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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes III, Circuit Court Judge

Appellate Case No. 2015-001053

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SC Court of Appeals

Majorie Cato Burton as Trustee of the Sloan Marvin Burton and Majorie Cato Burton, AB Living Trust by and through David A Burton as Attorney-in-Fact, Individually and in the right and on behalf of T.E. Cato Estate, LLC

Appellant

v.

Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw & Hinson, P.A.,

Respondents

SUPPLEMENTAL RECORD ON APPEAL

Matthew B. Rosbrugh
MBR Law, LLC
Post Office Box 292290
Columbia, South Carolina 29229

Samuel W. Outten, Esq.
Nelson Mullins Riley & Scarborough
Poinsett Plaza
Suite 900
104 S. Main Street
Greenville, SC 29601
Attorney for Respondents

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1 assured no one misunderstands the authority of the
2 corporation." Did I read that correctly, sir?

3 A. You did. Yes, sir.

4 Q. All right. First of all, what is the corporation that
5 you referred to?

6 A. The T.E. Cato Estate, LLC.

7 Q. All right. That was the Limited Liability Company?

8 A. Yes, sir.

9 Q. And, secondly, the attorney that you referred to in
10 here?

11 A. Is Carroll Pitts.

12 Q. Okay. Thank you. When you sent these emails, did you
13 expect to have the people who received them believe what
14 you were telling them?

15 MR. OUTTEN: Your Honor, I object. It calls for
16 speculation.

17 THE COURT: Well, he's asking what he expected. I'll
18 allow it.

19 A. The - the - This email was written under stress by me
20 and its intention was to answer the demands of the Burtons
21 for extra payments, I believe.

22 Q. Well, we will come to those - we will - we will get to
23 that.

24 A. The reason I - And the reason I set that out is I --

25 Q. But - And I understand that, but I'm asking a

1 THE COURT: Okay.

2 MR. OUTTEN: The LLC is dissolved sometime in June of
3 2013. If I have the date wrong, it's not on purpose. The
4 Articles of Dissolution, I think, have been introduced.
5 This LLC is dissolved. There is no LLC to bring a
6 derivative action on behalf of, and so for all those
7 reasons, Your Honor, they don't have a derivative claim on
8 behalf of the LLC.

9 And what you'll see Your Honor is Judge Michelle
10 Childs wrote a long opinion on this, and one of the things
11 that she said is, you can't bring a direct action and a
12 derivative action, you got to choose. You're either a
13 member bringing a direct action or you're bringing a
14 derivative action, but you can't do both. And that's what
15 they're trying to do in this case, and Judge Child's
16 opinion is attached to our trial brief and - and I would
17 ask Your Honor to read it when you have a moment and
18 consider it, because you can't do procedurally what they're
19 trying to do in this case.

20 So for all of those reasons, Your Honor, we object to
21 introduction of evidence regarding the bills of Ms. McDow
22 and Mr. McCoy. And in order to cut short this
23 presentation, I'm not going to ask that the bills be
24 authenticated or - I'm not objecting to whether or not the
25 services were reasonable and necessary. I know Mr. McCoy

1 and Ms. McDow are both fine lawyers, so I don't have any of
2 those issues if that helps move it along. Thank you.

3 THE COURT: The only issue is they're not relevant?

4 MR. OUTTEN: Sir?

5 THE COURT: The only issue is that they are not
6 relevant?

7 MR. OUTTEN: Yes, sir. They're not relevant because

8 --

9 THE COURT: For the reasons you stated?

10 MR. OUTTEN: Yes, sir.

11 THE COURT: All right. Mr. Jellenik.

12 MR. JELLENIK: All right. Thank you, Your Honor. I'm
13 - Under those circumstances, I think what we're going to
14 discuss here about invoices will be much simpler.

15 THE COURT: Okay.

16 MR. JELLENIK: But I - I did want to make one or two
17 comments. Obviously, I've not had a chance to see the
18 brief that Mr. Outten has presented.

