT.
- 14 Q WHO FORWARDED THE DEPOSIT TO YOU?
15 A I CAN'T SAY OTHER THAN WHAT I CAN READ. IT
16 SAYS, SANTEE DISCOUNT HOMES ISSUED THE CHECK.
17 THAT THIS IS A COPY OF. I'M ASSUMING THAT
18 THEY FORWARDED IT ON THE BANK.
- 19 Q OKAY. AND SANTEE DISCOUNT HOMES, DO YOU KNOW
20 WHETHER MR. WILSON WAS AFFILIATED WITH THAT
21 COMPANY?
- 22 A THAT'S HIS COMPANY AS I UNDERSTAND IT.
- 23 Q IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFF'S
24 STIPULATED EXHIBIT NUMBER "3".
- 25 A OKAY. I GOT IT. YES, SIR.

1 Q CAN YOU IDENTIFY THAT AS THE FIRST EXECUTED
2 LETTER OF INTENT BETWEEN MR. WILSON AND MR.
3 BUTLER?

4 A YES.

5 Q UNDER THAT ARRANGEMENT, HOW WAS THE LEASE TO
6 BE SET UP?

7 A THE LEASE WAS TO BE PREPARED IN ACCORDANCE
8 WITH THE SKELETON OR THE FRAME THAT'S OUTLINED
9 HERE IN THE LETTER OF INTENT.

10 Q AND THAT WOULD BE EXHIBIT NUMBER "3"?

11 A YES.

12 Q WOULD YOU LOOK AT PLAINTIFF'S STIPULATED
13 EXHIBIT NUMBER "5".

14 A OKAY.

15 Q ARE YOU ABLE TO IDENTIFY THAT DOCUMENT?

16 A YES. IT'S PART OF THE NEGOTIATIONS MOVING
17 TOWARDS A FORMAL LEASE AGREEMENT.

18 Q WERE THERE ANY CHANGES CONCERNING THE AMOUNT
19 OF RENT?

20 A YES. IN LOOKING AT THIS, WHAT HAPPENED WAS
21 THAT MR. WILSON HAD OFFERED THIRTY-SIX
22 THOUSAND FOR THE FIRST TWO YEARS OR THREE
23 YEARS. IT MUST HAVE BEEN THE FIRST TWO YEARS,
24 AND IT WAS AMENDED TO MAKE IT FORTY-TWO FIVE,
25 WHICH WAS ACCEPTABLE WITH MR. BUTLER FOR YEARS

1 ONE, TWO AND THREE, WITH YEARS FOUR THROUGH
2 SEVEN BEING FIFTY THOUSAND.

3 Q COULD YOU TELL US WHETHER OR NOT THERE WAS A
4 CHANGE MADE TO THE PROPOSAL TO GIVE MR. WILSON
5 ADDITIONAL OPTIONS TO EXPAND THE TERM OF THE
6 LEASE.

7 A OH. THE ORIGINAL ... THE TERM OF THE LEASE
8 WAS FOR ONE YEAR. IT'S A ONE YEAR TERM WITH
9 FOURTEEN ONE YEAR OPTIONS TO RENEW. IS THAT
10 WHAT YOU'RE REFERRING TO?

11 Q THAT'S RIGHT. DO YOU RECALL IF THAT WAS A
12 CHANGE FROM THE EARLIER PROPOSAL?

13 A I DON'T BELIEVE IT WAS.

14 Q OKAY. LET ME ASK YOU TO TAKE A LOOK AT NUMBER
15 "1" AGAIN.

16 A OKAY. IT WENT FROM ELEVEN TO FOURTEEN. OKAY.
17 I SEE IT'S PENCILED THROUGH, YES.

18 Q NOW, UNDER THOSE PROPOSALS, WHO HAD THE
19 OBLIGATION TO PROVIDE NOTICE IF THERE WAS
20 GOING TO BE A CONTINUATION OF THE LEASE?

21 A WELL, THE WAY ... MY UNDERSTANDING AND THE WAY
22 WE WERE DOING IT, IT WAS A ONE YEAR LEASE WITH
23 THE LESSEE HAVING THE OPTION TO EXTEND IT YEAR
24 TO YEAR. IT WAS A ONE YEAR LEASE WITH FOUR-
25 TEEN ONE YEAR OPTIONS.

1 Q WHAT WERE THE MECHANICS FOR EXTENDING THE
2 LEASE?

3 A TYPICAL AS ALWAYS. THE LESSEE/TENANT MAKES
4 THAT DECISION. JUST EXERCISES HIS OPTION YEAR
5 TO YEAR.

6 Q DID THE AGREEMENT PROVIDE FOR ANY METHOD OF
7 DOING THAT?

8 A I'D HAVE TO LOOK AT THE FINALIZED LEASE
9 AGREEMENT. AGAIN, I JUST DID THE SKELETON. I
10 FRAMED IT, AND YOU GUYS, WHEN Y'ALL PREPARED
11 THE LEASE AGREEMENT, DID THOSE DETAILS AND
12 MECHANICS FOR THE PROCEDURE THAT WOULD FOLLOW.

13 Q IF YOU WILL PLEASE LOOK AT PLAINTIFF'S STIP-
14 ULATED EXHIBIT NUMBER "7".

15 A THESE ARE SOME CHANGES THAT WERE MADE TO THE
16 ORIGINAL LETTER OF INTENT, A PART OF OUR
17 NEGOTIATIONS IS WE MOVED TOWARD A FORMAL LEASE
18 AGREEMENT.

19 Q WERE THOSE CHANGES SIGNED BY MR. BUTLER AND
20 MR. WILSON?

21 A YES, SIR.

22 Q IF YOU WOULD, PLEASE TAKE A LOOK AT PLAIN-
23 TIFF'S STIPULATED EXHIBIT NUMBER "8", AND I'LL
24 ASK IF YOU CAN IDENTIFY THAT?

25 A THIS IS MY FAX TO MR. WILSON REGARDING THE

1 FORMAL LEASE AGREEMENT.

2 Q WHEN DID YOU SEND THAT FAX TO MR. WILSON?

3 A APRIL 15, '98.

4 Q WHAT DID YOU SEND TO MR. WILSON WITH YOUR FAX?

5 A WELL, I THINK ... IT APPEARS I FAXED HIM JUST
6 A HEADS-UP TELLING HIM THAT I WOULD BE MAILING
7 HIM THESE. THAT WOULD BE MY GUESS OR THOUGHTS
8 AND LOOKING AT THE DOCUMENTS, I FAXED TO TELL
9 HIM I WOULD BE MAILING HIM THESE AND THEN I
10 DID A CO-LETTER APPARENTLY WITH THE LEASE
11 AGREEMENT, THREE COPIES OF THE LEASE AGREE-
12 MENT.

13 Q CAN YOU IDENTIFY THAT AS A COVER LETTER THAT
14 YOU SENT TO MR. WILSON FORWARDING THE FORMAL
15 DRAFT FOR THE PROPOSED LEASE AGREEMENT?

16 A YES.

17 Q NOW, AS A RESULT OF FORWARDING THAT DOCUMENT,
18 DID MR. WILSON REQUEST ANY CHANGES TO THAT
19 PROPOSED LEASE AGREEMENT? IN THAT REGARD, I
20 HAND THE WITNESS PLAINTIFF'S STIPULATED
21 EXHIBIT NUMBER "9"?

22 A AFTER THE FORMAL LEASE AGREEMENT WAS PREPARED,
23 APPARENTLY, WE CONTINUED TO NEGOTIATE A COUPLE
24 OF PROVISIONS, THREE OR FOUR PROVISIONS WERE
25 NEGOTIATED INTO THE DRAFT LEASE. AND, YOU

1 KNOW, WE MADE NOTE ON `EM, HAD THE PARTIES
2 SIGN `EM AND THEY WERE, AS I RECALL, EVENTU-
3 ALLY INCORPORATED INTO THE FINAL LEASE AGREE-
4 MENT.

5 Q SO, AGAIN, WHATEVER INTENT THERE WAS BACK AND
6 FORTH, IT WAS SIGNED BY EACH PARTY?

7 A YES, SIR.

8 Q WHAT WERE THE CHANGES THAT MR. WILSON WAS
9 REQUESTING TO THE DRAFT LEASE AGREEMENT THAT
10 HAD BEEN FORWARDED TO HIM FOR CONSIDERATION?

11 A THAT HE WANTED ALL THE RENTS FROM THE BILL-
12 BOARDS. THAT THE LEASE AGREEMENT WOULD BE
13 CHANGED FROM HIM HAVING AN OPTION TO RENEW TO
14 HAVING ... I CALL IT AN OPTION TO QUIT. THAT
15 THE LEASE AGREEMENT WOULD AUTOMATICALLY RENEW
16 AND IF HE DIDN'T WANT IT TO RENEW THEN HE
17 WOULD GIVE NOTICE AND IT WOULD TERMINATE. SO,
18 REALLY, IT REALLY SHIFTED FROM AN OPTION TO
19 RENEW, IN MY WORDS, AN OPTION TO QUIT. IT
20 WOULD BE WHAT I THINK WOULD BE A FIFTEEN YEAR
21 LEASE AND THAT HE COULD QUIT AT ANY TIME
22 ANNUALLY SO LONG AS HE PROVIDED WRITTEN
23 NOTICE. AND, LET'S SEE, WHAT ELSE? I DON'T
24 KNOW. I REALLY DON'T KNOW WHY WE CHANGED THE
25 DATE. MAYBE WE WERE STILL NEGOTIATING AND

1 JUST HADN'T GOTTEN THE LEASE AGREEMENT SIGNED,
2 BUT IN PARAGRAPH THREE, WE STATED WHEN THE
3 TERM OF THE LEASE WAS COMMENCING, AND THEN IT
4 WAS IMPORTANT TO HIM THAT HE HAVE THE RIGHT TO
5 ASSIGN THE LEASE AGREEMENT OR SUB-LEASE IT.
6 IT'S IMPORTANT TO MR. BUTLER THAT IF HE DID
7 THAT, THAT MR. WILSON WOULD CONTINUE TO BE
8 PERSONALLY LIABLE FOR THE PERFORMANCE OF THE
9 LEASE.

10 Q I'LL ASK YOU TO LOOK AT A DOCUMENT THAT IS
11 MARKED AS PLAINTIFF'S STIPULATED EXHIBIT
12 NUMBER "10".

13 A OKAY.

14 Q I'LL ASK YOU TO IDENTIFY THAT DOCUMENT AS A
15 REDLINE DRAFT INCORPORATING THE CHANGES THAT
16 WERE REQUESTED BY MR. WILSON.

17 A IT DOES APPEAR TO BE SO, BUT AS FAR AS KNOWING
18 OR RECALLING, I CAN'T TELL YOU.

19 Q I'LL ASK YOU TO LOOK AT DOCUMENTS THAT HAVE
20 BEEN MARKED AS PLAINTIFF'S EXHIBITS "11" AND
21 "12".

22 A OKAY.

23 Q ARE YOU ABLE TO IDENTIFY PLAINTIFF'S EXHIBIT
24 "11"?

25 A I AM.

1 Q WHAT IS THAT?

2 A THAT'S THE FINAL LEASE AGREEMENT.

3 Q I BELIEVE THAT MAY BE NUMBER "12". THOSE ARE
4 TWO EXHIBITS.

5 A "11". OKAY, "11" AND "12", OKAY?

6 Q OKAY. CAN YOU IDENTIFY "11"?

7 A "11" IS A COPY OF MY FAX COVER SHEET TO MR.
8 WILSON'S ATTORNEY, MR. COFFEE. I SENT HIM A
9 COPY OF THE MODIFIED LEASE AGREEMENT OR THE
10 LEASE AGREEMENT WITH THE INCORPORATED CHANGES.
11 THE REQUEST FOR THE CHANGES.

12 Q DID YOU MAKE ANY COMMENTS ON YOUR FAX SHEET AS
13 TO WHO HAD REQUESTED THE CHANGES THAT HAD BEEN
14 MADE?

15 A THIS AGREEMENT INCORPORATES THE CHANGES
16 REQUESTED BY MR. BILLY WILSON.

17 Q NOW, UP TO THAT POINT, MR. RAY, WITH RESPECT
18 TO ANY NEGOTIATIONS THAT YOU HANDLED BY THE
19 PARTIES, UP TO AND INCLUDING THE FINAL LEASE
20 AGREEMENT, WHICH IS PLAINTIFF'S EXHIBIT NUMBER
21 "12", WERE ALL OF THE NEGOTIATIONS REDUCED TO
22 WRITING?

23 A THEY WERE.

24 Q AND SIGNED BY THE PARTIES?

25 A YES, SIR.

1 Q FOLLOWING THE EXECUTION OF THE LEASE AGREE-
2 MENT, DID YOU HAVE OCCASION TO FORWARD CORRES-
3 PONDENCE TO THE TENANT REQUESTING PAYMENT OF
4 THE ANNUAL RENT?

5 A I DID.

6 Q I'LL ASK YOU TO LOOK AT A DOCUMENT THAT'S BEEN
7 MARKED AS PLAINTIFF'S STIPULATED EXHIBIT
8 NUMBER "15", AND IT'S ACTUALLY TWO PAGES. SEE
9 IF YOU CAN IDENTIFY THAT.

10 A YES, SIR. THOSE I WROTE TO MISS POWELL,
11 SANTEE MOBILE HOMES, REGARDING THE RENT
12 PAYMENT FOR 2000, 2001.

13 Q IN RESPONSE TO THE LETTERS THAT WERE SENT, DID
14 YOU RECEIVE RENT CHECKS FROM TIME TO TIME FROM
15 THE TENANT?

16 A I DID.

17 Q I'LL TURN YOUR ATTENTION TO EXHIBIT NUMBER "5"
18 AND NUMBER "6". I'LL ASK YOU TO TAKE A LOOK
19 AT THOSE AND THEN I'LL HAVE A QUESTION FOR
20 YOU.

21 A OKAY.

22 Q ARE YOU ABLE TO IDENTIFY DEFENDANT'S
23 STIPULATED EXHIBIT NUMBER "5"?

24 A YES, SIR.

25 Q WHAT IS DEFENDANT'S EXHIBIT NUMBER "5"?

- 1 A IT'S A LETTER TO MISS POWELL ACKNOWLEDGING
2 RECEIPT OF PAYMENT OF \$26,500.00, AND JUST RE-
3 STATING OUR UNDERSTANDING OF OUR AGREEMENT FOR
4 THEM TO PAY THE BALANCE AT A LATER DATE.
- 5 Q TELL US PLEASE ABOUT THAT CORRESPONDENCE AND
6 THAT TRANSACTION, AND WHAT I WANT TO ASK OF
7 YOU IS, DID THAT REPRESENT A DEVIATION FROM
8 WHAT THE PRACTICE HAD BEEN PRIOR TO MAY OF
9 2001?
- 10 A IT REPRESENTED A DEVIATION FROM THE STANDPOINT
11 THAT THE RENT WAS DUE IN ONE LUMP SUM AND THAT
12 YEAR THEY AGREED THAT IT COULD BE PAID INTO
13 TWO PAYMENTS.
- 14 Q DID MR. WILSON OR ANYBODY WORKING WITH MR.
15 WILSON REQUEST THAT THE PAYMENT BE MADE IN TWO
16 INSTALLMENTS IN 2001?
- 17 A THEY DID.
- 18 Q DID YOU TAKE THAT REQUEST TO MR. BUTLER?
- 19 A I DID.
- 20 Q WHAT WAS MR. BUTLER'S RESPONSE TO THEIR
21 REQUEST TO PAY THE RENT IN TWO INSTALLMENTS?
- 22 A HE WAS AGREEABLE.
- 23 Q WAS THAT CONFIRMED IN WRITING BY YOUR CORRES-
24 PONDENCE?
- 25 A IT WAS.

1 Q MR. RAY, I'M GONNA HAND YOU DOCUMENTS WHICH
2 HAVE BEEN MARKED AS PLAINTIFF'S EXHIBITS "30"
3 AND "31", AND ASK IF YOU CAN IDENTIFY THOSE.

4 A YES.

5 Q FIRST WITH RESPECT TO NUMBER "30". COULD YOU
6 IDENTIFY THAT FOR THE RECORD PLEASE?

7 A "30" IS AN INVOICE THAT WAS MAILED TO MS.
8 KATHY POWELL AT SANTEE MOBILE HOMES ON SEPTEMBER
9 17, 2001 INVOICING HER FOR THE BALANCE OF
10 THE RENT DUE FOR 2001 IN THE AMOUNT OF TWENTY-
11 FIVE THOUSAND.

12 INVOICE FROM RAY REALTY
13 TO KATHY POWELL, SANTEE
14 MOBILE HOMES DATED 9/17/01
15 MARKED FOR IDENTIFICATION
16 AND INTRODUCED INTO EVIDENCE
17 AS PLAINTIFF'S EXHIBIT "30".

18 Q ALRIGHT, SIR. IF YOU WOULD PLEASE, TELL US
19 WHAT PLAINTIFF'S EXHIBIT NUMBER "31"
20 REPRESENTS.

21 A "31", OKAY. "31" IS THE RECEIPT OF \$25,000.00
22 FROM HORTON HOMES SUPER CENTER IN A CASHIER'S
23 CHECK AND IT WAS MADE PAYABLE TO ME AND I DE-
24 DUCTED A FIVE PERCENT LEASING FEE AND SENT MR.
25 BUTLER THE OTHER CHECK, MY TRUST CHECK FOR

1 \$23,750.00. I CUT THE CHECK ON NOVEMBER 26,
2 2001.

3 COPY OF TWO CHECKS MARKED
4 FOR IDENTIFICATION AND
5 INTRODUCED INTO EVIDENCE
6 AS PLAINTIFF'S EXHIBIT "31".

7 Q I'LL ASK YOU TO LOOK AT DOCUMENT WHICH IS
8 PLAINTIFF'S STIPULATED EXHIBIT NUMBER "21".

9 A OKAY.

10 Q ARE YOU FAMILIAR WITH THAT DOCUMENT?

11 A YES.

12 Q WHAT IS THAT DOCUMENT?

13 A IT'S AN INVOICE FROM MY OFFICE TO SANTEE
14 MOBILE HOMES FOR RENT FOR MAY 15, 2002 TO MAY
15 14, 2003 IN THE AMOUNT OF FIFTY THOUSAND.

16 Q NOW, WHEN WAS THAT FORWARDED?

17 A IT'S DATED APRIL 16, 2002. SO, I WOULD ASSUME
18 IT WAS MAILED THAT DAY OR THE NEXT, BUT ABOUT
19 THAT TIME.

20 Q WAS IT YOUR CUSTOMARY PROCESS TO SEND AN
21 INVOICE FOR THE RENT BEFORE THE RENT WAS DUE
22 AND PAYABLE?

23 A YES, SIR.

24 Q IN RESPONSE TO THAT INVOICE, DID YOU RECEIVE
25 ANY CORRESPONDENCE FROM MR. WILSON OR ANYONE

1 ACTING ON MR. WILSON'S BEHALF?

2 A NO.

3 Q I'M GOING TO ASK YOU NOW TO LOOK AT PLAIN-
4 TIFF'S STIPULATED EXHIBIT NUMBER "22".

5 A OKAY.

6 Q ARE YOU ABLE TO IDENTIFY THAT DOCUMENT?

7 A I AM.

8 Q WHAT IS THAT DOCUMENT?

9 A THAT'S A LETTER THAT I MAILED MR. WILSON ON
10 JUNE 3, 2002 BY CERTIFIED MAIL.

11 MR. HANNA: WHAT WAS THE DATE AGAIN?

12 A JUNE 3, 2002.

13 Q WITH RESPECT TO THAT LETTER THAT YOU FORWARDED
14 TO MR. WILSON ON JUNE 3, 2002, DID YOU REQUEST
15 THAT HE ADDRESS THE MATTER OF HIS INTENTION
16 ABOUT WHETHER HE INTENDED TO CONTINUE
17 OCCUPYING THE PREMISES?

18 A YES, I DID.

19 Q HAD YOU MADE ATTEMPTS TO CONTACT MR. WILSON BY
20 TELEPHONE PRIOR TO THAT TIMES?

21 A NUMEROUS ATTEMPTS.

22 Q DID HE RETURN ANY OF YOUR PHONE CALLS?

23 A NO.

24 Q DID ANYONE ELSE IN HIS OFFICE RETURN ANY OF
25 YOUR PHONE CALLS?

1 A NO.

2 Q DID MR. WILSON EVER RESPOND TO THAT LETTER
3 THAT YOU SENT TO HIM EITHER IN WRITING OR
4 VERBALLY?

5 A NO.

6 Q MR. RAY, PRIOR TO MAY 15TH 2002, AND YOUR
7 LETTER OF JUNE 3RD 2002, DID MR. WILSON EVER
8 TELL YOU THAT HE WAS NOT GOING TO RENEW THE
9 LEASE FOR THE PERIOD MAY 15, 2002 THROUGH MAY
10 14, 2002?

11 A NO.

12 Q DID MR. BUTLER AT ANY TIME AFTER JUNE 3RD 2002
13 REQUEST THAT YOU ASSIST HIM WITH RESPECT TO
14 RE-LETTING THE PROPERTY?

15 A HE DID.

16 Q WHAT COULD YOU TELL US ABOUT THAT?

17 A AS I RECALL, I DID GO BACK AND PUT A 'FOR
18 LEASE' SIGN ON THE PROPERTY AND DID WORK WITH
19 A NUMBER OF PEOPLE IN AN EFFORT TO RE-LEASE
20 THE PROPERTY.

21 Q DO YOU RECALL SPECIFICALLY THE DATE WHEN YOU
22 WENT BACK TO DO THAT?

23 A NO.

24 Q I'LL ASK YOU TO LOOK AT SOME PHOTOGRAPHS THAT
25 HAVE BEEN MARKED AS PLAINTIFF'S STIPULATED

1 EXHIBIT NUMBERS "26", "27", "28" AND "29".
2 WHEN YOU WENT BACK TO PUT YOUR SIGN ON THE
3 PROPERTY, DO THOSE PHOTOGRAPHS THAT YOU JUST
4 REVIEWED, "26", "27", AND "28" AND "29",
5 REFLECT THE CONDITION OF THE PROPERTY WHEN YOU
6 WENT BACK TO PUT YOUR SIGN ON IT?

7 A I DIDN'T GO BACK TO PUT THE SIGN ON IT. I
8 WOULD HAVE SENT SOMEONE. BUT, I DID HAVE THE
9 OCCASION TO VISIT THE PROPERTY AND THAT
10 REPRESENTS THE CONDITION OF THE PROPERTY, YES,
11 SIR.

12 Q SO, WHEN YOUR SIGN WENT BACK ON THE PROPERTY
13 TO RE-LEASE THE PROPERTY, THERE WAS STILL A
14 HORTON HOMES SIGN ON THE PROPERTY?

15 A YES.

16 Q AND THERE WAS STILL APPARENTLY A VEHICLE AND A
17 DAMAGED MOBILE HOME ON THE PROPERTY?

18 A YES.

19 Q MR. RAY, THOSE ARE ALL THE QUESTIONS I HAVE
20 FOR YOU. PLEASE ANSWER ANY QUESTIONS THAT MR.
21 MARING HAS FOR YOU.

22 CROSS EXAMINATION BY MR. MARING:

23 Q MR. RAY, I'M GONNA CALL YOUR ATTENTION BACK TO
24 FIRST THE 2001 MODIFICATION OF THE AGREEMENT.
25 YOU JUST TESTIFIED THAT THE PARTIES CHANGED

1 THE AGREEMENT TO PAY THE REMAINING LEASE
2 AMOUNT IN TWO INSTALLMENTS, IS THAT CORRECT?

3 MR. WRIGHT: I WOULD OBJECT TO THE
4 QUESTION IN THAT THE WITNESS DID NOT
5 TESTIFY THAT THE AGREEMENT WAS MODIFIED.
6 HE INDICATED THAT THERE WAS AN AGREEMENT
7 TO MAKE THE PAYMENT IN TWO PAYMENTS. OUR
8 POSITION IS THAT IT WAS AN ACCOMMODATION
9 TO THE DEFENDANT. IT WAS NOT A PERMANENT
10 MODIFICATION OF THE AGREEMENT BECAUSE IT
11 WAS NOT REDUCED TO WRITING AND, IN FACT,
12 THE NEXT RENT PAYMENT OR THE NEXT INVOICE
13 THAT WAS SENT OUT WAS FOR THE ENTIRE
14 AMOUNT OF \$50,000.00 IN APRIL OF 2002.

15 MR. HANNA: I UNDERSTAND THE TESTIMONY TO
16 MEAN THAT THERE WAS A MODIFICATION THAT
17 THAT WOULD BE THE WAY IT WOULD BE DONE
18 LATER ON, BUT IT WAS AN ADJUSTMENT TO THE
19 RENTAL. TRY AND REPHRASE YOUR QUESTION
20 AND SEE IF WE CAN GET BY WITH THAT.

21 Q DID THE PARTIES ORALLY MODIFY THE AGREEMENT IN
22 2001 IN REGARDS TO THE METHOD OF PAYMENT?

23 MR. WRIGHT: SAME OBJECTION.

24 MR. WARING: AS TO THAT YEAR, YOUR HONOR?

25 MR. HANNA: AS TO THAT YEAR, I HAVE NO

1 PROBLEM WITH THAT.

2 A I WOULD SAY THAT THEY AGREED TO MODIFY THE
3 RENT PAYMENT FOR THAT PERIOD.

4 Q THE AGREEMENT BETWEEN THE PARTIES, THE LEASE
5 AGREEMENT, WHICH IS NUMBER "2", PAGE 16, AND
6 I'LL ASK YOU, IF YOU COULD, TO REVIEW
7 PARAGRAPH NUMBER 34, PLEASE.

8 A YES, SIR.

9 Q DID YOU REVIEW THAT?

10 A YES, SIR.

11 Q WHAT IS YOUR UNDERSTANDING OF PARAGRAPH 34 OF
12 THE LEASE?

13 A IF THE LEASE AGREEMENT IS MODIFIED OR CHANGED
14 IT MUST BE IN WRITING BY THE PARTIES. THAT
15 WOULD BE MY INTERPRETATION.

16 Q AND SIGNED BY BOTH PARTIES, IS THAT CORRECT?

17 A YES, SIR.

18 Q ALRIGHT, SIR. SO, MY QUESTION IS, IN 2001,
19 THE PARTIES ORALLY AGREED TO MODIFY THE
20 PAYMENT TERMS OF THE LEASE, CORRECT?

21 A CORRECT, YES.

22 Q FOR THAT YEAR?

23 A YES, SIR.

24 Q THEY DIDN'T SIGN IT?

25 A THEY DIDN'T.

- 1 Q IT WAS NOT IN WRITING?
- 2 A IT WASN'T.
- 3 Q THE ONLY WRITING ... IN FACT, THAT THERE WAS
- 4 ONLY ONE WRITING, AND THAT WAS YOUR LETTER TO
- 5 MR. WILSON, IS THAT CORRECT?
- 6 A THAT'S CORRECT. THAT I'M AWARE OF.
- 7 Q THAT YOU'RE AWARE OF?
- 8 A RIGHT.
- 9 Q ALRIGHT, SIR. DO YOU RECALL DURING THE TAKING
- 10 OF YOUR DEPOSITION THAT YOU STATED THAT YOU
- 11 HAD SEVERAL CONVERSATIONS WITH MR. WILSON SUB-
- 12 SEQUENT TO THE CHANGING THE TERMS OF THE LEASE
- 13 IN 2001, BUT COULD NOT RECALL THE ACTUAL
- 14 CONVERSATIONS?
- 15 A IN REGARDS TO SPLITTING THE PAYMENT THAT YEAR?
- 16 Q THAT IS CORRECT. DURING THAT PERIOD OF TIME?
- 17 A YES, SIR.
- 18 Q SO, YOU TESTIFIED AT YOUR DEPOSITION THAT YOU
- 19 HAD CONVERSATIONS WITH MR. WILSON DURING THAT
- 20 TIME OF THE YEAR, IS THAT CORRECT?
- 21 A YES, SIR.
- 22 Q AND, I BELIEVE YOU TESTIFIED THAT YOU THOUGHT
- 23 IT WAS REGARDING A FISHING TRIP THAT YOU TOOK
- 24 WITH MR. WILSON?
- 25 A I BELIEVE I DID TESTIFY TO THAT. I DID

1 TESTIFY TO THE FISHING TRIP. I DIDN'T TESTIFY
2 THAT ALONG ABOUT THAT TIME IT WAS REGARDING A
3 FISHING TRIP. BUT ... AND I'M NOT EVEN SURE
4 THE TWO ARE IN THE SAME TIME PERIOD, BUT MAY
5 HAVE WELL BEEN.

6 MR. WARING: YOUR HONOR, I'VE GOT THE
7 ORIGINAL DEPOSITION HERE.

8 MR. HANNA: LET THE RECORD REFLECT THAT I
9 AM OPENING THE ORIGINAL OF THE DEPOSITION
10 OF MR. CHARLEY RAY DATED OCTOBER THE
11 18TH, 2007. DO YOU HAVE A COPY FOR MR.
12 RAY TO LOOK AT?

13 MR. WARING: I DO, YOUR HONOR.

14 MR. HANNA: WHICH PAGE ARE YOU REFERRING
15 TO?

16 MR. WARING: I'M ON PAGE 26. CAN I TAKE
17 A SHORT RECESS WHILE HE'S DOING THAT?

18 MR. HANNA: SURE.

19 OFF THE RECORD

20 Q MR. RAY, I'D LIKE TO ASK YOU SOME SPECIFIC
21 QUESTIONS REGARDING IT, BUT YOU DO RECALL
22 TESTIFYING THAT YOU BELIEVE THAT YOU HAD SOME
23 CONVERSATIONS WITH MR. WILSON SUBSEQUENT TO
24 Y'ALL'S DISCUSSIONS REGARDING THE RENTAL
25 CHANGE OR THE PAYMENT CHANGE IN '01?

1 A I'M SURE WE MUST HAVE OR WE WOULDN'T HAVE ...
2 PROBABLY, SIR, WE DID OR WE WOULDN'T HAVE
3 MODIFIED. SO, I DID HAVE DISCUSSIONS WITH
4 SOMEONE AND THAT MAY HAVE BEEN WHAT I WAS
5 REFERRING TO.

6 Q THE QUESTION THAT I ASKED YOU WAS SUBSEQUENT
7 TO THAT, DO YOU RECALL EVER SPEAKING WITH MR.
8 WILSON?

9 A SUBSEQUENT TO AGREEING TO THE MODIFICATION OF
10 THE RENT PAYMENT?

11 Q THAT'S CORRECT.

12 A I DON'T REMEMBER BUT I'M CERTAIN THAT WE MUST
13 HAVE HAD A LOT OF CONVERSATIONS OR WE WOULDN'T
14 HAVE MODIFIED THIS.

15 Q AFTER YOU MODIFIED ... LET ME ASK IT THAT WAY.
16 AFTER YOU MODIFIED THE AGREEMENT, DO YOU
17 RECALL SPEAKING TO MR. WILSON?

18 A I DON'T RECALL THE CONVERSATION, NO.

19 Q IN YOUR DEPOSITION ON PAGE 26, THE VERY LAST
20 QUESTION, I ASKED YOU, "DID YOU EVER SPEAK TO
21 MR. WILSON SUBSEQUENT TO THAT DATE?" YOUR
22 ANSWER WAS, "I'M SURE I DID." AND THEN LATER
23 ON, YOU WENT ON TO SAY THAT YOU THOUGHT IT WAS
24 REGARDING A FISHING TRIP.

25 A NO.

1 Q MAYBE I ASKED YOU IN 2002, "DID YOU GO
2 FISHING?" TURN TO THE TOP OF PAGE 28.
3 A BOTTOM OF PAGE 27.
4 Q BOTTOM OF PAGE 27. I ASKED THE QUESTION, "DID
5 YOU GO FISHING IN 2007?"
6 A NO. I'M TRYING TO ASK THE QUESTION BUT I
7 DON'T BELIEVE THAT'S ... I DON'T MEAN TO BE
8 ARGUMENTATIVE, BUT I DON'T BELIEVE WHAT THIS
9 SAYS.
10 Q "DID YOU GO FISHING THAT YEAR?" THE QUESTION
11 ON THE BOTTOM OF PAGE 27. ALRIGHT, TURN THE
12 PAGE.
13 A OKAY. "IN 2002, DID YOU GO FISHING?"
14 Q WHAT WAS YOUR RESPONSE?
15 A "YES, SIR."
16 Q I'M GOING TO SHOW YOU A COPY OF THIS LETTER.
17 DO YOU SEE THIS LETTER?
18 A UH-HUH. (AFFIRMATIVE RESPONSE.) I REMEMBER
19 THIS LETTER.
20 Q YOU REMEMBER THAT LETTER?
21 A UH-HUH. (AFFIRMATIVE RESPONSE.)
22 Q IS THAT REGARDING THE FISHING TRIP?
23 MR. HANNA: HAS THAT LETTER BEEN MARKED
24 AS AN EXHIBIT? LET'S MARK IT FOR ID.
25 I'M NOT GONNA ASK YOU TO PUT IT IN THE

1 RECORD, THAT'S UP TO YOU, BUT I NEED IT
2 MARKED FOR ID IF HE'S GONNA LOOK AT IT.

3 MR. WARING: I WAS GONNA HAVE HIM ...
4 QUESTION HIM ABOUT IT AND THEN PUT IT
5 INTO EVIDENCE, YOUR HONOR.

6 MR. HANNA: I DON'T THINK YOU CAN
7 QUESTION HIM ABOUT IT UNTIL YOU PUT IT
8 INTO EVIDENCE. YOU CAN ASK HIM IF HE CAN
9 IDENTIFY IT.

10 Q CAN YOU IDENTIFY THIS LETTER?

11 A YES, SIR. IT'S A LETTER I WROTE MR. WILSON ON
12 OCTOBER 20TH 1998.

13 COPY OF LETTER FROM
14 RAY REALTY TO WILSON
15 DATED 10/20/98 MARKED
16 FOR IDENTIFICATION AND
17 INTRODUCED INTO EVIDENCE
18 AS DEFENDANT'S EXHIBIT "10".

19 Q WHAT WAS THE CONTENTS OF THE LETTER REGARDING?

20 A PARAGRAPH ONE I ACKNOWLEDGED A FISHING TRIP
21 THAT WE TOOK. PARAGRAPH TWO, I SENT A TAX
22 NOTICE. BILLED HIM FOR SOME TAXES.

23 MR. HANNA: THAT'S EXHIBIT WHAT NUMBER?

24 MR. WARING: IT'S MARKED AS DEFENDANT'S
25 EXHIBIT NUMBER "10".

1 Q THE ONLY REASON I'M ASKING YOU ABOUT THIS
2 LETTER, MR. RAY, IS THAT YOU TESTIFIED IN YOUR
3 DEPOSITION THAT YOU HAD NO BUSINESS TO TALK TO
4 MR. WILSON REGARDING, WITH THE EXCEPTION OF
5 ONE TIME WHEN YOU HAD ONE SOCIAL INTERACTION
6 WHICH WAS A FISHING TRIP, IS THAT CORRECT?
7 A AGAIN, I'M JUST NOT FOLLOWING YOUR QUESTION.
8 Q MY QUESTION TO YOU ... I'LL REPHRASE THE
9 QUESTION. DID YOU HAVE ANY REASON TO TALK TO
10 BILLY WILSON OTHER THAN REGARDING HIS AGREE-
11 MENT WITH MR. BUTLER?
12 A NO.
13 Q AGAIN, YOU WERE FRIENDS?
14 A YEAH, WE WERE FRIENDS.
15 Q THE ONLY SOCIAL INTERACTION YOU TESTIFIED TO
16 IS THAT Y'ALL DID GO FISHING ONCE?
17 A I EMPLOYED HIM AS A GUIDE TO TAKE MY SON
18 FISHING ONE TIME.
19 Q ALRIGHT. OKAY. AND THAT WAS IN 1998?
20 A I DON'T KNOW ABOUT THE DATE NOW. I'M NOT
21 BEING DIFFICULT BUT I JUST DON'T RECALL.
22 Q BASED ON YOUR LETTER DATED OCTOBER 20TH 1998,
23 WHICH IS DEFENDANT'S "10", IT WOULD HAVE BEEN
24 BEFORE THAT DATE?
25 A CORRECT.

1 MR. HANNA: HAS THAT BEEN INTRODUCED?

2 MR. WARING: IT WAS DEFENDANT'S "10"

3 MR. HANNA: I KNEW IT HAD BEEN MARKED BUT
4 I DIDN'T KNOW WHETHER IT HAD BEEN INTRO-
5 DUCED. WITHOUT OBJECTION?

6 MR. WRIGHT: NO OBJECTION.

7 Q ALRIGHT, SIR. SO, YOU DID TALK TO MR. WILSON
8 SUBSEQUENT TO OR AFTER THE TIME OF WHICH ...
9 WELL, AS YOU TESTIFIED IN YOUR DEPOSITION THAT
10 YOU DID TALK TO MR. WILSON SUBSEQUENT TO MODI-
11 FYING THE LEASE IN 2001?

12 A YES, SIR.

13 Q YOU HAVE NO RECOLLECTION OF WHAT THOSE CONVER-
14 SATIONS WERE ABOUT THAT?

15 A NO.

16 Q IS IT FAIR TO SAY, MR. RAY, THAT YOU HAVE VERY
17 LITTLE INDEPENDENT RECOLLECTION OF THE EVENTS
18 THAT TOOK PLACE DURING THIS WHOLE TRANSACTION?

19 A OTHER THAN WHAT I CAN RE-ESTABLISH WITH A FILE
20 UNLESS THERE WAS SOME MONUMENTAL ACTION THAT
21 TOOK PLACE. THAT'S FAIR TO SAY, YES.

22 Q ALRIGHT, SIR. IF YOU COULD PLEASE, TAKE A
23 LOOK AT PLAINTIFF'S EXHIBIT NUMBER "22". IF
24 YOU COULD PLEASE, SIR, READ ME THE SECOND SEN-
25 TENCE OF THE SECOND PARAGRAPH.

1 A "THE OWNER, MR. BUTLER, WOULD LIKE FOR YOU TO
2 CONTINUE RENTING THE PROPERTY BUT HAS
3 INSTRUCTED ME TO COLLECT THE RENT OR ASK YOU
4 TO VACATE."

5 Q ALRIGHT SIR. THANK YOU. MY QUESTION TO YOU,
6 MR. RAY, IS THIS IS YEARS '98, '99, 2000,
7 2001, NOW 2002, CORRECT? THIS IS THE FIFTH
8 YEAR OF THIS LEASE?

9 A I WOULD SAY YES.

10 Q ALRIGHT. SO, THERE WERE NO PROBLEMS WITH
11 REGARDS TO ANY TYPE OF PAYMENTS FROM MR.
12 WILSON FOR THE FIRST FOUR YEARS OF THE TERMS
13 OF THIS LEASE, IS THAT CORRECT?

14 A I DON'T KNOW OF ANY PROBLEMS.

15 Q OTHER THAN THE CHANGE OR THE MODIFICATION OF
16 THE 2001 PAYMENT, WHICH WAS PAID ...

17 A IN TWO INSTALLMENTS.

18 Q ... IN TWO INSTALLMENTS WITH A \$1,500.00
19 SERVICE CHARGE, IS THAT CORRECT?

20 A YES.

21 Q YOU TESTIFIED EARLIER THAT YOU WERE WRITING
22 MR. WILSON A LETTER TO REMIND HIM OF THE RENT,
23 IS THAT CORRECT?

24 A I SENT INVOICES.

25 Q YOU SENT HIM INVOICES?

1 A UH-HUH. (AFFIRMATIVE RESPONSE.)

2 Q SO, WITHOUT HAVING ANY CONVERSATIONS WITH MR.
3 WILSON, YOUR LETTER TO HIM, YOUR FIRST LETTER,
4 INDICATES THAT, "MR. BUTLER WOULD LIKE FOR YOU
5 TO CONTINUE RENTING THE PROPERTY, BUT HAS
6 INSTRUCTED ME TO EITHER COLLECT THE RENT OR TO
7 ASK YOU TO VACATE."

8 A YES, SIR.

9 Q MY QUESTION TO YOU, MR. RAY, IS, ISN'T IT
10 POSSIBLE THAT MR. WILSON, DURING ONE OF THOSE
11 CONVERSATIONS THAT YOU HAD EARLIER IN THE
12 YEAR, TOLD YOU THAT HE WAS NOT GOING TO CON-
13 TINUE RENTING THE PROPERTY?

14 A I DON'T RECALL THAT CONVERSATION.

15 Q IS IT POSSIBLE?

16 A OH, YES, IT'S POSSIBLE.

17 Q ALRIGHT, SIR. BECAUSE THE LETTER INDICATES
18 THAT, "WE WOULD LIKE YOU TO CONTINUE TO KEEP
19 RENTING IT."?

20 A RIGHT.

21 Q BUT, WOULD ASK YOU TO VACATE ...

22 A IF YOU'RE NOT GONNA PAY.

23 Q ... IF YOU'RE NOT GONNA PAY?

24 A UH-HUH. (AFFIRMATIVE RESPONSE.)

25 Q YOU WROTE THIS LETTER EVEN THOUGH THE TERMS OF

1 THE LEASE INDICATED THAT MR. WILSON'S LEASE
2 AUTOMATICALLY RENEWED BY THAT TIME, IS THAT
3 CORRECT?

4 A THAT'S RIGHT.

5 Q SO, IT'S FAIR TO SAY THAT YOUR LETTER WAS NOT
6 SUPPORTED BY THE TERMS OF THE RENEWAL OF THE
7 AGREEMENT?

8 MR. WRIGHT: OBJECTION. THAT CALLS FOR A
9 LEGAL CONCLUSION.

10 MR. HANNA: REPHRASE THE QUESTION.

11 Q I'LL REPHRASE THE QUESTION. DID YOUR LETTER
12 TO MR. WILSON SAY THAT YOUR LEASE IS AUTOMAT-
13 ICALLY RENEWED. WE WOULD LIKE YOU TO PAY
14 \$50,000.00?

15 A NO.

16 MR. WRIGHT: OBJECTION. THE LETTER
17 SPEAKS FOR ITSELF.

18 MR. HANNA: HE'S ON CROSS AND I THINK YOU
19 CAN ASK THAT QUESTION. THE LETTER DOES
20 SPEAK FOR ITSELF, BUT I JUST THINK HE'S
21 TRYING TO MAKE A POINT. GO AHEAD.