19 THE COURT: Right.

20 MR. JELLENIK: But I did want to make a couple of
21 quick comments to the extent I can remember what we just
22 went through. One of them is Your Honor did rule in the
23 context of the motion made during the partition action of
24 the Respondent moved for Summary Judgment on the grounds
25 that the sequencing of the Deed execution and the formation

1 what are the pros and cons of each, and what did he
2 recommend for me.

3 Q. Right. And is it fair to say, you came to Mr. Pitts.
4 You said I've been asked by the heirs to take the lead in
5 this. I want you to represent me ---

6 A. Yes.

7 Q. --- as general manager of this LLC that you are going
8 to form and I am going to take the lead in marketing and
9 selling this property. Is that fair?

10 A. That is correct.

11 Q. Now, you were asked by Mr. Jellenik about a title
12 search. You never asked Carroll Pitts to do a title search
13 did you?

14 A. No, sir.

15 Q. And as I understand it what happened is when you came
16 to Mr. Pitts' office you had some information about the
17 property, tax map information, and maybe other information;
18 is that right?

19 A. A lot of stuff.

20 Q. Right.

21 A. A lot of paper.

22 Q. And - And you gave information that you had about the
23 property to Mr. Pitts and said prepare the deeds based on
24 this information that I'm giving you, Carroll; is that
25 right?

1 A. I did.

2 Q. And you did not ask Mr. Pitts to review the closing
3 documents did you?

4 A. I did not.

5 Q. And you did not ask Mr. Pitts to attend the closing
6 did you?

7 A. No, sir.

8 Q. And Mr. Pitts did not attend the closing on behalf of
9 the LLC. Correct?

10 A. Nor me.

11 Q. Now you were asked a lot of questions about that
12 amendment, do you remember that?

13 A. Yes.

14 Q. The Amendment to the Contract?

15 A. Yes, sir.

16 Q. Do you remember that?

17 A. Yes, sir.

18 Q. My understanding is that that amendment grew out of a
19 meeting between you and the Thomason's and Josh Vann. Do I
20 have that right?

21 A. Yes, sir.

22 Q. And Mr. - And Mr. Pitts was not present at that
23 meeting was he?

24 A. He wasn't invited.

25 Q. Okay. And you never consulted Mr. Pitts about what

1 an opinion on this one.

2 MR. OUTTEN: I'm just asking for the facts, Judge.

3 THE COURT: Well --

4 MR. JELLENIK: Also, Your Honor, - I am sorry.

5 THE COURT: Well, you --

6 You can ask him what was reflected in the Deed and
7 that it conveyed, I believe here.

8 MR. OUTTEN: Right. That - That's what I attempted to
9 ask, Your Honor.

10 THE COURT: All right.

11 MR. OUTTEN: If I did not, I apologize.

12 A. The --

13 Q. After - After the sale to Thomason Apartments, Ltd.,
14 did Cato Estate, LLC, still own five lots?

15 A. Yes.

16 Q. All right. And the Deed that was prepared by Mr.
17 Pitts from the heirs into the LLC conveyed Areas A, B, C
18 and D. Correct?

19 A. Yes, sir.

20 Q. And five additional lots?

21 A. Yes, sir.

22 Q. The sale to Thomason was only Areas A, B, C and D?

23 A. Correct.

24 Q. So without regard to -- without to --

25 THE COURT: Wait. Wait.

1 A. As I was instructed by each heir.

2 Q. Righ. For \$900,000. Right?

3 A. Yes, sir. With a \$100,000 being held back.

4 Q. In other words, the million dollar purchase price
5 didn't change.

6 A. Correct.

7 Q. Right?

8 A. That's correct.

9 Q. But the \$100,000 to be paid upon the successful
10 completion of the partition action. Right?

11 A. Yes, sir. Yes, sir.

12 Q. Let me ask you about the negotiating process. As I
13 understand it, Sloan Marvin Burton suggested that you
14 market the properties by shopping it - shopping it among
15 developers; is that right?

16 A. Yes. We had a, as I said, ten-hour discussion on how
17 it was to operate, and he came up with that but several
18 things that Marvin said that I applauded. First of all,
19 they sounded like they made good sense from a marketing
20 standpoint. And also, incidentally, I agreed with it.