22 A ASK ME THE QUESTION AGAIN.

23 Q THE QUESTION WAS, YOUR LETTER DID NOT STATE OR
24 YOU DID NOT WRITE A LETTER TO MR. WILSON THAT
25 YOUR LEASE HAS AUTOMATICALLY RENEWED AND WE

1 WANT YOU TO PAY THE \$50,000.00 LEASE, IS THAT
2 CORRECT?

3 A THAT'S CORRECT.

4 Q ALRIGHT, SIR. I WANT TO BRING YOUR ATTENTION
5 TO A QUESTION THAT WAS BROUGHT UP HERE EARLIER
6 REGARDING WHAT TOOK PLACE SUBSEQUENT TO MR.
7 WILSON VACATING THE PROPERTY. DID MR. BUTLER
8 HIRE YOU TO LEASE THE PROPERTY AFTER MR.
9 WILSON LEFT?

10 A NO.

11 Q ALRIGHT, SIR. DID MR. BUTLER HIRE ANYBODY?

12 A HIRE. I DIDN'T USE THE WORD HIRE. WHAT
13 HAPPENED, HE ASKED ME TO DO IT AND I DON'T
14 KNOW IF I ... I MAY HAVE JUST FAILED TO GET AN
15 EXCLUSIVE AUTHORIZATION. I MAY NOT HAVE HAD
16 THE ENERGY, BUT FOR SOME REASON, I DID IT ON A
17 BEST EFFORT. I DIDN'T LIST IT. WE DID NOT
18 ENTER INTO A FORMAL AGENCY AGREEMENT. IT WAS
19 A BEST EFFORT. I DON'T KNOW IF THAT ANSWERS
20 YOUR QUESTION.

21 Q LET ME ASK THIS QUESTION, MR. RAY. YOU
22 TESTIFIED IN YOUR DEPOSITION THAT YOUR AREA OF
23 EXPERTISE IN THE REAL ESTATE MARKET IS COM-
24 MERCIAL LEASING.

25 A I THINK I SAID IT WAS COMMERCIAL, AND I'M

1 SPENDING MORE TIME ON COMMERCIAL LEASES.

2 Q SO YOU'RE SPENDING A GOOD BIT OF TIME IN YOUR
3 BUSINESS DOING COMMERCIAL LEASES?

4 A YES, SIR.

5 Q IS IT REASONABLE FOR SOMEONE WANTING TO LEASE
6 A PIECE OF COMMERCIAL PROPERTY ... IS IT
7 REASONABLE FOR THAT PERSON TO PLACE THAT
8 OFFERING ON THE MULTIPLE LISTING SYSTEM?

9 A I THINK SO.

10 Q WOULD IT BE REASONABLE FOR SOMEONE TO ADVER-
11 TISE A PIECE OF PROPERTY?

12 A I DON'T KNOW IF IT MAKES A WHOLE LOT OF
13 DIFFERENCE.

14 Q IT IS REASONABLE FOR SOMEONE TO HIRE AN EXCLU-
15 SIVE AGENT TO TRY TO SECURE A TENANT FOR A
16 PIECE OF PROPERTY?

17 A YES.

18 Q THOSE ARE ALL REASONABLE EXPECTATIONS TO
19 SECURE A TENANT FOR A PIECE OF PROPERTY?

20 A I THINK SO, BUT, YOU KNOW, THE OWNER AND
21 FOLKS, WHILE THEY HAVE DIFFERENT IDEAS ABOUT
22 THAT ...

23 Q MR. RAY, YOU ARE A REAL ESTATE AGENT, CORRECT?

24 A YES.

25 Q ALRIGHT, SIR. MY QUESTION TO YOU IS, IN ORDER

1 TO LEASE A PIECE OF PROPERTY, IS IT REASONABLE
2 FOR THAT PIECE OF PROPERTY TO BE PLACED IN THE
3 MULTIPLE LISTING SYSTEM?

4 A I THINK IT'S REASONABLE, YES.

5 Q IF I WERE OFFERING A PIECE OF PROPERTY FOR
6 LEASE, WOULD IT BE REASONABLE FOR ME TO HIRE
7 AN EXCLUSIVE AGENT TO SECURE A POTENTIAL
8 TENANT?

9 A YES.

10 Q WOULD ME PLACING A SIGN ON MY PIECE OF
11 PROPERTY STATING, "FOR LEASE", WOULD THAT BE
12 CONSIDERED A REASONABLE EFFORT IN, IN THAT
13 ALONE, IN TRYING TO SECURE A TENANT FOR MY
14 PIECE OF PROPERTY?

15 A DO THE QUESTION AGAIN BECAUSE I THINK THERE
16 ARE TWO PARTS TO IT.

17 Q OKAY. WOULD I BE USING MY BEST EFFORTS IN
18 LEASING A PIECE OF PROPERTY BY ONLY PLACING A
19 SIGN, "FOR LEASE" ON THE PROPERTY?

20 A I THINK YOU NEED MORE THAN THAT.

21 Q YOU DO NEED MORE THAN THAT. ALRIGHT, SIR. IN
22 THIS PARTICULAR CASE, SUBSEQUENT TO MR. WILSON
23 LEAVING THE PROPERTY, YOU DIDN'T TAKE ANY
24 OTHER STEPS OTHER THAN PLACING A SIGN ON THE
25 PROPERTY, IS THAT CORRECT?

- 1 A THAT'S CORRECT.
- 2 Q ALL OF THE COMMUNICATION BETWEEN MR. WILSON
- 3 AND MR. BUTLER CAME THROUGH YOU, IS THAT
- 4 CORRECT?
- 5 A I DON'T KNOW.
- 6 Q TO THE BEST OF YOUR RECOLLECTION, WAS THERE
- 7 ANY COMMUNICATION BETWEEN MR. BUTLER AND MR.
- 8 WILSON?
- 9 A I DON'T RECALL THAT.
- 10 Q DO YOU RECALL THAT YOU WERE THE MIDDLE MAN
- 11 BASICALLY IN THIS DEAL?
- 12 A YES, SIR.
- 13 Q ALRIGHT, SIR. DO YOU KNOW IF MR. BUTLER
- 14 SUBSEQUENTLY LEASED HIS PIECE OF PROPERTY?
- 15 A I THINK SO BUT I DON'T KNOW.
- 16 Q YOU WEREN'T PAID ANYTHING FOR A FUTURE
- 17 LEASING?
- 18 A NO.
- 19 Q MR. RAY, WHEN MR. BUTLER HIRED YOU IN 1998,
- 20 DID YOU PLACE THE PROPERTY IN THE MULTIPLE
- 21 LISTING SYSTEM?
- 22 A I DID.
- 23 Q DID YOU ADVERTISE THE PROPERTY?
- 24 A YES, SIR.
- 25 Q DID YOU MAKE ALL THE EFFORTS THAT AN EXCLUSIVE

1 AGENT WOULD TAKE IN ORDER TO SECURE A POTEN-
2 TIAL TENANT?

3 A YES, SIR.

4 MR. WARING: THAT'S ALL THE QUESTIONS I
5 HAVE, YOUR HONOR.

6 MR. HANNA: RE-DIRECT?

7 MR. WRIGHT: YES, PLEASE.

8 RE-DIRECT EXAMINATION BY MR. WRIGHT:

9 Q MR. RAY, I BELIEVE YOU TESTIFIED IN CROSS
10 EXAMINATION IF THERE WAS ANYTHING OF SIGNIFI-
11 ANCE THAT WOULD COME UP IN YOUR CONVERSATION
12 THAT YOU WOULD HAVE RECALLED THAT?

13 A I THINK SO. PROBABLY.

14 Q NOW, AS MR. BUTLER'S AGENT IN THIS TRANSACTION
15 WITH THE DUTY TO COMMUNICATE WITH YOUR PRINCI-
16 PAL, MR. BUTLER, IF MR. WILSON HAD TOLD YOU
17 THAT HE WAS NOT RENEWING THE LEASE, IS THAT
18 SOMETHING THAT YOU WOULD HAVE TOLD MR. BUTLER?

19 A YES, SIR.

20 Q DID YOU EVER TELL MR. BUTLER THAT HE WAS NOT
21 RENEWING THE LEASE?

22 A NO.

23 Q I'D LIKE TO DIRECT YOU TO EXHIBITS "21" AND
24 "22".

25 MR. HANNA: IS THAT PLAINTIFF'S "21" AND

1 "22"?

2 MR. WRIGHT: YES, YOUR HONOR.

3 Q MR. RAY, IF MR. WILSON HAD TOLD YOU PRIOR TO
4 FEBRUARY 15, 2002, THAT HE WAS NOT GOING TO
5 RENEW THE LEASE, WOULD YOU HAVE HAD ANY REASON
6 TO SEND HIM A BILL FOR THE ANNUAL RENT ON
7 APRIL 16, 2002?

8 A NO.

9 Q AND THAT'S WHAT YOU DID ON APRIL 16, 2002,
10 WHICH IS PLAINTIFF'S EXHIBIT NUMBER "16", IS
11 THAT CORRECT?

12 A CORRECT.

13 Q AND WITH RESPECT TO PLAINTIFF'S EXHIBIT NUMBER
14 "22", WHICH IS YOUR LETTER OF JUNE 3RD 2002 TO
15 MR. WILSON. WITH RESPECT TO THE FIRST
16 SENTENCE IN THE SECOND PARAGRAPH, DID YOU
17 REQUEST MR. WILSON AT THAT TIME TO ADVISE YOU
18 OF HIS INTENTIONS?

19 A YES.

20 Q MY QUESTION, SIR, IS WHY WOULD YOU WRITE THAT
21 LETTER IF HE HAD, IN FACT, ADVISED YOU PRIOR
22 TO THAT TIME THAT HE WAS NOT RENEWING THE
23 LEASE?

24 MR. WARING: OBJECT TO THE FORM.

25 LEADING, YOUR HONOR.

1 MR. HANNA: I DON'T THINK IT'S NECES-
2 SARILY LEADING. GO AHEAD. HE'S ASKING
3 HIM WHY. HE DIDN'T ASK HIM A YES OR NO
4 QUESTION. HE ASKED HIM MORE A WHY
5 QUESTION.

6 MR. WRIGHT: I WOULDN'T HAVE ASKED HIM
7 HAD I KNOWN THE ANSWER.

8 Q NOW, YOU WERE ASKED SOME QUESTIONS ABOUT
9 METHODS OF MARKETING PROPERTY AND WHAT IS A
10 REASONABLE METHOD OF MARKETING PROPERTY. MR.
11 RAY, OVER THE YEARS, HAVE YOU LEASED
12 PROPERTIES IN RESPONSE TO PHONE INQUIRIES THAT
13 YOU RECEIVED FROM SIGNS THAT YOU HAVE ON THE
14 PROPERTY?

15 A YES, SIR.

16 Q IS THAT A METHOD OF LEASING PROPERTY OR ADVER-
17 TISING PROPERTY FOR SALE THAT IS CUSTOMARY IN
18 THE REAL ESTATE TRADE?

19 A IT IS.

20 Q AND IF YOU GO BACK TO THE INITIAL INQUIRY THAT
21 YOU HAD FROM MR. WILSON IN THIS CASE, WAS MR.
22 WILSON REFERRED TO YOU BY ANOTHER REALTOR.
23 DID ANYONE BRING HIM INTO YOUR OFFICE AND SAY,
24 "I SAW THIS IN MULTIPLE LISTING AND I'M CON-
25 TACTING YOU."?

1 A NO.

2 Q NO FURTHER QUESTIONS.

3 MR. HANNA: ANY RE-CROSS?

4 MR. WARING: YES, YOUR HONOR.

5 RE-CROSS EXAMINATION BY MR. WARING:

6 Q MR. RAY, YOU DIDN'T PUT YOUR SIGN ON THE
7 PROPERTY UNTIL AFTER THE LEASE EXPIRED FOR
8 2003, ISN'T THAT NOT CORRECT?

9 A I DON'T KNOW.

10 Q YOU DON'T RECALL PUTTING OUT THE SIGN, ISN'T
11 THAT CORRECT?

12 A THAT'S CORRECT.

13 Q THE QUESTION WAS, MR. BUTLER TESTIFIED EARLIER
14 TODAY THAT IN MAY OF 2003, AFTER THE LEASE
15 YEAR PERIOD FOR MR. WILSON HAD EXPIRED, THAT
16 HE WANTED YOU TO PUT A SIGN BACK ON THE
17 PROPERTY? IS THAT AN ACCURATE STATEMENT?
18 WHAT WAS YOUR ANSWER?

19 MR. WRIGHT: I OBJECT TO THAT AS PITTING
20 THE WITNESS BECAUSE WHAT WE'RE REFERRING
21 TO IS THE TESTIMONY OF MR. BUTLER.
22 COUNSEL WAS REPRESENTING HIM, BUT THAT
23 WAS TESTIMONY OF MR. BUTLER AND MR.
24 BUTLER WAS NOT IN THE ROOM AND MR. RAY
25 BASICALLY IS ... WHATEVER YOU'RE SAYING

1 HIS TESTIMONY WAS, THAT'S RIGHT, BUT MR.
2 RAY DIDN'T TESTIFY TO THAT.

3 MR. HANNA: I DON'T THINK THAT'S QUITE
4 THE PROPER USE OF THE DEPOSITION TO START
5 WITH. AS I UNDERSTAND, THE DEPOSITION
6 CAN ONLY BE USED FOR IMPEACHMENT. SO,
7 YOU'RE ASKING A QUESTION AND IF HE GIVES
8 YOU A DIFFERENT ANSWER OTHER THAN WHAT
9 WAS GIVEN IN THE DEPOSITION, THEN YOU CAN
10 IMPEACH HIM WITH IT. BUT LET'S PURSUE
11 THAT. YOU ASK HIM A QUESTION AND SEE IF
12 HE GIVES A DIFFERENT ANSWER THAN HE DID
13 IN THE DEPOSITION. WHAT WAS THE QUESTION
14 YOU ASK HIM?

15 MR. WARING: YOUR HONOR, I ASKED HIM
16 EARLIER, WAS IT TRUE THAT HE WAITED UNTIL
17 AFTER THE LEASE HAD EXPIRED TO ... AND HE
18 SAID, "NO. HE HAS NO RECOLLECTION OF
19 THAT." HE DIDN'T KNOW. BUT WHAT HE SAYS
20 IN THE DEPOSITION THAT WAS AFTER MAY OF
21 2003. THAT'S AN ACCURATE STATEMENT. I
22 ASKED HIM IF MR. BUTLER'S STATEMENT WAS
23 ACCURATE.

24 MR. HANNA: ASK YOUR QUESTION AGAIN.

25 Q DID YOU WAIT UNTIL AFTER MAY OF 2003 TO PUT

1 YOUR SIGN ON THE PROPERTY AFTER MR. WILSON'S
2 LEASE WAS NO LONGER IN EFFECT?

3 A AGAIN, I DON'T RECALL.

4 Q I'LL CALL YOUR ATTENTION TO THE APPROXIMATE
5 DATE OF MAY 31. I BELIEVE YOU TESTIFIED ON
6 OCTOBER 18TH. I ASKED A QUESTION ... WOULD YOU
7 READ THE QUESTION?

8 MR. HANNA: YOU ASKED HIM THE QUESTION,
9 DID HE PUT IT UP OR WHEN HE PUT IT UP AND
10 HE SAID HE DOESN'T RECALL. NOW, WHERE IS
11 THAT QUESTION IN THE DEPOSITION?

12 MR. WARING: THE QUESTION IS THAT MR.
13 BUTLER TESTIFIED EARLY TODAY THAT IN MAY
14 OF '03, AFTER THE LEASE PERIOD FOR MR.
15 WILSON EXPIRED, THAT YOU PUT A SIGN BACK
16 UP ON THE PROPERTY? IS THAT AN ACCURATE
17 STATEMENT.

18 MR. HANNA: THAT'S NOT PROPER CROSS
19 EXAMINATION. YOU CAN CROSS EXAMINE HIM
20 ON A QUESTION THAT YOU ASK HIM THE
21 QUESTION OR WHAT YOU'RE EXAMINING HIM ON
22 STATEMENTS THAT SOMEBODY ELSE MADE. IF
23 YOU WANT TO REPHRASE IT ALONG THOSE
24 LINES, I'LL BE HAPPY TO RULE ON THAT.

25 MR. WARING: THANK YOU, YOUR HONOR.

1 Q COULD IT HAVE BEEN MAY 15TH OF 2003 THAT YOU
2 PUT THE SIGN ON THE PROPERTY?

3 A COULD HAVE BEEN.

4 MR. WARING: THAT'S ALL I HAVE, YOUR
5 HONOR.

6 MR. HANNA: IT ACCOMPLISHED THE SAME
7 THING. ANY OBJECTION TO MR. RAY'S BEING
8 EXCUSED?

9 MR. WRIGHT: YOUR HONOR, JUST ONE VERY
10 BRIEF ...

11 MR. HANNA: IF IT'S SOMETHING THAT HE
12 BROUGHT UP.

13 MR. WRIGHT: IT GOES TO WHEN THE SIGN
14 WENT UP.

15 RE-RE-DIRECT EXAMINATION BY MR. WRIGHT:

16 Q THE QUESTION IS THIS, BY THE TIME YOU PUT THE
17 SIGN UP, OR HAD THE SIGN PUT UP, HAD MR.
18 WILSON VACATED THE PROPERTY?

19 MR. HANNA: HE'S ALREADY TESTIFIED TO
20 THAT. YES. I THINK THAT WAS YOUR
21 ANSWER, WASN'T IT?

22 A MY ANSWER WOULD BE THAT I DON'T RECALL. I
23 DON'T KNOW EXACTLY WHAT VACATING MEANS.

24 MR. HANNA: HE DOESN'T RECALL. HE JUST
25 KNOWS A SIGN WENT UP, CORRECT? ANYTHING

1 ELSE?

2 MR. WARING: NOTHING FURTHER, YOUR HONOR.

3 MR. HANNA: ANY OBJECTION TO HIM BEING
4 EXCUSED?

5 MR. WRIGHT: NONE FROM THE PLAINTIFF.

6 MR. HANNA: HOW LONG IS YOUR NEXT WITNESS
7 GONNA TAKE? WHO'S THE NEXT WITNESS?

8 OFF THE RECORD

9

10 LEON P. BUTLER, JR., HAVING FIRST BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. WRIGHT:

13 Q THE TRACT CONTAINING FIVE ACRES IS THE SUBJECT
14 OF THIS LITIGATION. HOW DID YOU ACQUIRE THAT
15 PROPERTY?

16 A THAT PROPERTY WAS ACQUIRED THROUGH A DEED FROM
17 MY MOTHER, WHO, IN ESSENCE, GAVE IT TO ME FOR
18 LOVE AND AFFECTION.

19 Q HAD THAT PROPERTY BEEN IN YOUR FAMILY FOR A
20 LONG TIME?

21 A YES, SIR, LONG AS I CAN REMEMBER.

22 Q TO YOUR KNOWLEDGE, HAD IT BEEN RENTED TO ANY-
23 ONE PRIOR TO 1996?

24 A NO, SIR.

25 Q DID YOU MAKE ANY EFFORTS IN 1996 TO ATTEMPT TO

1 LEASE THE PROPERTY?

2 A YES, I DID. I TALKED WITH CHARLEY RAY AND
3 ASKED HIM TO HELP ME TO LEASE IT OR TO GET
4 SOME CASH FLOW OUT OF THE PROPERTY AS SUCH.

5 Q DID YOU HAVE ANY SPECIFIC REQUIREMENTS WITH
6 MR. RAY WITH RESPECT TO HIS EFFORTS ON YOUR
7 BEHALF? DID YOU TRY TO TELL HIM HOW YOU
8 WANTED HIM TO MARKET THE PROPERTY?

9 A NO, I DIDN'T. I ASSUMED THAT HE WAS ... IN MY
10 ESTIMATION AT LEAST, A REAL ESTATE PROFES-
11 SIONAL AND HE WOULD KNOW WHAT TO DO AND HOW TO
12 DO IT. I WAS NOT.

13 Q ALRIGHT, SIR. TELL US, DID ANYONE, TO YOUR
14 KNOWLEDGE, SUBMIT A PROPOSAL FOR LEASING THE
15 PROPERTY PRIOR TO THE DEFENDANT, BILLY WILSON?

16 A NO, SIR. HE WAS THE FIRST ONE I WAS MADE
17 AWARE OF.

18 Q ALRIGHT, NOW. AS BETWEEN YOU AND MR. RAY AND
19 HIS RELATIONSHIP AND MARKETING THE PROPERTY ON
20 YOUR BEHALF, DID MR. RAY HAVE AUTHORITY TO
21 MAKE FINAL BINDING AGREEMENTS WITH RESPECT TO
22 LEASING THE PROPERTY?

23 A NO, HE DID NOT. I RESERVED THAT RIGHT.

24 Q YOU WERE HERE WHEN WE WENT THROUGH A NUMBER OF
25 DOCUMENTS WITH MR. RAY. I'M NOT GONNA SPEND

1 QUITE AS MUCH TIME ON THEM WITH YOU. BUT I'D
2 LIKE TO ASK YOU TO TAKE A LOOK BRIEFLY AT
3 PLAINTIFF'S STIPULATED EXHIBIT NUMBER "3".

4 A YES. THIS WAS EARLY IN THE NEGOTIATIONS ON
5 THE LEASE. THIS WAS MR. BILLY WILSON'S
6 CORRESPONDENCE TO CHARLEY, WHICH WAS THEN
7 GIVEN TO ME.

8 Q DID YOU AT ANY TIME DURING THE NEGOTIATIONS
9 HAVE ANY COMMUNICATIONS WITH MR. WILSON THAT
10 WERE NOT WRITTEN COMMUNICATIONS?

11 A NO, SIR, I DID NOT.

12 Q I BELIEVE YOU INDICATED PLAINTIFF'S EXHIBIT
13 "3" WAS THE INITIAL COMMUNICATIONS CONCERNING
14 THE LEASE TERMS?

15 A I BELIEVE THERE WAS AN EARLIER PROPOSAL WHERE
16 HE HAD PROPOSED THIRTY-SIX THOUSAND PER YEAR
17 AND THEN AS WE WERE MORE INTO THE NEGOTIA-
18 TIONS, THIS WAS CHANGED WHERE I HAD INITIALED
19 IT, AND I WAS TELLING HIM I WAS ASKING FORTY-
20 TWO FIVE FOR THE FIRST TWO YEARS.

21 Q PLAINTIFF'S STIPULATED EXHIBIT NUMBER "9", AND
22 THAT'S A THREE PAGE EXHIBIT AND I'M GOING TO
23 ASK YOU TO FOCUS UPON THE THIRD PAGE OF THAT
24 EXHIBIT.

25 A YES, I REMEMBER THIS LETTER.

1 Q WHAT DOES THAT DOCUMENT PURPORT TO BE?

2 A THIS IS AN ADDENDUM TO THE ORIGINAL LETTER OF
3 INTENT. IT STIPULATES SOME CHANGES WHICH MR.
4 WILSON HAD ASKED FOR IN THE LEASE. THESE WERE
5 REQUIREMENTS THAT HE WANTED TO IMPOSE IN
6 HAVING THE LEASE.

7 Q NOW, SIR, DID YOU EXECUTE THAT DOCUMENT TO
8 SIGNIFY YOUR AGREEMENT TO THE REQUESTED
9 CHANGES THAT WERE MADE BY MR. WILSON?

10 A YES, I DID.

11 Q WHAT DATE WAS THAT DOCUMENT EXECUTED BY YOU?

12 A THE 12TH DAY OF MAY, 1998.

13 Q SPECIFICALLY WHAT CHANGES WERE BEING REQUESTED
14 BY MR. WILSON?

15 A WELL, THE FIRST ONE WAS THAT HE WANTED ... MR.
16 WILSON WANTED TO RECEIVE ALL THE RENTS FROM
17 THE BILLBOARDS THAT WERE ON THE PREMISES.
18 HERETOFORE I HAD BEEN GETTING THOSE RENTS.

19 Q IF I CAN STOP YOU THERE FOR JUST A MOMENT.
20 DID YOU HAVE AN AGREEMENT WITH A SIGN COMPANY
21 TO MAINTAIN BILLBOARDS ON THE PROPERTY?

22 A YES.

23 Q WAS THERE A WRITTEN LEASE AGREEMENT IN EFFECT
24 FOR THOSE SIGNS?

25 A YES, THERE WAS.

1 Q AND THAT AGREEMENT PRE-DATED THIS ADDENDUM
2 DATED MAY 12, 1998?

3 A YES, BY SEVERAL YEARS AS I REMEMBER.

4 Q DID YOU UNDERSTAND WHY MR. WILSON WAS
5 REQUESTING THE RENT FROM THE BILLBOARDS?

6 A WELL, I WAS ASKING FOR MORE RENT INITIALLY AND
7 I THINK HE HAD A CONCERN ABOUT SOMEONE PUTTING
8 UP A COMPETITOR'S SIGN ON THE BILLBOARD THAT
9 WAS ADJACENT TO WHERE HIS LOT WAS GOING TO BE.

10 Q WHAT OTHER CHANGES HAD BEEN REQUESTED AT THAT
11 TIME BY MR. WILSON?

12 A WELL, NUMBER TWO ON THIS LETTER, "THE LEASE
13 AGREEMENT SHALL AUTOMATICALLY RENEW FROM YEAR
14 TO YEAR UNLESS NOTICE IS GIVEN BY MR. WILSON
15 NINETY DAYS PRIOR TO THE EXPIRATION DATE."
16 THIS WAS AT HIS REQUEST.. NUMBER THREE, MOVING
17 ON WAS, "THE LEASE TERMS SHALL COMMENCE ON MAY
18 THE 15TH 1998, AND EXPIRE ON THE 14TH DAY OF
19 MAY, 1999. THAT ALL RENEWAL TERMS SHALL RUN
20 FROM MAY 15TH TO MAY 14TH OF THE FOLLOWING
21 YEAR." THIS WAS NECESSARY BECAUSE WE HAD
22 HOPED TO GET IT ACCOMPLISHED AND SIGNED OFF
23 EARLIER, BUT TIME CONSTRAINTS OR WHATEVER
24 DIDN'T ALLOW US. SO, WE HAD TO CHANGE THE
25 EFFECTIVE DATE OF THE LEASE. AND NUMBER FOUR,

1 "MR. WILSON SHALL HAVE THE RIGHT TO ASSIGN THE
2 LEASE AGREEMENT OR SUB-LEASE, BUT SHALL REMAIN
3 PERSONALLY LIABLE FOR THE LEASES PERFORMANCE."
4 THOSE WERE THE FOUR THINGS THAT HE ASKED ME TO
5 INCLUDE IN THE LEASE AGREEMENT, WHICH I AGREED
6 TO.

7 Q WITH RESPECT TO PLAINTIFF'S STIPULATED EXHIBIT
8 NUMBER "12", IS THAT THE FINAL LEASE AGREEMENT
9 THAT WAS EXECUTED ON MAY 15, 1998 BY YOU AS
10 LANDLORD?

11 A THIS WAS THE FINAL LEASE AGREEMENT.

12 Q FROM THE DATE OF THE INITIAL LETTER OF INTENT
13 THROUGH THE DATE OF EXECUTION OF THE LEASE
14 AGREEMENT OF MAY 15TH 1998, HAD YOU HAD ANY
15 VERBAL COMMUNICATION AT ALL WITH MR. BILLY
16 WILSON?

17 A NO, NONE AT ALL.

18 Q FOLLOWING THE DATE OF EXECUTION OF THE LEASE
19 AGREEMENT AND UP UNTIL THE DATE THAT YOUR
20 DEPOSITION WAS TAKEN LAST WEEK AT THE
21 MCCUTCHEN LAW FIRM IN CONWAY, HAD YOU HAD ANY
22 VERBAL COMMUNICATION AT ALL WITH MR. WILSON?

23 A NO, SIR, NONE AT ALL. I HAD NEVER MET THE
24 MAN.

25 Q DID YOU HAVE ANY DISCUSSIONS WITH ANYBODY

1 WORKING FOR MR. WILSON, TO YOUR KNOWLEDGE?

2 A NO, SIR.

3 Q ALRIGHT. WITH RESPECT TO THE PAYMENT OF THE
4 RENT UNDER THE LEASE AGREEMENT, DID YOU
5 RECEIVE CHECKS DIRECTLY FROM MR. WILSON OR DID
6 YOU RECEIVE CHECKS FROM MR. RAY?

7 A I WOULD GET A CHECK FROM MR. RAY, PRESUMABLY
8 AFTER HE HAD GOTTEN THE CHECK FROM MR. WILSON
9 AND TAKEN OUT HIS COMMISSION.

10 Q I'D LIKE TO DIRECT FOCUS TO THE CALENDAR YEAR
11 2001, AND SPECIFICALLY MAY OF 2001. DO YOU
12 RECALL IF THERE WERE ANY DISCUSSIONS AT THAT
13 POINT IN TIME ABOUT ACCOMMODATING A REQUEST BY
14 MR. WILSON TO PAY THE RENT IN TWO INSTALL-
15 MENTS RATHER THAN IN ONE INSTALLMENT AS SET
16 FORTH IN THE LEASE AGREEMENT?

17 A WELL, AS I RECALL, MR. RAY GOT IN TOUCH WITH
18 ME AND SAID THAT MR. WILSON HAD PROPOSED THAT
19 HE WOULD PAY HALF NOW AND THE OTHER HALF IN
20 SIX MONTHS IF HE WOULD AGREE TO THAT. AND I
21 MADE THE STIPULATION THAT FOR A, I GUESS, A
22 SERVICE CHARGE OR AN ACCOMMODATIONS CHARGE OR
23 WHATEVER OF \$1500.00. IF HE WOULD PAY THAT
24 INITIALLY THEN SIX MONTHS LATER I WOULD THEN
25 ACCEPT THE OTHER HALF, WHICH WAS THE OTHER

1 \$25,000.00 PRINCIPAL AMOUNT.

2 Q WAS THERE ANY DISCUSSION AT THAT TIME ABOUT
3 WHETHER THERE WOULD BE AN AMENDMENT TO THE
4 LEASE AGREEMENT SO THAT THE RENT WOULD BE PAID
5 IN TWO INSTALLMENTS IN THE FUTURE?

6 A NO. THE ... IT WAS MY UNDERSTANDING THAT THIS
7 WAS A ONE TIME ACCOMMODATION TO MR. WILSON AND
8 I SAW NO REASON TO ... HE HAD NOT ASKED ME TO
9 CHANGE THE LEASE. THERE WAS NO CORRESPONDENCE
10 FROM HIM IN WRITING ASKING ME TO CHANGE IT OR
11 TO AMEND THE ORIGINAL LEASE. SO, I ASSUMED
12 THAT THE ORIGINAL LEASE WOULD STILL BE IN
13 EFFECT. THAT HE WOULD STILL HAVE THE RIGHT TO
14 REMAIN ON THE PROPERTY AS LONG AS HE PAID THE
15 RENT.

16 Q WAS THE RENT FOR THE 2001/2002, AND I'M
17 TALKING NOW MAY 15, 2001 THROUGH MAY 14, 2002.
18 WAS THAT RENT PAID IN FULL?

19 A YES, THE RENT WAS PAID IN FULL.

20 Q PRIOR TO MAY 15, 2002, DID YOU HAVE ANY INFOR-
21 MATION THAT MR. WILSON WAS NOT GOING TO
22 CONTINUE TO LEASE THE PROPERTY FROM YOU?

23 A I HAD NO COMMUNICATIONS TO THAT EFFECT.

24 Q FOLLOWING THE AGREEMENTS IN MAY OF 2001, TO
25 SPLIT THE RENT PAYMENTS INTO TWO INSTALLMENTS

1 FOR THAT YEAR, DID YOU RECEIVE ANY DOCUMENTA-
2 TION AT ALL FROM MR. WILSON CONCERNING THE
3 LEASE AGREEMENT?

4 A I GOT A LETTER WITH A SIGNATURE FROM MR.
5 WILSON CONCERNING THE SPLIT PAYMENT THAT HE
6 HAD AGREED TO THAT, AND WHERE I HAD AGREED TO
7 IT, BUT THERE WAS NO OTHER COMMUNICATION
8 CONCERNING THE LEASE.

9 Q I'D LIKE YOU TO TAKE A LOOK AT PLAINTIFF'S
10 "31" PLEASE. CAN YOU IDENTIFY PLAINTIFF'S
11 EXHIBIT "31".

12 A YES. THIS APPEARS TO BE A COPY OF THE CHECK
13 THAT RAY REALTY SENT TO ME DATED NOVEMBER 26,
14 2001, AND IT'S ALSO A COPY OF APPARENTLY THE
15 CASHIERS CHECK PAYABLE TO RAY REALTY. I CAN'T
16 MAKE OUT WHO SIGNED IT.

17 Q ALRIGHT. I'M GOING TO ASK YOU TO TAKE A LOOK
18 PLEASE AT DEFENDANT'S EXHIBITS "5" AND "6".
19 WITH RESPECT TO DEFENDANT'S EXHIBIT NUMBER
20 "5", YOU TESTIFIED PREVIOUSLY ABOUT SEEING A
21 WRITTEN AGREEMENT CONCERNING THE SPLITTING OF
22 THE LEASE PAYMENT. WHAT I WANT TO ASK YOU, IS
23 THAT THE DOCUMENT YOU SAW OR WAS THERE SOME
24 OTHER DOCUMENT THAT YOU RECALL?

25 A I BELIEVE THERE WAS ANOTHER DOCUMENT, BUT THIS

1 WAS THE LETTER FROM CHARLEY SAYING THAT, "WE
2 ARE IN RECEIPT OF YOUR PAYMENT." THIS WAS IN
3 MAY AND THEN IT SAID THAT THE RENT THAT I HAD
4 AGREED TO DO ... MAYBE THE OTHER PART WAS
5 WHERE WE JUST AGREED FROM CHARLEY AND THIS WAS
6 THE ACTUAL LETTER THAT WAS SENT TO SANTEE
7 MOBILE HOMES STATING THE BALANCES OR THE PART
8 THAT WAS DUE NOW, AND THE BALANCE THAT WOULD
9 BE DUE.

10 Q DID YOU RECEIVE A RENT CHECK FROM MR. WILSON
11 ON OR ABOUT MAY 15TH 2002?

12 A 2002?

13 Q UH-HUH. (AFFIRMATIVE RESPONSE.)

14 A NO, I DID NOT.

15 Q WHEN YOU DID NOT RECEIVE A RENT CHECK FROM MR.
16 WILSON AT THAT TIME, DID YOU TAKE ANY ACTION?

17 A I ... A FEW DAYS LATER I CALLED ... I KNOW I
18 CALLED CHARLEY RAY AND ASK HIM, "WHAT WAS UP?
19 WHY HADN'T THE RENT BEEN PAID?" IN ESSENCE,
20 "HAVE YOU RECEIVED A CHECK AND JUST NOT SENT
21 ME MINE YET?" AND HE TOLD ME HE HAD NOT
22 RECEIVED THE CHECK.

23 Q IN RESPONSE TO HIS COMMENT TO YOU THAT HE HAD
24 NOT RECEIVED A CHECK, DID YOU ASK HIM TO TAKE
25 ANY ACTION ON YOUR BEHALF?

1 A I ASKED HIM TO WRITE TO MR. WILSON OR TO GET
2 IN CONTACT WITH MR. WILSON AND TO, IN ESSENCE,
3 TO FIND OUT WHY THE RENT WAS LATE. BECAUSE IT
4 WAS MY DETERMINATION FROM THE ORIGINAL LEASE
5 THAT IT WOULD AUTOMATICALLY RENEW. SO, I HAD
6 FULL CONFIDENCE THAT HE WAS GOING TO CONTINUE
7 TO BE ON THE PROPERTY AND THAT FOR SOME
8 REASON, NOT KNOWN TO ME, IT WAS OBVIOUSLY
9 LATE.

10 Q I'D ASK YOU TO TAKE A LOOK PLEASE AT PLAIN-
11 TIFF'S STIPULATED EXHIBIT NUMBER "22". ARE
12 YOU ABLE TO IDENTIFY THAT DOCUMENT?

13 A THIS WAS A LETTER WHICH CHARLEY RAY, ON BEHALF
14 OF RAY REALTY, SENT TO MR. BILLY WILSON DATED
15 JUNE THE 3RD, STATING THAT THE RENT WAS DUE ON
16 MAY THE 15TH AND HE'D NOT RECEIVED A PAYMENT.
17 THAT HE HAD LEFT HIM A NUMBER OF MESSAGES, HAD
18 NOT HEARD FROM HIM. ASKED HIM TO ADVISE US OF
19 HIS INTENTIONS AND THAT I, OBVIOUSLY, WOULD
20 LIKE FOR HIM TO CONTINUE BUT I INSTRUCTED HIM
21 ... OR THE LETTER SAYS THAT EITHER PAY THE
22 RENT OR ASK HIM TO VACATE. AND AS I RECALL,
23 WE NEVER GOT A RESPONSE TO THIS LETTER.

24 Q AT OR ABOUT THE TIME THAT LETTER WAS SENT, DID
25 YOU MAKE ANY EFFORT TO GO BY THE PROPERTY, 116

1 HIGHWAY 17 IN LITTLE RIVER TO DETERMINE IF THE
2 TENANT WAS STILL IN POSSESSION OF THE
3 PROPERTY?

4 A YES, I DID. AFTER NOT RECEIVING A REPLY, WE
5 BECAME VERY CONCERNED AND I MADE A SPECIAL
6 TRIP UP AND RODE BY AND IT APPEARED THAT THERE
7 WERE STILL MOBILE HOMES ON THE LOT AND THERE
8 WAS STILL A SIGN OUT FRONT AND IT LOOKED TO BE
9 BUSINESS AS USUAL. SO, I HAD NO REASON TO
10 BELIEVE THAT ANYTHING WAS AWRY. IT WAS MY
11 UNDERSTANDING THAT I STILL WAS, BY THE AGREE-
12 MENT, RESPONSIBLE TO MR. WILSON TO LEASE IT TO
13 HIM. ALTHOUGH THE RENT HAD NOT BEEN PAID AT
14 THIS TIME.

15 Q I'M GONNA ASK YOU TO GO BACK AND LOOK AT
16 PLAINTIFF'S EXHIBIT NUMBER "12", WHICH IS THE
17 GROUND LEASE AGREEMENT, AND I'M GONNA ASK YOU
18 TO FOCUS SPECIFICALLY UPON PARAGRAPH 31 ON
19 PAGE 16. WHAT WAS YOUR UNDERSTANDING WITH
20 RESPECT TO MR. WILSON'S RIGHT TO RECEIVE THE
21 LEASE PAYMENTS FOR THE BILLBOARD LEASES ON THE
22 PROPERTY?

23 A WELL, THIS PARTICULAR PART OF THE LEASE WAS IN
24 RESPONSE TO HIS ORIGINAL REQUEST TO RECEIVE
25 THE MONEY FROM THE SIGNS, AND THE CIRCUM-

1 STANCES WERE THAT IT SAYS AS LONG AS HE WAS IN
2 LAWFUL POSSESSION OF THE LEASED PREMISES, PUR-
3 SUANT TO THE TERMS OF THIS LEASE AGREEMENT,
4 AND AS LONG AS HE WAS NOT IN DEFAULT WITH HIS
5 OBLIGATIONS THAT HE WOULD BE ENTITLED TO
6 COLLECT AND RECEIVE ALL THE RENT THAT IS PAID.
7 AND THIS WAS PURSUANT TO THE AGREEMENT THAT
8 WAS ORIGINALLY IN MY MOTHER'S NAME BECAUSE SHE
9 HAD OWNED THE PROPERTY AT THAT TIME.

10 Q ALRIGHT, NOW. DO YOU RECALL HOW THE BILLBOARD
11 LEASE PAYMENTS WERE NORMALLY MADE? WERE THEY
12 MADE MONTHLY, SEMI-ANNUALLY, ANNUALLY?

13 A THEY WERE PAID TWICE A YEAR AFTER ... I MEAN,
14 THEY WEREN'T PAID IN ADVANCE. IN JANUARY, I
15 BELIEVE, THEY PAID FOR THE PRIOR SIX MONTHS
16 AND THEN THE FOLLOWING JULY, IF I REMEMBER
17 CORRECTLY, THEY WOULD PAY FOR THE FIRST HALF
18 OF THE YEAR.

19 Q NOW, DID MR. WILSON AT ANY TIME IN 2002 SEND
20 YOU ANY RENT CHECKS THAT HAD BEEN SENT TO HIM
21 FOR THE BILLBOARD LEASE PAYMENTS?

22 A NO, SIR. I RECEIVED NO RENT PAYMENTS ON THE
23 SIGNS OR SIGNED LEASE THING.

24 Q DID YOU FORM ANY IMPRESSION ABOUT MR. WILSON'S
25 INTENTIONS BASED ON YOUR FAILURE TO RECEIVE

1 THE BILLBOARD RENT PAYMENTS?

2 A WELL, I FELT LIKE IF HE HAD VACATED THE
3 PROPERTY, HE WOULD HAVE TURNED THOSE PAYMENTS
4 BACK OVER TO ME AS CALLED FOR IN THE LEASE.
5 BUT, APPARENTLY, HE TOOK THE MONEY OR CASHED
6 THE CHECKS. SO, I COULD ONLY ASSUME THAT HE
7 WAS STILL IN POSSESSION AND THE SIGN WAS STILL
8 ON THE PROPERTY AND THERE WERE STILL MOBILE
9 HOMES ON THE PROPERTY AFTER THE ANNIVERSARY
10 DATE OF THE LEASE. SO, I ASSUMED IT WAS
11 BUSINESS AS USUAL, AND FOR WHATEVER THE
12 REASON, THE CHECK WAS JUST LATE. I FELT AS IF
13 HE PAID THE RENT THAT WOULD ENTITLE HIM TO BE
14 THERE THROUGH MAY 14TH OF '03.

15 Q I'LL DIRECT YOUR ATTENTION TO THE LEASE AGREE-
16 MENT, SPECIFICALLY PARAGRAPH NUMBER TEN
17 PERTAINING TO TAXES. PARAGRAPH TEN OF THE
18 LEASE STATES ... I'M NOT GONNA ASK YOU TO READ
19 IT. I'M NOT GOING TO ASK YOU TO PUBLISH IT.
20 I WANTED YOU TO REFRESH YOUR MEMORY. WHAT WAS
21 YOUR UNDERSTANDING AS TO THE OBLIGATION OF THE
22 PARTIES TO THE LEASE AGREEMENT WITH RESPECT TO
23 PAYMENT OF THE REAL PROPERTY TAXES ON THE
24 LEASED PREMISES?

25 A AS I UNDERSTOOD, AND AS THE LEASE SAID, IT WAS

1 MR. WILSON'S RESPONSIBILITY TO PAY THE
2 PROPERTY TAXES FOR THE YEARS THAT HE WAS ON
3 THE PROPERTY AND RENTED THE PROPERTY.

4 Q YOU HAVE ALREADY TESTIFIED THAT YOU WERE ON
5 THE SITE AND EVERYTHING APPEARED TO BE
6 BUSINESS AS USUAL. DID YOU ACTUALLY TO UP AND
7 TALK TO ANYONE ON THE PREMISES?

8 A NO, I DID NOT.

9 Q DID THERE COME A TIME WHEN YOU FORMED AN
10 IMPRESSION THAT THE SITUATION WAS NO LONGER
11 BUSINESS AS USUAL?

12 A IT WAS ... I DON'T RECALL EXACTLY BUT IT WAS
13 LATER IN THE SUMMER OR EARLY IN THE FALL THAT
14 I WENT BY AND THERE WAS PART OF AN OLD
15 DILAPIDATED MOBILE HOME STILL THERE AND MAYBE
16 A TRUCK OR VEHICLE OF SOME SORT, AND, OF
17 COURSE, THERE WAS STILL A SIGN ON THE
18 PROPERTY. MR. WILSON'S SIGN, BUT IT LOOKED
19 FOR THE MOST PART THAT IT HAD BEEN VACATED.
20 THAT WAS MY IMPRESSION.

21 Q AT THAT POINT IN TIME, WHAT DID YOU DO?

22 A I GOT IN TOUCH WITH YOU AND TOLD YOU WHAT IT
23 APPEARED AND THAT I WOULD LIKE FOR YOU TO
24 WRITE A LETTER AS SUCH TO MR. WILSON AND SORT
25 OF FIND OUT WHAT THE SITUATION WAS. HE HAD

1 NOT TAKEN ... APPARENTLY, HE HAD NOT TAKEN THE
2 TIME TO RESPOND TO MR. RAY'S LETTER EARLIER
3 ON. I THOUGHT, WELL, MAYBE IF HE GETS A
4 LETTER FROM MY ATTORNEY, WE'LL GET A RESPONSE.

5 Q I WANT YOU TO LOOK AT A DOCUMENT THAT HAS BEEN
6 ENTERED AS PLAINTIFF'S STIPULATED EXHIBIT
7 NUMBER "24" AND ASK IF YOU'VE SEEN THAT
8 BEFORE?

9 A YES. THIS WAS THE LETTER WHICH YOU SENT TO
10 MR. BILLY WILSON BY CERTIFIED MAIL STATING
11 THAT YOU WERE REPRESENTING ME AND THAT HE HAD
12 FAILED TO PAY THE RENT AND THAT HE WAS IN
13 DEFAULT.

14 Q WHAT EFFORT, IF ANY, MR. BUTLER, DID YOU
15 UNDERTAKE AFTER I SENT NOTICE OF DEFAULT TO
16 MR. WILSON IN OCTOBER OF 2002?

17 A AS I RECALL, I WENT UP AND TOOK SOME PHOTO-
18 GRAPHS OF THE PROPERTY. I BELIEVE THOSE WERE
19 IN NOVEMBER OF '02.

20 Q ALRIGHT, SIR. I'M GOING TO ASK YOU TO LOOK AT
21 THESE DOCUMENTS THAT HAVE BEEN ENTERED AS
22 PLAINTIFF'S STIPULATED EXHIBIT NUMBER "26",
23 "27", "28" AND "29".

24 A YES. THESE ARE THE PHOTOGRAPHS THAT I TOOK AT
25 THAT TIME.

1 Q ALRIGHT, SIR. AND BASED ON YOUR EXAMINATION
2 OF THE PHOTOGRAPHS, ARE YOU ABLE TO DETERMINE
3 APPROXIMATELY WHEN THOSE PHOTOGRAPHS WERE
4 TAKEN?

5 A I BELIEVE THE DATE STAMP ON HERE WAS NOVEMBER
6 THE 19TH, MAYBE THE 18TH. I CAN'T QUITE READ
7 WHAT IS STAMPED ON THERE. OF '02.

8 Q AND YOU TOOK THOSE PHOTOGRAPHS?

9 A YES.

10 Q AND BASED UPON YOUR OBSERVATIONS OF WHEN THE
11 PHOTOGRAPHS WERE TAKEN, DO THOSE PHOTOGRAPHS
12 ACCURATELY REPRESENT THE CONDITION OF THE
13 PREMISES AT THE TIME THE PHOTOGRAPHS WERE
14 TAKEN?

15 A YES.

16 Q AT THAT TIME, DID MR. WILSON STILL HAVE A SIGN
17 ADVERTISING HIS BUSINESS ON THE PREMISES?

18 A YES. IN FACT, HE HAD TWO SIGNS IN EXHIBIT
19 NUMBER "27".

20 Q AT THAT TIME, DID MR. WILSON STILL HAVE A
21 MAILBOX ON THE PREMISES FOR DELIVERY OF MAIL?

22 A THERE IS A MAILBOX IN THE PHOTOGRAPH, YES, ON
23 THE PROPERTY.

24 Q AT THAT TIME WAS THERE ANY TRASH LEFT ON THE
25 PREMISES BY MR. WILSON OR SOMEONE HOLDING

1 POSSESSION UNDER MR.. WILSON?

2 A YES. THERE APPEARS TO BE AN OLDER TRUCK.
3 THERE APPEARS TO BE A SOMEWHAT ABANDONED
4 LOOKING MOBILE HOME. THERE IS A SIGN WITH AN
5 ARROW ON THE TOP THAT'S KIND OF DILAPIDATED
6 LOOKING, AND THEN THERE WERE THE TWO LARGE
7 BILLBOARD SIGNS THAT WERE ON THE PROPERTY. IT
8 APPEARS TO BE RATHER WEED-GROWN.

9 Q MR. BUTLER, AT ANY TIME AFTER MAY 15, 2002,
10 DID MR. WILSON CALL YOU TO TELL YOU THAT HE
11 WAS VACATING THE PREMISES?

12 A NO, HE DID NOT.

13 Q AT ANY TIME AFTER MAY 15, 2002, DID MR. WILSON
14 SEND YOU ANY CORRESPONDENCE INDICATING THAT HE
15 WAS VACATING THE PREMISES?

16 A NO, HE DID NOT.

17 Q MR. BUTLER, DID YOU, AT ANY TIME, SUBSEQUENT
18 TO THESE PHOTOGRAPHS YOU TOOK ON OR ABOUT
19 NOVEMBER 19, 2002, AT ANY TIME, DID YOU ASK
20 MR. RAY TO MAKE ANY EFFORTS TO MARKET THE
21 PREMISES TO OTHER POTENTIAL LESSEES?

22 A AT ANY TIME AFTER THESE SIGNS?

23 Q YES.

24 A YES, I DID.

25 Q TELL US ABOUT THAT PLEASE.

1 A WELL, I FELT OBLIGATED BY THE LEASE THAT
2 HAVING NOT BEEN NOTIFIED THAT HE WAS STILL IN
3 POSSESSION OF THE PROPERTY UNTIL MAY THE 14TH
4 OF '03, EVEN THOUGH THE RENT HAD NOT BEEN PAID
5 OR THE LEASE PAYMENT HAD NOT BEEN PAID. I
6 FELT LIKE AT ANY TIME I COULD GET A CHECK AND
7 THAT HE WOULD HAVE THE RIGHT TO GO BACK ON
8 THERE. AND SO IT WAS AFTER THAT DATE EXPIRED
9 OR PASSED, IF MY RECOLLECTION IS RIGHT, BUT I
10 ASK CHARLEY TO TRY TO GET ME ANOTHER TENANT.
11 Q I'D LIKE TO GO OVER WITH YOU THE DAMAGES THAT
12 YOU ARE ALLEGING AGAINST THE DEFENDANT, MR.
13 WILSON.
14 A OKAY.
15 Q WOULD YOU DO THAT FOR US PLEASE?
16 A I CAN. CAN I REFER TO MY NOTES?
17 Q YES, SIR.
18 A I DON'T HAVE ALL THE FIGURES IN MY HEAD.
19 Q WHAT ARE YOU REQUESTING FROM MR. WILSON?
20 A WELL, INITIALLY THE \$50,000.00 WHICH WAS DUE
21 AND PAYABLE ON MAY 15, 2002. THAT PAYMENT WAS
22 NEVER MADE. AND AN AMOUNT OF INTEREST THAT
23 WAS COMPUTED, AS IT SAYS ON MY NOTES, IF THE
24 LEGAL INTEREST RATE OF 8.75 PERCENT FROM MAY
25 THE 15TH UNTIL THE TRIAL DATE OF OCTOBER 26,

1 2007. THAT AMOUNT BEING \$23,840.75. THE NEXT
2 ITEM WERE THE 2002 TAXES 'CAUSE HE WAS ON THE
3 PROPERTY AND I HAD NOT BEEN NOTIFIED OF HIM
4 LEAVING. THAT AMOUNT WAS \$4,982.87, WHICH I
5 ULTIMATELY PAID WHEN HE DID NOT. THE INTEREST
6 ON THAT UNPAID TAX AMOUNT CAME TO \$1,999.36.
7 AGAIN, COMPUTED AT THE LEGAL INTEREST RATE OF
8 8.75 PERCENT FROM MAY 12TH '03 UNTIL THE TRIAL
9 DATE OF OCTOBER 26, 2007. THE NEXT ITEM,
10 NUMBER FIVE, IS THE DEFENDANT'S SHARE OF THE
11 2004 TAXES. THIS WOULD BE FROM JANUARY 1, '03
12 TO MAY 14TH, '03. THIS AMOUNT WAS CALCULATED
13 AT \$1,800.75. ITEM SIX IS THE INTEREST
14 ACCRUED ON THAT UNPAID BALANCE. THAT AMOUNT
15 BEING \$597.47 COMPUTED AGAIN, AT THE INTEREST
16 RATE OF 8.75 PERCENT FROM JANUARY THE 9TH 2004
17 UNTIL THE TRIAL DATE OF OCTOBER 26, 2007. THE
18 NEXT ITEM IS FOR CLEANING. THIS IS THE
19 APPROXIMATE COST OF THE REMOVAL OF THE TRASH
20 LEFT BY THE DEFENDANT WHEN HE ABANDONED THE
21 PREMISES. AND THIS WAS IN THE AMOUNT OF
22 \$2500.00. THIS CORRELATES WITH WHAT I HAD TO
23 FORGIVE, IN ESSENCE, TO THE NEXT TENANT WHO
24 CAME TO LEASE IT. THAT WAS THE AGREEMENT.
25 Q SO THAT WAS AGREED UPON WITH NEXT TENANT?

1 A NEXT TENANT.

2 Q THEY WERE GIVEN CREDIT AGAINST THEIR LEASE

3 PAYMENTS?

4 A GIVEN CREDIT AGAINST THEIR LEASE PAYMENT.

5 Q FOR THE COST OF CLEANING?

6 A YEAH. AND THEY DID THE CLEANING UP. I DID

7 NOT DO IT.

8 Q DID THAT INCLUDE THE REMOVAL OF THE SIGNS OF

9 THE DEFENDANT, BILLY WILSON? THE HORTON HOME

10 SIGN SHOWN IN THIS PHOTOGRAPH?

11 A WELL, TO BE QUITE HONEST WITH YOU, I'M NOT

12 SURE WHO TOOK THAT SIGN DOWN. I WAS NOT

13 THERE.

14 Q OKAY. ALRIGHT, SIR. ANY OTHER ITEMS THAT

15 YOU'RE CLAIMING?

16 A I'M CLAIMING A \$150.00, THE AMOUNT OF THE

17 HORRY COUNTY CLERK FILING FEE. \$15.00 FOR THE

18 ORANGEBURG COUNTY SHERIFF SERVICE FEE. \$50.00

19 FOR THE GRAHAM DETECTIVE AGENCY, SERVICE OF

20 SUBPOENA. \$25.00 FOR THE NEXT MEDIA SUBPOENA

21 FEE. PLUS THE GROUND LEASE AGREEMENT

22 OBLIGATES THE DEFENDANT TO PAY A REASONABLE

23 ATTORNEY FEES FOR MY COUNSEL. ALSO COURT

24 REPORTER FEES AND ANY FEES ASSESSED BY THE

25 SPECIAL REFEREE. THOSE HAVE NOT BEEN

1 DETERMINED YET.

2 MR. WRIGHT: YOUR HONOR, WITH RESPECT TO
3 THE ISSUE OF ATTORNEY'S FEES, I WOULD
4 REQUEST THAT THE RECORD BE HELD OPEN SO
5 WE CAN FILE AN AFFIDAVIT BECAUSE
6 OBVIOUSLY THE ATTORNEY'S FEES ARE CON-
7 TINUING TO GO ON.

8 MR. HANNA: ANY OBJECTION?

9 MR. WARING: JUST THE OPPORTUNITY TO BE
10 ABLE TO CROSS EXAMINE HIM. THE AMOUNT OF
11 SUCH FEES AND THE REASONS FOR SUCH FEES.

12 MR. HANNA: WHY DON'T WE HANDLE IT THIS
13 WAY. WHY DON'T YOU PREPARE AT THE CLOSE
14 OF THE CASE TO DETERMINE THOSE AND
15 INCLUDE THIS PAPER THAT YOU SUBMIT WITH
16 AN AFFIDAVIT AS TO YOUR ATTORNEY'S FEES
17 AND WE'LL GET THAT TO MR. MARING AND
18 AFTER REVIEWING THE AFFIDAVIT AND SUBJECT
19 TO THIS AGREEMENT OR DISAGREEMENT AS TO
20 THE AMOUNT OF DAMAGES. IF YOU WANT TO
21 BRING ANY MORE WITNESSES.

22 MR. WRIGHT: THAT IS ALL THE QUESTIONS I
23 HAVE OF MR. BUTLER.

24 MR. HANNA: CROSS?

25 MR. WARING: THANK YOU, YOUR HONOR.

1 CROSS EXAMINATION BY MR. WARING:

2 Q MR. BUTLER, DID MR. WILSON HAVE THE RIGHT TO
3 RELY ON CHARLEY RAY AS HIS REPRESENTATIVE TOO
4 REGARDING THE TERMS OF THIS LEASE?

5 A MR. RAY WAS THE MIDDLE MAN. I WAS THE ONE WHO
6 HAD TO MAKE ALL THE FINAL DECISIONS, BUT, YES,
7 HE COULD RELY ON WHAT MR. RAY WAS TELLING HIM
8 BECAUSE I, IN TURN, WAS TELLING THIS TO MR.
9 RAY.

10 Q MR. BUTLER, THIS IS MORE FOR CLARIFICATION. I
11 THINK YOU TESTIFIED THAT THERE WAS AN AGREE-
12 MENT OR LETTER SIGNED BY MR. WILSON REGARDING
13 THE SPLIT OF THE PAYMENTS. DID YOU TESTIFY
14 EARLIER THAT THERE WAS A LETTER SIGNED BY MR.
15 WILSON?

16 A THE LETTER I THINK I WAS REFERRING TO WAS THE
17 ONE THAT WAS EVENTUALLY SENT THAT I SIGNED
18 SAYING THAT I WOULD AGREE TO THIS.

19 Q WAS THAT THE LETTER SENT BY CHARLEY RAY TO MR.
20 WILSON THAT SAID IT WAS ACCEPTABLE? IS THAT
21 THE LETTER YOU'RE REFERRING TO?

22 A YES, THAT'S WHAT I RECALL. YES, SIR.

23 Q YOU WOULD AGREE WITH ME, MR. BUTLER, THAT YOU
24 AND MR. WILSON ORALLY MODIFIED THE TERMS OF
25 THE LEASE FROM MAY 15 OF 2001 TO MAY 14 OF

1 2002, ISN'T THAT CORRECT?

2 A YOU'RE ASKING ME IF WE ORALLY MODIFIED THE
3 LEASE?

4 Q THE TERMS OF THE LEASE AGREEMENT DURING THE
5 YEAR OF ... DURING THE TIME FROM MAY 15, '01
6 TO MAY 14 OF '02?

7 A WELL, I DIDN'T THINK OF IT IN TERMS OF A MOD-
8 IFICATION OF THE ORIGINAL LEASE. THAT WAS
9 STILL IN EFFECT. THIS WAS AN ACCOMMODATION
10 BECAUSE OF WHATEVER MR. WILSON WAS REASONED,
11 BUT IT WAS TOLD TO ME THAT HE COULD PAY HALF
12 NOW AND HALF SIX MONTHS LATER. BUT, THERE WAS
13 NO REASON TO GO IN AND MODIFY THE LEASE. I
14 WAS NOT REQUESTED TO DO THAT.

15 Q IT CHANGED THE PAYMENT TERMS OF YOUR GROUND
16 LEASE AGREEMENT, ISN'T THAT CORRECT?

17 A IT DID FOR THAT ONE YEAR, YES, SIR.

18 Q AND YOUR LEASE AGREEMENT DOES PROVIDE THAT IF
19 THERE'S ANY MODIFICATION OF THE TERMS OF THAT
20 LEASE, THAT IT HAS TO BE IN WRITING AND SIGNED
21 BY BOTH PARTIES, ISN'T THAT CORRECT?

22 A YES.

23 Q SO, MY QUESTION TO YOU IS, IS THAT YOU AND MY
24 CLIENT, MR. WILSON, DEVIATED FROM THAT PROVI-
25 SION OF THE CONTRACT IN MAY 15, '01 THROUGH

1 MAY 14 OF 2002, ISN'T THAT CORRECT?

2 A THAT WE DEVIATED ...

3 Q THAT YOU MODIFIED THE TERMS OF THE CONTRACT?

4 A THERE WAS A LETTER THAT WE BOTH AGREED TO DO
5 THIS FOR THIS ONE YEAR, YES.

6 Q SO, THE ANSWER TO THAT QUESTION IS YES?

7 A YES. WE AGREED TO SPLIT PAYMENTS FOR THE YEAR
8 2001.

9 Q DID YOU EVER HAVE ANY CONVERSATION WITH MR.
10 RAY AT THE POINT IN TIME WHERE HE CAME TO YOU
11 WITH THE REQUEST FROM MR. WILSON THAT THE PAY-
12 MENTS OF THE 2001 RENTS BE SPLIT?

13 A I THINK THE CONVERSATION WAS, FROM MY POINT OF
14 VIEW WAS, WELL, IF WE SPLIT IT UP, I'M NOT
15 GETTING WHAT I'M ENTITLED TO WHEN I'M ENTITLED
16 TO GET IT. THEREFORE, I WOULD LIKE AN EXTRA
17 SERVICE CHARGE PUT ON THERE SO THAT I, IN
18 ESSENCE, WAS FINANCING HIM FOR SIX MONTHS FOR
19 HALF OF THE LEASE PAYMENT.

20 Q ALRIGHT, SIR.

21 A IS THAT WHAT YOU'RE ASKING ME?

22 Q THAT'S YOUR ANSWER, MR. BUTLER. WHEN YOU
23 ORIGINALLY WENT TO MR. RAY TO LEASE THE
24 PROPERTY, DID YOU ENTER INTO AN AGREEMENT?

25 A WHEN I ORIGINALLY WENT TO MR. RAY?

- 1 Q THAT'S CORRECT.
- 2 A YES, WE DID.
- 3 Q THAT WAS IN WHAT YEAR? WAS THAT 1996?
- 4 A I BELIEVE THAT'S CORRECT, YES, SIR.
- 5 Q IT IS TRUE THAT IN 1996 THE PROPERTY ACTUALLY
- 6 BELONGED TO YOUR MOTHER AT THAT POINT IN TIME.
- 7 A THAT'S CORRECT, YES, SIR.
- 8 Q IT WAS ACTUALLY CONVEYED TO YOU IN APRIL OF
- 9 1998, IS THAT CORRECT?
- 10 A I BELIEVE THAT'S WHAT THE RECORD WILL SHOW.
- 11 Q THAT'S WHAT THE RECORD WILL SHOW?
- 12 A YEAH.
- 13 Q SO, THAT WOULD BE A MONTH PRIOR TO YOU
- 14 ENTERING INTO THIS AGREEMENT IS WHEN YOU
- 15 ACTUALLY WERE GIVEN TITLE TO THE PROPERTY?
- 16 A THAT'S CORRECT.
- 17 Q AND IT'S TRUE THAT YOU HIRED MR. RAY TO ACT AS
- 18 YOUR EXCLUSIVE AGENT IN TRYING TO OBTAIN A
- 19 RENTER, CORRECT?
- 20 A YES.
- 21 Q AND THAT YOU ULTIMATELY OBTAINED A LEASE
- 22 AGREEMENT THAT WE ALL AGREE ON HERE FOR MR.
- 23 WILSON IN 1998, IS THAT CORRECT?
- 24 A YES.
- 25 Q AND EVERYTHING WENT ... I'M GONNA USE THE

1 WORK, "LIKE CLOCKWORK" UNTIL 2001, IS THAT
2 CORRECT?

3 A YES. HE PAID THE FEES AND ...

4 Q NO DEVIATIONS FROM THE CONTRACT?

5 A NOPE.

6 Q SO IN MAY OF 2001, MR. RAY CAME TO YOU STATING
7 THAT THERE WAS GOING TO BE A SPLIT IN THE
8 RENTS. DO YOU RECALL WHETHER OR NOT YOU
9 RECEIVED THE SECOND INSTALLMENT ON TIME THAT
10 YEAR?

11 A I BELIEVE THAT I DID OR VERY CLOSE TO IT.
12 'CAUSE SOMETIMES I THINK THE CHECK WOULD GO TO
13 CHARLEY AND THEN IT MIGHT BE A FEW DAYS BEFORE
14 HE COULD GET THE CHECK CUT AND SENT TO ME. I
15 DON'T REMEMBER THE EXACT DATE I GOT THE CHECK.

16 Q ALRIGHT, SIR. IT WAS YOUR TESTIMONY THAT IN
17 MAY OF 2002, YOU DID NOT RECEIVE A RENT
18 PAYMENT, CORRECT?

19 A THAT'S CORRECT.

20 Q THAT YOU INQUIRED TO MR. RAY, CORRECT? YOU
21 INQUIRED AS TO WHY FROM MR. RAY?

22 A I TOLD HIM THAT I HAD NOT RECEIVED THE RENT
23 PAYMENT AND ASKED HIM IF HE HAD RECEIVED IT.

24 Q AND YOU DIRECTED MR. RAY TO WRITE A LETTER, IS
25 THAT CORRECT?

1 A YES.

2 Q DO YOU RECALL WHAT YOU TOLD MR. RAY TO PUT IN
3 THAT LETTER?

4 A WELL, I'M REMINDED BY HAVING READ IT AGAIN
5 RECENTLY, BUT I WANTED MY MONEY BECAUSE I HAD
6 NOT HEARD FROM MR. WILSON AND I ASSUMED THAT
7 HE WAS STILL RENTING THE PROPERTY AND I
8 WONDERED WHERE MY MONEY WAS. AND THAT WAS THE
9 LETTER I WANTED CHARLEY TO SEND WAS TO SAY,
10 YOU KNOW, A GENTLE REMINDER. I NEED TO BE
11 PAID.

12 Q DID YOU EVER TELL CHARLEY RAY TO TELL MR.
13 WILSON TO EITHER PAY OR VACATE?

14 A I DON'T REMEMBER USING THOSE SPECIFIC WORDS,
15 NO. I THINK THAT WAS POSSIBLY SOMETHING THAT
16 CHARLEY PUT IN THERE, BUT THE INTENT OBVIOUSLY
17 WAS YOU EITHER PAY FOR WHAT YOU'RE GETTING OR
18 YOU'LL HAVE TO LEAVE.

19 Q ALRIGHT, SIR. AND YOU TESTIFIED THAT YOU
20 NEVER GOT ANY RESPONSE AT ALL? LET ME MAKE
21 SURE. I WROTE THE TESTIMONY DOWN HERE OR I'LL
22 HAVE THE COURT REPORTER READ IT BACK IF I
23 CAN'T GET IT CORRECT. THAT MR. WILSON
24 PROVIDED YOU NO CORRESPONDENCE STATING THAT HE
25 WAS LEAVING AFTER MAY 15TH OF 2002?

- 1 A NO CORRESPONDENCE.
- 2 Q DID ANYBODY REPRESENTING MR. WILSON EVER GIVE
- 3 YOU CORRESPONDENCE STATING THAT HE WAS
- 4 LEAVING?
- 5 A NO, SIR, NOT THAT I READ.
- 6 Q ALRIGHT, SIR. I'M GONNA CALL YOUR ATTENTION
- 7 TO PLAINTIFF'S EXHIBIT NUMBER "23". SIR, MAY
- 8 I ASK YOU TO TAKE A LOOK AT THAT LETTER.
- 9 A UH-HUH. (AFFIRMATIVE RESPONSE.) THIS IS A
- 10 LETTER TO MY ATTORNEY, NEIL WRIGHT, REGARDING
- 11 THE GROUND LEASE AGREEMENT FROM N. DAVID
- 12 DURANT.
- 13 Q ALRIGHT, SIR. COULD YOU READ THE CONTENTS OF
- 14 PARAGRAPH NUMBER FIVE.
- 15 A "ON THE LATTER PART OF JANUARY OR FIRST PART
- 16 OF FEBRUARY, MY CLIENT ADVISED MR. RAY THAT HE
- 17 WAS NOT GOING TO EXTEND THE GROUND LEASE FOR
- 18 AN ADDITIONAL ONE YEAR TERM."
- 19 Q AND THE NEXT PARAGRAPH PLEASE.
- 20 A "INASMUCH AS MR. RAY WAS THE AGENT FOR MR.
- 21 BUTLER, WE BELIEVE THAT THERE HAS BEEN SUFFI-
- 22 CIENT NOTICE TO MR. BUTLER IN THIS MATTER THAT
- 23 MY CLIENT WAS NOT GOING TO EXTEND THE LEASE
- 24 TERM."
- 25 Q ALRIGHT, SIR. WHEN YOU TESTIFIED EARLIER THAT

1 YOU RECEIVED NO CORRESPONDENCE STATING THAT HE
2 WAS LEAVING, YOU WEREN'T SPEAKING OF THIS
3 DOCUMENT?

4 A NO. I DON'T REMEMBER THIS LETTER. THIS DOES
5 NOT COME BACK TO MY CONSCIOUSNESS.

6 Q SO, YOU WOULD NOT DISPUTE THAT MR. WILSON'S
7 ATTORNEY STATED THAT HE WOULD NOT BE COMING
8 BACK ON THE PROPERTY?

9 MR. WRIGHT: OBJECTION TO THAT. I THINK
10 IT MISSTATES THE LETTER.

11 MR. WARING: I'LL READ THE LETTER. I'LL
12 WITHDRAW THAT QUESTION, YOUR HONOR.

13 MR. HANNA: IF YOU'LL JUST LET ME READ
14 IT. I CAN READ IT MYSELF WHILE Y'ALL ARE
15 CARRYING ON IF YOU WANT ME TO. I CAN GO
16 AHEAD AND READ IT. I'M GONNA ASK TO SEE
17 IT ANYWAY.

18 Q IS IT ALSO YOUR TESTIMONY THAT FOR 2003, YOU
19 ASKED MR. BUTLER TO FIND YOU ANOTHER TENANT?
20 THAT WAS YOUR TESTIMONY HERE A MINUTE AGO, IS
21 THAT CORRECT?

22 A I'M MR. BUTLER.

23 Q I'M SORRY. MR. BUTLER.

24 A THAT'S QUITE ALL RIGHT.

25 Q I APOLOGIZE FOR THAT. THAT MAY HAVE BEEN THE

1 WORSE THING I DID TODAY.

2 A APOLOGY ACCEPTED.

3 Q IS YOUR TESTIMONY HERE TODAY THAT YOU ASKED
4 CHARLEY RAY AFTER MAY 15TH OF 2003 TO FIND YOU
5 ANOTHER TENANT?

6 A AFTER MAY OF 2003, YES.

7 Q ITEM 26, WHICH WAS ... 20, EXCUSE ME. THIS IS
8 PLAINTIFF'S EXHIBIT "20". THIS IS THE CHECK
9 FROM CLEAR CHANNEL DATED 7/12/02?

10 A YES.

11 Q IT'S YOUR TESTIMONY HERE TODAY THAT THIS CHECK
12 WAS FOR THE FIRST PART OF THE YEAR OF 2002,
13 ISN'T THAT CORRECT?

14 A I THINK THEY PAID THE CHECKS IN ARREARS. THAT
15 WAS MY UNDERSTANDING.

16 Q SO, WHEN THIS CHECK WAS PAID AND WAS GIVEN TO
17 MR. WILSON, THAT WOULD HAVE BEEN FROM JANUARY
18 1 OF '02 THROUGH THE SUMMER OF '02, IS THAT
19 CORRECT?

20 A THROUGH ... YEAH. PROBABLY THROUGH JULY.

21 Q THE FIRST HALF OF 2002?

22 A YES.

23 Q AND THAT WAS DURING THE LATTER PART OF THE
24 2001 TO 2002 LEASE TERM, ISN'T THAT CORRECT?

25 A I BELIEVE THAT'S CORRECT, YES.

1 Q IN NOVEMBER WHEN YOU TOOK THOSE PICTURES, YOU
2 SAID THAT THE WEEDS HAD GROWN UP?

3 A YES, SIR.

4 Q AND LOOKED LIKE IT HAD BEEN ABANDONED FOR SOME
5 TIME?

6 Q I DON'T KNOW HOW FAST WEEDS GROW BUT IT LOOKED
7 ABANDONED WHEN I WENT DOWN IN NOVEMBER, YES,
8 SIR.

9 Q ALRIGHT, SIR. MR. BUTLER, YOU TESTIFIED
10 EARLIER WITH REGARDS TO ITEMS YOU FELT YOU
11 WERE ENTITLED TO REGARDING THIS PARTICULAR
12 CASE. IN REGARDS TO THE INTEREST THAT YOU ARE
13 CLAIMING AS A DAMAGE HERE TODAY, I JUST WANT
14 TO MAKE SURE IT'S CLEAR THAT THERE IS NO PRO-
15 VISION FOR INTEREST INVOLVED ... THERE IS NO
16 PROVISION PROVIDING FOR INTEREST CONTAINED IN
17 YOUR CONTRACT, ISN'T THAT CORRECT?

18 A I DON'T BELIEVE IT SAYS ANYTHING IN THE
19 CONTRACT SPECIFICALLY RELATING TO THIS, BUT
20 OBVIOUSLY, HE WAS IN ARREARS IN HIS PAYMENT.

21 Q ALRIGHT, SIR. BUT MY QUESTION IS, THERE'S NO
22 PROVISION IN THIS CONTRACT THAT PROVIDES FOR
23 THE PAYMENT OF INTEREST OR ANY ARREARAGES,
24 ISN'T THAT CORRECT?

25 A YES.

1 Q REGARDING THE CLEAN UP OF THE PROPERTY, YOU
2 SAID THIS IN YOUR DEPOSITION, AND YOU SAID
3 THIS HERE TODAY, THAT IT WAS AN APPROXIMATE
4 COST. YOU CAN'T BREAK DOWN THE ACTUAL COST OF
5 ANY CLEAN UP ON THE PROPERTY, ISN'T THAT TRUE,
6 MR. BUTLER?

7 A WELL, THIS WAS THE AMOUNT THAT I HAD TO NEGOT-
8 IATE WITH MY NEXT CLIENT. SO, BEING THAT I
9 HAD TO GIVE HIM CREDIT FOR THAT, I FELT LIKE,
10 IN MY ESTIMATIONS, SIR, THAT THAT WAS THE COST
11 OF CLEANING IT UP.

12 Q ALRIGHT, SIR. BUT YET YOU PROVIDED NO ...
13 YOU'VE PROVIDED NO INFORMATION ... YOU
14 PROVIDED NO WRITTEN EVIDENCE THAT WOULD
15 CORROBORATE THE \$2500.00, ISN'T THAT CORRECT?

16 A I DON'T BELIEVE I HAVE PROVIDED THAT.

17 MR. WARING: YOUR HONOR, MAY I JUST HAVE
18 ONE SECOND WITH MY CLIENT?

19 MR. HANNA: SURE.

20 OFF THE RECORD

21 Q DID YOU HAVE YOUR ATTORNEY WRITE A LETTER ON
22 OCTOBER 26 OF 2002?

23 A YES.

24 Q THE NEXT THING THAT HAPPENED WAS A COMPLAINT
25 THAT YOU FILED ON MAY 13TH OF 2005, ISN'T THAT

1 CORRECT?

2 A IF THAT'S WHAT THE RECORD SHOWS. I DO NOT
3 REMEMBER THAT DATE OFF THE TOP OF MY HEAD.

4 Q I UNDERSTAND. THERE WAS NO ADDITIONAL
5 CORRESPONDENCE FROM THE LETTER THAT WAS SENT
6 TO MR. WILSON ON OCTOBER 31ST THAT YOU JUST
7 READ THAT WAS WRITTEN TO YOUR ATTORNEY? THERE
8 WAS NO OTHER WRITTEN CORRESPONDENCE BY YOU OR
9 ANYONE ACTING ON YOUR BEHALF UNTIL THIS
10 COMPLAINT WAS FILED ON MAY 13TH OF 2005, ISN'T
11 THAT CORRECT?

12 A THAT'S MY UNDERSTANDING. I DON'T RECALL ANY
13 OF THE CORRESPONDENCE.

14 MR. HANNA: RE-DIRECT?

15 RE-DIRECT EXAMINATION BY MR. WRIGHT:

16 Q IN ANY CORRESPONDENCE ... DID YOU EVER RECEIVE
17 A CORRESPONDENCE DIRECTLY FROM MR. WILSON
18 AFTER MR. RAY'S LETTER WAS SENT ON JUNE 3RD
19 2002?

20 A NO. I NEVER HEARD FROM MR. WILSON.

21 Q DID MR. WILSON EVER CALL YOU AT ANY TIME
22 SAYING, "I'M NOT GOING TO RENEW THE LEASE."?

23 A NO, HE DID NOT.

24 MR. WRIGHT: NO FURTHER QUESTIONS.

25 MR. HANNA: THANK YOU, MR. BUTLER. NEXT

1 WITNESS.

2 MR. WRIGHT: YOUR HONOR, THAT CONCLUDES
3 PLAINTIFF'S CASE.

4 MR. HANNA: ARE YOU GOING TO WAIT AND
5 SAVE YOUR MOTIONS UNTIL THE END, AREN'T
6 YOU?

7 MR. WARING: YOUR HONOR, I DON'T WANT TO
8 WAIVE ANY RIGHTS THAT I MAY HAVE.

9 MR. HANNA: I DON'T THINK UNDER THE RULES
10 YOU DO NOW. WILL YOU STIPULATE TO THAT?
11 I DON'T THINK YOU WAIVE ANY RIGHTS BY
12 MAKING ANY MOTIONS TO CLOSE THIS CASE.

13 MR. WARING: YOUR HONOR, I COULD JUST ...
14 JUST TO BE ON THE SAFE SIDE. I'LL BE
15 VERY BRIEF, YOUR HONOR.

16 MR. HANNA: SURE, SURE.

17 MR. WARING: I WANT TO MOVE FOR A DISMIS-
18 SAL OF THIS ACTION UNDER RULE 41(b),
19 WHICH IS AN INVOLUNTARY DISMISSAL BASED
20 ON THE FACT THAT THE PLAINTIFF HAS ...
21 BASED ON THE FACTS AND THE LAW, THE
22 PLAINTIFF HAS SHOWN NO RIGHT TO RELIEF
23 AND I'M GONNA RELY UPON THE LAW THAT IS
24 PRESENTED TO YOU IN MY TRIAL BRIEF BASED
25 ON THE DUTY TO MITIGATE DAMAGES, PRE-

1 JUDGMENT INTEREST AND VERBAL MODIFICATION
2 FROM A WRITTEN CONTRACT. IF I CAN INCOR-
3 PORATE THAT INTO THE RECORD.

4 MR. HANNA: BETTER MAKE THAT AN EXHIBIT.

5 MR. WARING: I'LL MAKE THAT INTO AN
6 EXHIBIT. IN ADDITION, YOUR HONOR, I'D
7 ALSO MAKE A MOTION FOR AN EVENT THAT IS
8 NOT CREATED. I'LL MAKE A MOTION FOR A
9 DIRECTED VERDICT. AGAIN, ON THE GROUNDS
10 THAT UNDER SOUTH CAROLINA LAW, PLAINTIFF
11 IS NOT ENTITLED TO DAMAGES IF HE FAILED
12 TO TAKE REASONABLE STEPS TO MITIGATE
13 DAMAGES. THE LAW ... AGAIN, TO RELY UPON
14 THE LAW PROVIDED IN MY TRIAL BRIEF, YOUR
15 HONOR. AGAIN, UNDER THE ... AGAIN, A
16 DIRECTED VERDICT ON THE GROUNDS OF THE
17 PLAINTIFF AS TO THE ALLEGATIONS OF PRE-
18 JUDGMENT INTEREST, YOUR HONOR. THIS CASE
19 IS INVOLVING RENT. ANY CASE INVOLVING
20 RENT, THERE'S AN INTERMEDIATE QUESTION AS
21 TO WHAT WILL BE THE DAMAGES BASED ON THE
22 DUTY TO MITIGATE THOSE DAMAGES, YOUR
23 HONOR. NO ONE KNEW AT THE TIME THE
24 CONTRACT WAS SIGNED THE AMOUNT OF RENT
25 THAT MIGHT BE RECEIVED BY THE PLAINTIFF

1 FROM A THIRD PART AFTER THE DEFENDANT
2 VACATED THE PREMISES. THE DUTY TO MITI-
3 GATE DAMAGES BY MAKING A GOOD FAITH
4 EFFORT. TO RELEASE THE PREMISES MEANS
5 THAT ONE DOES NOT KNOW AT THE TIME OF THE
6 BREACH, IF THERE WAS A BREACH, WHAT THE
7 AMOUNT IS DUE THE PLAINTIFF. THIS MEANS
8 THAT IN CASES INVOLVING RENT, THE SUM IS
9 NOT A LIQUIDATED AMOUNT NOR SOME CERTAIN.
10 THEREFORE, CANNOT BE SUBJECT TO PRE-
11 JUDGMENT INTEREST. ANY PROVISION IN THE
12 CONTRACT THAT ATTEMPTS TO NEGATE THE DUTY
13 TO MITIGATE DAMAGES AGAINST PUBLIC POLICY
14 AND THEREFORE, INVALID. I JUST WANT TO
15 PLACE THAT ON THE RECORD, YOUR HONOR.
16 MR. HANNA: LET ME ASK YOU A QUESTION IF
17 I MIGHT. IS THE DUTY TO MITIGATE NOT AN
18 AFFIRMATIVE DEFENSE?
19 MR. WARING: IT WAS PLED, YOUR HONOR.
20 MR. HANNA: I REALIZE THAT. IT IS AN
21 AFFIRMATIVE DEFENSE BUT THE BURDEN OF
22 PROOF IS ON YOU NOT ON THE PROOF OF FAIL-
23 URE TO MITIGATE BUT TO HOW MUCH, IS THAT
24 CORRECT? SO, BASED ON THAT, I THINK IT
25 WOULD BE PREMATURE FOR ME TO RULE ON THAT

1 UNTIL I HEAR YOUR SIDE OF THE CASE. I'M
2 GONNA RULE THAT THE TIME IS NOT RIGHT NOW
3 TO HEAR THAT MOTION. I'LL BE HAPPY TO
4 REVISIT THAT AT THE CLOSE OF YOUR
5 EVIDENCE.

6 MR. WARING: THANK YOU, YOUR HONOR.

7 MR. HANNA: ANYTHING ELSE?

8 MR. WARING: THAT'S IT, YOUR HONOR.

9 MR. HANNA: OF COURSE, I'M GONNA DENY THE
10 FIRST MOTION. CALL YOUR FIRST WITNESS.

11 MR. WARING: I'LL CALL BILLY WILSON, YOUR
12 HONOR.

13

14 WILLIAM L. "BILLY" WILSON, HAVING BEEN DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. WARING:

17 Q STATE YOUR NAME FOR THE RECORD PLEASE, SIR.

18 A IT'S WILLIAM L. WILSON.

19 Q MR. WILSON, WHAT DO YOU DO FOR A LIVING NOW?

20 A I'M BASICALLY RETIRED. I STILL GOT A
21 CONTRACTOR'S LICENSE BUT I'M NOT BUILDING
22 ANYTHING.

23 Q LET'S GO BACK INTO 1998. WHAT WERE YOU ...
24 WHAT BUSINESS CONCERNS WERE YOU INVOLVED IN
25 BACK IN 1998?

1 A I HAD FIVE ... FOUR MANUFACTURING HOME
2 BUSINESSES AND I DID SOME LAND DEVELOPMENT
3 ALSO.

4 Q ALRIGHT, SIR. TELL ME ABOUT THE BUSINESS
5 RELATED TO THIS LAWSUIT HERE TODAY.

6 A YOU TALKING ABOUT THE RENTAL PROPERTY?

7 Q YEAH, REGARDING THE RENTAL PROPERTY THAT'S THE
8 SUBJECT OF THE LAWSUIT.

9 A IN 1998, I WAS LOOKING FOR A CHANCE TO EXPAND
10 A LITTLE BIT 'CAUSE BUSINESS WAS GOOD. WE HAD
11 A LOT OF LENDERS AND, YOU KNOW, WE WERE MAKING
12 PRETTY GOOD MONEY IN THAT BUSINESS AND I
13 WANTED TO MOVE TO THE BEACH AND I HAVE A YOUNG
14 SON, AND SO I SAID, "I'LL OPEN A BUSINESS AND
15 TRY TO EXPAND UP THAT WAY." SO, A PROPERTY I
16 RAN INTO WAS CHARLEY RAY HAD IT LISTED AND I
17 CALLED CHARLEY AND WE'VE BEEN THROUGH IT
18 TODAY. WE DECIDED ON A LEASE.

19 Q ALRIGHT, SIR.

20 A AND I WENT IN BUSINESS UP THERE.

21 Q WHAT KIND OF BUSINESS WAS THAT?

22 A MANUFACTURED HOME BUSINESS.

23 Q TELL ME A LITTLE BIT ABOUT WHAT HAPPENED WITH
24 YOUR BUSINESS STARTING IN 1998. JUST A BRIEF
25 OVERVIEW. WHAT WAS GOING ON FROM '98 FORWARD?

1 A WELL, AS I MENTIONED, BUSINESS WAS GOOD. WE
2 HAD, YOU KNOW, WE HAD BOMB BARTAE PLAYING AND
3 DUESHA AND GE AND ALL KIND OF LENDERS WERE
4 FIGHTING OVER PAPER, GREEN TREE, AND THEY
5 WERE, YOU KNOW, FOUR OR FIVE DIFFERENT
6 BUSINESSES UP IN NORTH MYRTLE BEACH AND ALL OF
7 `EM WERE DOING GOOD AND THEN ALL OF A SUDDEN,
8 THEY WERE GIVING OUT TOO MUCH PAPER. THEY
9 WERE BUYING DEALS WITH NO DOWN PAYMENTS AND
10 EVERYTHING ELSE, AND IT WENT SOUTH. WE
11 STARTED LOSING MONEY, GOSH, IN `99, 2000,
12 2001. IT WENT SOUTH ON US.