21 Q. Okay. Now, as I understand it, Thomason Apartments,
22 LLC, offered you the best price among the five or six
23 different developers you spoke with. Right?

24 A. I visited each of those seven developers with a
25 complete package of plat maps, topographical surveys, Corps

1 of Engineers water flow places, because that affected the
2 cost, and various documents concerning the property
3 including tax invoices over the years and other stuff.

4 And, initially, I made a presentation personally to
5 each of those seven contractors whose names I got from the
6 Chamber of Commerce in Rock Hill, and then after they had a
7 chance of studying my presentation and that pile of maps
8 that I had gotten, I went back to them to hear what their
9 suggestions and interests might be, and get their bid, and
10 then after I got a few bids, I went back to them again and
11 got them to bid against one another or as according to
12 Uncle - Uncle Marvin Burton told me to "play them against
13 one another" in his words and get them to bid against one
14 another so that basically was a combination of a market
15 appraisal by experts. That was the developers, because
16 they knew what the land was worth because they're in that
17 business and also to get them to bid against one another.

18 Q. Mr. Cato, you have heard that one --

19 A. Shopping, I think that's called. I think that's
20 called shopping.

21 Q. I didn't mean to interrupt you. Did you get to finish
22 your answer?

23 A. Yes, sir; I did. Thank you.

24 Q. I'm sorry. You heard the complaint in the partition
25 action and that the Burton Trust said that you didn't get

1 A. Yes, I remember it vividly.

2 Q. Sir?

3 A. \$73,333.33.

4 Q. And the two-hundred --

5 THE COURT: Who - Who was paid that money? I missed
6 that. Who paid - Who got paid \$73,000 from whom?

7 MR. OUTTEN: Okay. Your Honor, as I understand it,
8 the Burton Trust received \$249,000 ---

9 THE COURT: I got that.

10 MR. OUTTEN: --- in settlement of the partition
11 action, and the LL -- Cato Estate, LLC, paid \$73,333.33 of
12 that amount.

13 THE COURT: Okay.

14 A. And - And the four building lots.

15 Q. And the four --

16 THE COURT: I got that. I just - I didn't understand
17 the 73, but I got it.

18 Q. Now, Mr. Cato, hopefully what I just told Judge Hayes
19 is correct. Was I right about that?

20 A. Yes, sir.

21 Q. Okay. And the \$249,000 the Burton Trust received in
22 the partition action was in addition to the \$124,200 it had
23 already received from the December 2007 closing. Right?

24 A. Correct.

25 Q. And no other heir received any money in the settlement

1 of the partition action. Right?

2 A. Correct.

3 Q. No other heir profited from the partition action other
4 than the Burton Trust. Correct?

5 A. Correct.

6 Q. And the \$73,000 that the - the LLC paid to the Burton
7 Trust to settle the partition action would have been
8 available to distribution to the members had you not had to
9 pay it to settle the partition action. Right?

10 A. That's correct.

11 MR. JELLENIK: Your Honor, objection, again on - on
12 relevance. This whole thing is - is simply directed to
13 another question. The question isn't how well or how not
14 well, and we will get to the not well part later, but the
15 question in this lawsuit isn't whether the Burtons did or
16 didn't succeed in the partition action. They were sued.
17 The question is whether there was legal malpractice in this
18 action.

19 THE COURT: I understand that.

20 MR. OUTTEN: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 MR. OUTTEN: Your Honor, we move for the admission of
23 Exhibit Number Five.

24 THE COURT: In without objection.

25 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER FIVE,

1 A. --- about the old road bed because it would, in
2 effect, be part of Area B. That's the way I interpreted
3 it.

4 Q. All right. So the only reason for the Quitclaim was
5 it wasn't in the Deed into the LLC in the first place? The
6 only reason for the Deed in the fall of 2007 to correct the
7 area of the road bed tract problem was that the road bed
8 tract - the old road bed tract wasn't included in the deed
9 that Mr. Pitts prepared in the first place?