13 Q WHEN YOU SAY IT WAS GETTING HARD TO FIND
14 LENDERS, WHAT DO YOU MEAN BY THAT?

15 A THE PEOPLE THAT WERE LENDING MONEY FOR MANU-
16 FACTURED HOME BUYERS JUST QUIT WITH THE
17 MARKET. THEY WITHDREW. THEY SAID, "WE'RE NO
18 LONGER LENDING IN THE MANUFACTURED HOME
19 BUSINESS."

20 Q WHAT IMPACT, IF ANY, DID THAT HAVE ON YOUR
21 BUSINESS?

22 A IT WAS A DISASTER. IT HURT ME IN ALL THE
23 LOCATIONS. I FIRST CLOSED JAMESTOWN AND THEN
24 I WAS LOOKING AT CLOSING LITTLE RIVER BUT I
25 HAD A LOT OF INVENTORY. SO, I STARTED PULLING

1 BACK IN 2001. I DIDN'T ORDER ANY MORE HOUSES
2 EXCEPT FOR RETAIL SOLD. WHAT I WAS RUNNING
3 INTO AT THE BEACH WAS, UNLIKE SANTEE AND THE
4 OTHER LOCATIONS I HAD, PEOPLE WOULD BUY YOUR
5 INVENTORY, BUT EVERYBODY THAT WAS BUYING AT
6 THE BEACH, THEY'D WANT TO BUY AND ORDER IT.
7 SO, CONSEQUENTLY, I HAD A HARD TIME GETTING
8 RID OF MY INVENTORY AND, YOU KNOW, I ANTICI-
9 PATED GETTING OUT OF BUSINESS WHEN I PAID THE
10 \$26,500.00. I TOLD MR. RAY, I SAID, "THIS IS
11 THE REASON I'M NEGOTIATING THIS IS BECAUSE I
12 AIN'T GONNA BE HERE IN A YEAR."

13 Q LET'S TAKE A STEP BACKWARD. DID YOU HAVE ANY
14 BUSINESS PARTNERS WITH YOU AT THE LITTLE RIVER
15 LOCATION?

16 A YES. JACKIE WOODBURY.

17 Q WHAT RELATIONSHIP DID JACKIE WOODBURY HAVE
18 WITH YOU?

19 A JACKIE OWNED ONE-THIRD OF THE BUSINESS AND I
20 OWNED TWO-THIRDS IN LITTLE RIVER, AND AT THE
21 SAME TIME, WE OPENED UP OVER AROUND LORIS AT
22 THE GREEN SEA AREA AND HE OWNED THE LAND OVER
23 THERE. SO, HE TOOK A SIXTY PERCENT SHARE AND
24 I HAD A FORTY PERCENT SHARE. SO, WE WERE
25 BUSINESS PARTNERS AT BOTH PLACES.

1 Q ALRIGHT, SIR. AT ANY TIME, DID Y'ALL CEASE
2 BEING PARTNERS IN THE LITTLE RIVER AREA?

3 A YEAH.

4 Q ABOUT WHAT TIME?

5 A THAT HAPPENED IN THE SUMMER OF 2001. AFTER WE
6 HAD CHANGED THE CONTRACT OR DEVIATED FROM THE
7 CONTRACT, JACKIE SAYS, "WELL, MAN, I NEED TO
8 GET OUT." HE SAID ... WE'D CHECKED OUR
9 RECORDS AND WE WERE LOSING, LOSING, LOSING. I
10 SAID, "WELL, I DON'T HAVE NO CHOICE BUT TO
11 STAY BECAUSE ALL THIS INVENTORY IS UNDER MY
12 FLOOR PLAN." AND I SAID, "WHAT I'LL DO IS
13 I'LL TAKE OVER THIS BUSINESS AND YOU TAKE OVER
14 THE GREEN SEA", WHICH I STILL OWNED FORTY
15 PERCENT OF. "IF YOU'LL TAKE SOME OF MY INVEN-
16 TORY OFF OF ME, HELP ME GET OUT OF THIS THING,
17 I'LL MOVE SOME TO SANTEE AND I'LL, YOU KNOW,
18 PUT SOME IN THE OCEAN BREEZE SUBDIVISION THAT
19 I WAS WORKING ON OVER HERE", AND WE WERE
20 TRYING TO ELIMINATE OUR STOCK, SO WE COULD
21 VIRTUALLY GO OUT OF BUSINESS. IF IT'S \$137.00
22 A DAY IS WHAT I WAS PAYING MR. BUTLER, PLUS
23 TAXES AND EVERYTHING ELSE. THAT WAS JUST FOR
24 THE LEASE AND I COULDN'T COVER MY OVERHEAD
25 DOING THAT. I WAS WAY OUT THE BALLPARK.

1 Q ALRIGHT, SIR. HOW DID YOU COMMUNICATE WITH
2 MR. WILSON DURING THE TERM OF YOUR LEASE?

3 A I HAD NO COMMUNICATION WITH MR. WILSON. I DID
4 ALL MY COMMUNICATIONS WITH CHARLEY RAY.
5 CHARLEY'S A REAL LIKEABLE FELLOW, YOU KNOW,
6 AND I'M FROM WILLIAMSBURG COUNTY, MAN. YOU
7 KNOW, A HANDSHAKE AND A DEAL AND TALKING IT
8 OVER, YOU KNOW, YOU PRETTY WELL THINK EVERY-
9 THING IS STRAIGHT UP. I NEVER HAD ANYTHING
10 BAD TO SAY ABOUT MR. BUTLER OR MR. RAY OR
11 ANYTHING UNTIL ... YOU KNOW, ALL MY COMMUNI-
12 CATIONS WAS WITH CHARLEY. AND I JUST FIGURED
13 IF I SAID IT TO CHARLEY, IT WAS HANDLED.

14 A ALRIGHT, SIR.

15 Q I KNOW HE DIDN'T REPRESENT ME BUT STILL, YOU
16 KNOW, I MEAN, HE TOLD ME ... HE TOLD ME ONE
17 TIME ... WELL, I WON'T SAY THAT.

18 Q MR. WILSON, LET ME ASK YOU THIS QUESTION:
19 DURING THE FIRST FEW YEARS OF YOUR LEASE, DID
20 YOU HAVE MUCH COMMUNICATION WITH CHARLEY RAY?

21 A NO. I THINK THE FIRST YEAR THAT CHARLEY AND I
22 WENT FISHING AND I TOOK HIS LITTLE BOY AND I'M
23 A LICENSED COAST GUARD GUIDE DOWN AT SANTEE
24 COOPER. SO, HE SAID, "WELL, I'D LIKE TO HIRE
25 YOU." AND SO, I TOOK HIM FISHING, BUT FAR AS

1 ANY PLAYING GOLF OR ANY OTHER RELATIONSHIPS,
2 GOING FISHING OR ANYTHING, I NEVER HAD
3 ANYTHING. JUST BUSINESS.

4 Q DID YOU HAVE ANY REASON TO TALK TO HIM
5 REGARDING THIS LEASE THE FIRST FEW YEARS YOU
6 WERE THERE?

7 A I TALKED WITH HIM, YOU KNOW, WHEN IT WOULD
8 COME DUE. YOU KNOW, BUT MOST OF THE TIME HE
9 ... THEY DIDN'T HAVE ANY PROBLEM WITH ME. I
10 PAID `EM, YOU KNOW. I KNEW WHEN IT WAS DUE
11 AND I'D STEP UP AND PAY IT AS LONG AS I COULD
12 STAY IN BUSINESS THERE.

13 Q ALRIGHT, SIR. NOW, LET'S DIRECT YOUR ATTEN-
14 TION TO 2001. DID THERE COME A TIME IN 2001
15 THAT YOU APPROACHED MR. RAY REGARDING THE
16 PAYMENT OF THAT YEAR'S RENT?

17 A YEAH. WHEN I PAID THE TWENTY-SIX THOUSAND, I
18 TOLD HIM, I SAID, YOU KNOW ... TWENTY-FIVE
19 THOUSAND PLUS \$1500.00 INTEREST OR WHATEVER
20 THEY CHARGED ME. AND I TOLD HIM, I SAID, "YOU
21 KNOW, I GOT TO PAY THIS, CHARLEY, OR I'M GONNA
22 HAVE TO GET MY STUFF AND GET OUT OF HERE
23 `CAUSE, YOU KNOW, I DON'T HAVE \$50,000.00 IN
24 THE BANK." HE SAID, "WELL, LET ME RUN THAT BY
25 MR. BUTLER." I SAID, YOU KNOW, "THINGS AIN'T

1 GOOD." AND I SAID, "I DOUBT IF I STAY HERE A
2 YEAR. CAN I DO IT A HALF YEAR?" "YEAH". AND
3 I SAID, "YOU KNOW, IF I STAY HERE, I'LL PAY
4 YOU THE REST OF IT." SO, THAT'S THE WAY IT
5 STARTED OFF. WELL, IN JANUARY, I TOLD HIM, I
6 SAID, "I'M DEFINITELY OUT OF HERE NOW. I'M
7 MAKING AN ALL-OUT EFFORT TO FIND OUT WHERE I
8 CAN PUT THESE MANUFACTURED HOMES AND GET OUT
9 OF HERE BECAUSE THIS IS COSTING ME A FORTUNE."
10 YOU KNOW, JACKIE AND I HAD MEETINGS ABOUT IT.
11 EVERYBODY KNEW I WAS GOING OUT OF BUSINESS.
12 IT WASN'T NO SECRET. JUST EVERYBODY KNEW IT.
13 I MEAN, I WAS DOWN TO JUST A VERY FEW MOBILE
14 HOMES.

15 Q WAS THERE A TIME DURING THAT POINT OF THE YEAR
16 THAT YOU HAD YOUR SALES OFFICE BURN DOWN?

17 A YES. IN THE SUMMER OF 2001. I HAD A DOUBLE
18 WIDE THERE AND THAT'S PART OF THE DEBRIS
19 THAT'S ON THE BACK OF THE WOODS BACK THERE WAS
20 A BURNOUT. HALF OF IT'S GONE. I SOLD FIFTY-
21 SEVEN. GUY COME ASKED ME WHAT I WANTED FOR
22 IT. I HAD IT MOVED BACK THERE AND I PULLED IN
23 A SINGLE WIDE AND KEPT ON TRYING TO STAY IN
24 BUSINESS, AND I TOLD HIM HE COULD HAVE IT IF
25 HE PULLED IT OFF. WELL, HE PULLED OFF THE

1 SIDE WITH THE REFRIGERATOR AND STOVE AND
2 FURNACE AND EVERYTHING AND THEN LEFT THE OTHER
3 HALF. THE OLD VEHICLE THAT WAS THERE WAS OUR
4 TOUTER, BUT INSURANCE GOT SO HIGH ON IT, I HAD
5 TO PARK IT. JACKIE ENDED UP GETTING IT,
6 TAKING IT TO GREEN SEA.

7 Q SO THIS WAS BACK IN 2001? YOU SAID YOU HAD
8 MEETINGS WITH JACKIE DURING THAT PERIOD OF
9 TIME ABOUT THE STATE OF THE BUSINESS?

10 A OH, YEAH. JACKIE WAS STILL IN BUSINESS WITH
11 ME UNTIL MAY OR JUNE OF 2001.

12 Q WHERE DID THE REST OF YOUR INVENTORY GO?

13 A I HAD OCEAN BREEZE SUBDIVISION OUT HERE IN
14 SURFSIDE ... I MEAN GARDEN CITY. I SOLD SOME
15 OF IT AT COST, AND I MOVED SOME TO SANTEE.
16 SOME OF `EM SOLD THROUGH SANTEE.

17 Q I'LL BRING YOUR ATTENTION NOW TO JANUARY OF
18 2002, WHAT DID YOU TELL CHARLEY RAY IN JANUARY
19 OF THAT YEAR?

20 A I TOLD CHARLEY I'D BE OUT OF THERE BUT I
21 DIDN'T QUITE MAKE IT. I STAYED OVER, I THINK,
22 UNTIL JUNE, AND I GOT THAT LETTER IN JUNE. I
23 SAID, "WELL, EVIDENTLY, YOU KNOW, THEY DON'T
24 WANT ... THEY OKAY WITH EVERYTHING. I'LL
25 JUST GET ON OUT OF HERE HARD AS I CAN." I

1 THINK THE RECORDS WILL SHOW WHEN I ACTUALLY
2 LEFT.

3 Q DO YOU RECALL WHEN THE LAST EMPLOYEE WAS PAID?

4 A 21ST OF JUNE.

5 Q THAT WAS THE LAST TIME AN EMPLOYEE WAS PAID?

6 A YEP.

7 Q AT THAT BUSINESS?

8 A YEAH. I THINK THAT'S WHAT BETTY GAVE ME.

9 Q ALRIGHT, SIR. WHEN YOU SAY YOU TRIED TO GET
10 OUT OF THERE, EXPLAIN TO ME WHAT YOU MEAN BY
11 THAT.

12 A I DIDN'T QUITE MAKE IT BY MAY 15TH. IT WAS
13 GONNA COST ME MORE TO MOVE THAT INVENTORY.
14 THE FEW HOUSES I HAD LEFT, I DECIDED I WAS,
15 YOU KNOW ... I TOLD CHARLEY, YOU KNOW, "I'LL
16 PRO-RATE THIS THING NOW WHATEVER I'M OVER
17 HERE. YOU GIVE ME A BILL AND I'LL PAY IT." I
18 MEAN, I GOT A 762 BEACON SCORE. I AIN'T NEVER
19 HAD A JUDGMENT AGAINST ME. I'VE BEEN IN
20 BUSINESS FOR TWENTY YEARS AND, YOU KNOW, THIS
21 ISN'T COMMON. YOU KNOW, I WASN'T TRYING TO
22 MESS MR. BUTLER OUT OF HIS RENT.

23 Q DID YOU TELL MR. RAY ANYTHING REGARDING FUTURE
24 TENANTS?

25 A I TOLD CHARLEY WHEN I TALKED WITH HIM IN

1 JANUARY. I SAID, "CHARLEY, YOU NEED TO GO
2 AHEAD AND PUT UP A SIGN AND TRY TO START
3 RENTING IT." I MEAN, YOU KNOW, I'M HEARING IT
4 ALL ABOUT MY SIGNS BUT, YOU KNOW, THAT WOULD
5 HELP ANOTHER RENTER. MOBILE HOME BUSINESS IS
6 THERE NOW. HE PROBABLY PAINTED OVER IT AND
7 PUT HIS NAME ON IT. THEM SIGNS COST ME
8 \$2,000.00 APIECE. FAR AS THE LEASE ON THAT
9 SIGN, THE LEASE ON THAT SIGN CAME TO BETTY.
10 IT WAS DEPOSITED IN THE SANTEE HOMES. SHE
11 GETS A LOTS OF CHECKS. I WAS STILL DOING
12 BUSINESS THERE. SHE DIDN'T KNOW NOT TO
13 DEPOSIT IT, AND IF I OWE THEM ANYTHING ON THE
14 SIGN, I DONE OFFERED AND I'M GLAD TO PAY, YOU
15 KNOW. ONLY CORRESPONDENCE I GET FROM MR.
16 BUTLER'S SIDE OF THE TABLE IS THROUGH AN
17 ATTORNEY TELLING ME HOW MUCH MONEY I OWE 'EM.
18 THAT'S ALL.

19 Q AFTER YOU RECEIVED A LETTER FROM MR. BUTLER'S
20 ATTORNEY, DID YOU THEN CONTACT AN ATTORNEY?

21 A DAVID DURANT.

22 Q DID HE WRITE A LETTER ON YOUR BEHALF?

23 A YEAH, HE DID.

24 Q DO YOU RECALL THE CONTENTS OF THAT LETTER?

25 LET ME SHOW IT TO YOU. IT'S PLAINTIFF'S

1 EXHIBIT NUMBER ...

2 A I KNOW WHAT I TOLD DAVID. I TOLD HIM, I SAID,
3 "YOU KNOW, I AIN'T NEVER TALKED WITH MR.
4 BUTLER. I HAVEN'T NEVER MET HIM." CHARLEY
5 TOLD ME, HE SAYS, "YOU DON'T NEED TO DEAL WITH
6 THOSE FOLKS. YOU DEAL WITH ME." HE SAID, "I
7 GOT YOU COVERED, BILLY." SO, I BELIEVED THAT.
8 SO, I DEALT WITH CHARLEY RAY, AND I SAID,
9 "JUST WRITE `EM A LETTER AND TELL `EM CHARLEY
10 KNEW ABOUT THIS." GETTING BACK TO THE
11 BURNOUT, YOU KNOW, MY LEASE BURNT UP IN THAT
12 OFFICE. IT WAS AN ACCIDENT. I KNOW SOME
13 PEOPLE BURN STUFF ON PURPOSE, BUT I GOT PAID
14 \$25,000.00 FOR A \$35,000.00 MOBILE HOME
15 BECAUSE IT WAS ON MY FLOOR PLAN SOURCE. I
16 DIDN'T GET PAID ANYTHING FOR ANYTHING THAT WAS
17 IN IT. SO, I LOST ALL MY COMPUTERS, EQUIPMENT
18 AND THE STUFF THAT I WAS DOING BUSINESS WITH.

19 Q ALRIGHT, SIR. AGAIN, LET'S TALK ABOUT DURING
20 THIS TIME. WHEN DID YOU LEAVE THE PREMISES?

21 A I DON'T KNOW THE EXACT DATE BUT IT WAS
22 PROBABLY IN JUNE MAYBE, JULY, BEFORE EVERY-
23 THING WAS MOVED OFF.

24 Q YOU KNOW WHEN YOUR LAST EMPLOYEE WAS PAID,
25 ISN'T THAT CORRECT?

1 A NO. I GOT BETTY TO GET THE RECORDS.. I DIDN'T
2 KNOW THAT DURING MY DEPOSITION, BUT THAT'S
3 COME UP SINCE THEN.

4 Q ALRIGHT, SIR. SO, YOU THINK YOUR LAST
5 EMPLOYEE WAS PAID JUNE 21ST?

6 A THAT'S WHAT SHE'S GOT A RECORD OF.

7 Q ALRIGHT, SIR. IS IT YOUR TESTIMONY TODAY THAT
8 THE REST OF YOUR PROPERTY OR THE REST OF THE
9 HOMES WERE MOVED SOON THEREAFTER?

10 A OH, ABSOLUTELY, YEAH. YEAH. I DON'T KNOW THE
11 EXACT DATE, BUT I WASN'T DOING VERY MUCH AFTER
12 THAT. OBVIOUSLY, PROBABLY I WAS GONE IN JUNE,
13 BUT I MIGHT HAVE BEEN THERE A FEW DAYS IN
14 JULY, WORSE SCENARIO.

15 Q DID YOU HAVE A OPPORTUNITY TO GO BY THAT
16 PROPERTY LATER ON DURING THE YEAR?

17 A YEAH. I WENT BY IT SEVERAL TIMES.

18 Q DID YOU NOTICE ANY 'FOR LEASE' SIGNS?

19 A NOT A ONE.

20 Q DID YOU THINK THERE WAS SOMETHING UP WITH
21 THAT?

22 A I FIGURED HE MUST BE TRYING TO SELL IT. I
23 SAID, "WELL, HE MUST BE TRYING TO SELL IT OR
24 KNOW SOMEBODY OR SOMETHING BECAUSE, YOU KNOW,
25 SEVERAL TIMES I PASSED THERE AND I DIDN'T SEE

1 ANY FOR IT.

2 Q DO YOU KNOW WHETHER OR NOT MR. BUTLER
3 ATTEMPTED TO TRY TO LEASE THAT PROPERTY FROM
4 MAY 15TH OF 2002 UNTIL MAY 14TH OF 2003?

5 A WHEN I GOT THAT LETTER SAYING, YOU KNOW, "PAY
6 YOUR MONEY OR VACATE" I GOT RIGHT AT A MILLION
7 ... I HAD NO REASON ... I MEAN, YOU KNOW, THEY
8 NEVER SENT ME SOMETHING IF I OWED A PRO-RATED
9 BILL AND I'LL PAY IT. I SAID, "I PAY MY
10 BILLS."

11 Q DO YOU KNOW WHETHER OR NOT MR. BUTLER
12 ATTEMPTED TO LEASE THAT PROPERTY AFTER YOU
13 VACATED IT?

14 A THEY WASN'T NO SIGN. I DON'T THINK HE TRIED
15 TO. THEY MAY BE A SIGN UP THERE TWO YEARS
16 LATER OR WHATEVER, I DON'T KNOW. IT WASN'T
17 NOTHING UNTIL A LONG TIME AFTER I WAS GONE.

18 Q DO YOU THINK YOU OWE MR. BUTLER SOMETHING FOR
19 THE PERIOD OF TIME THAT YOU WERE THERE?

20 A YES. BUT NOT WHAT HE'S ASKING FOR. I MEAN, I
21 CAN'T PAY THAT. I MEAN, I OWE HIM PRO-RATED
22 WHILE I WAS THERE, AND YOU KNOW, I'M SURE, YOU
23 KNOW, I OWE HIM SOMETHING.

24 Q DO YOU BELIEVE THAT MR. ...

25 A LIKE I SAID, THERE'S \$137.00 A DAY JUST TO

1 KEEP THE DOORS OPEN, AND THEY SAID THEY
2 SQUEAKED.

3 Q MR. WILSON, DO YOU THINK MR. BUTLER TOOK
4 REASONABLE STEPS IN TRYING TO RE-LEASE THE
5 PROPERTY?

6 A NO.

7 Q DO YOU THINK THAT NOT ENGAGING A REAL ESTATE
8 AGENT FROM MAY 15TH OF 2002 THROUGH MAY 14TH OF
9 2003 WAS REASONABLE?

10 MR. WRIGHT: OBJECTION.

11 MR. HANNA: I THINK THAT CALLS FOR EXPER-
12 TISE THAT HE DOESN'T HAVE. HE WOULDN'T
13 BE HERE IF HE THOUGHT IT WAS REASONABLE.
14 BUT I KNOW WHAT THE ANSWER TO THE
15 QUESTION IS.

16 MR. WARING: ALL RIGHT, SIR.

17 Q MR. WILSON, HAVE YOU EVER HAD THE OCCASION TO
18 HAVE TO RENT COMMERCIAL PROPERTIES?

19 A HAVE I EVER RENTED ...

20 Q HAVE YOU EVER HAD THE OCCASION TO RENT ANY OF
21 YOUR PROPERTIES?

22 A YEAH, I'VE LEASED PROPERTIES.

23 Q WHAT STEPS DID YOU TAKE IN LEASING YOUR
24 PROPERTIES?

25 MR. WRIGHT: OBJECTION. RELEVANCY.

1 MR. HANNA: I REALLY DON'T SEE THE RELE-
2 VANCY.

3 MR. WARING: ALL RIGHT, SIR.

4 Q MR. WILSON, DO YOU RECALL THIS LETTER HERE
5 REGARDING THE BUTLER LEASE?

6 A YEAH. IT'S A MATTER OF READING IT HERE.

7 Q UNDER PARAGRAPH TWO, WHAT WAS YOUR UNDER-
8 STANDING AFTER READING THIS LETTER?

9 A I SAID, "DOGGONE, YOU KNOW, CHARLEY KNOWS I'M
10 GONE. I DON'T KNOW WHY HE WANTS ME TO ADVISE
11 HIM OF MY INTENTIONS." I'D ALREADY TOLD HIM
12 THAT I WASN'T GONNA BE RENTING. AT THIS POINT
13 IN TIME ON JUNE 3RD, I MIGHT HAVE HAD TWO OR
14 THREE HOUSES LEFT. I HAD THE OFFICE AND MAYBE
15 A COUPLE HOUSES THAT I WAS ALREADY TRYING TO
16 ARRANGE MOVERS TO GET OUT OF THERE. IT SAYS,
17 "THE OWNER, MR. BUTLER, WOULD LIKE FOR YOU TO
18 CONTINUE RENTING THE PROPERTY BUT HAS
19 INSTRUCTED ME TO COLLECT THE RENT OR ASK YOU
20 TO VACATE."

21 Q WHAT DID YOU DO?

22 A I SAID, "WELL, I'D ALREADY DISCUSSED THIS
23 STUFF WITH CHARLEY THAT I'D PAY HIM WHATEVER I
24 OWED HIM." I SAID, "EVIDENTLY, THEY DON'T
25 WANT NOTHING. I'LL JUST GIT ON OFF OF HERE."

1 BEING AS I CLEARED ALL THE LAND AND SPENT
2 THOUSANDS OF DOLLARS THERE TO IMPROVE THE
3 PROPERTY VERSUS, YOU KNOW ...

4 Q TELL ME A LITTLE BIT ABOUT YOUR IMPROVING THE
5 PROPERTY.

6 A WELL, IT WAS ...

7 MR. WRIGHT: I'M GONNA OBJECT TO THAT AS
8 BEING BEYOND THE SCOPE OF THE PLEADINGS.
9 THAT'S NOT BEEN RAISED AS A DEFENSE IN
10 THIS MATTER. THERE'S NO BETTERMAN'S
11 CLAIM. IT'S TOTALLY IRRELEVANT TO THE
12 ISSUES WE'RE HERE FOR.

13 MR. HANNA: WHAT'S IRRELEVANT?

14 MR. WARING: I'LL WITHDRAW THE QUESTION,
15 YOUR HONOR.

16 Q DID YOU GIVE NOTICE TO CHARLEY RAY THAT YOU
17 WERE NOT GOING TO EXERCISE THE TERMS AND TO
18 RE-LEASE IN JANUARY OF 2002?

19 A YES, SIR.

20 MR. WARING: THAT'S ALL THE QUESTIONS I
21 HAVE, YOUR HONOR.

22 MR. HANNA: CROSS EXAM?

23 MR. WRIGHT: MAY I ASK FOR A BRIEF
24 RECESS?

25 MR. HANNA: UNLESS COUNSEL HAS ANY

1 OBJECTIONS.

2 MR. WARING: I DON'T HAVE ANY PROBLEMS
3 WITH IT.

4 MR. HANNA: I DON'T SEE ANY REASON WHY
5 NOT.

6 OFF THE RECORD

7 MR. HANNA: REMEMBER YOU'RE STILL UNDER
8 OATH, MR. WILSON.

9 CROSS EXAMINATION BY MR. WRIGHT:

10 Q OKAY, MR. WILSON. I BELIEVE I HEARD YOU SAY
11 ON DIRECT EXAMINATION YOU'RE JUST AN OLE
12 COUNTRY BOY FROM WILLIAMSBURG COUNTY, AND YOU
13 DO DEALS ON A HANDSHAKE, IS THAT CORRECT?

14 A YEAH, I PROBABLY SAID THAT.

15 Q YEAH, THAT'S WHAT I THOUGHT I HEARD. NOW, IN
16 FACT, PRIOR TO THE TIME THAT YOU STARTED TO DO
17 BUSINESS WITH MR. BUTLER, YOU WERE ALREADY A
18 PRETTY SOPHISTICATED BUSINESSMAN. IF I RECALL
19 WHEN WE TOOK YOUR DEPOSITION, YOU TOLD US THAT
20 YOU HAD SOME EXPERIENCE AS A FOOD BROKER, IS
21 THAT CORRECT?

22 A YES, SIR.

23 Q AND YOU WORKED AS A MANAGER FOR THE NESTLE
24 COMPANY FOR A NUMBER OF YEARS?

25 A THAT'S CORRECT.

- 1 Q AND YOU OWNED AND OPERATED A CONVENIENCE STORE
2 ON INTERSTATE 95 THAT YOU STARTED ABOUT 1990?
3 A 1987.
4 Q BUT AGAIN, ABOUT TEN YEARS BEFORE YOU STARTED
5 DOING BUSINESS WITH MR. BUTLER, CORRECT?
6 A TEN YEARS BEFORE I DONE BUSINESS WITH MR.
7 BUTLER?
8 Q YES, SIR.
9 A YES, SIR.
10 Q I BELIEVE YOU ALSO TOLD US THAT YOU HAD BEEN
11 BUYING AND SUBDIVIDING AND SELLING LAND SINCE
12 AT LEAST 1990 IN ORANGEBURG COUNTY?
13 A UH-HUH. (AFFIRMATIVE RESPONSE.) I LIVED
14 THERE.
15 Q AND YOU HAD SEVERAL SUBDIVISIONS THERE. AS I
16 RECALL, YOU TOLD US YOU WERE THE DEVELOPER OR
17 ONE OF THE DEVELOPERS OF THE FIELDCREST
18 SUBDIVISION?
19 A YES, SIR.
20 Q YOU WERE THE DEVELOPER OF THE LIVINGSTON
21 BRANCH SUBDIVISION?
22 A YES, SIR.
23 Q AND THE PARLOR TRACT SUBDIVISION?
24 A YES, SIR.
25 Q AND THE SAND TRAIL SUBDIVISION?

1 A YES, SIR.

2 Q AND I BELIEVE YOU ALSO HAD SOME OPERATIONS IN
3 HORRY COUNTY, IS THAT CORRECT?

4 A YES, SIR. I HAD PARTNERS IN ALL OF THESE.
5 SHAREHOLDERS.

6 Q SURE. AND YOU WERE INVOLVED IN THE SUBDIV-
7 ISION OF BLUE RIBBON PLANTATION, ISN'T THAT
8 CORRECT?

9 A YES, SIR.

10 Q AND SUGAR BEAR SUBDIVISION UP AROUND LORIS?

11 A YES, SIR.

12 Q AND I BELIEVE YOU ALSO HAD SOME AGREEMENTS
13 WITH THE SMITH LAND COMPANY WHERE YOU WERE
14 BUYING LOTS FROM THEM IN THE OCEAN BREEZE SUB-
15 DIVISION IN GARDEN CITY, AND THEN YOU WERE RE-
16 SELLING THEM TO THIRD PARTIES, IS THAT
17 CORRECT?

18 A YES, SIR.

19 Q AND WHEN YOU FIRST CAME TO HORRY COUNTY WHEN
20 YOU WERE LOOKING ... LET ME REPHRASE THE
21 QUESTION. WHEN YOU WERE LOOKING FOR PROPERTY
22 FOR A MOBILE HOME LOT IN HORRY COUNTY, YOUR
23 MOTIVATION IN LOOKING FOR THAT PROPERTY WAS TO
24 HAVE A PLACE TO SELL MOBILE HOMES, TO PUT THE
25 MOBILE HOME LOTS THAT YOU HAD IN THE VARIOUS

1 SUBDIVISIONS SUCH AS BLUE RIBBON PLANTATION
2 AND SUGAR BEAR SUBDIVISION. DO YOU REMEMBER
3 TELLING ME THAT IN YOUR DEPOSITION?

4 A YES, SIR.

5 Q ALRIGHT. WHEN YOU CAME TO HORRY COUNTY
6 LOOKING FOR LAND, DID YOU CONTACT ANYBODY
7 THROUGH THE MLS ABOUT MR. BUTLER'S LAND?

8 A NO. I SAW THE SIGN UP THERE AND CALLED IT.

9 Q OKAY. SO THE SIGN THAT WAS ON THE PROPERTY,
10 MR. RAY'S SIGN IS WHAT ATTRACTED YOU TO THE
11 PROPERTY AND YOU CALLED HIM TO FOLLOW UP?

12 A THAT'S TRUE.

13 Q APPARENTLY, THAT WAS A REASONABLE EFFORT ON
14 MR. RAY'S BEHALF TO GET SOME ATTENTION BECAUSE
15 THAT SIGN GOT YOUR ATTENTION, DIDN'T IT?

16 A YES, SIR.

17 Q NOW, LET'S TALK ABOUT YOUR NEGOTIATIONS AND
18 YOUR LETTERS OF INTENT. I'M GONNA ASK YOU TO
19 LOOK FIRST AT PLAINTIFF'S EXHIBIT NUMBER "3".

20 A OKAY. OH, IT'S THE WHOLE THING? I DON'T KNOW
21 WHETHER THIS IS THE FINAL ONE OR NOT. IS THAT
22 WHAT YOU'RE ASKING?

23 Q NO, SIR. I JUST ASKED YOU TO LOOK AT IT.

24 A OH, OKAY.

25 Q WHAT I WANT TO ASK YOU, SIR, THIS LETTER

1 BEARING YOUR ADDRESS ... YOUR NAME, YOUR
2 ADDRESS?
3 A YES, SIR.
4 Q 7464 FIVE CHOP ROAD, DATED FEBRUARY 28TH ...
5 EXCUSE ME. FEBRUARY 25TH 1998?
6 A RIGHT.
7 Q THAT WAS A PROPOSAL, LETTER OF AGREEMENT THAT
8 YOU MADE TO MR. BUTLER, CORRECT?
9 A THIS WAS MY PROPOSAL?
10 Q YES, SIR.
11 A NOW, UNDER THAT PROPOSAL, WOULD YOU AGREE WITH
12 ME THAT WHAT YOU WERE PROPOSING WAS A ONE YEAR
13 LEASE WITH AN OPTION TO EXTEND FOR ELEVEN
14 ADDITIONAL ONE YEAR TERMS?
15 A UH-HUH. (AFFIRMATIVE RESPONSE.) YEAH, THAT'S
16 WHAT THAT SAYS. THERE WAS SOME NEGOTIATION
17 AFTER THIS, RIGHT?
18 Q YES, SIR. WOULD YOU ALSO AGREE WITH ME THAT
19 UNDER THE TERMS OF YOUR PROPOSAL, YOU WOULD
20 PROVIDE NOTICE TO MR. BUTLER NINETY DAYS PRIOR
21 TO THE EXPIRATION OF EACH TERM OF YOUR INTEN-
22 TION TO RENEW THE LEASE AGREEMENT?
23 A UH-HUH. (AFFIRMATIVE RESPONSE.) YES, SIR.
24 Q SO, THAT WOULD PUT THE BURDEN ON YOU TO NOTIFY
25 HIM IN YOU WANTED TO CONTINUE?

1 A THAT IS CORRECT.

2 Q AND YOU RECALL THAT MR. BUTLER HAD SOME DIS-
3 AGREEMENT FOR YOUR PROPOSED RENT FOR THE FIRST
4 TWO YEARS? YOU WERE PROPOSING THIRTY-SIX
5 THOUSAND AND HE WANTED FORTY-TWO FIVE?

6 A YES, SIR.

7 Q YOU AGREED FROM THE VERY BEGINNING THAT YOU
8 WERE GONNA PROVIDE ALL MAINTENANCE TO THE
9 PROPERTY AND YOU WERE GONNA PAY ALL PROPERTY
10 TAXES, CORRECT?

11 A YES, SIR.

12 Q THAT WAS YOUR PROPOSAL TO HIM?

13 A YES, SIR.

14 Q I'M GOING TO ASK YOU TO TAKE A LOOK PLEASE AT
15 PLAINTIFF'S EXHIBIT NUMBER "5" AND SEE IF YOU
16 CAN IDENTIFY THAT.

17 A THIS IS FOR FIFTEEN YEARS TOTAL. AND IT'S
18 INITIALED BY EVERYONE.

19 Q DO YOU RECALL REQUESTING ADDITIONAL YEARS
20 UNDER THE ARRANGEMENT BECAUSE MR. BUTLER WAS
21 WANTING ADDITIONAL RENT IN THE FIRST TWO
22 YEARS?

23 A YEAH. THIRTY-SIX IS WHAT I PROPOSED AND HE
24 WENT TO FORTY-TWO FIVE.

25 Q BASED ON THAT YOU WANTED TO EXTEND THE TERM OF

1 THE LEASE AGREEMENT SO YOU COULD HAVE IT UP TO
2 FIFTEEN YEARS?

3 A I THINK THAT'S WHAT IT IS.

4 Q NOW, YOU RECALL THAT I PREPARED A DRAFT OF THE
5 LEASE AGREEMENT INCLUDING THOSE TERMS THAT YOU
6 HAD AGREED UPON AND MR. RAY FORWARDED THAT
7 DOCUMENT TO YOU FOR REVIEW? DO YOU RECALL
8 THAT?

9 A YEAH.

10 Q LET ME SEE IF THIS WILL REFRESH YOUR RECOLLEC-
11 TION. TAKE A LOOK AT PLAINTIFF'S "8". DOES
12 IT REFRESH YOUR RECOLLECTION THAT WE PREPARED
13 A DRAFT OF THE LEASE ENCLOSING THE TERMS THAT
14 YOU AND MR. BUTLER HAD ESSENTIALLY AGREED UPON
15 IN THE LETTER OF INTENT?

16 A YES, SIR.

17 Q NOW, DO YOU RECALL ALSO THAT AFTER YOU
18 RECEIVED THAT DOCUMENT, YOU TOOK IT TO
19 ATTORNEY JOE COFFEE AND ASKED HIM TO REVIEW IT
20 ON YOUR BEHALF?

21 A YES, SIR.

22 Q AND HE DID REVIEW IT ON YOUR BEHALF?

23 A YES, SIR.

24 Q AND HE SUGGESTED SOME CHANGES FOR YOUR PROTEC-
25 TION, DIDN'T HE?

1 A I WOULD ASSUME HE DID. THAT'S WHAT WE DID IN
2 THE LAST DEPOSITION, I THINK.

3 Q I'M GONNA ASK YOU TO TAKE A LOOK PLEASE AT
4 PLAINTIFF'S EXHIBIT NUMBER "9" AND PARTICULAR-
5 ARLY THE THIRD PAGE. ALRIGHT, SIR. LOOKING
6 AT THE THIRD PAGE, CAN YOU IDENTIFY THAT AS AN
7 ADDENDUM TO A LETTER OF INTENT THAT YOU AND
8 MR. BUTLER SIGNED?

9 A YES, SIR.

10 Q AND THE DAY ON THAT IS MAY 12TH?

11 A UH-HUH. (AFFIRMATIVE RESPONSE.)

12 Q DOES THAT ADDENDUM MODIFY THE LETTER OF INTENT
13 TO INCLUDE THE PROVISIONS THAT YOU HAD
14 REQUESTED?

15 A YES, SIR.

16 Q THE FIRST ONE IS YOU WANTED ALL RENTS FROM THE
17 BILLBOARD PRESENTLY LOCATED ON THE PREMISES,
18 CORRECT?

19 A YES, SIR.

20 Q AND THE SECOND ONE REPRESENTS A CHANGE FROM
21 THE PRIOR DOCUMENT, DOESN'T IT?

22 A YES, SIR.

23 Q BECAUSE NOW, INSTEAD OF YOU HAVING THE OBLIGA-
24 TION TO NOTIFY MR. BUTLER EVERY YEAR IF YOU
25 WANTED TO CONTINUE THIS AGREEMENT, NOW IT

1 PROVIDES THAT IT WOULD AUTOMATICALLY RENEW
2 FROM YEAR TO YEAR UNLESS YOU GAVE NOTICE
3 NINETY DAYS PRIOR TO EXPIRATION DATE?
4 A UH-HUH. (AFFIRMATIVE RESPONSE.)
5 Q AND YOU REQUESTED THAT CHANGE, DIDN'T YOU?
6 A YES.
7 Q ALRIGHT, SIR. ALSO THE FIRST DOCUMENT PRO-
8 HIBITED ASSIGNMENT OF THE LEASE AND PROHIBITED
9 ANY SUB-LEASING AND YOU REQUESTED TO ASSIGN
10 THE LEASE OR TO SUB-LEASE IT, BUT YOU AGREED
11 THAT YOU WOULD REMAIN PERSONALLY LIABLE FOR
12 THE LESSEES PERFORMANCE?
13 A UNDERSTOOD, YES, SIR. ALL THAT CAME FROM RAY
14 REALTY.
15 Q WERE THESE DOCUMENTS THE CHANGES THAT YOU
16 REQUESTED?
17 A RIGHT. AND ALL THE CORRESPONDENCE WAS FROM
18 RAY REALTY.
19 Q AND IT ALL WAS DONE BY CORRESPONDENCE?
20 A YES, SIR.
21 Q EVERYTHING WAS REDUCED TO WRITING. IT WASN'T
22 DONE ON A HANDSHAKE?
23 A THAT'S RIGHT.
24 Q JUST BRIEFLY, TAKE A LOOK AT PLAINTIFF'S
25 EXHIBIT NUMBER "12". I'LL ASK YOU TO LOOK

1 SPECIFICALLY IF YOU WOULD ON THE SIGNATURE
2 PAGE.

3 A UH-HUH. (AFFIRMATIVE RESPONSE.) THAT'S MY
4 SIGNATURE.

5 Q THAT IS YOUR SIGNATURE ON PAGE 18 OF THE LEASE
6 AGREEMENT?

7 A YES, SIR.

8 Q THAT WAS THE FINAL LEASE AGREEMENT THAT YOU
9 HAD WITH MR. BUTLER, IS THAT CORRECT?

10 A 15TH DAY OF MAY. YES, SIR.

11 Q NOW, THAT'S THE AGREEMENT YOU WERE OPERATING
12 UNDER?

13 A YES, SIR.

14 Q AS I RECALL YOUR TESTIMONY ON DIRECT EXAMINA-
15 TION, YOU STATE THAT YOU STARTED LOSING MONEY
16 IN 1999?

17 A MY TAX RECORDS WOULD SHOW, BUT I WOULD SAY I
18 LOST MONEY EVERY YEAR I WAS THERE.

19 Q SO YOU LOST MONEY IN 1999 AND THEN AUTOMATI-
20 CALLY RENEWED THE LEASE? YOU DIDN'T GIVE ANY
21 NOTICE TO MR. BUTLER THAT YOU WEREN'T GONNA
22 CONTINUE BECAUSE YOUR TAX RECORDS SHOWED THAT
23 YOU WERE LOSING MONEY?

24 A I HAD PRETTY WELL COMMITTED WHEN YOU GOT A
25 MILLION DOLLARS WORTH OF INVENTORY.

- 1 Q AND IN 2000, YOU SAY YOU WERE LOSING MONEY?
- 2 A YES, SIR.
- 3 Q AND AGAIN, YOU PERMITTED THAT LEASE TO AUTO-
- 4 MATICALLY RENEW?
- 5 A YES, SIR. LIKE I SAID, MY TAX RECORDS WOULD
- 6 SHOW WHAT I MADE AND WHAT I DIDN'T.
- 7 Q ALRIGHT, SIR. IN 2001, YOU SAID YOU WERE
- 8 LOSING MONEY THERE, IS THAT CORRECT?
- 9 A IN THAT OPERATION, I THINK I WAS.
- 10 Q IN 2001, YOU DIDN'T GIVE ANYBODY NOTICE THAT
- 11 YOU WEREN'T GONNA CONTINUE IN 2001 THROUGH
- 12 2002, IS THAT CORRECT?
- 13 A YEAH. I TOLD CHARLEY RAY.
- 14 Q NO, SIR. WHAT I'M ASKING YOU IS THIS: IN
- 15 2001, DID YOU PROVIDE ANY WRITTEN NOTIFICA-
- 16 TION?
- 17 A NO WRITTEN, NO, SIR.
- 18 Q NOW, YOU SAID YOU WERE LOSING MONEY AND THAT'S
- 19 WHAT YOUR TAX RECORDS WOULD SHOW, CORRECT?
- 20 A UH-HUH. (AFFIRMATIVE RESPONSE.)
- 21 Q WHAT I WANT TO ASK YOU, SIR, THE TAX RECORDS
- 22 THAT YOU'RE TALKING ABOUT ARE TAX RECORDS FOR
- 23 BILLY WILSON, ISN'T THAT CORRECT? OR ARE THE
- 24 TAX RECORDS YOU'RE TALKING ABOUT TAX RECORDS
- 25 FOR HORTON HOMES?

- 1 A HORTON HOMES, THAT LOCATION WAS LOSING MONEY.
- 2 Q MY QUESTION, SIR, THE TAX RECORDS THAT YOU'RE
- 3 REFERRING TO, THOSE ARE NOT BILLY WILSON'S TAX
- 4 RECORDS, ARE THEY?
- 5 A INDIVIDUAL?
- 6 Q YES, SIR.
- 7 A I DO CORPORATION AND INDIVIDUAL.
- 8 Q WELL, I'M ASKING THE TAX RECORDS YOU'RE
- 9 REFERRING TO ARE NOT YOUR PERSONAL TAX
- 10 RETURNS, IS THAT CORRECT?
- 11 A NO RESPONSE.
- 12 Q YOU'RE NOT SAYING YOU WERE LOSING MONEY?
- 13 YOU'RE SAYING THE CORPORATION WAS LOSING
- 14 MONEY?
- 15 A THAT LOCATION WAS LOSING MONEY.
- 16 Q ALRIGHT, SIR.
- 17 A BECAUSE THE LEASE OVERHEAD WAS TOO HIGH.
- 18 Q BUT YOU, IN FACT, WERE MAKING MONEY HAND OVER
- 19 FIST AT THE SAME TIME?
- 20 A OH, YEAH, I MAKE MONEY ON LAND. I WASN'T
- 21 MAKING IT IN THE MOBILE HOME BUSINESS.
- 22 Q NO. YOU WERE JUST SELLING THE MOBILE HOMES ON
- 23 THE LOTS YOU WERE SELLING AND THAT'S WHERE YOU
- 24 WERE MAKING ALL YOUR MONEY?
- 25 A NO, NOT NECESSARILY. THAT'S NOT TRUE. I WAS

1 MAKING MONEY IN SANTEE. I WASN'T MAKING NO
2 MONEY IN HORRY COUNTY I DON'T THINK.

3 Q MY PURPOSE OF PLAINTIFF'S EXHIBIT NUMBER "32"
4 ...

5 MR. HANNA: HAS THAT BEEN IDENTIFIED?
6 HAS HE IDENTIFIED THAT. DID HE EVER
7 IDENTIFY THAT?

8 MR. WRIGHT: WELL, HE ASKED ME FOR A SHOW
9 OF RELEVANCE.

10 MR. HANNA: WELL, BEFORE YOU GET TO THAT
11 YOU HAVE TO LAY A FOUNDATION TO GET TO
12 DEVELOPMENT.

13 Q ALRIGHT, SIR. IF YOU WOULD PLEASE TAKE A LOOK
14 AT EXHIBIT "32" AND "33".

15 A I ENTERED INTO AN EXCLUSIVE AGREEMENT WITH
16 SMITH LAND COMPANY AND THEIR REQUIREMENT WAS I
17 BUY FOUR LOTS AND THEN MAINTAIN THREE SET-UP
18 MANUFACTURED HOMES IN THIS SUBDIVISION IN
19 GARDEN CITY, AND ... WHAT'S YOUR QUESTION NOW?

20 Q MY QUESTION, SIR, DID YOU GET A WARRANTY DEED
21 FROM SMITH LAND COMPANY IN AUGUST OF 1999 FOR
22 FOUR LOTS, BEING LOT 2, LOT 4, LOT 67 AND LOT
23 73 IN THE OCEAN BREEZE PLANTATION? DID YOU
24 ACQUIRE FOUR LOTS FOR THE SUM OF \$5.00?

25 A FOR \$5.00?

1 Q TAKE A LOOK AT THE DEED, SIR.

2 MR. WARING: OBJECTION, YOUR HONOR. THAT
3 BILLY WILSON WAS MAKING MONEY ON OTHER
4 LAND DEALS IS NOT RELEVANT TO THIS CASE.

5 MR. HANNA: HOW IS IT RELEVANT, MR.
6 WRIGHT?

7 MR. WRIGHT: IT'S RELEVANT BECAUSE HE
8 BROUGHT UP THE ISSUE OF HOW HE'S LOSING
9 MONEY. THE TENANT UNDER THIS LEASE IS
10 NOT HORTON HOMES. IT IS NOT SANTEE
11 DISCOUNT MOBILE HOMES. IT'S BILLY
12 WILSON. AND UNDER THE LEASE AGREEMENT,
13 HE AGREED TO BE PERSONALLY LIABLE UNDER
14 THE TERMS OF THE LEASE, NOT ANY ASSIGNEE
15 OR SUB-LESSEE. NOW, HE BROUGHT ...
16 OPENED A CAN OF WORMS HERE TALKING ABOUT
17 HOW HE WAS LOSING MONEY.

18 MR. HANNA: I AGREE WITH BOTH OF YOU. I
19 DON'T SEE THE RELEVANCE OF THIS LINE OF
20 TESTIMONY. I DON'T THINK IT'S GOT ANY-
21 THING TO DO WITH WHETHER OR NOT HE
22 BREACHED THE LEASE OR NOT, WHETHER HE WAS
23 MAKING MONEY THERE OR NOT, BUT YOU OPENED
24 THE DOOR AND HE TESTIFIED TO IT, SO I'LL
25 LET HIM CROSS ON IT.

1 MR. WARING: WE'LL STIPULATE THAT WE'RE
2 NOT CLAIMING THAT MR. WILSON DIDN'T HAVE
3 THE ABILITY ... I DON'T KNOW. WE'LL GO
4 FORWARD. YOU'RE RIGHT, YOUR HONOR.

5 MR. HANNA: IF I SOLD A CONVENIENCE STORE
6 IN SANTEE FOR \$550,000.00, BUT I WASN'T
7 MAKING MONEY AT THE LOCATION IN NORTH
8 MYRTLE BEACH ...

9 Q YOU SAID YOU WERE NOT MAKING ANY MONEY IN
10 HORRY COUNTY, IS THAT CORRECT?

11 A I MADE MONEY AT OCEAN BREEZE.

12 Q OKAY, YOU GOT A LOT FOR \$5.00 AND I BELIEVE
13 YOU TOLD US IN YOUR DIRECT TESTIMONY THAT IN
14 JANUARY OF 2002, WHEN YOU WERE TALKING TO
15 CHARLEY RAY, THAT YOU JUST DIDN'T HAVE ANY
16 MONEY. YOU DIDN'T HAVE ANY MONEY IN THE BANK
17 ACCOUNT. IF WE TAKE A LOOK AT PLAINTIFF'S
18 EXHIBIT NUMBER "33", LOT NUMBER 73, ONE OF
19 THOSE LOTS YOU GOT FOR \$5.00, YOU SOLD FOR
20 \$118,150.00.

21 A NOT JUST THE LOT.

22 Q IT WAS ONE OF THOSE MOBILE HOMES YOU SOLD AS
23 WELL, WASN'T IT?

24 A IT WAS A DOUBLE WIDE WITH BRICK UNDERPIN AND
25 PAVED DRIVEWAYS, AND IT PAYS THE TAP FEES. I

1 SPENT ABOUT TWENTY SOME THOUSAND FOR A MOBILE
2 HOME, PLUS THE COST FOR THE MOBILE HOME BEFORE
3 PUTTING IT IN THERE.

4 Q AND YOU MADE A TIDY PROFIT ON IT?

5 A YEAH, SURE, YOU MAKE A PROFIT.

6 Q AND YOU HAD MONEY?

7 A YEAH.

8 Q THE SAME TIME YOU'RE TELLING CHARLEY RAY
9 YOU'RE BROKE. YOU HAD MONEY BECAUSE YOU'RE
10 SELLING MOBILE HOMES AND LOTS IN GARDEN CITY
11 IN HORRY COUNTY?

12 A I MUST HAVE HAD \$26,000.00. I PAID HIM THAT
13 MONEY.

14 Q NO, SIR. THIS WAS IN JANUARY OF 2002. THIS
15 IS NINE MONTHS AFTER YOU PAID HIM \$26,000.00.

16 A YOU KNOW, MY MONEY FLUCTUATES BACK AND FORTH.
17 SOMETIMES I GOT IT AND SOMETIMES I DON'T.
18 ANYBODY THAT DEALS IN LAND DOES THAT.

19 Q AT THE TIME THAT YOU TOLD CHARLEY RAY THAT YOU
20 WERE LOSING MONEY, AND I BELIEVE YOU FIRST
21 TOLD HIM THAT YOU WERE READY TO GET OUT IN MAY
22 OF 2001? IS THAT WHEN YOU TOLD HIM YOU WERE
23 GETTING OUT?

24 A YEAH. WHENEVER WE PAID THE \$26,000.00 I TOLD
25 CHARLEY, I SAID, "I'VE HAD A BAD YEAR. I

1 AIN'T PROBABLY GONNA BE HERE IN A YEAR."

2 Q THAT WAS MAY OF 2001, CORRECT?

3 A I BELIEVE SO, YES.

4 Q YOU SAY YOU TOLD HIM THAT?

5 A UH-HUH. (AFFIRMATIVE RESPONSE.)

6 WARRANTY DEED FOR LOTS

7 2, 4, 67 AND 73 IN OCEAN

8 BREEZE PLANTATION MARKED

9 FOR IDENTIFICATION AND

10 INTRODUCED INTO EVIDENCE

11 AS PLAINTIFF'S EXHIBIT "32".

12 WARRANTY DEED FOR LOT 73

13 IN OCEAN BREEZE MARKED

14 FOR IDENTIFICATION AND

15 INTRODUCED INTO EVIDENCE

16 AS PLAINTIFF'S EXHIBIT "33".

17 Q ALRIGHT, SIR. NOW, ABOUT FOUR MONTHS LATER

18 ... FOUR MONTHS LATER AFTER YOU WERE TELLING

19 CHARLEY YOU WERE LOSING MONEY AND HAD TO GET

20 OUT, YOU WENT TO THE EXPENSE OF HAVING A NEW

21 SALES TRAILER INSTALLED ON THE PROPERTY THAT'S

22 THE SUBJECT OF THIS LITIGATION, ISN'T THAT

23 CORRECT?

24 A I PUT A NEW ONE UP THERE WHEN THAT ONE BURNED

25 DOWN?

- 1 Q YES, SIR.
- 2 A YEAH.
- 3 Q AND THAT WAS IN SEPTEMBER OF 2001, FOUR MONTHS
- 4 AFTER YOU TOLD CHARLEY RAY YOU WERE GETTING
- 5 OUT?
- 6 A CAN I ANSWER WHY I DID THAT?
- 7 MR. HANNA: SURE, YOU CAN.
- 8 A YOUR HONOR, I HAD INVENTORY THERE.
- 9 MR. HANNA: ANSWER HIS QUESTION FIRST.
- 10 A YES, SIR, I DID. I HAD ... I STILL HAD
- 11 INVENTORY THERE IN SEPTEMBER, 2001, AND I HAD
- 12 TO HAVE A WAY TO SELL IT AND I HAD A SINGLE
- 13 WIDE ON THE LOT AND I PULLED IT IN THERE AND
- 14 GOT THE ELECTRICITY HOOKED UP AND WENT BACK IN
- 15 BUSINESS TO TRY AND MOVE THAT INVENTORY.
- 16 Q AT THE SAME TIME, YOU HAD ANOTHER MOBILE HOME
- 17 LOT DOWN IN SANTEE, ISN'T THAT CORRECT?
- 18 A YES, SIR. UH-HUH. (AFFIRMATIVE RESPONSE.)
- 19 Q AND YOU HAD A MOBILE HOME LOT OUT IN GREEN
- 20 SEA, ISN'T THAT CORRECT?
- 21 A YEAH. I OWN FORTY PERCENT OF THAT.
- 22 Q AND YOU COULD HAVE MOVED THOSE TRAILERS UP
- 23 THERE? ALL YOU HAD TO DO WAS HOOK `EM UP AND
- 24 MOVE `EM?
- 25 A WELL, I HAD A COUPLE OF HOUSES THERE THAT WAS

1 UNDER CONTRACT, YOU KNOW, AND I WAS ARRANGE-
2 ... I DIDN'T START MAKING ARRANGEMENTS TO DO
3 THIS UNTIL JANUARY OF 2002. TO GET EVERYTHING
4 OFF THE LOT.

5 Q BUT YOU WERE ALREADY LOSING MONEY AND YOU
6 SPENT MORE MONEY TO BUILD ANOTHER FACILITY,
7 ANOTHER SALES FACILITY ...

8 A CAN I LOOK AT THAT?

9 Q SURELY.

10 A ALL RIGHT. THE INVOICE IS \$18,150.00. YOU
11 CAN'T CONTINUE IN A BUSINESS ... I HAD A FIVE
12 BEDROOM DOUBLE WIDE THERE THAT GOT BURNED OUT,
13 AND THAT'S A LITTLE SINGLE WIDE THERE THAT I
14 PULLED IN TO TRY TO MOVE MY INVENTORY. I HAD
15 NO INTENTIONS THEN OF STAYING.

16 Q BUT EVEN THOUGH YOU SAID YOU HAD NO INTENTIONS
17 OF STAYING THERE, YOU SPENT THE MONEY TO BRING
18 IN ANOTHER TRAILER AND HOOK IT UP, HAVE IT
19 PERMITTED, COMPLY WITH REQUIREMENTS OF THE
20 AMERICANS WITH DISABILITY ACT TO HAVE IT SET
21 UP. YOU SPENT ALL THAT MONEY AT A LOCATION
22 WHERE YOU SAY YOU WERE LEAVING.

23 A IF YOU GOT EIGHT MOBILE HOMES THAT'S LOT SET
24 TO SHOW TO A CUSTOMER, OR FIVE, IT'LL COST YOU
25 MORE TO TEAR THAT DOUBLE WIDE DOWN AND MOVE IT

1 THAN IT WILL TO PULL THIS SINGLE WIDE A
2 HUNDRED YARDS AND SET IT UP AND HOOK IT UP TO
3 THE ALREADY SEWER AND WATER THAT YOU GOT. SO,
4 I DIDN'T SPEND A WHOLE LOT OF MONEY. THIS WAS
5 A QUICK WAY OUT, AND BESIDES THAT, MY LEASE
6 WAS PAID UP. I DIDN'T EXPECT MR. BUTLER TO
7 REFUND MY MONEY BECAUSE I WAS GONNA GET OUT OF
8 THERE. I HAD PAID FOR SIX MONTHS.

9 Q ALRIGHT, SIR. AND I BELIEVE YOU TOLD US WHEN
10 EVERYTHING BURNED DOWN IN THE SUMMER OF 2001,
11 THAT YOU LOST EVERYTHING THAT YOU HAD. YOU
12 LOST YOUR COMPUTERS. YOU LOST EVERYTHING THAT
13 YOU HAD IN THAT TRAILER?

14 A I HAD DOCUMENTS IN THAT MANUFACTURED HOME THAT
15 WAS SET UP FOR AN OFFICE ON MY DOSHER FLOOR
16 PLAN OR EITHER TRANSAMERICA, OKAY. IT WASN'T
17 INSURED SEPARATELY AS BEST I RECALL. I THINK
18 IT WAS A LOSING SITUATION. I DIDN'T GET PAID
19 FOR THE CONTENTS, THE FIXTURES IN THE MANUFAC-
20 TURED HOME.

21 Q AFTER THAT BURNED DOWN, EVEN THOUGH YOU'RE
22 TELLING US YOU'RE LOSING MONEY UP THERE, YOU
23 NOT ONLY SET THIS UP BUT YOU ALSO PUT THE
24 COMPUTERS AND EVERYTHING ELSE THAT YOU NEEDED
25 TO CONTINUE BUSINESS, INCLUDING THE POWER SET

1 UP FOR THIS UNIT, ISN'T THAT CORRECT?

2 A POWER SET UP?

3 Q YES, SIR. YOU HAD TO HAVE POWER TO YOUR UNIT,

4 DIDN'T YOU?

5 A I PUT IT RIGHT AT THE SAME PLACE THAT THE

6 OFFICE WAS.

7 Q LET'S TAKE A LOOK PLAINTIFF'S EXHIBIT NUMBER

8 "17". YOU HAD TO HAVE A POWER CONNECTION FROM

9 SANTEE COOPER AT THE SAME TIME, DIDN'T YOU?

10 A YEAH. HOW MUCH WAS THAT?

11 Q DON'T KNOW, SIR, BUT YOU DID HAVE TO HAVE

12 POWER.

13 A I'M SURE THE POWER THING BURNT UP ALONG WITH

14 THE HOUSE.

15 Q NOW, I WANT TO BE CLEAR ABOUT THIS. YOU'RE

16 TELLING US THAT IN JANUARY OF 2002, YOU

17 REMEMBER A CONVERSATION WITH MR. RAY WHERE YOU

18 TOLD HIM YOU DEFINITELY WEREN'T STAYING BEYOND

19 MAY 15TH? WOULD HE PLEASE SEND YOU AN INVOICE

20 FOR PRO-RATED RENT BEYOND MAY 15TH. WOULD HE

21 PLEASE SEND YOU AN INVOICE FOR PRO-RATED RENT?

22 A NO. I DIDN'T SAY, "SEND ME A PRO-RATED RENT."

23 I TOLD HIM IN JANUARY, I SAID, "I WON'T BE

24 HERE ... AT THE END OF THIS LEASE, I'LL BE

25 GONE. YOU NEED TO PUT YOUR SIGN UP AND TRY TO

1 RENT IT FOR MR. BUTLER." IN OTHER CONVERSA-
2 TIONS WITH HIM, I TOLD HIM, I SAID, "I KNOW
3 I'M A LITTLE BIT LATE. PRO-RATE IT. WHATEVER
4 THE PRO-RATION IS, I'LL PAY YOU. I'M GETTING
5 OUT, CHARLEY, AS HARD AS I CAN." "YES, SIR. I
6 SURE WILL DO THAT."

7 Q SO JANUARY YOU SAID, "I'M GETTING OUT."?

8 A YEP.

9 Q AND IN FEBRUARY OF 2002, A MONTH, MAYBE LESS
10 THAN A MONTH AFTER YOU SAID YOU HAD THAT
11 CONVERSATION WITH MR. RAY, SARAH KEET, WHO WAS
12 YOUR OFFICE MANAGER AT THAT OFFICE, SIGNED A
13 LEASE AGREEMENT WITH SANTEE COOPER TO PUT
14 ADDITIONAL LIGHT POSTS ON THE PROPERTY. BUT
15 YOU HAD ALREADY TOLD MR. RAY THAT YOU WERE
16 LEAVING?

17 A IT SEEMS I WAS GETTING BROKEN INTO PROBABLY.
18 THAT'S THEM BIG OLD HEADLIGHTS. I WANTED TO
19 LIGHT IT UP SO I COULD SEE WHAT THEY'S DOING.

20 Q OR I GUESS YOU COULD HAVE JUST MOVED ALL THAT
21 STUFF OUT, COULDN'T YOU?

22 A WELL, I'D PAID UP THE LEASE FOR THREE MORE
23 MONTHS SO ...

24 MR. WARING: OBJECTION.

25 MR. HANNA: I'M GONNA OVERRULE THE

1 OBJECTION ON THAT BASED ON I THINK THERE
2 WAS AN OPENING OF THE DOOR ON THAT. I
3 DON'T THINK THE ISSUES ARE ALL UP TO MY
4 DETERMINATION BUT I'M GONNA LET HIM HAVE
5 HIS SHOT IN THE DARK.

6 Q I'D HAVE YOU LOOK AT 3.35 PLEASE.

7 A WHAT DOES THIS HAVE TO DO WITH A SIGN OR WHAT?

8 Q I'M JUST ASKING IF YOU CAN IDENTIFY THIS.

9 DOES IT BEAR YOUR SIGNATURE?

10 A IT'S MY SIGNATURE BUT I REALLY DON'T KNOW WHAT
11 IT IS. WHAT IS THIS?

12 MR. HANNA: NO, YOU CAN'T ASK ANY
13 QUESTIONS. IF YOU DON'T KNOW WHAT IT IS,
14 YOU DON'T KNOW WHAT IT IS AND THAT'S YOUR
15 RESPONSE. I CAN'T ALLOW YOU TO ASK HIM
16 QUESTIONS BACK. HE CAN FOLLOW UP ON IT
17 IF HE WANTS TO. IT'S IN OUR CONTROL.
18 BOTH OF THEM GET TO ASK SOME QUESTIONS.
19 HE DOESN'T RECOGNIZE IT. NEXT QUESTION.

20 A MCFARLAND CIRCLE. THAT SOUNDS FAMILIAR BUT I
21 ...

22 Q DID YOU HAVE A SUB-LEASE AGREEMENT WITH PALM
23 SHORES DEVELOPMENT CORPORATION?

24 MR. WARING: YOUR HONOR, I'M GOING TO
25 OBJECT ON THE RELEVANCY. THIS IS A 1997

1 LEASE WITH ... IT HAS NOTHING TO DO WITH
2 THIS DEAL.

3 MR. HANNA: HE HASN'T IDENTIFIED IT YET.
4 DON'T KNOW WHAT IT IS.

5 A I CAN'T REMEMBER PALM SHORES. I'M NOT DENYING
6 IT. I JUST DON'T ...

7 Q LET ME ASK YOU THIS: DID YOU SIGN A TERMINA-
8 TION AGREEMENT TO GET OUT OF THE LEASE
9 AGREEMENT THAT YOU HAD WITH PALM SHORES?

10 MR. WARING: OBJECTION, RELEVANCY.

11 MR. HANNA: WHAT'S THE RELEVANCY OF THAT?

12 MR. WRIGHT: I'M JUST SHOWING HE KNOWS
13 HOW TO SIGN AGREEMENTS TO GET OUT OF
14 LEASES.

15 MR. HANNA: JUST BECAUSE OF TIME AND I
16 DON'T THINK HE HAS ANY, AND I UNDERSTAND
17 WHERE YOU ARE AND I UNDERSTAND WHERE YOU
18 GOING TO. YOUR POINT IS YOU'VE BEEN
19 TRYING TO MAKE THROUGHOUT THIS WHOLE LINE
20 OF TESTIMONY THAT HE'S NOT SO DUMB THAT
21 HE DOESN'T KNOW ABOUT THIS KIND OF THING?

22 MR. WRIGHT: YES, SIR.

23 Q ALRIGHT, SIR. I BELIEVE YOU SAID THAT I THINK
24 THE LAST PAYCHECK YOU WROTE FOR SOMEONE WAS IN
25 JUNE, IS THAT CORRECT?

1 A YEAH. I THINK SO, YEAH. I HAVEN'T SEEN
2 DOCUMENTATION ON THAT. MY SECRETARY TOLD ME
3 THAT TODAY.

4 Q SO, YOU DON'T HAVE ANY INDEPENDANT KNOWLEDGE
5 OF THAT?

6 A I HAVE NOT SEEN ANYTHING. I WAS TRYING TO
7 FIGURE OUT THE EXACT DATE OF WHEN I WAS OFF
8 THE PROPERTY, AND THAT'S RELEVANT TO THIS.

9 Q ALRIGHT, SIR. I'M GONNA GO BACK TO PLAIN-
10 TIFF'S EXHIBIT NUMBER "17" WHICH ARE THE
11 DOCUMENTS THAT DEAL WITH SANTEE COOPER. I'M
12 GONNA ASK YOU TO LOOK AT THESE DOCUMENTS ON
13 HORTON HOMES SUPER CENTER FAX COVER SHEET.

14 A UH-HUH. (AFFIRMATIVE RESPONSE.)

15 Q DO YOU RECOGNIZE THE SIGNATURE OF SARAH KEET?

16 A SARAH KEET ON 7/19/02.

17 Q AND SARAH KEET WAS YOUR OFFICE MANAGER AT THE
18 LOCATION WHICH IS THE SUBJECT OF THIS DISPUTE?

19 A YES, SIR.

20 Q WHAT DID MS. KEET TELL SANTEE COOPER ON JULY
21 19, 2002 CONCERNING THE CUT OFF DATE FOR THE
22 POWER?

23 A PLEASE DISCONNECT AS OF 7/31/02.

24 Q DID SHE INDICATE THAT THEY WERE TO CALL YOU IF
25 THEY HAD ANY QUESTIONS?

- 1 A THAT'S RIGHT.
- 2 Q YOU AUTHORIZED TO SHUT THE POWER OFF AS OF THE
3 END OF JULY?
- 4 A YES. SHE PROBABLY DID THAT. I HAVE SEEN THIS
5 BEFORE, YES, SIR. IS THERE ANYTHING ELSE YOU
6 WANTED TO KNOW?
- 7 Q NO, SIR. NOW, YOU HAD A TELEPHONE AT THAT
8 LOCATION, ISN'T THAT CORRECT?
- 9 A YES, SIR. UH-HUH. (AFFIRMATIVE RESPONSE.)
- 10 Q THE TELEPHONE NUMBER, I BELIEVE, WAS ...
- 11 A 380-4893, IS THAT CORRECT?
- 12 Q NO.
- 13 A NOW, THAT TELEPHONE WAS FORWARDED TO SARAH
14 KEET'S HOME ADDRESS. WHEN IT RANG THAT NUMBER
15 IT WOULD RING TO HER HOUSE BECAUSE SARAH WAS
16 SENDING IN SERVICE TO HORTON INDUSTRIES TO DO
17 MY SERVICE SINCE I WAS OUT OF BUSINESS THERE.
18 SO, THAT'S WHY IT GOES ON TO NOVEMBER.
- 19 Q ALRIGHT, SIR. SO, YOU CONTINUED TO HAVE A
20 SIGN ON THE PROPERTY REFLECTING A PHONE NUMBER
21 OF 280-7553?
- 22 A YES, SIR.
- 23 Q AND THAT PHONE SERVICE YOU SAID WENT TO SARAH
24 KEETS ...
- 25 A SARAH KEETS HOUSE, YEAH.

1 Q WOULD IT BE A FAIR STATEMENT THAT ANYBODY THAT
2 WANTED TO GET IN TOUCH WITH YOU, THEY COULD
3 CALL THAT NUMBER AND IT WOULD GO THROUGH TO
4 SARAH KEET? SO ANYBODY THAT WENT BY AND SAW
5 THE SIGNS WOULD BE ABLE TO CALL SARAH KEET
6 USING THE PHONE NUMBER THAT WAS LISTED ON YOUR
7 SIGN THAT WAS STILL ON THE PROPERTY?

8 A IN OUR DEPOSITION PRIOR TO THIS, I TOLD YOU I
9 DIDN'T KNOW WHY IT WENT ON FOR SO LONG BECAUSE
10 THEY WASN'T NO MANUFACTURED HOME DOWN THERE.
11 AND SO, IN CONVERSATION, I ASKED WHY DID WE
12 PAY THESE BILLS SO LONG ...

13 MR. WRIGHT: I'M GONNA OBJECT TO
14 ANYTHING, CONVERSATION WITH THIRD PARTIES
15 THAT'S NOT HERE TO TESTIFY.

16 MR. HANNA: IT MAKES IT AWKWARD FOR THE
17 TRUTH. I HAVEN'T HEARD WHAT HE'S SAID
18 YET. WHAT THE CONVERSATION WAS ABOUT.

19 A IN CONVERSATION WITH MY SECRETARY, SHE SAID,
20 "YOU KNOW, I CONTINUED TO PAY THAT BILL" AND
21 IT WAS GOING TO SARAH TO HANDLE SERVICE ON THE
22 LAST FEW HOMES WE HAD. SEE, WE HAVE ...

23 MR. HANNA: YOU'VE ALREADY TESTIFIED TO
24 THAT ANYWAY.

25 Q I'LL ASK YOU TO LOOK AT PLAINTIFF'S EXHIBIT

1 "36". IS THIS AN INVOICE FROM INETBA FOR LONG
2 DISTANCE SERVICE ASSOCIATED WITH THE ACCOUNT
3 AT 116 HIGHWAY 17, LITTLE RIVER, SOUTH
4 CAROLINA?

5 A YES, IT IS. I WOULD PRESUME THAT. I NOTICED
6 SOME OF THESE. LIKE I SAID, MY SECRETARY
7 HANDLED THESE.

8 Q WELL, THIS IS ONE OF THE DOCUMENTS YOUR
9 ATTORNEY PRODUCED TO US IN RESPONSE TO OUR
10 DISCOVERY REQUEST. THIS DOCUMENT SHOWS LONG
11 DISTANCE CALLS TO SANTEE WHERE YOUR OFFICE IS
12 LOCATED. IS THAT YOUR OFFICE NUMBER THERE IN
13 SANTEE, (803) 854-3435?

14 A I THINK THAT'S A FAX. ONE'S A FAX AND ONE'S A
15 PHONE.

16 Q THESE ARE CALLS ORIGINATING FROM THE NUMBER
17 ... THESE WERE THE NUMBERS THAT WERE ASSIGNED
18 TO THAT ACCOUNT, IS THAT CORRECT?

19 A I DON'T KNOW. LET ME SEE THAT SIGN AGAIN.
20 SOME OF `EM ARE. SOME OF THOSE NUMBERS ARE
21 7553 AND SOME OF THEM ARE 8192. UH-HUH.
22 (AFFIRMATIVE RESPONSE.) 7573.

23 Q WERE THOSE ADDITIONAL CALL LINES THAT YOU HAD
24 COMING OUT OF THE PHONE SYSTEM AT THAT
25 LOCATION?

1 A YES, SIR. BUT TELL ME WHAT THIS MEANS?

2 Q WHAT IT SHOWS IS CALLS WERE ORIGINATING FROM
3 THAT LOCATION ON JULY 24TH.

4 A IS THAT THE LAST DATE ON THERE?

5 Q IT'S THE LAST DATE THAT I SEE LONG DISTANCE
6 CALLS MADE.

7 A OKAY. AND THAT WOULD HAVE HAD TO HAVE BEEN
8 MADE FROM THE HEADQUARTERS POINT AT LITTLE
9 RIVER?

10 Q IT SAYS THAT'S THE ORIGIN LOCATION FROM ALL
11 THREE OF THOSE NUMBERS THAT YOU'VE IDENTIFIED
12 AS NUMBERS AT THAT LOCATION.

13 A IF THAT PHONE HAD OF BEEN TURNED OVER TO SARAH
14 KEET, IT WOULD STILL SHOW UP AT THAT LOCATION.
15 I DON'T KNOW. I'M ASKING QUESTIONS AGAIN,
16 YOUR HONOR. I JUST DON'T KNOW.

17 MR. HANNA: THAT'S WHAT NUMBER?

18 MR. WRIGHT: "36".

19 MR. HANNA: ARE YOU GOING TO INTRODUCE
20 THAT?

21 MR. WRIGHT: YES.

22 MR. WARING: OBJECTION. YOUR HONOR, I
23 DON'T THINK HE CAN AUTHENTICATE IT. HE
24 SAYS HE DOESN'T KNOW.

25 MR. HANNA: THOSE ARE DOCUMENTS THAT YOU

1 PRODUCED IN DISCOVERY AND IF IT'S
2 RELEVANT TO QUESTION HIM, WHICH I THINK
3 IT IS, AS TO WHEN HE VACATED THE
4 PROPERTY, I THINK IT'S RELEVANT. YOU'VE
5 AUTHENTICATED IT BY THE FACT THAT YOU
6 PRODUCED IT, I THINK.

7 INVOICE FROM INETBA MARKED
8 FOR FOR IDENTIFICATION AND
9 INTRODUCED INTO EVIDENCE
10 AS PLAINTIFF'S EXHIBIT "36".

11 Q I HAVE NO FURTHER QUESTIONS.

12 OFF THE RECORD

13

14 JACKIE WOODBURY, HAVING FIRST BEEN DULY SWORN,

15 TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. WARING:

17 Q STATE YOUR NAME AND ADDRESS FOR THE RECORD.

18 A JACKIE WOODBURY, 5280 HIGHWAY NUMBER 9, GREEN
19 SEA.

20 Q WHAT DO YOU DO FOR A LIVING?

21 A I OWN A CONVENIENCE STORE AND IN THE MOBILE
22 HOME BUSINESS.

23 Q HOW LONG HAVE YOU BEEN IN THE MOBILE HOME
24 BUSINESS?

25 A PROBABLY SEVEN, EIGHT YEARS.

1 Q ALRIGHT, SIR. HOW ABOUT, DO YOU KNOW MR.
2 WILSON SITTING HERE TODAY?
3 A YES, I DO.
4 Q TELL ME ABOUT YOUR RELATIONSHIP WITH MR.
5 WILSON.
6 A WELL, ME AND BILLY HAD A PLACE ... WELL, WE
7 HAD SEVERAL PLACES, BUT WE HAD A PLACE, THE
8 ONE I THINK WE'RE TALKING ABOUT, THE ONE AT
9 THE BEACH. WE ... YOU WANT TO WHOLE STORY?
10 Q JUST TELL ME WHAT KIND OF BUSINESS INTEREST
11 Y'ALL HAVE TOGETHER.
12 A WE JUST HAD A ... I HAD A THIRD IN THE
13 BUSINESS AND HE HAD SIXTY-SIX PERCENT.
14 Q HOW ABOUT THE GREEN SEA BUSINESS?
15 A HE HAD FORTY PERCENT.
16 Q HE OWNED FORTY PERCENT OF THAT?
17 A AND I HAD SIXTY.
18 Q I'M GOING TO DIRECT YOUR ATTENTION ... WHAT
19 POINT IN TIME DID Y'ALL ENTER INTO PARTNER-
20 SHIP TOGETHER?
21 A IT WAS MAYBE IN '99, MAYBE '98.
22 Q WAS THERE A POINT IN TIME WHERE YOU AND MR.
23 WILSON PARTED WAYS AS FAR AS THE PARTNERSHIP
24 YOU HAD IN THE LITTLE RIVER SITE?
25 A YES, SIR.

1 Q WHAT WERE THE REASONS BEHIND THAT?

2 A MONEY SITUATION. LOSING MONEY.

3 MR. WRIGHT: AGAIN, I'M GOING TO OBJECT
4 ON THE BASIS OF RELEVANCE.

5 MR. HANNA: WHAT IS THE RELEVANCE?

6 MR. WARING: I'M GOING TO GET AROUND TO
7 IT, YOUR HONOR, BECAUSE IT'S GONNA GET TO
8 THE POINT WHERE MR. WOODBURY TOOK SOME
9 INVENTORY AND ACTUALLY WAS A WITNESS TO A
10 CONVERSATION THAT MR. BUTLER HAD ON THE
11 TELEPHONE.

12 MR. HANNA: YOU'VE LAID A FOUNDATION FOR
13 THAT. GO AHEAD.

14 Q AT WHAT POINT IN TIME DID YOU AND MR. WILSON
15 PART WAYS?

16 A WHEN I GOT OUT ... NOW, LIKE I SAID, DATES. I
17 MIGHT NOT BE TELLING YOU EXACTLY THE RIGHT
18 DATES. BUT WHEN I GOT OUT, IT WAS SOME TIME
19 THE YEAR BEFORE. I'M GONNA SAY SOME TIME IN
20 THE SUMMER, END OF THE SUMMER.

21 Q WAS IT AROUND THE TIME THEY WERE TALKING ABOUT
22 A FIRE OF A MOBILE HOME?

23 A I HAD BEEN OUT AT THAT TIME.

24 Q NOW, Y'ALL STILL HAD BUSINESS RELATIONSHIPS
25 WITH GREEN SEA?

- 1 A YES, SIR.
- 2 Q DID Y'ALL MEET REGULARLY?
- 3 A ON AND OFF, YEAH.
- 4 Q DID YOU EVER HAVE THE OCCASION TO MEET WITH
- 5 MR. WILSON IN JANUARY OF 2002?
- 6 A MR. WILSON?
- 7 Q MR. WILSON.
- 8 A YES, I DID.
- 9 Q IF YOU COULD TELL ME WHAT THE BASIS OF THAT
- 10 PARTICULAR MEETING WAS ABOUT.
- 11 A WELL, LIKE I SAID, I HAD BEEN OUT OF THE
- 12 BUSINESS AND BILLY ... ME AND BILLY HAD BEEN
- 13 TALKING BACK AND FORTH ABOUT THE LOSING SITU-
- 14 ATION. IT WAS DOING THE SAME THING. HE WAS
- 15 TRYING TO GET RID OF THE INVENTORY BECAUSE WE
- 16 WERE LOSING MONEY, AND HE WAS LOSING MONEY.
- 17 SO, WE HAD A MEETING AND HE WAS WANTING ME TO
- 18 COME DOWN AND DISCUSS IF I COULD TAKE PART OF
- 19 THE INVENTORY OFF OF THAT LOT AND MOVE IT TO
- 20 GREEN SEA AND HE WAS GONNA TAKE THE OTHER PART
- 21 AND MOVE TO SANTEE AND THEN WAS JUST GONNA TRY
- 22 TO DISBURSE IT EVERYWHERE WE COULD TO GET OFF
- 23 OF THE LOT THAT HE WAS ON.
- 24 Q ALRIGHT, SIR. DID YOU OBSERVE ANY CONVERS-
- 25 TIONS THAT MR. WILSON HAD ON THE TELEPHONE?

1 A WELL, THE REASON ... WELL, I GUESS ONE REASON
2 I DO REMEMBER THIS IS BECAUSE THAT'S WHY WE
3 HAD MET AT BILLY'S OFFICE. WE HAD MET THERE
4 TO DISCUSS HIM LEAVING THE BUSINESS OR GETTING
5 OUT OF THE BUSINESS. THE BEST WAY TO PERFORM
6 EVERYTHING AS FAR AS CLOSING DOWN, WHERE TO
7 MOVE THE HOUSES. WHILE I WAS IN THE OFFICE
8 THAT DAY, WE PUT EVERYTHING TOGETHER. BILLY
9 CALLED MR. RAY. I GUESS IT WAS CHARLEY RAY
10 'CAUSE HE CALLED HIM CHARLEY, AND HE ANSWERED
11 THE PHONE.

12 MR. WRIGHT: OBJECTION TO THIS LINE OF
13 TESTIMONY.

14 MR. HANNA: YOU GOT TO DO BETTER IN
15 IDENTIFYING WHO HE THINKS IS CHARLEY, I
16 THINK. I THINK THIS IS BEING OFFERED NOT
17 FOR THE TRUTH OF THE MATTER ASSERTED BUT
18 TO SHOW NOTICE AND, OF COURSE, THAT'S AN
19 EXCEPTION TO THE HEARSAY RULE. BUT, I
20 THINK YOU GOT TO DO BETTER THAN TO SAY,
21 "I THINK IT WAS CHARLEY."

22 MR. WARING: I UNDERSTAND, YOUR HONOR.

23 Q DID MR. WILSON TELL YOU WHO HE WAS TALKING TO?

24 A YES, SIR. WE CALLED CHARLEY RAY'S REALTY
25 COMPANY.

1 MR. WRIGHT: SAME OBJECTION.

2 MR. HANNA: MOVE ON.

3 Q MOVE ON FROM THERE. WHAT HAPPENED?

4 A WELL, BILLY CALLED MR. CHARLEY AT THE REALTY
5 COMPANY TO TELL HIM WHAT WE WERE DOING. WE
6 WERE DISCUSSING LEAVING THE PROPERTY, GETTING
7 OUT OF THE CONTRACT AND LEAVING THE PROPERTY.
8 HE WAS JUST LETTING HIM KNOW THAT'S WHAT WE
9 WERE GONNA DO AND I WAS GOING TO TAKE PART OF
10 THE HOMES AND THAT HE WAS LEAVING. LIKE I
11 SAID, I WASN'T IN IT AT THAT TIME, BUT I JUST
12 HAPPENED TO BE IN THAT OFFICE AND WE WERE
13 DISCUSSING THAT WHILE I WAS DOWN THERE THAT
14 DAY WAS TO CLEAR UP GETTING OUT OF THIS
15 BUSINESS.

16 Q DID YOU END UP TAKING SOME OF MR. WILSON'S
17 INVENTORY?

18 A YES, SIR. WE TOOK SOME OF IT.

19 Q DO YOU KNOW WHERE THE REST OF THE INVENTORY
20 WENT?

21 A MOST OF IT, I THINK, WENT TO SANTEE. BUT IT'S
22 KIND OF A JOB, YOU KNOW, TO MOVE THAT MUCH
23 PROPERTY. IT'S, YOU KNOW, MOVING EVERYTHING
24 OFF THOSE LOTS IS NOT REAL SIMPLE. YOU KNOW,
25 IT TAKES A LITTLE TIME AND YOU HAVE TO TAKE

1 TIME TO DO IT BECAUSE OF THE FLOOR PLAN SITUA-
2 TIONS.

3 Q ANSWER ANY QUESTIONS MR. WRIGHT MAY HAVE FOR
4 YOU.

5 CROSS EXAMINATION BY MR. WRIGHT:

6 Q YOU'VE HAD A BUSINESS RELATIONSHIP WITH THE
7 DEFENDANT, BILLY WILSON, FOR QUITE A FEW
8 YEARS, HAVEN'T YOU?

9 A YES, SIR.

10 Q AND YOU CONTINUE TO HAVE A BUSINESS RELATION-
11 SHIP WITH HIM TODAY, ISN'T THAT CORRECT?

12 A YES, SIR.

13 Q THE TWO OF YOU OWN SOME SUBDIVISIONS YET?

14 A YES, SIR.

15 Q BLUE RIBBON PLANTATION?

16 A YES, SIR.

17 Q AND SUGAR BEAR PLANTATION?

18 A YES, SIR.

19 Q HOW ABOUT THE CROSSINGS?

20 A YES, SIR.

21 Q SO THE TWO OF YOU GOT A LOT OF INTEREST
22 ALIGNED TOGETHER, ISN'T THAT CORRECT?

23 A THAT'S TRUE, SIR.

24 Q AND IT JUST SO HAPPENED THAT YOU HAPPENED TO
25 GO BY WHEN MR. WILSON WAS PLACING A CALL TO

1 MR. RAY, IS THAT CORRECT?

2 A YES, SIR, THAT IS TRUE.

3 Q HAVE YOU EVER SPOKEN TO MR. RAY?

4 A NEVER IN MY LIFE EXCEPT WHEN HE COME IN THAT
5 DOOR.

6 Q OH, WHEN HE CAME IN THE DOOR?

7 A YES, SIR.

8 Q WHAT DOOR?

9 A THAT FRONT DOOR OF THIS BUILDING RIGHT HERE,
10 SIR.

11 Q SO YOU SAW HIM TODAY?

12 A YES, SIR.

13 Q NEVER SPOKE TO HIM BEFORE?

14 A NOT THAT I KNOW OF TO MY KNOWLEDGE.

15 Q COULDN'T RECOGNIZED HIS VOICE BECAUSE YOU
16 DIDN'T KNOW WHO HE WAS?

17 A NO, SIR.

18 Q SO THE ONLY INFORMATION YOU HAVE MR. WILSON
19 WAS TALKING TO CHARLEY RAY WAS BECAUSE MR.
20 WILSON SAID HE WAS TALKING TO CHARLEY RAY?