10 MR. OUTTEN: Your Honor, I object. That's a leading
11 question and includes testimony. He's --

12 MR. JELLENIK: I -- I --

13 MR. OUTTEN: --- still repeating his testimony.

14 THE COURT: All right. Only one at a time. I
15 overrule the objection.

16 Go ahead.

17 Q. You want me to repeat that again?

18 A. Please.

19 Q. All right. Would there have been any reason to have
20 any discussion about a Quitclaim Deed for the road bed
21 tract?

22 A. In my opinion, no.

23 Q. All right.

24 A. Now, I don't know what went on at the courthouse about
25 the Quitclaim Deeds, so I have no knowledge of that.

1 Q. All right. Let's talk about appraisals for a minute.
2 I understand - Well, did you testify a little while ago
3 that you made the decision not to get an MAI appraisal and
4 ---

5 A. Yes, I did say that.

6 Q. --- and instead you --

7 A. That was my decision.

8 Q. --- were engage - and instead you got a market
9 appraisal? Did I understand that correctly?

10 A. That's what it's generally called I think in the real
11 estate business.

12 Q. Would you describe what a market appraisal is as far
13 as you're concerned?

14 A. It's a comparison in somebody's mind, an adjusted
15 appraisal of the value of property compared with other
16 properties in the area, just like an MAI would do, done by
17 professional people who are in the business and have
18 interest in having it done correctly ---

19 Q. And in this --

20 A. --- in consideration of market --

21 Q. I am sorry.

22 A. --- market activity which I think is considered by
23 everyone to be the most accurate judgment of property
24 value.

25 Q. What would you - If you know, what is the difference

1 you asked Carroll Pitts to do was substantially complete
2 with that bill that he sent you on July 20, 2007; is that
3 right?

4 A. That is correct.

5 Q. And but in fairness, there were a couple of
6 conversations that you had sort of keeping him updated
7 along the way. Right?

8 A. Correct.

9 Q. But what really happened was after Carroll finished
10 his work and you headed towards closing, the legal work was
11 done by Josh Vann on behalf of Thomason Apartments, LLC.

12 Right?

13 A. That's correct.

14 Q. But, again, in interest of - of - of fairness, there -
15 there were conversations here and there with Mr. Pitts to
16 keep him advised about what was happening. Right?

17 A. Correct.

18 Q. And is that a fair description of what happened?

19 A. Yes.

20 Q. And when you look at Mr. Pitts time records, you
21 weren't billed anything for anything which occurred after
22 the July 2007 time frame. Right?

23 A. Yeah. That's correct!

24 Q. And Mr. Pitts got re-engaged, that is a new project he
25 was asked to handle was in 2008 to take on the partition

1 mother had already received \$124,200 coming off the
2 December 12th closing?

3 A. Yes.

4 Q. So is it correct that she received a total of
5 \$373,200?

6 A. Yes.

7 Q. If you add those two numbers together?

8 A. Yes.

9 Q. When the \$124,200 came into the Trust, what happened
10 to that money? What was done with it?

11 A. She held the check for a long time and under advice of
12 her attorney at the time.

13 Q. All right. Where was it?

14 MR. OUTTEN: Your Honor, I object to hearsay about
15 what her lawyer - what advice Mrs. Burton ---

16 THE COURT: I sustain ---

17 MR. OUTTEN: --- received from her lawyer.

18 THE COURT: --- the objection. Well, he testified she
19 kept it on advice of counsel. That's based on hearsay.

20 MR. JELLENIK: Okay. I understand.

21 THE COURT: So I sustain the objection.

22 MR. JELLENIK: Okay.

23 Q. Was that check deposited into a financial institution
24 account?

25 A. Eventually, yes.

1 Q. All right. And ---

2 A. Right - Right before taxes were due, because she was
3 going to have to pay taxes on --

4 Q. How do you know that?

5 A. How do I know?

6 Q. How did you know? How do you know she was going to
7 have pay taxes on that?

8 A. Because that's what she received. She was going to
9 have to pay capital gains tax on.

10 Q. Did you ever have conversations with anybody at the
11 IRS or anyplace about that?

12 MR. OUTTEN: Objection, hearsay.

13 THE COURT: I -I sustain the objection.

14 MR. JELLENIK: I asked if he ever had.

15 THE COURT: Well, I - That's not relevant as to
16 whether he may have had a conversation with the IRS.

17 MR. JELLENIK: Okay. Fair enough.

18 THE COURT: So it's definitely hearsay. Well, he
19 could testify perhaps to what he asked the IRS but not what
20 they - not what they told him.