21 A YES, SIR.

22 Q NO FURTHER QUESTIONS.

23 MR. WARING: NO FURTHER QUESTIONS. WE'LL
24 CALL OUR NEXT WITNESS.

25 MR. HANNA: ANSWER ANY QUESTIONS THESE

1 GENTLEMAN MAY HAVE.

2

3 BETTY BRYANT, HAVING BEEN DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION BY MR. WARING:

6 Q MS. BRYANT, IT'S LATE TODAY AND I WON'T KEEP
7 YOU HERE TOO LONG BECAUSE I KNOW YOU'VE GOT A
8 LONG DRIVE. JUST TELL THE COURT PLEASE WHO
9 YOU ARE AND WHAT YOU DO.

10 A I AM A BOOKKEEPER/ACCOUNTANT. I'M RETIRED NOW
11 BUT I WORKED FOR BILLY WILSON AT SANTEE HOMES
12 FROM '97 UNTIL THE END OF 2005 WHEN HE CLOSED
13 THE BUSINESS.

14 Q WERE YOU KIND OF BILLY'S RIGHT-HAND PERSON UP
15 THERE AT SANTEE?

16 A YES.

17 Q I JUST WANT TO CALL YOUR ATTENTION TO PARTICU-
18 LARLY IN JANUARY OF 2002. DO YOU RECALL ANY-
19 THING AT ALL GOING ON WITH THE LITTLE RIVER
20 STORE THAT MR. WILSON OWNED?

21 A TOWARDS THE END OF JANUARY, MR. WILSON CAME IN
22 AND SAID THAT HE WAS GONNA HAVE TO CLOSE THE
23 LITTLE RIVER LOT. THAT HE WAS LOSING TOO MUCH
24 MONEY.

25 Q I'M GOING TO SHOW YOU THIS DOCUMENT. MS.

1 BRYANT, DO YOU RECOGNIZE THIS?

2 A YES. AFTER BILLY HAD TOLD ME HE WAS GONNA
3 CLOSE THE BUSINESS, I CALLED SARAH KEET, WHO
4 WORKED AT THE LITTLE RIVER LOT AND ASKED HER
5 TO SEND ME A COPY OF THE HOUSES ... THE
6 INVENTORY, SO WE COULD MOVE INTO OUR OTHER
7 LOTS.

8 Q IS THIS THE DOCUMENT THAT YOU WERE ...

9 A THIS IS WHAT SHE FAXED TO ME.

10 Q WHEN DID SHE FAX THAT TO YOU?

11 A JANUARY THE 31ST OF 2002.

12 Q HOW ARE YOU CERTAIN THAT WAS THE PARTICULAR
13 DATE?

14 A BECAUSE IT'S ON HERE.

15 MR. WARING: YOUR HONOR, I MOVE TO ADMIT
16 THIS AS DEFENDANT'S EXHIBIT NUMBER "11".

17 MR. HANNA: ANY OBJECTION.

18 MR. WRIGHT: YOUR HONOR, I WOULD HAVE
19 SOME OBJECTIONS WITH THIS DOCUMENT
20 WITHOUT FURTHER FOUNDATION BECAUSE I'M
21 TOLD THAT THIS IS SUPPOSED TO BE A LIST
22 AS OF JANUARY 31, 2002. THERE ARE NOTES
23 ON THIS DOCUMENT THAT REFERENCE JULY 12.
24 THERE ARE NOTES IN THIS DOCUMENT THAT
25 NOTE APRIL 26. YOU KNOW, I CERTAINLY

1 DON'T THINK I CAN AGREE TO ADMIT IT AS IT
2 WAS REPRESENTED.

3 MR. HANNA: GO INTO A BIT MORE FOUNDA-
4 TION.

5 Q MA'AM, THERE'S A BUNCH OF ... LOOKS LIKE THERE
6 ARE SOME HIGHLIGHTED MARKS AND THERE ARE SOME
7 NOTES THAT WERE MADE ON THIS SHEET. WHERE ...
8 A THESE WERE NOTES THAT I MADE OF EVERYTHING
9 THAT COULD ... THE FAX ITSELF WAS BLACK AND
10 WHITE. BUT I MADE NOTES ON THIS SHEET AS THE
11 HOUSES WERE REMOVED FROM THE LOT, AS WE MOVED
12 THEM TO OTHER LOTS. THE COLORS AND THE NOTES
13 ARE WHAT I MADE.

14 MR. WARING: WE'D NOW LIKE TO INTRODUCE
15 THIS AS DEFENDANT'S EXHIBIT NUMBER "11".

16 MR. WRIGHT: NO OBJECTION.

17 MR. HANNA: DEFENDANT'S "11" ALLOWED
18 WITHOUT OBJECTION.

19 LIST OF INVENTORY MARKED
20 FOR IDENTIFICATION AND
21 INTRODUCED INTO EVIDENCE
22 AS DEFENDANT'S EXHIBIT "11".

23 Q MS. BRYANT, PRIOR TO JANUARY OF 2002, WERE YOU
24 INVOLVED WITH THE INVENTORY OF THE LITTLE
25 RIVER SUPER CENTER?

1 A I WAS NOT INVOLVED WITH THE INVENTORY ITSELF.
2 I WAS LIKE ... IF THEY HAD A TECHNICAL QUES-
3 TION OR ANYTHING, THEY WOULD CALL ME. I DID
4 GO DOWN AND SET UP THEIR COMPUTER FOR `EM.
5 BUT AS FOR THE NORMAL, EVERY DAY WORK OF
6 LITTLE RIVER, I JUST GOT REPORTS.

7 Q AND IT WASN'T UNTIL JANUARY OF 2002 THAT YOU
8 WERE LOOKING IN TERMS OF TRYING TO FIND HOMES
9 OR FIND PLACES FOR THESE HOMES?

10 A THAT'S CORRECT.

11 MR. WARING: THAT'S ALL THE QUESTIONS I
12 HAVE, YOUR HONOR.

13 MR. HANNA: CROSS?

14 CROSS EXAMINATION BY MR. WRIGHT:

15 Q AS I UNDERSTAND IT, YOU WORKED FOR MR. WILSON
16 FOR A PERIOD OF EIGHT YEARS?

17 A YES, SIR.

18 Q AND I BELIEVE YOU INDICATED THAT YOU WERE
19 BOOKKEEPER AND ALSO DID SOME ACCOUNTING WORK?

20 A YES. WHAT I DID WAS THE EVERY DAY BOOKKEEPING
21 AND THEN I WOULD COMPILE ALL OF THE LOTS, END
22 OF THE YEAR FINANCIALS TO TAKE THEM TO THE
23 CPA.

24 Q SO, LET ME ASK THIS QUESTION: DID SANTEE
25 DISCOUNT MOBILE HOMES FILE A CONSOLIDATED TAX

1 RETURN THAT INCLUDED THE RESULTS OF ALL
2 SUBSIDIARIES?

3 A NO, SIR. EACH SUBSIDIARY HAD THEIR OWN TAX
4 RETURN. THE REASON I WOULD COMPILE `EM WAS
5 FOR BILLY WILSON TO DO HIS PERSONAL TAXES, AND
6 HE HAD TO HAVE A TAX RETURN FROM EACH BUSINESS
7 TO DO HIS PERSONAL TAXES.

8 Q WHAT BUSINESSES DID YOU DO RETURNS FOR MR.
9 WILSON SO THAT HE COULD DO HIS PERSONAL TAXES?

10 A I WOULD COLLECT THE RETURNS THAT WERE
11 COMPLETED FROM THE OTHER BUSINESSES.

12 Q I'M ASKING YOU TO IDENTIFY THOSE BUSINESSES.

13 A THE GREEN SEA HORTON HOME CENTER, THE LITTLE
14 RIVER HORTON HOME CENTER AND THE OCEAN BREEZE
15 LOTS WAS WITH SANTEE HOMES. IT WASN'T A
16 SEPARATE CORPORATION. THERE WAS JAMESTOWN FOR
17 AWHILE. A LOT IN JAMESTOWN.

18 Q DID YOU HAVE ANY RESPONSIBILITY WITH RESPECT
19 TO MR. WILSON'S PERSONAL RETURN?

20 A NO, SIR. THE ONLY RESPONSIBILITY I HAD WAS TO
21 TAKE IT TO HIS CPA.

22 Q WHAT INFORMATION, IF ANY, DID YOU COMPILE
23 CONCERNING MR. WILSON'S OWNERSHIP OF SUBDIVI-
24 SIONS WITH JACKIE WOODBURY?

25 A I HAVE NO KNOWLEDGE OF THAT.

1 Q SO, I TAKE IT THAT YOU WOULDN'T KNOW WHETHER
2 HE MADE MONEY OR LOST MONEY ON THOSE LAND
3 TRANSACTIONS?

4 A I HAVE NO KNOWLEDGE OF THAT.

5 Q WHAT ABOUT OCEAN BREEZE? I BELIEVE YOU
6 INDICATED THAT YOU HAD SOME RESPONSIBILITIES
7 FOR THAT.

8 A THE BANK STATEMENTS WOULD COME TO MY OFFICE
9 AND I WOULD DO A SPREADSHEET ON THOSE. THEN
10 END OF THE YEAR, I TOOK THOSE SPREADSHEETS TO
11 THE ACCOUNTANT.

12 Q WAS THAT MR. WILSON INDIVIDUALLY?

13 A YES, SIR.

14 Q NOW, BASED ON YOUR REVIEW OF DEFENDANT'S
15 EXHIBIT NUMBER "11", WITH RESPECT TO THE VERY
16 FIRST LINE. "AGF'00". WHAT DOES THAT DESIG-
17 NATE?

18 A OKAY. AGF IS THE MODEL OF HORTON HOME. AGF
19 DESIGNATES THAT IT'S A SINGLE WIDE, SIXTEEN BY
20 SEVENTY-SIX MOBILE HOME. THE '00 IS THE YEAR
21 IT WAS MADE. HORTON HOMES GOES FROM JULY 1ST
22 THROUGH JUNE THE 30TH OF THE FOLLOWING YEAR.
23 THAT MEANS IT WAS MADE BETWEEN JULY THE 1ST,
24 '99 TO JUNE THE 20TH OF '04.

25 Q WITH RESPECT TO THE SECOND COLUMN, THE NUMBER

1 210987, WHAT DOES THAT INDICATE?
2 A SERIAL NUMBER OF THE HOME.
3 Q THAT WOULD BE THE SERIAL NUMBER OF THE HOME?
4 A YES.
5 Q AND THE NEXT COLUMN LOOKS LIKE "DUCT"?
6 A YES. DEUCHER AND TRANSAMERICAN BOMBARDIA WERE
7 FINANCERS, BANKS. IT WAS A FLOOR PLAN WITH
8 IT.
9 Q AND THE VERY NEXT COLUMN THERE'S A DOLLAR
10 AMOUNT, \$18,870.00?
11 A THAT'S THE COST OF THE HOME FROM THE FACTORY.
12 Q NOW, IS THERE ANYTHING THAT INDICATES HOW MUCH
13 IS OWED ON THE UNIT?
14 A NO, NOT ON HERE.
15 Q WITH RESPECT TO THIS FIRST LINE, WHICH I
16 BELIEVE YOU IDENTIFIED AS A HORTON HOME AGF
17 2000, SERIAL NUMBER 210987. CAN YOU TELL US
18 WHAT DISPOSITION WAS MADE OF THAT MOBILE HOME?
19 A IT WENT TO SANTEE AND IT WAS SOLD FROM THE
20 SANTEE LOT.
21 Q CAN YOU TELL US WHEN IT WENT TO THE SANTEE
22 LOT?
23 A IT WOULD HAVE BEEN BETWEEN THIS DATE, AND I
24 THINK, JUNE THE 21ST IS WHEN WE CLOSED THE LOT.
25 I DON'T HAVE THE PAPERWORK SHOWING WHEN IT

1 WENT.

2 Q WOULD IT BE A FAIR STATEMENT THAT YOU DON'T
3 HAVE ANY PAPERWORK TO SHOW WHEN ANY OF THESE
4 UNITS LEFT THAT LOT?

5 A NOT WITH ME. THERE'S ... I DID BRING ONE BILL
6 BUT THE OFFICE AT SANTEE HAD GOTTEN BROKEN
7 INTO AND THE FILES WERE ALL OVER THE FLOOR,
8 AND I JUST WENT THROUGH AS FAST AS I COULD TO
9 GET WHAT I COULD TO BRING.

10 Q SO, YOUR ANSWER IS NO?

11 A NO.

12 Q NO FURTHER QUESTIONS.

13 MR. HANNA: ANY FURTHER QUESTIONS?

14 MR. WARING: NO RE-DIRECT, YOUR HONOR.

15 MR. HANNA: NEXT WITNESS.

16 MR. WARING: THAT'S IT, YOUR HONOR.

17 MR. HANNA: REBUTTAL?

18 MR. WRIGHT: NO REBUTTAL FROM THE
19 PLAINTIFF.

20 MR. HANNA: I'M GONNA HANDLE THE MOTIONS
21 THIS WAY: I'M GONNA LET YOU SUBMIT THEM
22 IN WRITING TO GIVE YOU WHATEVER TIME TO
23 REFLECT ON THE TESTIMONY RATHER THAN
24 HAVING TO COME UP WITH IT. I KNOW EVERY-
25 BODY IS BUSY. YOU'LL GET YOUR RESPONSE

1 BY MAIL. ANY PROBLEMS WITH THAT?

2 MR. WARING: NO OBJECTION WITH THAT.

3 WHAT DATE DO YOU WANT IT?

4 MR. HANNA: LET'S DO IT AT THE SAME TIME
5 SO NOBODY GETS AN ADVANTAGE HERE. WHY
6 DON'T WE SAY YOU MAIL THEM TO ME AT 4:00
7 NEXT FRIDAY. Y'ALL SEND THEM AT THE SAME
8 TIME. THAT WAY WE DON'T HAVE ... WE'LL
9 DO IT AT FOUR IN THE AFTERNOON. THEN
10 I'LL ... IF I NEED FURTHER BRIEFING I'LL
11 LET YOU KNOW. IF THEY'RE OBVIOUS, I CAN
12 MAKE A RULING ON IT. LET ME MAKE SOME
13 COMMENTS ON THE RECORD FIRST SO I DON'T
14 FORGET ABOUT THIS 'CAUSE I LIKE TO TRY
15 AND RECAP AT THE END KIND OF TO GIVE
16 Y'ALL AN INDICATION ... THIS IS BY NO
17 MEANS A RULING. IT'S JUST AN INITIAL
18 RESPONSE TO THE FACTS OF THE CASE, KIND
19 OF A GUT REACTION WITHOUT HAVING THE
20 BENEFIT TO REVIEW THE CASES THAT Y'ALL
21 CITED TO ME, THE LAW THAT YOU'VE GIVEN TO
22 ME, WHAT YOUR POSITION IS, BUT AN OFF THE
23 CUFF RESPONSE. FIRST OF ALL, I WANT TO
24 THANK BOTH OF YOU ATTORNEYS THE WAY YOU
25 TRIED THE CASE SHOWED A LOT OF PROFES-

1 SIONALISM. I'VE HAD SOME OTHER CASES
2 WITH OTHER ATTORNEYS THAT HAVE TAKEN TWO
3 DAYS TO GET THROUGH IT. I APPRECIATE THE
4 PREPARATION THAT Y'ALL PUT INTO IT TO GET
5 READY AND TRY THIS CASE. AS TO THE
6 PARTIES, I'M GOING TO SAY THIS TO BOTH OF
7 YOU, I THINK THAT YOU'RE ... WHAT'S THE
8 WORD I'M LOOKING FOR? YOU WERE BELIEVE-
9 ABILITY ON THE STAND. I BELIEVE THAT
10 BOTH OF YOU TRIED TO TELL THE TRUTH AND
11 THAT YOU CAN RECOLLECT AFTER THIS MANY
12 YEARS IS GOING TO BE HARD SOMETIMES, AND
13 I UNDERSTAND THAT. I HAVE ... THE ISSUES
14 THAT I HAD IN THE CASE ARE ... LET'S
15 START, FIRST OF ALL, THE QUESTION YOU HAD
16 TO GET TO BEFORE YOU GET ANYWHERE ELSE
17 WAS THERE AN EXTENSION OF THE LEASE OR
18 NOT. AS I UNDERSTAND IT, PLAINTIFF'S
19 POSITION IS KIND OF AN OPT OUT SITUATION.
20 HE DIDN'T GIVE ANY NOTICE OF IT, AND
21 THEREFORE, DEFENDANT'S LOCKED IN FOR
22 ANOTHER YEAR. DEFENDANT SAYS HE GAVE
23 THAT NOTICE TO MR. RAY, AN AGENT OF THE
24 DEFENDANT. I HAVE A COUPLE PROBLEMS WITH
25 THAT IN THAT THERE NEVER WAS ANY REAL

1 TESTIMONY EXACTLY WHAT THE WORDING OF IT
2 WAS. THE EXACT STATEMENTS THAT WERE MADE
3 TO MR. RAY. MY RECOLLECTION OF THE
4 RECORD, THE VERSIONS WERE A LITTLE BIT
5 OFF, AND THAT'S TO BE EXPECTED IN HAVING
6 TO RECALL THAT LONG AGO. BUT, THE REAL
7 QUESTION I HAVE IN USING THAT AS A BASIS
8 TO SAY THAT HE HAD OPTED OUT WAS THAT I
9 DIDN'T EVER HEAR ANY TESTIMONY
10 CONCRETELY. MR. RAY, "I AM NOT GOING TO
11 BE THERE. ADVISE YOUR CLIENT THAT I'M
12 NOT GOING TO BE THERE. I'M NOT RENEWING
13 THE LEASE." I DIDN'T EVER HEAR HIM
14 TESTIFY, "I'M NOT GOING TO RENEW THE
15 LEASE." THAT GIVES ME A LITTLE BIT OF
16 HEARTBURN. ANOTHER THING THAT GIVES ME
17 HEARTBURN IS TRYING TO SAY THAT YOU ARE
18 NOT RENEWING THE LEASE, BUT AT THE SAME
19 TIME, YOU'RE TAKING ADVANTAGE OF IT AND
20 YOU'RE STAYING THERE AND YOU'RE RECEIVING
21 SOME BENEFIT AS OCCUPANTS OF THE LAND
22 INsofar AS BREACHING IT IN NOVEMBER OF
23 '02. THEN THE OTHER SIDE OF THE COIN, I
24 KNOW THE OPERATOR WAS TAKING A BEATING
25 WITH THE ECONOMY, AND THERE WAS A LEASE

1 IN EFFECT. BECAUSE THERE WAS A LEASE IN
2 EFFECT BUT HE HAD OPTED OUT, HE COULDN'T
3 TAKE ANY MEASURE TO PROTECT HIS MITIGATED
4 DAMAGES ON THE BASIS THAT HE THOUGHT THAT
5 IT WAS OVER. IF HE BREACHED THE LEASE,
6 THAT'S A BREACH OF THE LEASE NOT TO
7 OCCUPY. THAT'S WHAT THESE PROCEEDINGS
8 ARE ALL ABOUT. I'VE GOT A LITTLE PROBLEM
9 WITH THAT AND I'LL ADDRESS ALL THESE
10 ISSUES THAT ARE PUT IN FRONT OF ME AND
11 I'LL POINT IT OUT TO YOU. CONTRACT WITH
12 REGARDS TO DOING AWAY WITH THE REQUIRE-
13 MENT TO MITIGATE. IT'S NOT VALID IN
14 SOUTH CAROLINA. I'LL LOOK AT THE CASE.
15 I DO HAVE SOME PROBLEMS WITH THE FACT
16 THOUGH THAT MITIGATION OF DAMAGES IS AN
17 AFFIRMATIVE DEFENSE AND AS I UNDERSTAND
18 IT, NOT ONLY IS IT AN AFFIRMATIVE DEFENSE
19 WITH REGARDS TO PROVING THE FAILURE TO
20 MITIGATE, YOU HAVE TO OFFER TESTIMONY AS
21 TO HOW MUCH OF A FAILURE IT WAS. SOME
22 KIND OF OBJECTIVE STANDARD. IT CAN BE
23 OFFSET AGAINST THE LEASE ITSELF AND I
24 DIDN'T HEAR A WHOLE LOT OF THAT. THERE
25 WERE SOME THINGS ... THERE WERE SOME

1 THINGS ... THAT WERE SOME INFERENCES AS
2 TO HOW LONG THAT MIGHT HAVE BEEN, WHAT
3 THE DAMAGES MIGHT BE BUT I DIDN'T HEAR
4 CONCRETE TESTIMONY OF THAT. THESE ARE
5 SOME OF THE THINGS THAT ARE GIVING ME
6 SOME PROBLEMS. NOW, THAT I'VE POINTED
7 OUT THE PROBLEMS TO BOTH OF YOU, AND I DO
8 THIS IN EVERY ARBITRATION I DO, AND AFTER
9 I GIVE EVERYBODY THE BENEFIT OF MY
10 OBJECTIVE OBSERVATIONS ABOUT THE
11 TESTIMONY AND THE EVIDENCE AND THE LAW, I
12 ASK YOU IN THE NEXT WEEK, CONSIDER THE
13 POSSIBILITY OF RE-VISITING THE ISSUE OF
14 TRYING TO SETTLE THE CASE WITHOUT ME
15 HAVING TO MAKE A DECISION ON IT. IT'LL
16 SAVE ALL OF YOU TIME, TROUBLE AND MONEY,
17 ATTORNEY'S FEES AND EVERYTHING ELSE
18 BEFORE IT'S ALL OVER WITH, AND THIS GIVES
19 YOU SOME KIND OF BASIS TO RE-EVALUATE AND
20 SIT DOWN AND EXAMINE THE POSITION. I'VE
21 DONE THIS IN EVERY ARBITRATION THAT I'VE
22 EVER DONE, AND BELIEVE IT OR NOT, ONLY
23 ONE OF THEM DID THEY NOT SETTLE THE CASE
24 AFTER THE BENEFIT OF KIND OF A POST-GAME
25 ANALYSES OF QUARTER-BACKING OF HOW THE

1 GAME IS PLAYED. SEE WHAT Y'ALL CAN DO
2 NEXT WEEK ABOUT TRYING TO RE-VISIT AND
3 SETTLING THE CASE. I WOULD ENCOURAGE YOU
4 TO DO THAT. IF THERE'S ANYTHING I CAN
5 HELP YOU IN THAT AS FAR AS LOOKING AT
6 YOUR MOTIONS, PLEASE DO THAT. ANY
7 QUESTIONS? ANY OBJECTIONS TO WHAT I
8 SAID?

9 MR. WRIGHT: NONE, YOUR HONOR.

10 MR. WARING: THANK YOU, YOUR HONOR.
11
12
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25

1 SOUTH CAROLINA,

2

CERTIFICATE

3 HORRY COUNTY.

4 I, JERRY S. MABRY, A NOTARY PUBLIC AND
5 VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH
6 CAROLINA DO HEREBY CERTIFY THAT THE WITNESSES WERE
7 DULY SWORN PRIOR TO THE TAKING OF THEIR TESTIMONY
8 AND THAT THE FOREGOING ONE HUNDRED FIFTY-FOUR (154)
9 PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF
10 THE EVIDENCE AS GIVEN BY SAID WITNESSES AND AS
11 TAKEN DOWN AND TRANSCRIBED BY ME. I FURTHER
12 CERTIFY THAT THE PERSONS WERE PRESENT AS STATED IN
13 THE CAPTION.

14 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR
15 NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS
16 ACTION NOR AM I INTERESTED EITHER DIRECTLY OR
17 INDIRECTLY IN THE RESULTS THEREOF.

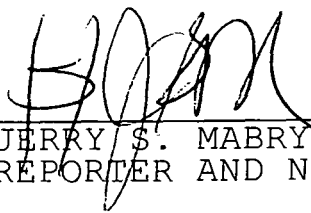
18 I FURTHER CERTIFY THAT I AM NOT RELATED BY
19 BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS
20 ACTION.

21 THIS THE 8TH DAY OF SEPTEMBER, 2011.

22

23

24


JERRY S. MABRY, VERBATIM
REPORTER AND NOTARY PUBLIC

25 MY COMMISSION EXPIRES:
NOVEMBER 22, 2012.

EXHIBIT “B”

ORDER UPON MOTIONS TO RECONSIDER

AND ALTER OR AMEND

AUGUST 23, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CIVIL ACTION NO. 2006-CP-22-422

LEON P. BUTLER, JR.,) **ORDER GRANTING PLAINTIFF'S MOTION**
) **TO ALTER OR AMEND FINAL ORDER**
) **PURSUANT TO RULE 60(A) SCRPC TO**
Plaintiff,) **IDENTIFY THE DEFENDANT AS WILLIAM**
vs.) **L. WILSON A/K/A BILLY WILSON AND**
) **DENYING PLAINTIFF'S MOTION TO**
WILLIAM L. WILSON A/K/A BILLY) **RECONSIDER AND ALTER OR AMEND**
WILSON,) **PURSUANT TO RULES 52(B) AND 59(E)**
) **SCRPC AND DENYING DEFENDANT'S**
Defendant.) **MOTION FOR RECONSIDERATION**
) **PURSUANT TO RULE 59(E) SCRPC AND**
) **GRANTING DEFENDANT'S MOTION FOR**
) **DEPOSIT OF FUNDS WITH CLERK OF COURT**

Date of Hearing: June 2, 2009
Hearing Officer: Willard D. Hanna, Jr., Special Referee
Counsel for Plaintiff: Neil D. Wright
Counsel for Defendant: Robert W. Maring
Court Reporter: Jerry S. Mabry

FILED
GEORGETOWN COUNTY, S.C.
AUG 23 AM 9:26
JAMES Y. WHITE
CLERK OF COURT

This non-jury matter is before me as Special Referee by virtue of a Consent Order of Reference issued pursuant to Rule 53 SCRPC (Court's Exhibit #1). I issued a Final Order Ending Action in this matter on March 27, 2009, which Order was filed in the Office of the Clerk of Court for Georgetown County on April 1, 2009. Thereafter, on April 7, 2009, the Defendant Billy Wilson filed a timely written Motion for Reconsideration of my Final Order Ending Action, which Motion for Reconsideration was incorrectly designated as a Motion pursuant to Rule 60 SCRPC. On April 9, 2009, the Plaintiff Leon P. Butler, Jr., filed a timely written Notice of Motion and Motion pursuant to Rules 52(b), 59(e) and 60(a) SCRPC, which requested that I reconsider and alter or amend my Final Order Ending Action. On June 2, 2009 I conducted a hearing to consider the parties' motions for reconsideration and heard the arguments of counsel concerning each issue raised in those motions. The parties were not present at that hearing. Thereafter, on September 18,

2009, the Defendant Billy Wilson filed a Motion for Deposit in Court pursuant to Rule 67 SCRPC which seeks an Order allowing the Defendant to deposit the amount of the judgment in this matter with the Clerk of Court for Georgetown County. I will address these motions in the sequence in which they were filed.

Defendant's Motion for Reconsideration

The Defendant's written Motion for Reconsideration requests that I reconsider six (6) alleged errors in my Final Order Ending Action:

1. Defendant's Motion for Reconsideration alleges that the evidence and testimony showed that the Plaintiff had received adequate notice that the Defendant did not intend to re-let the premises.

At the hearing that I conducted on June 2, 2009, counsel for the Defendant revisited and reiterated the arguments that he made concerning this issue during the trial and in his written post-trial motions and brief. After careful consideration of the evidence presented during the trial and the arguments set forth in the Defendant's post-trial motions and brief, I rejected the Defendant's arguments in my Final Order Ending Action. The Ground Lease Agreement between the Plaintiff, as Lessor, and the Defendant, as Lessee, imposed an affirmative obligation upon the Defendant Lessee to "opt out" of the automatic renewal of the Ground Lease Agreement for an additional one (1) year term if the Defendant Lessee did not intend to exercise his option to renew the Ground Lease Agreement. Furthermore, the Ground Lease Agreement clearly defines the obligation of the Defendant Lessee to furnish written, as opposed to oral, notice to the Plaintiff Lessor of the Defendant Lessee's intention to "opt out" of automatic renewal of the Ground Lease Agreement. In light of the Defendant's concession that he did not furnish written notice to

the Plaintiff of his intention not to exercise his option to extend the term of the Ground Lease Agreement, the Ground Lease Agreement automatically renewed for an additional one (1) year term thereby obligating the Defendant to perform his obligations as Lessee for the lease period commencing May 15, 2002 and ending May 14, 2003.

After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I again reject the Defendant's arguments on this issue as unpersuasive. I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

2. Defendant's Motion for Reconsideration alleges that I erred in asserting that the Plaintiff did not have the duty to mitigate his damages due to the contract provision in the Ground Lease Agreement.

In his Answer and Counterclaim the Defendant asserted as an affirmative defense that the Plaintiff failed to mitigate his damages. The issue of the Plaintiff's alleged duty to mitigate his damages was extensively addressed in my Final Order Ending Action. Based upon the evidence presented at trial, I made findings of fact that the Plaintiff and the Defendant were sophisticated businessmen, that the Ground Lease Agreement between the Plaintiff and the Defendant was the product of extensive lease negotiations over the course of several months, that the Plaintiff and the Defendant were represented during the negotiations by independent legal counsel who prepared, reviewed, and made changes to drafts of the Ground Lease Agreement, that both the Plaintiff and the Defendant made compromises and concessions during the negotiations, and that the Plaintiff and the Defendant were in essentially equal bargaining positions during the negotiations. I also concluded as a matter of law that any duty of the Plaintiff to mitigate damages

suffered as a result of the Defendant's failure to perform his obligations under the Ground Lease Agreement was negated by the following lease provision which specifically annuls any duty to mitigate (Court's Exhibit #2, Paragraph 18, page 10):

"There shall be no obligation on the part of the LESSOR to re-let nor any liability on his part for failure to re-let, and the LESSEE'S liability shall not be diminished or affected by the LESSOR's failure to re-let."

The Plaintiff was not under a duty to mitigate damages as the Plaintiff and the Defendant, as sophisticated businessmen, bargained away any obligation on the part of the Plaintiff to mitigate his damages during extensive arms length negotiations.

After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I again reject the Defendant's arguments on this issue as unpersuasive. I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

3. Defendant's Motion for Reconsideration alleges that I erred in not considering the evidence by the Defendant on the issue of mitigation.

This error alleged by the Defendant's Motion for Reconsideration is allied with the Defendant's immediately preceding assignment of error. In light of my conclusion that the Plaintiff was not under a legal duty to mitigate damages, any evidence proffered by the Defendant on the issue of Plaintiff's efforts to mitigate his damages is unnecessary. After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I reject the Defendant's arguments on this issue as unpersuasive. I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

4. Defendant's Motion for Reconsideration alleges that I erred in awarding the Plaintiff damages for removal of trash abandoned by the Defendant on the Leased Premises as the Plaintiff did not present competent evidence of the damages as to the cleanup of the property.

Testimonial evidence and documentary evidence was presented concerning this issue at the trial of the case. This issue was specifically addressed in the post trial motions and briefs of the parties and in my Final Order Ending Action.

The provisions of the Ground Lease Agreement obligate the Defendant to maintain the Leased Premises in a clean and orderly condition. It is undisputed that the Defendant breached his maintenance obligation under the Ground Lease Agreement as he left a mailbox, a partially burned mobile home, a truck, an illuminated sign, and freestanding business signs on the Leased Premises when he abandoned the Leased Premises. (Testimony of Leon P. Butler, Jr.; Testimony of Billy Wilson; and Plaintiff's Exhibits # 26, 27, 28 and 29). When the Plaintiff re-let the Leased Premises on May 14, 2005 the items abandoned by the Defendant were still on the Leased Premises and the Plaintiff negotiated a credit in the amount of \$2,500.00 against the rent payable by the new tenant for clean up of the debris abandoned by the Defendant upon the Leased Premises. The Plaintiff provided sworn testimony concerning the lease payment credit that he negotiated for the clean up of the Leased Premises and the Defendant failed to present any evidence to controvert the reasonableness of the \$2,500.00 lease payment credit negotiated by the Plaintiff for clean up of the debris abandoned by the Defendant upon the Leased Premises.

At the hearing that I conducted on June 2, 2009, counsel for the Defendant reiterated the arguments that he made concerning this issue during the trial and in his written post-trial motions

and brief. After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I again reject the Defendant's arguments on this issue as unpersuasive. I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

5. Defendant's Motion for Reconsideration alleges that I erred in awarding the Plaintiff pre-judgment interest as the Plaintiff was not entitled to pre-judgment interest.

South Carolina law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, and the sum is certain or capable of being reduced to certainty. The provisions of the Ground Lease Agreement which specify when the Defendant Lessee's rent payment is due and the amount of the rent owed by the Defendant Lessee to the Plaintiff Lessor are sufficiently specific to determine when the Defendant's payment is demandable and the amount of the payment. Thus, prejudgment interest is authorized by South Carolina law with respect to the Defendant's rent payment obligation to the Plaintiff. Likewise, the provisions of the Ground Lease Agreement which obligate the Defendant to pay Horry County real estate taxes assessed against the Leased Premises are sufficiently specific to determine when the Defendant's payment is demandable and to ascertain the amount of the payment and prejudgment interest is thus authorized by South Carolina law with respect to the Defendant's tax payment obligation.

This legal issue was addressed extensively in the parties' post-trial motions and briefs and in my Final Order Ending Action. At the hearing that I conducted on June 2, 2009, counsel for the Defendant reiterated the arguments that he made concerning this issue during the trial and in his written post-trial motions and brief. I again reject the Defendant's arguments on this issue as

unpersuasive. I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

6. Defendant's Motion for Reconsideration alleges that I erred in awarding attorney's fees to the Plaintiff that the Defendant characterizes as excessive and unreasonable.

At the conclusion of the trial in this matter, I requested that counsel for the parties submit written post trial motions and briefs addressing the legal issues presented for determination. Thereafter, I conducted a conference call with counsel to inform counsel of my findings and conclusions concerning the issues presented for determination. During that conference call with counsel, I requested that counsel for the Plaintiff prepare a proposed final Order for my consideration. As the Ground Lease Agreement specifically provides that the Defendant Lessee shall be liable for payment of the Lessor's costs of collection, including reasonable attorney's fees incurred by the Lessor, and as the Plaintiff's Complaint in this matter specifically demands judgment against the Defendant for costs of collection, including reasonable attorney's fees incurred by the Plaintiff, I requested that counsel for the Plaintiff provide an Affidavit Concerning Attorney Fees incurred by the Plaintiff in this matter. I informed counsel for the Defendant that if the Defendant objected to the attorney fees set forth in the Affidavit of Plaintiff's counsel I would conduct an evidentiary hearing to afford the Defendant an opportunity to cross examine Plaintiff's counsel concerning the Attorney Fees incurred by the Plaintiff in this matter.

In accordance with my request, Plaintiff's counsel provided an Affidavit Concerning Attorney Fees incurred by the Plaintiff which included a detailed and itemized list of the

professional services rendered by counsel for the Plaintiff in this matter. I examined Plaintiff counsel's Affidavit Concerning Attorney Fees in the course of my consideration of a reasonable attorney's fee to be awarded to the Plaintiff. I examined counsel's Affidavit Concerning Attorney Fees in light of the six factors that our South Carolina Supreme Court has set forth as factors to be considered in determining a reasonable attorney's fee¹:

- (1) the nature, extent, and difficulty of the case;
- (2) the time necessarily devoted to the case;
- (3) professional standing of counsel;
- (4) contingency of compensation;
- (5) beneficial results obtained; and,
- (6) customary legal fees for similar services.

The fourth factor, contingency of compensation, does not apply in this case and therefore was not considered. I determined that the attorney fee set forth in counsel's Affidavit Concerning Attorney Fees appeared to be reasonable in light of the remaining five factors and awarded Plaintiff attorney fees in the amount of \$39,145.00 in my Final Order Ending Action.

As the Defendant challenged the award of attorney fees as excessive and unreasonable, I conducted an evidentiary hearing on the issue of attorney fees on June 2, 2009, and afforded the Defendant's counsel an opportunity to examine Plaintiff's counsel concerning the professional services performed for the Plaintiff and counsel's charges for those services.

Neil D. Wright, Esq., Plaintiff's counsel of record, testified concerning the professional services that he and Matthew N. Wright, Esq., rendered to the Plaintiff in this matter. Mr.

Wright also submitted five (5) exhibits in support of his testimony concerning the professional services rendered to the Plaintiff:

1. Plaintiff counsel's Affidavit Concerning Attorney Fees;

1. Glasscock v. Glasscock 304 S.C. 158, 403 S.E.2d 313 (SC 1991).

2. Plaintiff's Interrogatories to Defendant;
3. Plaintiff's Request for Production of Documents to Defendant;
4. Letter from Defendant's counsel, dated October 25, 2007, setting forth Defendant's settlement proposal; and,
5. Proposed Final Order Ending Action by counsel for the Plaintiff-dated 12/16/08.

Counsel for the Defendant conceded at the hearing that Plaintiff's counsel is an experienced litigator who is highly regarded among his peers for his abilities as a litigator and his diligent preparation for litigation. Counsel for the Defendant further conceded at the hearing that the hourly rate charged by Plaintiff's counsel for the professional services rendered to the Plaintiff was less than the customary legal fees in the community for similar services. The crux of the Defendant's complaint about the Plaintiff's legal fees is that he believes that Plaintiff's counsel spent too many hours preparing the Plaintiff's case against the Defendant.

In response, Plaintiff's counsel testified that while this collection action should have been a simple matter, the Defendant's vigorous denial of the Plaintiff's claim and assertion of numerous affirmative defenses and counterclaims converted the simple collection action into a complex legal matter that required extensive work by Plaintiff's counsel. Plaintiff's counsel pointed to extensive, custom drafted interrogatories and requests for production directed to the Defendant, and extensive document subpoenas directed to third parties that were designed to extract information concerning the date upon which the Defendant actually abandoned possession of the Leased Premises. This information was essential to establish the Plaintiff's

claim that the Defendant maintained possession of and enjoyed the use of the Plaintiff's property long after the commencement of the lease term that the Defendant has attempted to disavow. Moreover, Plaintiff's counsel obtained documents under subpoena from the Horry County Building Department and Santee Cooper which detailed improvements made to the Leased Premises by the Defendant shortly before he abandoned the Leased Premises. Those documents belie the crux of the Defendant's defense; that is, his claim that he informed the Plaintiff's real estate agent in May of 2001 that he was vacating the Leased Premises in May of 2002.

The exhaustive briefs and the Final Order Ending Action prepared by Plaintiff's counsel in this action attest to the vigorous manner in which the parties to this action contested every issue. They also attest to the many hours of research, analysis, and writing necessarily devoted to this matter by counsel for the Plaintiff. I find that the number of hours devoted by Plaintiff's counsel to the preparation and trial of the Plaintiff's case against the Defendant were reasonable and justified and commensurate with the nature, extent, and difficulty of the case, which was made more difficult by the vigorous manner in which the Defendant contested every issue.

To emphasize the beneficial results obtained by the Plaintiff as a result of counsel's efforts, Plaintiff's counsel referenced the letter from Defendant's counsel, dated October 25, 2007, which set forth the Defendant's pre-trial settlement proposal. In that proposal, the Defendant offered to settle the Plaintiff's claim for the sum of \$19,756.38, which included Plaintiff's attorney fee. Plaintiff's counsel noted that the Plaintiff's award of \$133,887.75 under the terms of the Final Order Ending Action was a very beneficial result which reflected that the Plaintiff had prevailed upon all elements of his cause of action and upon all affirmative defenses asserted by the Defendant.

After considering the testimonial and documentary evidence presented by Plaintiff's counsel at the hearing on June 2, 2009, the concessions by Defendant's counsel concerning the professional standing of Plaintiff's counsel and the reasonableness of the hourly rate charged by Plaintiff's counsel, and the applicable factors which must be considered in determining a reasonable attorney's fee, I find and conclude that the sum of \$39,145.00 is a reasonable attorney's fee for the services of Plaintiff's counsel in this matter. Accordingly, I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

Motions Presented by the Plaintiff

The Plaintiff's written Motion for Reconsideration requests that I reconsider and alter or amend my Final Order Ending Action as follows:

1. That the Final Order Ending Action be altered or amended, pursuant to Rule 60(a) SCRPC, to correctly identify the Defendant as William L. Wilson a/k/a Billy Wilson.

The Defendant is identified in the Ground Lease Agreement and in the Plaintiff's Complaint as Billy Wilson. Based upon a transcript of the Defendant's deposition that was presented for my consideration at the hearing on June 2, 2009, it appears that the Defendant identified himself at the deposition as William L. Wilson. Accordingly, I hereby grant the Plaintiff's motion to amend the Final Order Ending Action to correctly identify the Defendant as William L. Wilson a/k/a Billy Wilson.

2. Plaintiff's Motion for Reconsideration alleges that I erred in failing to conclude as a matter of law that the Plaintiff is entitled to judgment against the Defendant for all fees that I charged for my services as Special Referee which were paid by the Plaintiff.

Paragraph 18 of the Ground Lease Agreement provides for the recovery of costs of collection of rentals due under the Ground Lease Agreement, including reasonable attorney's fees. Plaintiff argues that "costs of collection of rentals" should be interpreted to include the recovery of Special Referee's Fees. The Ground Lease Agreement does not specifically provide for the recovery of Special Referee's Fees. Accordingly, I find that the provisions of Rule 53(d) SCRCF are controlling with respect to the award of Special Referee's fees. Pursuant to Rule 53(d) SCRCF, I made the determination in the Final Order Ending Action that my fees as Special Referee should be divided equally between the Plaintiff and the Defendant.

After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I reject the Plaintiff's argument on this issue as unpersuasive. I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue.

3. Plaintiff's Motion for Reconsideration alleges that I erred in failing to find that the Defendant did not present evidence to satisfy his burden of proof with respect to his affirmative defense that the Plaintiff failed to mitigate damages.

The Plaintiff argues that the Defendant, as the proponent of the affirmative defense of failure to mitigate damages, bears the burden of proof with respect to that affirmative defense. The Plaintiff further argues that the Defendant did not introduce any evidence concerning the amount of damages that the Plaintiff could have avoided by efforts to mitigate the damages that he suffered. The Plaintiff specifically makes reference to my deletion of proposed Findings of Fact 46, 48, and 49 of the Plaintiff's draft of a proposed Final Order Ending Action dated December 16, 2008.

After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue. In light of my legal conclusion that the Plaintiff was not under a duty to mitigate damages, evidence concerning the amount of damages that the Plaintiff could have avoided by efforts to mitigate the damages that he suffered is irrelevant.

4. Plaintiff's Motion for Reconsideration alleges that I erred in failing to conclude as a matter of law that the Defendant failed to satisfy his burden of proof with respect to the amount of damages that the Plaintiff could have avoided by efforts to mitigate the damages that he suffered.

The Plaintiff again argues that the Defendant, as the proponent of the affirmative defense of failure to mitigate damages, bears the burden of proof with respect to that affirmative defense. The Plaintiff specifically makes reference to my deletion of proposed Conclusion of Law 34 of the Plaintiff's draft of a proposed Final Order Ending Action dated December 16, 2008.

After considering the arguments made by counsel during the motion hearing that I conducted on June 2, 2009, I find no basis for modifying my Final Order Ending Action as a result of my reconsideration of this issue. In light of my legal conclusion that the Plaintiff was not under a duty to mitigate damages, evidence concerning the amount of damages that the Plaintiff could have avoided by efforts to mitigate the damages that he suffered is irrelevant.

Defendant's Motion for Deposit in Court Pursuant to Rule 67 SCRPC

On September 18, 2009, the Defendant filed a Motion for Deposit in Court pursuant to Rule 67 SCRPC, which motion seeks an Order allowing the Defendant to deposit the amount of the Judgment in this matter with the Clerk of Court for Georgetown County. The Plaintiff does not

oppose the Defendant's motion. I have been advised by counsel for the parties that they have agreed, by an exchange of correspondence, that if the final Judgment amount is in fact deposited by the Defendant with the Clerk of Court for Georgetown County in accordance with the terms of an amended Final Order issued by the undersigned as Special Referee in this matter, that interest accruing on the Judgment amount at the statutory judgment interest rate shall cease as of September 18, 2009.

Pursuant to South Carolina Supreme Court Order 2009-01-05-01, the legal rate of interest for judgments and money decrees for the period January 15, 2009, through January 14, 2010, is 7.25% compounded annually. Accordingly, interest at the statutory rate of 7.25% or \$26.60 per day accrued upon the Judgment amount of \$133,887.75 set forth in the Final Order Ending Action from March 27, 2009 through September 18, 2009. The Judgment amount as of September 18, 2009 was therefore \$138,542.75.

As the parties appear to be in agreement concerning the Defendant's Motion to deposit the amount of the Judgment in this matter with the Clerk of Court for Georgetown County, I hereby grant the Defendant's Motion pursuant to Rule 67 SCRPC to deposit the amount of the Judgment in this matter with the Clerk of Court for Georgetown County conditioned upon the Defendant's compliance with the terms of this Order.

ORDERED

IT IS THEREFORE ORDERED, that the Plaintiff's Motion pursuant to Rule 60(a) SCRPC to alter or amend the Final Order Ending Action in this matter to correctly identify the Defendant as William L. Wilson a/k/a Billy Wilson is hereby GRANTED.

IT IS FURTHER ORDERED, that the Plaintiff's Motion for Reconsideration is DENIED with respect to all other requests for reconsideration.

IT IS FURTHER ORDERED, that the Defendant's Motion for Reconsideration is DENIED.

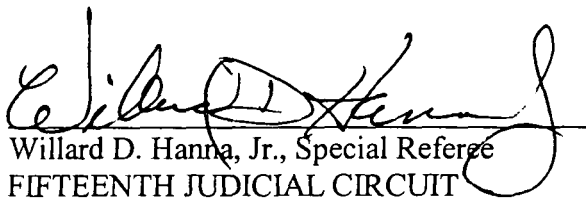
IT IS FURTHER ORDERED, that the Defendant's Motion to Deposit the amount of the Judgment in this matter with the Clerk of Court for Georgetown County is GRANTED upon the condition that the Defendant deposit the sum of \$138,542.75 with the Clerk of Court for Georgetown County, South Carolina within TEN (10) DAYS of the date of this Order.

IT IS FURTHER ORDERED, that upon receipt of the sum of \$138,542.75 from the Defendant, the Clerk of Court for Georgetown County shall deposit the said sum in an interest bearing account.

IT IS FURTHER ORDERED, that the disposition of the funds deposited by the Defendant with the Clerk of Court for Georgetown County and any interest accruing thereon by reason of investment of such funds by the Clerk of Court shall be determined by subsequent Order of the Court.

AND IT IS SO ORDERED.

August 15, 2011


Willard D. Hanna, Jr., Special Referee
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2006-CP-22-422

LEON P. BUTLER, JR.,)
)
)
Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

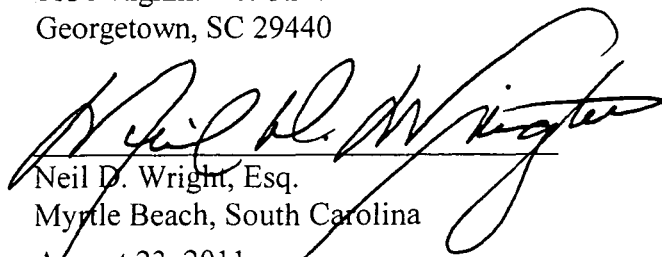
WILLIAM L. WILSON A/K/A BILLY)
WILSON,)
)
Defendant.)

The undersigned employee of Barnett & Wright, P.A., Attorneys at Law, 1304 Azalea Court, Suite B, Myrtle Beach, South Carolina 29577, does hereby certify that the following described document:

ORDER GRANTING PLAINTIFF'S MOTION TO ALTER OR AMEND FINAL ORDER PURSUANT TO RULE 60(A) SCRPC TO IDENTIFY THE DEFENDANT AS WILLIAM L. WILSON A/K/A BILLY WILSON AND DENYING PLAINTIFF'S MOTION TO RECONSIDER AND ALTER OR AMEND PURSUANT TO RULES 52(B) AND 59(E) SCRPC AND DENYING DEFENDANT'S MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(E) SCRPC AND GRANTING DEFENDANT'S MOTION FOR DEPOSIT OF FUNDS WITH CLERK

was served upon counsel of record for the Defendant by hand delivering a copy of same to the office of counsel of record for the Defendant at the following address on August 23, 2011

Robert W. Maring, Esq.
Maring and Moody Law Firm
1130 Highmarket Street
Georgetown, SC 29440


Neil D. Wright, Esq.
Myrtle Beach, South Carolina
August 23, 2011

FILED
GEORGETOWN COUNTY, S.C.
2011 AUG 23 AM 9:26
ALMA Y. WHITE
CLERK OF COURT

EXHIBIT “C”

MOTION HEARING TRANSCRIPT

JUNE 2, 2009

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON
COUNTY OF GEORGETOWN PLEAS
FIFTEENTH JUDICIAL
CIRCUIT
2006-CP-22-422

LEON P. BUTLER, JR.
PLAINTIFF,
-VS-
BILLY WILSON,
DEFENDANT.

COPY

**MOTION HEARING BEFORE WILLARD D. HANNA, ESQ.,
SPECIAL REFEREE IN THE ABOVE ENTITLED MATTER.**

TAKEN BY JERRY S. MABRY, VERBATIM REPORTER AND
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA ON
JUNE 2, 2009 IN THE OFFICE OF WILLARD D. HANNA,
GLENN'S BAY DRIVE, SURFSIDE BEACH, SOUTH CAROLINA.

****THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY
25A SOUTH CAROLINA CODE ANN. REGS. 67-615D (SUPP.
2000). THE UNAUTHORIZED COPYING OF THIS DOCUMENT
IS DEEMED TO BE CONVERSION OF AN ASSET BELONGING TO
THE COURT REPORTER.**

A P P E A R A N C E S

FOR THE PLAINTIFF: NEIL D. WRIGHT, ESQ. AND
 MATTHEW WRIGHT, ESQ.
 1304-B AZALEA COURT
 MYRTLE BEACH, S.C. 29577

FOR THE DEFENDANT: ROBERT W. MARING, ESQ. AND
 JEFFREY MARTIN, ESQ.
 P. O. BOX 478
 GEORGETOWN, S.C. 29442

EXHIBITS

PLAINTIFF'S:

1. AFFIDAVIT OF PLAINTIFF PAGE 5
2. PLAINTIFF'S INTERROGATORIES
 TO THE DEFENDANT PAGE 20
3. PLAINTIFF'S FIRST REQUEST FOR
 PRODUCTION TO THE DEFENDANT PAGE 20
4. NOT INTRODUCED
5. FINAL ORDER ENDING ACTION PAGE 38

1 MR. HANNA: GENTLEMEN, ONE MATTER ON THE
2 RECORD HOUSE CLEANING THAT I THINK WE
3 NEED TO CLEAR UP SO IF THERE'S ANY
4 QUESTION ABOUT IT LATER ON, WE DID IT
5 EITHER BY TELEPHONE OR WHATEVER, BUT THE
6 QUESTION WAS: THE AWARD OF ATTORNEY'S
7 FEES AFTER THE TRIAL, AND I THINK IT WAS
8 WITH EVERYBODY'S AGREEMENT THAT WE
9 DECIDED TO ADDRESS THAT ALONG WITH THE
10 POST-TRIAL MOTIONS THAT WE'RE GONNA HEAR
11 TODAY, IS THAT CORRECT? ANYBODY HAVE ANY
12 OBJECTIONS TO THAT?

13 MR. WRIGHT: NO OBJECTION.

14 MR. MARING: NO OBJECTION, YOUR HONOR.

15 MR. HANNA: I THOUGHT WE NEEDED TO GET
16 THAT ON THE RECORD. SO, BEFORE WE GET TO
17 THOSE MOTIONS, LET'S DEAL WITH THE
18 ATTORNEY'S FEES FIRST. NEIL, I'LL LET
19 YOU BE HEARD WITH REGARDS TO THE
20 ATTORNEY'S FEES AND I'LL LET ROBERT
21 RESPOND.

22 MR. WRIGHT: ALL RIGHT, THAT'S FINE. AND
23 I SPOKE TO ROBERT A LITTLE BIT ABOUT THIS
24 BEFORE. THERE WAS A LETTER THAT HE SENT
25 ON MARCH 30, I BELIEVE, DEALING WITH

1 CERTAIN SPECIFIC ISSUES THAT I'M PREPARED
2 TO ADDRESS, AND HIS MOTION FOR RECONSID-
3 ERATION HAS A MUCH BROADER PERSPECTIVE,
4 WHICH HE SAYS THAT THE ATTORNEY'S FEES
5 ARE EXCESSIVE, WHEREAS, THESE ARE
6 SPECIFIC ISSUES. I'LL BE GLAD TO ADDRESS
7 THEM, AND ALSO, I DIDN'T KNOW WHAT ORDER
8 WE WERE GONNA TAKE THESE IN. JOHN LEITER
9 IS ON STANDBY WAITING FOR US TO CALL HIM.
10 HE'S OUR EXPERT WITNESS ON THE ISSUE.
11 MR. HANNA: DO YOU HAVE AN AFFIDAVIT TO
12 SUBMIT ON YOUR ATTORNEY'S FEES AND WE'LL
13 MARK THAT AS AN EXHIBIT?
14 MR. WRIGHT: I DO.
15 MR. HANNA: I DON'T KNOW THE NUMBER FOR
16 THE COURT, BUT LET'S JUST START AGAIN
17 WITH NUMBER "1" IF EVERYONE IS IN AGREE-
18 MENT WITH THAT?
19 MR. MARING: FINE WITH ME, YOUR HONOR.
20 MR. HANNA: YOU WANT TO MARK THIS AS
21 PLAINTIFF'S EXHIBIT "1".
22 MR. WRIGHT: THIS IS OUR ORIGINAL
23 AFFIDAVIT. THERE'S A COPY FOR YOUR CON-
24 sideration.
25 MR. HANNA: I DON'T WANT TO INTERRUPT YOU

1 NOW, BUT I WOULD ASSUME ... I'LL TAKE
2 THAT BACK, I DON'T WANT TO MAKE ANY
3 ASSUMPTIONS. DO YOU HAVE ANY OBJECTIONS
4 TO HIS AFFIDAVIT AS OPPOSED TO LIVE
5 TESTIMONY?

6 MR. MARING: I HAVE NO OBJECTIONS, YOUR
7 HONOR.

8 AFFIDAVIT OF PLAINTIFF'S
9 COUNSEL CONCERNING ATTORNEY'S
10 FEES MARKED FOR IDENTIFICA-
11 TION AND INTRODUCED INTO
12 EVIDENCE AS DEFENDANT'S
13 EXHIBIT "1".

14 MR. HANNA: I'M SORRY. GO AHEAD.

15 MR. WRIGHT: AND AGAIN, IN TERMS OF
16 ADDRESSING THIS, I CAN GO OVER ROBERT'S
17 LETTER OF MARCH 30. THE FIRST ITEM THAT
18 ROBERT RAISES IN HIS LETTER OF MARCH 30,
19 HE STATES THAT 6.2 HOURS IS EXCESSIVE FOR
20 A SEVEN PAGE COMPLAINT. MY ASSUMPTION
21 HE'S REFERRING TO TIME ENTRY ON 12/16/04,
22 WHICH IS ON PAGE 4 OF THE AFFIDAVIT,
23 SECOND ITEM ON THAT PAGE.

24 MR. MARING: THAT'S CORRECT. I'M SORRY.
25 THAT'S FINE.

1 MR. WRIGHT: ACTUALLY WHAT THAT REFLECTS
2 IS, I HAD A MEETING WITH MY CLIENT TO
3 VERIFY INFORMATION TO BE INCLUDED IN THE
4 COMPLAINT. SO I TRAVELED TO CONWAY TO
5 MEET WITH HIM. MET WITH HIM, DISCUSSED
6 THE LAWSUIT. I DID SOME RESEARCH AND I
7 BEGAN DRAFTING THE COMPLAINT ON THAT
8 DATE. SO NOT ALL THE TIME WAS SENT ON
9 DRAFTING THE COMPLAINT.

10 MR. HANNA: WITH REGARDS TO THAT ITEM, DO
11 YOU HAVE ANY QUESTIONS FOR HIM, ROBERT?

12 MR. MARING: OTHER THAN THE ... IF YOU
13 TAKE THE NEXT THREE ENTRIES OF 6.2, 4.6
14 AND 1.6, WHICH ALL SEEM TO COVER THE SAME
15 WHICH I CALCULATED AS TWELVE HOURS TO
16 MEET YOUR CLIENT AND DRAW UP THE
17 COMPLAINT. I JUST WANTED TO MAKE SURE
18 THAT IS, IN FACT, WHAT YOU ARE ADDRESSING
19 WITH THOSE THREE ENTRIES ON 12/16, 12/17
20 AND 5/12.

21 MR. HANNA: LET'S DO THIS BEFORE WE GO
22 ANY FURTHER. NEIL, YOU REFERRED TO A
23 LETTER DATED MARCH 30TH, 2009, IN WHICH
24 MR. MARING OUTLINES HIS OBJECTIONS. SOME
25 OF HIS OBJECTIONS TO ATTORNEY'S FEES, I

1 DON'T KNOW WHETHER THEY'RE ALL INCLUSIVE
2 OR NOT. DO YOU HAVE SOME MORE IN
3 ADDITION TO THESE?

4 MR. MARING: YOUR HONOR, THE CRUX, AND
5 MAYBE ... LET ME GET AN ARGUMENT UP
6 FRONT.

7 MR. HANNA: LET'S DO THIS: AS I UNDER-
8 STAND IT, JUST TO MAKE THE SAME ORDER,
9 YOU PUT IN YOUR AFFIDAVIT. I THINK
10 THAT'S GOOD ENOUGH TO SHIFT IT OVER TO
11 ROBERT. LET ROBERT ADDRESS HIS QUESTIONS
12 WITH REGARDS TO THE AFFIDAVIT AND YOU CAN
13 RESPOND AND IF WE NEED TESTIMONY FROM
14 JOHN AFTERWARDS, WE'LL DO THAT. HOW DOES
15 THAT SOUND?

16 MR. MARING: THAT'S FINE WITH ME, JUDGE.

17 MR. HANNA: SO, LET'S START WITH YOUR
18 OBJECTIONS TO HIS AFFIDAVIT AS TO
19 ATTORNEY'S FEES.

20 MR. MARING: I'VE HAD AN OPPORTUNITY TO
21 LOOK AT THE NUMBER OF HOURS THAT WERE PUT
22 INTO THE CASE, AND I'VE CALCULATED TWO
23 HUNDRED AND SEVENTY-NINE POINT SEVEN
24 HOURS THAT WERE BILLED FOR BRINGING THIS
25 CASE, IS THAT CORRECT?

1 MR. WRIGHT: YES.

2 MR. MARING: OF WHICH ... AND YOU WOULD
3 AGREE THAT THERE WERE THREE DEPOSITIONS
4 TAKEN IN THE CASE?

5 MR. WRIGHT: YES.

6 MR. MARING: AND YOU WOULD AGREE THAT THE
7 TRIAL OF THIS CASE TOOK ONE DAY?

8 MR. WRIGHT: YES.

9 MR. MARING: AND THAT OTHER THAN BEING
10 HERE TODAY, THERE ... NO OTHER MOTIONS
11 WERE HEARD OTHER THAN THAT OF THE DAY OF
12 TRIAL?

13 MR. WRIGHT: OTHER THAN A MOTION FOR
14 CHANGE OF VENUE THAT ...

15 MR. MARING: I'M JUST SAYING THERE WAS A
16 CONSENT ORDER FILED ON THE CHANGE OF
17 VENUE, CORRECT?

18 MR. WRIGHT: YES.

19 MR. MARING: SO, REALISTICALLY, WHAT WE
20 HAVE IS A ONE DAY TRIAL, AND THE SAME DAY
21 WE HEARD ALL PRE-TRIAL MOTIONS ON THE DAY
22 OF TRIAL?

23 MR. WRIGHT: PRE-TRIAL MOTIONS. POST-
24 TRIAL MOTIONS WERE WRITTEN MOTIONS
25 AFTERWARDS.

1 MR. MARING: WERE WRITTEN AND SUBMITTED
2 AFTERWARDS, CORRECT?

3 MR. WRIGHT: YES.

4 MR. MARING: THE AMOUNT IN CONTROVERSY IN
5 THE CASE WAS \$50,000.00, WHICH WAS A
6 LIQUIDATED DAMAGE PURSUANT TO A CONTRACT,
7 CORRECT?

8 MR. WRIGHT: I WOULD DISAGREE WITH THAT.
9 AND THE REASON BEING, THAT IN ADDITION TO
10 THE AMOUNT OF THE RENT, THERE WERE ALSO
11 ISSUES CONCERNING THE MATTER OF TAXES
12 THAT WERE NOT PAID BY YOUR CLIENT. THERE
13 WAS ALSO THE MATTER OF PRE-JUDGMENT
14 INTEREST ON THOSE AMOUNTS, WHICH WAS
15 BRIEFED AND ARGUED EXTENSIVELY. THERE
16 WERE ALSO THE MATTERS OF ALL OF THE
17 AFFIRMATIVE DEFENSES THAT YOU HAD RAISED
18 THAT WERE ALSO PRETTY EXTENSIVE. SO,
19 THERE WAS QUITE A BIT OF TIME SPENT IN
20 THIS CASE OUTSIDE ACTUAL HEARING. A LOT
21 OF TIME SPENT IN PREPARING FOR THE
22 DEPOSITIONS AND A LOT OF TIME SPENT IN
23 PAPER DISCOVERY IN THAT WE HAD SOME
24 EXTENSIVE REQUESTS FOR DOCUMENTS AND
25 INTERROGATORIES.

1 MR. MARING: WHAT I'M TRYING TO ASK
2 THOUGH, NEIL, IN TERMS OF THE MATTER OF
3 CONTROVERSY WOULD HAVE RENT AND TAXES ...

4 MR. WRIGHT: AND INTEREST.

5 MR. MARING: AND YOUR CLAIM OF INTEREST.
6 NOW, THE BREACH OF THIS LEASE TOOK PLACE
7 BETWEEN MAY 12TH OF '02 THROUGH, I GUESS
8 IT WOULD BE MAY 11TH ...

9 MR. WRIGHT: MAY 14TH OF THE FOLLOWING
10 YEAR.

11 MR. MARING: OF '03. THIS CASE WAS NOT
12 FILED UNTIL JUST LITERALLY A FEW DAYS
13 PRIOR TO THE STATUTE OF LIMITATIONS ...
14 THE THREE YEAR STATUTE OF LIMITATIONS
15 RUNNING ON THE CASE, CORRECT?

16 MR. MARING: CORRECT.

17 MR. MARING: SO, IN TERMS OF WHETHER OR
18 NOT ... AND, OF COURSE, THAT'S CERTAINLY
19 ... I'M NOT CONCEDED THE PRE-JUDGMENT
20 INTEREST IS PROPER BUT THE FACT OF THE
21 PRE-JUDGMENT INTEREST WAS DUE TO THE FACT
22 OF THE LONG DELAY IN ACTUALLY FILING THE
23 SUIT. WOULD YOU AGREE WITH THAT?

24 MR. WRIGHT: I WOULD AGREE THAT THE
25 AMOUNT ... CERTAINLY WE HAD OFFERED TO

1 RESOLVE THIS MATTER EARLY ON WITH YOUR
2 CLIENT, WHO IGNORED OUR EFFORTS TO DO SO.
3 AND THEN I MET WITH MR. BUTLER IN
4 DECEMBER OF '04, SO THAT HE COULD DECIDE,
5 YOU KNOW, WHETHER OR NOT HE, IN FACT,
6 WANTED TO BRING THE SUIT BECAUSE HE WAS
7 CONCERNED ABOUT ISSUES OF WHETHER HE
8 COULD COLLECT THE MONEY; WHETHER HE WAS
9 WILLING TO THROW GOOD MONEY AFTER BAD SO
10 TO SPEAK. WE DID EXTENSIVE RESEARCH
11 CONCERNING YOUR CLIENT'S ASSETS TO
12 DETERMINE WHETHER HE COULD RESPOND TO A
13 JUDGEMENT.

14 MR. MARING: ALRIGHT, SIR. NOW, SPECI-
15 FICALLY GOING BACK TO YOUR AFFIDAVIT. IT
16 APPEARS THAT THERE WAS ...

17 MR. WRIGHT: WHAT PAGE?

18 MR. MARING: I'M LOOKING AT PAGE 11. IT
19 APPEARS TO ME THAT THERE WAS A LENGTHY
20 AMOUNT OF TIME OR AN EXCESSIVE AMOUNT OF
21 TIME WORKING ON THIS FINAL ORDER. I'M
22 GOING TO BRING YOUR ATTENTION TO THE
23 ENTRIES OF 12/11/07 THROUGH 10/8/08. LET
24 ME ADD THOSE UP. AND I'M JUST GONNA DOWN
25 TO THE LAST ... THE 12/11/07 THROUGH

1 12/16 OF '08, AND I COME UP WITH FIFTY-
2 SEVEN HOURS TO DRAFT THE FINAL ORDER.
3 EXPLAIN TO ME WHY IT TOOK FIFTY-SEVEN
4 HOURS TO DRAFT A FINAL ORDER.

5 MR. WRIGHT: THE ENTRIES ON DECEMBER 11TH
6 OF '07, DECEMBER 12TH OF '07, DECEMBER
7 13TH OF '07, DECEMBER 17TH '07. IT LOOKS
8 LIKE TWENTY-TWO ... LITTLE OVER FORTY
9 HOURS. ABOUT FORTY-ONE HOURS THERE. ALL
10 OF THAT INITIAL DRAFT OF THE ORDER IN
11 THIS CASE WAS DONE BY MY SON, AN ASSOC-
12 IATE, MATTHEW WRIGHT. MATTHEW HAD DONE
13 MUCH OF THE RESEARCH AND THE WORK ON THE
14 REPLY BRIEF, THE LEGAL ISSUES THAT WERE
15 AT THE HEART OF MOST OF THAT ORDER. SO,
16 HE DID THE WORK TO THAT POINT ON THE
17 FINAL ORDER. SO, BASICALLY, WHAT I HAD
18 AT THAT POINT WAS A ROUGH DRAFT. AND I
19 DON'T MEAN TO DIGRESS BUT IN ORDER TO PUT
20 THIS IN PROSPECTIVE, RIGHT AFTER 12/17,
21 WE WENT TO PENNSYLVANIA, WHERE MY MOTHER
22 WAS LIVING. SHE WAS ILL. UNFORTUNATELY,
23 HER CONDITION BECAME MUCH WORSE AND THERE
24 WAS A PERIOD OF TIME WHERE I WAS SPENDING
25 VERY LITTLE TIME IN MY OFFICE BECAUSE I

1 WAS HAVING TO CARE FOR HER 'CAUSE SHE
2 COULD NOT CARE FOR HERSELF. THAT PUT ME
3 BACK QUITE A BIT IN TERMS OF MY TIME. I
4 GOT BACK TO WORKING ON THIS FILE IN
5 OCTOBER AND THAT'S WHEN YOU'LL SEE WHERE
6 I SPENT MYSELF ABOUT TEN HOURS IN THE
7 REVISION OF MATTHEW'S DRAFT. MATTHEW
8 THEN, WHEN I ASKED HIM TO GO BACK
9 SHEPHARDIZE ALL OF THE CASES TO MAKE
10 CERTAIN THAT WHAT WE WERE SUBMITTING WAS
11 STILL SUPPORTED BY PRECEDENT. HE DID
12 THAT ON 11/5. I SENT THE FINAL DRAFT ON
13 12/16. SENT THAT BY EMAIL TO BOTH YOU
14 AND THE SPECIAL REFEREE. SO, I MEAN,
15 THAT'S ... I THINK OUR DRAFT OF THE ORDER
16 THAT WE SUBMITTED THE 16TH WAS SOME FIFTY
17 PAGES IN LENGTH. SO, IT WAS RATHER ...
18 IT WAS A LENGTHY ORDER, BUT THERE WERE A
19 LOT OF ISSUES THAT WERE HOTLY CONTESTED
20 AND WE FELT IT NECESSARY TO ADDRESS THOSE
21 IN THE ORDER.
22 MR. MARING: THE HOURLY RATES THAT YOU
23 CHARGE, I HAVE NO OBJECTION AS TO THE
24 HOURLY RATES. I JUST WANT TO BRING THAT
25 TO THE COURT'S ATTENTION RIGHT NOW. THE

1 CONCERN THAT I HAVE IS JUST THE ... IT'S
2 TRUE THAT YOU SPENT SIX WEEKS ... BASIC-
3 ALLY, ABOUT SIX WEEKS OF ATTORNEY TIME
4 PREPARING THIS CASE FOR TRIAL. IS THAT
5 ABOUT RIGHT? TWO HUNDRED AND EIGHTY
6 HOURS, TOTAL HOURS?

7 MR. WRIGHT: IN TERMS OF MY WORK WEEK, IT
8 IS LESS THAN THAT BECAUSE I TYPICALLY
9 WORK BETWEEN FIFTY AND SIXTY HOURS A
10 WEEK. BUT, THERE ARE LESS ... WELL,
11 CLOSE TO FIVE WEEKS.

12 MR. MARING: THAT'S ALL THE QUESTIONS I
13 HAVE, YOUR HONOR.

14 MR. HANNA: SO, AS I UNDERSTAND IT,
15 ROBERT, YOUR QUESTIONS ARE WITH REGARDS
16 TO THE NUMBER OF HOURS IN PREPARING THE
17 ORDER AND THE HOURS IN DRAFTING THE
18 COMPLAINT, IS THAT RIGHT?

19 MR. MARING: YOUR HONOR, THAT ALONG WITH
20 ... AND I'M GONNA BRING BACK MY LETTER.
21 THERE WERE SOME TWENTY HOURS TO ... THERE
22 WERE OVER TWENTY HOURS IN PREPARING ONE
23 SET OF INTERROGATORIES, WHICH HAD SIX OR
24 SEVEN OF THE STANDARD QUESTIONS AND
25 SIXTEEN REQUEST TO PRODUCE. THAT WAS THE

1 EXTENT OF THE REQUESTED DOCUMENTS. JUST
2 TWENTY HOURS TO PREPARE A SET OF INTERRO-
3 GATORIES AND A SET OF REQUEST TO PRODUCE.
4 THAT WOULD BE ANOTHER OBJECTION THAT I
5 HAVE. 1.2 HOURS TO DRIVE THE COMPLAINT
6 TO HORRY COUNTY. I CAN PUT MR. WRIGHT
7 ... AND MAYBE THERE'S A STATUTE OF
8 LIMITATION ISSUE. THAT WAS THE REASON
9 FOR IT, BUT THEY CHARGED 1.2 HOURS FOR AN
10 ATTORNEY TO DRIVE TO HORRY COUNTY TO FILE
11 THE SUMMONS AND COMPLAINT. CERTAINLY
12 DON'T THINK THAT WOULD BE PROPER TO DO
13 FOR AN ATTORNEY TO DRIVE A COMPLAINT TO
14 BE FILED.

15 MR. HANNA: UNLESS HE'S GOT THREE DAYS
16 LEFT ON THE STATUTE OF LIMITATIONS.

17 MR. MARING: WELL, THAT'S WHY I BROUGHT
18 THAT TO THE COURT'S ATTENTION. IF THAT'S
19 THE CASE, I'LL WITHDRAW IT. I WON'T EVEN
20 ARGUE THE ISSUE OF 1.2 HOURS TO DRIVE.
21 I'D DRIVE IT MYSELF, YOUR HONOR.

22 MR. HANNA: WELL, THAT WAS MY POINT.

23 MR. MARING: I'M GONNA JUST SUBTRACT THAT
24 FROM THE ARGUMENT. YOUR HONOR, THAT'S
25 BASICALLY THE EXTENT OF THE ... SO IT'S

1 CERTAINLY NOT AN ISSUE OF THE HOURLY
2 RATE, AND QUITE FRANKLY, I THINK THE
3 HOURLY RATE, IF ANYTHING, WAS LOW, AND IF
4 YOU APPLIED AN HOUR AWAY OF TWO TWENTY-
5 FIVE, THOSE TWO HUNDRED AND SEVENTY
6 HOURS, THAT'S OVER EIGHTY, \$90,000.00
7 WORTH OF ATTORNEY'S FEES IF YOU WERE TO
8 ADD THOSE, BUT TWO TWENTY-FIVE OR TWO
9 FIFTY, I'M ASSUMING YOU'VE GOT AN EXPERT
10 WHO'S CAN TESTIFY THAT THE CUSTOMARY FEE
11 MAY BE IN THAT RANGE FOR HORRY COUNTY
12 ATTORNEYS. SO, THAT'S THE EXTENT OF MY
13 ... JUST AS TO THE AMOUNT OF TIME, OVER-
14 ALL TIME WAS EXCESSIVE, YOUR HONOR. IT
15 WAS A \$50,000.00 LEASE CASE. THERE WERE
16 SOME ISSUES THAT WERE BROUGHT. NOTHING
17 THAT WAS OVERLY COMPLICATED. I DON'T
18 THINK I HAVE THE MENTAL CAPACITY TO OVER-
19 COMPLICATE A CASE, YOUR HONOR. BUT,
20 BASICALLY, THAT'S THE EXTENT OF THE
21 ARGUMENT ON THE ATTORNEY'S FEES.

22 MR. HANNA: IN THAT REGARD, YOU FEEL LIKE
23 THERE HAS BEEN TOO MUCH TIME, REASONABLE
24 TIME, EXPENDED ON CERTAIN AREAS? NOW,
25 WITH THAT IN MIND, WHAT WOULD YOU CONTEND

1 WOULD BE A REASONABLE AMOUNT OF TIME TO
2 BE SPENT ON THOSE AREAS?

3 MR. MARING: YOUR HONOR, I CERTAINLY
4 THINK THAT DRAFTING AN ORDER NEEDS SOME
5 ATTENTION BUT I THINK FOR A REASONABLE
6 LAWYER TEN HOURS WOULD BE ENOUGH TIME TO
7 DRAFT AN ORDER. I DON'T THINK THAT IT
8 TAKES TWENTY HOURS TO DRAFT ... THAT'S
9 TWO FULL DAYS TO ASK SIXTEEN QUESTIONS
10 FOR INTERROGATORIES AND SIXTEEN QUESTIONS
11 FOR REQUEST TO PRODUCE. I THINK A
12 REASONABLE NUMBER WOULD BE THREE HOURS
13 FOR REQUEST TO PRODUCE AND THREE HOURS
14 FOR INTERROGATORIES, NOT TWENTY. NOW, I
15 DON'T KNOW HOW MR. WRIGHT WORKS AND I
16 DON'T THINK WE NEED TO GET INTO THAT, BUT
17 MY POINT IS, I JUST BELIEVE THAT THE
18 AMOUNT OF TIME WAS EXCESSIVE CONSIDERING
19 THE MATTER IN CONTROVERSY AND WHAT THIS
20 CASE WAS ABOUT. IT WAS A SIMPLE BREACH
21 OF LEASE.

22 MR. HANNA: KEEPING IN MIND YOUR CONCES-
23 SION AND I APPRECIATE YOU DOING THAT,
24 ROBERT, WITH REGARDS TO THE REASONABLE-
25 NESS OF THE HOURLY RATE. I DON'T KNOW

1 THAT ANY TESTIMONY FROM MR. LEITER WOULD
 2 BE APPROPRIATE BECAUSE I DON'T THINK HE
 3 COULD TESTIFY AS TO THE QUALITY OF YOUR
 4 WORK OR WHETHER YOU ACTUALLY EXPENDED THE
 5 TIME. HE'LL ONLY BE ABLE TO TESTIFY, 1)
 6 AS TO THE HOURLY RATE, AND NUMBER 2) AS
 7 TO THE FINAL AMOUNT, WOULDN'T HE, NEIL?
 8 WOULD THERE BE ANYTHING ELSE HE'D BE ABLE
 9 TO TESTIFY TO. ANYTHING THAT YOU
 10 EXPECTED HIM TO TESTIFY TO?

11 MR. WRIGHT: THE REASONABLENESS OF THE
 12 TIME SPENT IN PREPARATION FOR TRIAL AND
 13 DEPOSITIONS. YEAH, I THINK WE'VE GOT A
 14 BASIC DISAGREEMENT ABOUT THE LEVEL OF
 15 PREPARATION NEEDED FOR THE CASE. I THINK
 16 YOU CAN ALWAYS LOOK BACK IN 20/20 AND
 17 SAY, "WELL, YOU KNOW, MAYBE YOU DIDN'T
 18 NEED TO SPEND THAT MUCH TIME ON IT." BUT
 19 ALL OF THESE ISSUES AT THE TIME WERE
 20 HOTLY CONTESTED ISSUES. IT WAS NOT ONE
 21 ISSUE IN THIS CASE THAT WAS CONCEDED.
 22 AND, YOU KNOW, FIGURING THAT WE WERE
 23 GONNA HAVE TO BE ABLE TO TRY AS BEST WE
 24 COULD, INCLUDING THE BEST CASE WE COULD.
 25 WE SPENT A LOT OF TIME IN PREPARATION,

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19 THE DEFENDANT, MR. WILSON, LEFT THE
 20 PREMISES. MR. WILSON WAS NOT ABLE TO
 21 TELL US IN HIS TESTIMONY WHEN HE LEFT THE
 22 PREMISES. ONE OF THE ISSUES WAS WHETHER
 23 HE HELD OVER INTO THAT TERM BEYOND MAY
 24 15TH AND HOW MUCH TIME HE SPENT THERE.
 25 WHAT I WAS TRYING TO DO WAS ELICIT

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1 CONCESSIONS THAT HAVE BEEN MADE HERE AND
2 THE WHOLE ARGUMENT, I DON'T SEE THREE,
3 FOUR, FIVE OR SIX BEING AT ISSUE. WOULD
4 YOU CONCEDE THAT, MR. MARING, AS PART OF
5 THE CONCESSION THAT HIS HOURLY FEES ARE
6 APPROPRIATE.

7 MR. MARING: I THINK HIS HOURLY FEES ARE
8 APPROPRIATE, YOUR HONOR, AND CERTAINLY
9 CONCEDE THAT MR. WRIGHT HAS BEEN A LONG
10 TERM MEMBER OF THE HORRY COUNTY BAR. AND
11 CERTAINLY BENEFICIAL RESULTS WERE
12 OBTAINED. IN TERMS OF THE FEE CUSTOM-
13 ARILY CHARGED, I'M NOT SO SURE, YOUR
14 HONOR, THAT IS JUST THE HOURLY RATE.
15 WE'RE TALKING A \$40,000.00 FEE IS WHAT
16 WAS CHARGED HERE, AND I THINK THAT IS THE
17 ISSUE THAT WHETHER OR NOT THAT WOULD BE
18 CONSIDERED UNDER NUMBER "2" UNDER THE
19 TIME. I THINK THE TIME IS INTERRELATED
20 IN TERMS OF ... YOU TALK ABOUT THE TIME
21 AND LABOR NECESSARILY DEVOTED TO THE
22 CASE, IS GONNA BE RELATED TO THE FEE
23 CUSTOMARILY CHARGED.

24 MR. HANNA: I DON'T QUITE READ IT THAT
25 WAY. I READ THE FEE CUSTOMARILY CHARGED

1 TO MEAN WHETHER IT WAS A FLAT FEE OR
2 SOMETHING LIKE THAT, BUT IN A SETTING
3 WHERE WE'RE DEALING WITH AN HOURLY FEE, I
4 THINK THAT THE FEE CUSTOMARILY CHARGED
5 WOULD AGAIN, RELATE BACK TO THE HOURLY
6 FEE.

7 MR. MARING: YES, SIR.

8 MR. HANNA: AND SO, I THINK THAT THE ONLY
9 THING I WOULD ... BASED ON WHAT I'VE
10 HEARD SO FAR THAT I WOULD HAVE TO PASS ON
11 WOULD BE THE DIFFICULTY OF THE SERVICES
12 RENDERED AND THE TIME AND LABOR NECES-
13 SARILY DEVOTED TO THE CASE. MR. WRIGHT
14 HAS SUBMITTED AN AFFIDAVIT THAT HE AND
15 HIS STAFF HAVE PERFORMED THE WORK, THE
16 HOURS THAT HE SET FORTH, AND I FIND NO
17 REAL OVERREACHING OR ABUSE OR ANY INDICA-
18 TION OF FRAUD ON HIS PART, AND SO, I'M
19 GOING TO ACCEPT HIS AFFIDAVIT WITH
20 REGARDS TO TIME AND LABOR. I THINK THAT
21 ONLY LEAVES ME WITH THE DIFFICULTY OF THE
22 LEGAL SERVICES RENDERED. AND I THINK
23 THAT HAS TO BE LOOKED AT IN LIGHT OF THE
24 HOURLY FEE CHARGED ALSO. I THINK THAT
25 BASED ON THE ISSUES IT MIGHT NOT HAVE

1 BEEN THE MOST COMPLICATED IN THE WORLD.
2 THEY WEREN'T EASY TO DEAL WITH FROM MY
3 STANDPOINT, AT LEAST. THEY MIGHT HAVE
4 BEEN EASY FOR Y'ALL TO DEAL WITH, BUT I
5 CERTAINLY SPENT A LOT OF TIME GOING OVER
6 THE ORDER AND LOOKING AT IT. SO, I DON'T
7 REALLY HAVE A PROBLEM WITH HIS FEES IN
8 LIGHT OF THE CONCESSIONS THAT HAVE BEEN
9 MADE, THE STATEMENTS THAT HAVE BEEN MADE,
10 BUT I WILL ALLOW MR. WRIGHT ... NEIL, I
11 DON'T WANT TO CUT YOU OFF IN ANY FORM OR
12 FASHION ON AN APPEAL. IF YOU THINK ANY-
13 THING ELSE IS NECESSARY FROM MR. LEITER,
14 I WILL CERTAINLY BE GLAD TO HEAR IT.
15 MR. WRIGHT: YOUR HONOR, I THINK IT'S
16 PROBABLY NOT NECESSARY.
17 MR. HANNA: ROBERT, DO YOU SEE ANYTHING
18 THAT MR. LEITER'S TESTIMONY COULD SHED ON
19 THIS OR HELP US OUT IN ANYWAY?
20 MR. MARING: YOUR HONOR, I DON'T THINK
21 THERE'S ANYTHING HE COULD TESTIFY TO
22 OTHER THAN MR. WRIGHT'S STATUS AS AN
23 ATTORNEY IN HORRY COUNTY, AND, AGAIN, I'M
24 NOT ... CERTAINLY I'M NOT MAKING THAT AN
25 ISSUE BEFORE THE COURT. I DON'T BELIEVE

1 ... YOU ARE OBVIOUSLY IN THE BEST
2 POSITION TO MAKE THAT DECISION.

3 MR. HANNA: WELL, I THINK THE CASE BEING
4 HEARD BY A SPECIAL REFEREE AS OPPOSED TO
5 A SITTING JUDGE DOES PUT ME IN A POSITION
6 TO HAVE SOME JUDICIAL OPINION WITH
7 REGARDS TO THE REASONABLENESS OF
8 ATTORNEY'S FEES. I ALWAYS GO THROUGH
9 THAT. I LOOK AT SOME ATTORNEY'S FEES AND
10 I SAY, "GOD, HOW DO YOU DO IT THAT QUICK.
11 I COULD HAVE NEVER GOTTEN IT DONE." BUT
12 I'D NEVER GO BACK AND QUESTION WHETHER OR
13 NOT HE SPENT THAT TIME ON THE CASE. SO,
14 I'M GONNA FIND THAT THEY ARE REASONABLE
15 AND I ASSUME NEIL WOULD SUBMIT MR. LEITER
16 FOR YOUR CROSS EXAMINATION. HE'S AVAIL-
17 ABLE IF YOU'VE GOT ANY QUESTIONS YOU WANT
18 TO ASK OF HIM IN THAT REGARD.

19 MR. MARING: I DON'T, YOUR HONOR.

20 MR. HANNA: ARE YOU SATISFIED WITH THAT,
21 NEIL?

22 MR. WRIGHT: YES, YOUR HONOR.

23 MR. HANNA: ALRIGHT. WITH THE ATTORNEY'S
24 FEES OUT OF THE WAY. LET'S TURN OUR-
25 SELVES TO THE ... LET ME GIVE YOU THIS

1 NOW, MS. COURT REPORTER. I DON'T WANT TO
2 LOSE THAT. HERE'S THE AFFIDAVIT, THE
3 ORIGINAL. YOU HAVE ALL THE DOCUMENTS
4 WE'VE MARKED SO FAR.

5 MS. MABRY: I HAVE FOUR EXHIBITS. IF I
6 CAN HAVE THOSE, I'LL BE ALL SET. YES. I
7 HAVE ALL FOUR NOW.

8 MR. HANNA: ALRIGHT, MR. WRIGHT, LET'S
9 DEAL WITH YOURS FIRST. DO YOU HAVE ...
10 DO I HAVE THE ORIGINAL OF THE MOTION
11 HERE? I THINK I DO. WELL, YOU FILED
12 THIS WITH THE COURT?

13 MR. WRIGHT: YES.

14 MR. HANNA: SO, THERE'S NO NEED FOR US TO
15 MAKE YOUR MOTION PART OF THE RECORDS, AM
16 I RIGHT? ALL RIGHT. GO AHEAD. LET'S
17 HEAR FROM YOU ON THOSE. TAKE 'EM ONE AT
18 A TIME AND I'LL LET ROBERT RESPOND AND
19 THEN WE'LL RULE ON EACH ONE AS WE GO.

20 MR. WRIGHT: OKAY. YOUR HONOR, THE VERY
21 FIRST ITEM THAT I ADDRESSED IN MY MOTION
22 FOR RECONSIDERATION WAS KIND OF A MATTER
23 OF HOUSEKEEPING. WHEN WE FILED THIS
24 MOTION INITIALLY IN 2000 ... IT WAS
25 ACTUALLY FILED INITIALLY IN HORRY COUNTY

1 AND THEN IT WAS TRANSFERRED, AND WE GOT A
2 NEW CASE NUMBER WHEN IT WENT TO GEORGE-
3 TOWN. WHEN WE FILED THIS LAWSUIT, THE
4 ONLY NAME THAT I HAD FOR THE DEFENDANT
5 WAS BILLY WILSON BECAUSE THAT WAS THE
6 NAME IN WHICH HE SIGNED THE LEASE. IT
7 TURNS OUT THAT HE IS APPARENTLY KNOWN BY
8 SEVERAL NAMES, ONE OF WHICH IS WILLIAM L.
9 WILSON AND ANOTHER IS BILLIE, B-I-L-L-I-E
10 WILSON AND SO MY FIRST ITEM AGAIN, BY WAY
11 OF HOUSEKEEPING, PURSUANT TO RULE 60, I'M
12 REQUESTING THAT THE FINAL ORDER BE
13 ALTERED OR AMENDED TO CORRECTLY IDENTIFY
14 THE DEFENDANT AS WILLIAM L. WILSON, ALSO
15 KNOWN AS, BILLY WITH A 'Y' AND BILLIE
16 WITH AN I-E WILSON.
17 MR. HANNA: MR. MARING, YOUR RESPONSE.
18 MR. MARING: YOUR HONOR, MY RESPONSE
19 WOULD BE THAT WE'RE AT A POINT NOW WHERE
20 THERE'S BEEN NO TESTIMONY, NO EVIDENCE
21 PRESENTED TO THE COURT THAT WHETHER THE
22 DEFENDANT IS KNOWN AS WILLIAM L. OR B-I-
23 L-L-I-E WILSON. I DON'T KNOW WHETHER OR
24 NOT MY CLIENT HAS BEEN EVER BEEN CALLED
25 BY ANY OF THESE OTHER NAMES, AND

1 CERTAINLY I DON'T BELIEVE THAT IF THERE
2 IS A JUDGMENT AGAINST BILLY WILSON, AND
3 HE IS KNOWN BY THESE OTHER NAMES, HE'S
4 CERTAINLY NOT GOING TO BE ABLE TO ESCAPE
5 PROSECUTION OF THE JUDGMENT BASED ON THE
6 NAME ITSELF. I JUST DON'T RECALL. I'LL
7 BE HONEST WITH YOU, I DIDN'T LOOK ...
8 THAT WAS SOMETHING I WASN'T VERY
9 CONCERNED ABOUT UNTIL I GOT HERE TODAY IN
10 TERMS OF THE NAME. SO, I WOULD SUBMIT TO
11 YOU THAT'S THE NAME HE USES, AND IT'S TOO
12 LATE NOW TO SIT BACK AND DO AN AMENDED
13 THE NAME FOR THE PLAINTIFF IN THE CASE.
14 CERTAINLY THEY HAVE EVERY RIGHT UNDER ...
15 THE CASE LAW THAT WOULD ALLOW THEM TO
16 PROSECUTE ANY JUDGMENT BY WAY OF WHATEVER
17 PROCEEDING THEY WOULD NEED. IF IT TURNS
18 OUT THAT BILLY WILSON IS KNOWN AS WILLIAM
19 L. WILSON THEY'LL CERTAINLY BE ABLE TO
20 MOVE FORWARD ON PROPERTY OWNED BY WILLIAM
21 L. WILSON, IF, IN FACT, THAT IS THE CASE.
22 SO, I JUST DON'T ... I CAN'T SIT BACK AND
23 TELL THE COURT OR CONSENT TO ALLOW THE
24 DEFENDANT'S NAME TO BE CHANGED AT THIS
25 LATE DATE.

1 MR. WRIGHT: I DON'T THINK IT REQUIRES
2 CONSENT AS LONG AS THERE IS SOME EVIDENCE
3 AND WE DID HAVE ... WHEN WE TOOK HIS
4 DEPOSITION, HE DID IDENTIFY HIMSELF AS
5 WILLIAM L. WILSON. ALSO, WE'VE GOT A ...
6 THERE WAS A CHECK THAT WAS SIGNED FOR
7 RENT OVER TO RAY REALTY WHICH WAS SIGNED
8 BY WILLIAM L. WILSON. SO, I'M JUST
9 TRYING TO STRAIGHTEN OUT THE RECORD AND
10 MAKE SURE WE'VE GOT HIM BY KNOWING HIS
11 OTHER NAMES.

12 MR. HANNA: BASED ON THE FACT THAT HIS
13 DEPOSITION WAS TAKEN UNDER WILLIAM L.
14 WILSON, THE DEFENDANT HAVING BEEN ... I
15 WOULD ASSUME THERE'S NO OBJECTION TO THAT
16 AT THE TIME OF THE DEPOSITION. AND IF HE
17 IDENTIFIED HIMSELF AS WILLIAM L. WILSON
18 AT THE DEPOSITION.

19 MR. MARING: YOUR HONOR, THIS IS THE
20 FIRST I SAW THE DEPOSITION. WHAT I
21 DIDN'T WANT TO DO IS HAVE A WILLIAM L.
22 WILSON KNOCKING ON MY DOOR SOMEWHERE.

23 MR. WRIGHT: WELL, IF HE HADN'T DONE
24 THIS, I WAS PREPARED TO RULE AGAINST MR.
25 WRIGHT UNTIL HE PRODUCED THIS DEPOSITION,

1 AND I THINK UNDER THOSE CIRCUMSTANCES
2 THAT IT SHOULD BE RIGHT. I'M NOT GONNA
3 CHANGE IT TO HAE, HAH, BILLIE WITH AN I-
4 E, UNLESS HE IDENTIFIED HIMSELF THAT WAY
5 IN THE DEPOSITION SOMEWHERE.

6 MR. WRIGHT: HE DID NOT. THERE WERE SOME
7 OTHER DOCUMENTS BUT HE IDENTIFIED HIMSELF
8 IN HIS DEPOSITION AS WILLIAM L.

9 MR. HANNA: SO, WE'LL CHANGE THE DEFEN-
10 DANT TO READ, WILLIAM L. WILSON, ALSO
11 KNOWN AS BILLY WILSON AND BILLY WITH A
12 'Y', IS THAT CORRECT?

13 MR. WRIGHT: THAT'S FINE, YOUR HONOR.

14 MR. MARING: THAT'S FINE, YOUR HONOR.

15 MR. WRIGHT: YOUR HONOR, OUR SECOND ISSUE
16 DEALS ACTUALLY WITH THE MATTER OF YOUR
17 FEES. THE LEASE AGREEMENT PROVIDES THAT
18 THE TENANT ... "IF THE TENANT IS IN
19 DEFAULT THAT HE IS OBLIGATED FOR COSTS OF
20 SEIZURE AND RE-POSSESSION COSTS OF
21 COLLECTION, INCLUDING REASONABLE
22 ATTORNEY'S FEES AS A RESULT OF THE
23 SEIZURE AND REPOSSESSION AND/OR
24 COLLECTION OF RENTALS AND/OR ENFORCEMENT
25 OF ANY OTHER TERMS AND CONDITIONS UNDER

1 THE LEASE." NOW, OUR POSITION IS THAT
2 YOUR FEES AS SPECIAL REFEREE ARE PART OF
3 THE COSTS OF COLLECTION OF THE RENTALS,
4 AND THEREFORE, THE DEFENDANT SHOULD BE
5 RESPONSIBLE FOR PAYMENT OF YOUR CHARGES,
6 WHICH ARE, IN FACT, A COST OF COLLECTION
7 THAT THE LANDLORD INCURS.

8 MR. MARING: WE'LL PULL THE LAW BOOK OUT
9 RIGHT NOW, YOUR HONOR, AND I WAS GETTING
10 READY TO ASK YOU FOR THAT. THERE'S A
11 RULE SPECIFICALLY ON POINT FOR SPECIAL
12 REFEREE FEES. I CERTAINLY BELIEVE IT'S
13 IN THE COURT'S DISCRETION TO NOT AWARD
14 THAT AS TO THE COST OF COLLECTION, YOUR
15 HONOR, INASMUCH AS IT WAS A FEE PAID FOR
16 THE COURT, YOUR HONOR, NOT NECESSARILY
17 FOR THE COST OF COLLECTION. IT'S IN YOUR
18 DISCRETION WHETHER OR NOT TO ORDER IT.

19 MR. HANNA: I'M TRYING TO FIND IT RIGHT
20 NOW. YOU DON'T KNOW THE NUMBER ON IT, DO
21 YOU?

22 A MR. MARING: IF I COULD LOOK. WE HAD
23 TALKED ABOUT THAT, YOUR HONOR, IN THE
24 ORDER ITSELF WHEN WE WERE GOING BACK AND
25 FORTH.

1 MR. HANNA: IF I'M NOT WRONG, I THINK IT
2 PROVIDES IT'S TO BE PAID BY BOTH PARTIES.
3 UNDER MASTERS AND REFEREES. WAIT A
4 MINUTE.

5 MR. MARING: RULE 53(d), "COMPENSATION OF
6 SPECIAL REFEREES. THE COMPENSATION OF A
7 SPECIAL REFEREE SHALL BE PAID BY THE
8 PARTIES IN SUCH AMOUNT AS SHALL BE SET BY
9 THE SPECIAL REFEREE SUBSTITUTED BY THE
10 CIRCUIT COURT UPON OBJECTION BY ANY PARTY
11 WITHIN TEN DAYS OF THE RECEIPT OF THE
12 ORDER." SO, IT CERTAINLY SAYS, "PAID BY
13 THE PARTIES."

14 MR. HANNA: PAID BY THE PARTIES, I THINK,
15 MR. WRIGHT, AND I THINK I'M GONNA RULE
16 AGAINST YOU ON THAT PORTION, REASON
17 NUMBER ONE, THE RULE SAYS THAT THAT'S
18 WHAT I'M SUPPOSED TO DO AND I THINK IT
19 WOULD TAKE A CONSENT ORDER FOR ME TO
20 BYPASS THE RULES. IT MIGHT HAVE BEEN
21 DONE IN ORDER OF REFERENCE. BUT THAT'S
22 NUMBER ONE. NUMBER TWO, IT'S MY UNDER-
23 STANDING THIS LEASE AGREEMENT WAS DRAFTED
24 BY YOU AND THE PLAINTIFF. THERE IS AN
25 INCONSISTENCY THERE. IT'S OPEN FOR

1 DEBATE AT THE VERY LEAST. SO I'M GONNA
2 RULE AGAINST YOU ON THOSE TWO GROUNDS.
3 WHAT'S THE NEXT ITEM FOR DISCUSSION?

4 MR. WRIGHT: YOUR HONOR, THE NEXT ITEM
5 DEALS WITH THE MATTER OF THE DEFENDANT'S
6 AFFIRMATIVE DEFENSE OF FAILURE OF THE
7 PLAINTIFF TO MITIGATE DAMAGES. YOUR
8 HONOR, OUR PROPOSED ORDER, AND IF I MAY,
9 I'M GOING TO ASK TO HAVE THIS MARKED AS
10 PART OF THE RECORD. YOUR HONOR, WITH
11 REFERENCE TO PLAINTIFF'S EXHIBIT NUMBER
12 "5" ...

13 MR. HANNA: LET ME GET ONE THING ON THE
14 RECORD. I'M GONNA MARK THIS AS AN
15 EXHIBIT BUT I'M NOT GONNA MARK IT INTO
16 EVIDENCE BECAUSE I DON'T THINK IT'S
17 ANYTHING THAT I SHOULD BE RELYING ON, BUT
18 FOR THE PURPOSES YOU'RE EXPOUNDING ON
19 YOUR POSITION, I'M GONNA LET YOU MARK IT
20 AS AN EXHIBIT. IS THAT FAIR?

21 MR. WRIGHT: THAT'S FAIR.

22 MR. MARING: NO OBJECTION, YOUR HONOR.

23 MR. WRIGHT: YOUR HONOR, IN PLAINTIFF'S
24 EXHIBIT "5", WHICH IS A COPY OF THE
25 PROPOSED ORDER THAT THE PLAINTIFF

1 SUBMITTED ON DECEMBER 16TH OF FINDINGS OF
2 FACTS 46, 48 AND 49 DEALT WITH THE ISSUE
3 OF THE FAILURE OF THE DEFENDANT TO
4 ACTUALLY PRESENT ANY EVIDENCE CONCERNING
5 STEPS THAT THE PLAINTIFF COULD HAVE TAKEN
6 TO MITIGATE DAMAGES AND THE EFFICACY OF
7 THOSE ATTEMPTS AT MITIGATION. IT'S OUR
8 POSITION THAT UNDER THE LAW THE DEFENDANT
9 WHO RAISES THE AFFIRMATIVE DEFENSE OF
10 MITIGATION HAS THE OBLIGATION TO PRESENT
11 EVIDENCE THAT THE PLAINTIFF COULD REASON-
12 ABLY HAVE MITIGATED DAMAGES. THERE WAS
13 NO SUCH EVIDENCE SUBMITTED. I UNDER-
14 STAND THAT YOUR HONOR TOOK THE POSITION
15 THAT BECAUSE OF THE LANGUAGE IN THE LEASE
16 THAT NULLIFIED ANY OBLIGATION ON THE PART
17 OF THE LANDLORD TO MITIGATE DAMAGES BUT
18 YOU FELT THAT IT WAS SUPERFILICIOUS.
19 NEVERTHELESS, THE DEFENDANT HAS ASSIGNED
20 AS AN ERROR YOUR DECISION TO RELY UPON
21 THAT PROVISION OF THE LEASE. WE FEEL AS
22 AN ADDITIONAL SUSTAINING GROUND FOR THE
23 PLAINTIFF'S POSITION THAT WE SHOULD HAVE
24 BEEN PERMITTED IN THE FINAL ORDER TO HAVE
25 IT REFLECT THAT THERE WAS NO EVIDENCE OF

1 MITIGATION PRESENTED.

2 FINAL ORDER ENDING ACTION
3 MARKED FOR IDENTIFICATION
4 AND INTRODUCED INTO EVIDENCE
5 AS DEFENDANT'S EXHIBIT "5".

6 MR. HANNA: MR. MARING, YOU HAVE
7 ADDRESSED THE DUTY TO MITIGATE AS ONE OF
8 YOUR MOTIONS FOR RECONSIDERATION. IT
9 MIGHT BE APPROPRIATE IF WE ADDRESSED BOTH
10 OF THEM AT ONE TIME. SO, IF I UNDERSTAND
11 WHAT MR. WRIGHT IS SAYING IS THAT HE
12 UNDERSTANDS THAT THERE WAS NO DUTY TO
13 MITIGATE, BUT IN CASE YOU PREVAIL ON YOUR
14 SECOND EXCEPTION, THEN HE WOULD BE
15 ENTITLED TO GO BACK AND ARGUE THAT THERE
16 WAS NO EVIDENCE IN SUPPORT OF YOUR
17 AFFIRMATIVE DUTY TO MITIGATE. WHY DON'T
18 YOU ADDRESS THOSE TWO ISSUES FOR ME.

19 MR. MARING: YOUR HONOR, THE FIRST ISSUE
20 IN TERMS OF NO EVIDENCE, I DON'T AGREE
21 THERE WAS NO EVIDENCE THAT WAS SUBMITTED
22 AS TO THE ISSUE OF MITIGATION. CHARLEY
23 RAY, WHO WAS MR. BUTLER'S REALTOR TESTI-
24 FIED THAT HE WAS THE PERSON THAT WAS THE
25 PERSON THAT MR. BUTLER USED IN TERMS OF

1 ATTEMPTING TO GET RENTALS. THAT HE AND
2 MR. BUTLER DID NOTHING IN TERMS OR
3 ATTEMPTING TO RENT THE PROPERTY. MR. RAY
4 GAVE A LITANY OF THINGS THAT HE WOULD
5 HAVE DONE ... OR SAID THAT WOULD HAVE
6 BEEN DONE OR SHOULD HAVE BEEN DONE TO RE-
7 LET THE PROPERTY, YOUR HONOR, AND I DON'T
8 THINK WE GOT INTO THAT ISSUE IN TERMS OF
9 ... YOU RULED THAT YOU WEREN'T GOING TO
10 GET INTO THE ISSUE OF MITIGATION SIMPLY
11 BECAUSE IT WAS GONNA BE THE COURT'S
12 RULING THAT THE PROVISION OF THE LEASE,
13 WHICH MR. BUTLER ALSO TESTIFIED TO THAT,
14 THAT HE DID NOT ATTEMPT TO MITIGATE
15 BECAUSE THE PROVISIONS OF THE LEASE
16 PROVIDED FOR THAT. THAT HE DIDN'T HAVE
17 TO. THAT WAS IN EVIDENCE AS WELL AND THE
18 COURT RELIED ON THAT AND THE COURT RULED
19 ON THAT. SO, IN TERMS OF WHETHER OR NOT
20 THERE WAS EVIDENCE, I WOULD SUBMIT TO THE
21 COURT THAT THERE WAS EVIDENCE THAT WAS
22 PRESENTED TO THE COURT IN TERMS OF
23 MITIGATION, NOT IN THE ORDER BECAUSE;
24 ONE, I DIDN'T HAVE THE ABILITY TO WRITE
25 THE ORDER AND WASN'T IT RULED BY THE

1 COURT THAT MITIGATION WAS AT ISSUE. DUE
2 TO YOUR DECISION THAT THE PROVISION OF
3 THE CONTRACT WAS RULED ON THAT PARTICULAR
4 MATTER. IN TERMS OF WHETHER OR NOT THE
5 COURT IS GOING TO CHANGE ITS POSITION NOW
6 REGARDING, I BELIEVE, IS NUMBER ...
7 LOOKING AT MY MOTION NOW.

8 MR. HANNA: I BELIEVE IT'S NUMBER "2".

9 MR. MARING: MY NUMBER "2". IT'S MY
10 POSITION THAT IT IS AGAINST PUBLIC POLICY
11 TO ALLOW A PARTY TO, BY CONTRACT, AVOID
12 THE DUTY TO MITIGATE DAMAGES. THAT'S THE
13 CRUX OF THAT ARGUMENT THAT IT IS AGAINST
14 PUBLIC POLICY. AND, AGAIN, I'M GOING TO
15 RELY ON MY REPLY BRIEF THAT WAS FILED IN
16 THIS CASE. THE COURT HAS HAD AN OPPOR-
17 TUNITY, ALONG WITH A LITANY OF CASE LAW,
18 THAT INDICATED THAT ... OR MY READING OF
19 THE LAW, THAT YOU CANNOT CONTRACT AWAY
20 THE DUTY TO MITIGATE. SO, THAT'S MY
21 POSITION ON THIS. NEIL'S ARGUMENT, AND
22 THEN AGAIN, ON MINE AS WELL.

23 MR. HANNA: LET ME INQUIRE ABOUT ONE
24 THING YOU SAID, MR. MARING, AND IT'S BEEN
25 A LONG TIME SINCE WE HEARD THIS. IT'S

1 BEEN OVER A YEAR NOW. SO, MY MEMORY
2 MIGHT NOT BE THE BEST ON THIS, BUT I
3 DON'T USUALLY PROHIBIT PEOPLE IN A
4 SPECIAL REFEREE SITTING FROM GOING INTO
5 WHATEVER THEY WANT TO. I DON'T RESTRICT
6 THEIR TESTIMONY, EVEN THOUGH I MIGHT RULE
7 AGAINST `EM. I DON'T RECALL HAVING HAND-
8 CUFFED YOU IN ANY WAY WITH REGARDS TO
9 PUTTING IN THE RECORD PROOF ON THAT ISSUE
10 THAT YOU WANTED TO. CAN YOU ENLIGHTEN ME
11 A LITTLE BIT MORE IN THAT YOU MADE THE
12 COMMENT THAT I MADE A RULING AND CUT YOU
13 OFF AND DIDN'T LET YOU ...
14 MR. MARING: NO, I DIDN'T SAY YOU CUT ME
15 OFF, YOUR HONOR. WHAT I SAID WAS THE
16 COURT MADE THE FINDING ... I'M TALKING
17 ABOUT IN TERMS OF MY ... I SHOULD NOT
18 HAVE SAID IN THE HEARING. IN MY ... WHEN
19 YOU ASKED ME TO REVIEW THE ORDER, YOU
20 INDICATED IN TERMS OF MY TRYING TO GO OUT
21 AND ELICIT FACTS THAT COULD HAVE
22 SUPPORTED THE ISSUE OF MITIGATION. I'M
23 NOT TALKING ABOUT IN TERMS OF THE HEARING
24 ITSELF. IN TERMS OF WHAT I BELIEVE TO BE
25 FACTS IN TERMS OF MITIGATION.

1 MR. HANNA: SO YOU MADE YOUR FULL SHOWING
2 IN THAT REGARD AT THE HEARING?

3 MR. MARING: WHATEVER WAS AT THE HEARING,
4 YOUR HONOR, AND, OF COURSE, IT WAS OUR
5 POSITION AT THE HEARING THAT ONCE IT WAS
6 SHOWN THAT THE PLAINTIFF MADE NO ATTEMPTS
7 TO MITIGATE THAT THERE WAS A BURDEN
8 SHIFTING BACK TO THE PLAINTIFF TO SHOW
9 THAT HE MADE OR SHOULD HAVE MADE REASON-
10 ABLE STEPS AT THAT POINT IN TIME. IF
11 YOU'VE GOT A YEAR AGO, YOUR HONOR, THAT
12 ISN'T WHAT I'M ARGUING HERE TODAY.

13 MR. HANNA: I JUST WANTED TO MAKE SURE.
14 THE REASON I WANTED TO MAKE SURE OF THAT
15 POSITION IS THAT I FEEL LIKE THAT THE
16 ISSUE HAS BEEN EXPOSED THROUGH THE COURSE
17 OF THE TESTIMONY TO WHATEVER DEGREE IS
18 NECESSARY FOR REVIEW BY A SUPREME COURT.
19 I DON'T FEEL LIKE IT'S NECESSARY FOR ME
20 TO MAKE A SECONDARY FINDING `CAUSE I
21 THINK IF THEY RULE AGAINST ME WITH
22 REGARDS TO THAT, THERE'S CERTAINLY ENOUGH
23 IN THE RECORD TO REVIEW THAT ISSUE AND I
24 DON'T THINK THEY'LL BE SENDING IT BACK
25 DOWN TO ME. I THINK THEY CAN HANDLE

1 THAT. SO, I GONNA LEAVE THAT ISSUE UP TO
2 THEM IN THE EVENT THEY RULE AGAINST ME ON
3 THE CONTRACT ISSUE.

4 MR. MARING: THAT'S FINE, YOUR HONOR.

5 MR. WRIGHT: YOUR HONOR, THE NEXT ITEM
6 THAT WE HAD, ITEM FOUR, DEALS WITH
7 ANOTHER PART OF THE ORDER BUT, FRANKLY,
8 IT'S STILL THE SAME ISSUE WITH RESPECT TO
9 MITIGATION. IN THIS ITEM NUMBER FOUR OF
10 MY MOTION FOR RECONSIDERATION, IT DEALS
11 WITH A CONCLUSION AS A MATTER OF LAW.
12 WHEREAS, ITEM NUMBER THREE THAT WE JUST
13 DEALT WITH DEALT WITH THE MATTER OF
14 FINDINGS OF FACTS. SO, IT'S THE SAME
15 ISSUE FROM ANOTHER STANDPOINT.

16 MR. HANNA: SAME RULING.

17 MR. MARING: I UNDERSTAND, YOUR HONOR.

18 MR. WRIGHT: THOSE ARE ALL OF MY ISSUES
19 ON MY MOTION FOR RECONSIDERATION.

20 MR. HANNA: THANK YOU, MR. WRIGHT. MR.
21 MARING, LET'S TAKE YOURS UP.

22 MR. MARING: THANK YOU, YOUR HONOR.

23 YOUR HONOR, I'M BASICALLY RENEWING THE
24 SAME MOTIONS THAT WERE FILED AT THE
25 ACTUAL CONCLUSION OF THE CASE. I BELIEVE

1 THERE WERE SIX FILED AT THAT TIME AND
2 THESE ARE THE SAME SIX THAT THE COURT HAD
3 AN OPPORTUNITY TO REVIEW AT THAT POINT IN
4 TIME. THE FIRST IS THAT THE EVIDENCE AND
5 TESTIMONY SHOWED THAT THE PLAINTIFF HAD
6 RECEIVED ADEQUATE NOTICE THAT THE DEFEN-
7 DANT DID NOT INTEND TO RE-LET THE
8 PREMISES BY THE PREPONDERANCE OF THE
9 EVIDENCE. THAT WAS BASED ON THE TESTI-
10 MONY OF MY CLIENT DEALING WITH THE AGENT
11 FOR THE PLAINTIFF. THAT THE AGENT KNEW
12 THAT THE DEFENDANT DID NOT INTEND TO RE-
13 LET THE PREMISES AND THAT WAS SUFFICIENT
14 NOTICE. NOTWITHSTANDING THE ARGUMENT MR.
15 WRIGHT IS GOING TO BRING UP THAT THE
16 LEASE PROVIDED FOR A WRITTEN NOTICE. SO,
17 IT IS OUR CONTENTION THAT THE EVIDENCE
18 AND TESTIMONY SHOW THAT THEY HAD RECEIVED
19 ADEQUATE NOTICE TO TERMINATE THE LEASE.
20 MR. HANNA: MR. WRIGHT, DO YOU HAVE A
21 RESPONSE?
22 MR. WRIGHT: WELL, YOUR HONOR, IT'S THE
23 SAME ISSUE THAT WE HAD DISCUSSED IN OUR
24 MOTIONS AND IN OUR BRIEF. AND THAT IS
25 THAT THE EXCLUSIVE METHOD OF PROVIDING

1 NOTICE IS AS SET FORTH IN THE LEASE AND
2 THAT IT HAS TO BE IN WRITING. IT HAS TO
3 BE SENT TO THE LANDLORD AND IT HAD TO BE
4 SENT TO ME AS COUNSEL FOR THE LANDLORD.
5 THE DEFENDANT ADMITTED ON CROSS EXAMINA-
6 TION THAT HE HAD NEVER PROVIDED ANY
7 WRITTEN NOTICE. HE FURTHER PROVIDED THAT
8 HE DID NOT PROVIDE ANY ORAL NOTICE
9 DIRECTLY TO MY CLIENT. HIS WHOLE ARGU-
10 MENT IS THAT HE PROVIDED ORAL NOTICE TO
11 MR. RAY. MR. RAY DENIED THAT HE HAD
12 RECEIVED SUCH NOTICE, AND, AGAIN, THE
13 BURDEN OF PROOF HERE ON THIS ISSUE ... ON
14 THIS MODIFICATION OF THE LEASE THAT WOULD
15 PERMIT ANYTHING OTHER THAN WRITTEN NOTICE
16 IS ON THE DEFENDANT. THEY FAILED TO
17 SATISFY THAT BURDEN. AS WE HAVE
18 PROVIDED, THERE IS AMPLE AUTHORITY THAT
19 LEASE PROVISIONS REQUIRING WRITTEN NOTICE
20 ARE, IN FACT, FAVORED BECAUSE THEY
21 RESOLVE DISPUTES ABOUT WHO SAID WHAT TO
22 WHOM WHEN EVERYTHING IS ORAL. SO,
23 THEY'VE NOT BEEN ABLE TO CARRY THAT
24 BURDEN. SO, I FEEL THE EVIDENCE IS
25 PRETTY CLEAR AND SUPPORTS YOUR HONOR'S

1 POSITION IN THE ORDER.

2 MR. HANNA: I DON'T SEE ANYTHING NEW IN
3 THE MOTION THAT I HAVEN'T ALREADY BEEN
4 OVER. I DON'T THINK IT'S APPROPRIATE.
5 BY THE WAY, MR. MARING, I DON'T KNOW
6 WHETHER THIS WAS ERROR ON YOUR PART OR
7 NOT, BUT YOUR MOTION SAYS RULE 60. I
8 WOULD ASSUME YOU'RE GOING UNDER 59 AS
9 OPPOSED TO 60?

10 MR. MARING: THAT'S CORRECT, YOUR HONOR.

11 MR. HANNA: LET THE RECORD REFLECT THE
12 CHANGE IN THE NOTICE ON THAT SO THERE
13 WON'T BE ANY PROBLEMS WITH THAT ON THE
14 APPEAL.

15 MR. MARING: YOUR HONOR, I DON'T BELIEVE
16 WE NEED TO GO ON THE ISSUE OF NUMBER
17 THREE AGAIN. THAT GOES BACK TO MITIGA-
18 TION. ON THE ISSUE OF NUMBER FOUR THAT
19 THE PLAINTIFF DID NOT PRESENT ANY
20 COMPETENT EVIDENCE TO SUBSTANTIATE A
21 \$2500.00 CLEAN UP EXPENSE, AND, YOUR
22 HONOR, THERE WAS NO ... MY RECOLLECTION
23 OF THE TESTIMONY WAS THAT THE DEFENDANT
24 APPROXIMATED \$2500.00 FOR THE CLEAN UP.
25 HE DID NOT PRESENT A BILL. HE DIDN'T

1 PRESENT WHAT HE PAID. IT WAS AN APPROXI-
2 MATION OF WHAT THE CLEAN UP WAS. THAT
3 WAS MY RECOLLECTION OF THE TESTIMONY AND
4 THAT WAS THE REASON FOR ME FILING THE
5 POST-JUDGMENT ... OR THE POST-JUDGMENT
6 MOTION AS WELL AS BRINGING IT UP HERE IN
7 A MOTION FOR RECONSIDERATION. IT JUST
8 WASN'T COMPETENT EVIDENCE TO SUBSTANTIATE
9 THE \$2500.00 AWARD.

10 MR. WRIGHT: YOUR HONOR, IN THAT REGARD,
11 I AGREE WITH ROBERT IN PART IN THAT THE
12 PLAINTIFF TESTIFIED THAT HE ASSUMED IT
13 WAS AROUND \$2500.00 TO CLEAN IT UP, BUT
14 ROBERT FORGOT A VERY CRITICAL PIECE OF
15 TESTIMONY BY THE PLAINTIFF. THE PLAIN-
16 TIFF TESTIFIED THAT HE MADE AN AGREEMENT
17 WITH THE NEXT OCCUPANT, NEXT TENANT, TO
18 GIVE HIM A CREDIT OF \$2500.00 ON HIS RENT
19 FOR CLEANING THAT UP BECAUSE THEY ASSUMED
20 THAT WOULD BE THE APPROXIMATE AMOUNT OF
21 THE CLEAN UP. SO, MY CLIENT DID NEGO-
22 TIATE AWAY \$2500.00 IN RENT FOR THAT
23 CLEAN UP THAT WAS THEN PERFORMED BY THE
24 THIRD PARTY.

25 MR. HANNA: ANY RESPONSE, MR. MARING?

1 MR. MARING: YOUR HONOR, AGAIN, THERE WAS
2 NO LEASE PROVIDED. I DON'T BELIEVE THERE
3 WAS AN EXHIBIT PROVIDED, AND IN ANY CASE,
4 YOUR HONOR, IT GOES TO THE CREDIBILITY OF
5 THE WITNESSES, YOUR HONOR.

6 MR. HANNA: I THINK IT GOES TO THE WEIGHT
7 OF THE EVIDENCE AND HE DID TESTIFY, I
8 BELIEVE, AS MR. WRIGHT INDICATED. SO, ON
9 THE BASIS OF THAT, I'M GONNA LET THAT
10 STAND ALSO. PRE-JUDGMENT INTEREST,
11 NUMBER FIVE.

12 MR. MARING: YOUR HONOR, THE PLAINTIFF
13 RELIED ON 343120(a) AS A BASIS FOR
14 CLAIMING THE PRE-JUDGMENT INTEREST ON
15 THAT, THAT HE MAY BE FOUND ENTITLED TO
16 THIS ACTION. YOUR HONOR, MY POSITION IS
17 THAT THE RELIANCE IS MISPLACED. THAT ...
18 THIS IS MY ACCOUNT FOR A LIQUIDATED SUM
19 THAT IN LIGHT OF THE MITIGATION ARGUMENT,
20 WHICH WE'VE BEAT TO DEATH HERE TODAY, BUT
21 IN LIGHT OF THAT, THERE WAS NO FIXED
22 AMOUNT DUE, DUE TO THE ISSUE OF WHETHER
23 OR NOT SOME PORTION OF THE LEASE SHOULD
24 BE ABATED BASED ON A FAILURE TO MITIGATE
25 DAMAGES. THEREFORE, IT'S THE DEFENDANT'S

1 POSITION THAT THIS IS NOT A CLAIM THAT
2 343128 CONTEMPLATES. WE'VE ARGUED ALL
3 THESE NUMEROUS TIMES, YOUR HONOR. I'M
4 GOING TO END THERE. I THINK YOU'VE BEEN
5 PROVIDED THE CASE LAW. MR. WRIGHT HAS
6 DONE THE SAME THING.

7 MR. HANNA: I WAS GONNA SAY. I DON'T SEE
8 ANYTHING NEW THERE. I THINK YOU'RE
9 PROTECTED FOR THE PURPOSES OF APPEAL IF
10 THAT'S WHAT YOU WERE ATTEMPTING TO DO,
11 BUT I DON'T SEE ANYTHING NEW THAT WE
12 HAVEN'T ALREADY BEEN OVER. ANY COMMENT,
13 MR. WRIGHT?

14 MR. WRIGHT: NO, YOUR HONOR. I THINK WE
15 ARE HUNDRED PERCENT CORRECT.

16 MR. MARING: YOUR HONOR, WE'VE ALREADY
17 ADDRESSED NUMBER SIX, AND, YOUR HONOR,
18 THAT WAS THE BASIS OF OUR MOTION FOR
19 RECONSIDERATION.

20 MR. HANNA: ANYTHING ELSE?

21 MR. MARING: NOT FROM OUR SIDE.

22 MR. HANNA: ALRIGHT. WE'VE DEALT WITH
23 THE ATTORNEY'S FEES. WE'VE DEALT WITH
24 PLAINTIFF'S MOTION FOR RECONSIDERATION.
25 WE'VE DEALT WITH DEFENDANT'S MOTION FOR

1 RECONSIDERATION. ANYTHING ELSE THAT WE
2 NEED TO DEAL WITH TODAY?

3 MR. WRIGHT: YOUR HONOR, WE DO HAVE SOME
4 ADDITIONAL ATTORNEY'S FEES AND I HAVEN'T
5 COMPUTED THE AMOUNT OF TIME THAT WE HAD
6 TODAY BECAUSE I DIDN'T KNOW HOW LONG THIS
7 HEARING WAS GOING TO LAST. BUT THAT
8 WOULD BE OUR ADDENDUM TO OUR ATTORNEY FEE
9 AFFIDAVIT. THE TIME THAT WE'VE SPENT
10 SINCE THE ORDER WAS FILED OF RECORD.

11 MR. HANNA: I DON'T KNOW THAT IT WOULDN'T
12 BE APPROPRIATE FOR MR. MARING TO RESPOND
13 TO THAT AT THIS TIME BECAUSE HE HASN'T
14 SEEN THAT BEFORE. WE'D INDICATED BEFORE
15 WE GOT STARTED THAT WE WOULD DEAL WITH
16 MOTIONS FOR RECONSIDERATION ON THE ORDER
17 FOR ATTORNEY'S FEES. LIKE I SAID, BY
18 TELEPHONE, WE'LL ADDRESS HIS RESPONSE AT
19 THAT TIME. IS THAT FAIR ENOUGH?

20 MR. MARING: THAT'S FINE, YOUR HONOR.

21 MR. WRIGHT: SURE.

22 MR. HANNA: WE'LL ADDRESS THAT WHEN WE
23 GET THE MOTION FOR RECONSIDERATION.
24 ANYTHING ELSE?

25 MR. WRIGHT: THAT'S IT.

1 MR. MARING: THAT'S IT, YOUR HONOR.
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1 SOUTH CAROLINA,

2 CERTIFICATE

3 HORRY COUNTY.

4 I, JERRY S. MABRY, A NOTARY PUBLIC AND
5 VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH
6 CAROLINA DO HEREBY CERTIFY THAT THE FOREGOING
7 FIFTY-ONE (51) PAGES CONSTITUTE A TRUE AND ACCURATE
8 TRANSCRIPT OF THE EVIDENCE AS GIVEN BY SAID
9 ATTORNEYS AS TAKEN DOWN AND TRANSCRIBED BY ME. I
10 FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS
11 STATED IN THE CAPTION.

12 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR
13 NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS
14 ACTION NOR AM I INTERESTED EITHER DIRECTLY OR
15 INDIRECTLY IN THE RESULTS THEREOF.

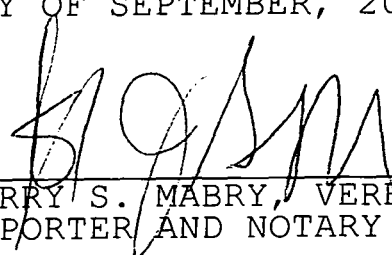
16 I FURTHER CERTIFY THAT I AM NOT RELATED BY
17 BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS
18 ACTION.

19 THIS THE 10TH DAY OF SEPTEMBER, 2011.

20

21

22


JERRY S. MABRY, VERBATIM
REPORTER AND NOTARY PUBLIC

23

24 MY COMMISSION EXPIRES:
25 NOVEMBER 22, 2012.

PLAINTIFF'S STIPULATED EXHIBIT 15

RAY REALTY, INC.

Mailing Address:

P.O. Box 416
Conway, South Carolina 29528

Street Address:

1304 Fourth Avenue
Conway, South Carolina 29526

May 1, 2000

Ms. Kathy Powell
Santee Mobile Homes
116 Hwy. 17 North
Little River, SC 29566

Re: Annual Rent Due

Dear Ms. Powell:

As per your lease agreement dated May 15, 1998, your annual rent is due for the period beginning May 15, 2000 to May 14, 2001 in the amount of \$49,250.00. Please make your check payable to Leon P. Butler.

Should you have any questions, please give me a call.

Sincerely,

RAY REALTY, INC.


Charley Ray, CCIM
President

CR/sl

**PLAINTIFF'S
EXHIBIT**

15
10-17-07 Jm



Ray
Realty
Inc.

April 16, 2001

Ms. Kathy Powell
Santee Mobile Homes
116 Hwy. 17 North
Little River, SC 29566

Re: Annual Rent Due

Dear Ms. Powell:

As per your lease agreement dated May 15, 1998, your annual rent is due for the period beginning May 15, 2001 to May 14, 2002 in the amount of \$50,000.00. Please make your check payable to Leon P. Butler.

Should you have any questions, please give me a call.

Sincerely,

RAY REALTY, INC.

Charley Ray, CCIM
President

CR/sl

BARNETT & WRIGHT, P.A.
ATTORNEYS AT LAW
1304-B AZALEA COURT
MYRTLE BEACH, SOUTH CAROLINA 29577

64062
ORIGINAL

ROBERT L. BARNETT
NEIL D. WRIGHT
MATTHEW N. WRIGHT

Telephone: (843)449-0781
Telecopier: (843)449-1583
E-mail: nwright@barnettandwright.com
(Not for Confidential Communication)

May 2, 2012

VIA HAND DELIVERY

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

RECEIVED

MAY 02 2012

SC Court of Appeals

RE: Butler, Leon v. Wilson, William
Case Tracking # 2011198586

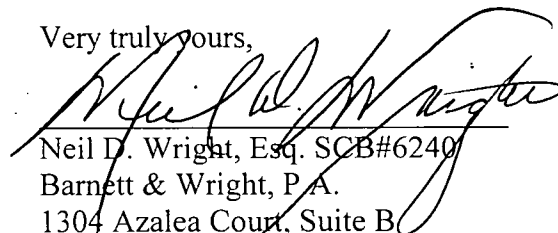
Dear Ms. Kitchings:

I am enclosing herewith for filing the following documents in the above case:

- (1) Original and six (6) copies of Respondent's Notice of Motion and Motion to Dismiss Appellant's Appeal for Failure to Comply with the South Carolina Appellate Court Rules or, in the Alternative, to Strike from Appellant's Initial Brief, Appellant's Initial Reply Brief, and Appellant's Designation of Matter to be Included in the Record on Appeal documents and/or statements which were not presented to the trial court and matter which is not relevant to the appeal.
- (2) Original and six (6) copies of Respondent's Memorandum of Authorities in Support of Motion; and,
- (3) Original and six (6) copies of Proof of Service of Respondent's Motion upon the Appellant.

I am also enclosing herewith my firm check in payment of the motion filing fee of \$25.00.

Very truly yours,


Neil D. Wright, Esq. SCB#6240
Barnett & Wright, P.A.
1304 Azalea Court, Suite B
Myrtle Beach, South Carolina 29577
(843) 449-0781 ext. 23
Attorney for Respondent

NDW

CC: Howell V. Bellamy, Jr., Esq.
George W. Redman, III, Esq.