21 MR. JELLENIK: Okay.

22 THE COURT: I mean that would be obvious hearsay.

23 MR. JELLENIK: I - I thought I asked if he had
24 conversation with them, but let's ---

25 THE COURT: Okay.

1 A. What? What, one million ---

2 Q. That's all right.

3 A. --- 348 was it?

4 Q. It's 1.348 million, I believe.

5 A. Okay. Okay.

6 Q. And if you divide that by five, what is that number?

7 A. It says two sixty-nine six hundred.

8 Q. Okay. So according to your expert, whom you have paid
9 and who has completed an appraisal, the value of the Burton
10 Trust twenty percent interest in this property is \$269,000.

11 Right?

12 A. Yes, sir.

13 Q. Okay. And you've got the - You have the piece of
14 paper up there that you and Mr. Jellenik were working with?

15 A. Yeah. That one?

16 Q. The 373?

17 A. Yes, sir.

18 Q. So - And I'm going to violate one of Judge Hayes'
19 rules and I'll - I'll - I'll probably get it wrong but.

20 THE COURT: It's a - it's a personal rule. You can -
21 you can walk that tight wire if you want.

22 Q. According to your expert, you - the Burton Trust has
23 received over \$100,000 more than its twenty percent is
24 worth. Right?

25 A. Yes, sir.

1 Q. In fact, the - You've received \$104,000 more than your
2 twenty percent interest is worth, if my math is correct; is
3 that right?

4 A. According to this ---

5 Q. Okay.

6 A. --- yeah.

7 Q. All right. And so you've been overcompensated
8 \$100,000 according to your expert. Right?

9 A. Yes, sir.

10 Q. Are you going to return that money to the heirs? Are
11 you going to return that \$100,000 to the heirs?

12 A. No, sir.

13 Q. You're not? Well, you're here and one of the things
14 you say you're doing is you're bringing a lawsuit on behalf
15 of the LLC. That's what you said in response to one of Mr.
16 Jellenik's questions. Right?

17 A. Yes, sir.

18 Q. And according to evidence that you paid for and intend
19 to present, you've been overpaid \$104,000. Right?

20 MR. JELLENIK: Your Honor, I - I object to this. In
21 our view, this is an inappropriate line of questioning and
22 Mr. - Mr. Outten is testifying, not the witness.

23 THE COURT: Well, it's cross-examination and I
24 overrule the objection.

25 BY MR. OUTTEN:

1 A. No, sir.

2 Q. --- this windfall that you've received to the other
3 heirs?

4 A. No, sir.

5 Q. Okay. You don't know the scope of services Mr. Pitts
6 was to provide do you?

7 A. No, sir. I did not hire him.

8 Q. You were not involved in Mr. Pitts' hiring. Correct?

9 A. That's correct.

10 Q. You don't know what his scope was when he was hired.
11 Correct?

12 A. I do not know what was discussed between Tommy Cato
13 and Mr. Pitts. I was not there.

14 Q. And I think you've testified that all you know is
15 through communication from Tommy Cato, not Carroll Pitts,
16 that he was hired as the attorney for the corporation; is
17 that --

18 A. That is correct. Through the communication from Tommy
19 Cato's emails, phones - emails, phone - different
20 communications from Tommy, yes.

21 Q. Right. And just to make the record clear and you
22 responded to questions from Mr. Jellenik, you're talking
23 about emails that Tommy Cato sent to you and the other
24 heirs. Right?

25 A. Yes.

1 Q. They were not communications from Mr. Pitts. Correct?

2 A. Correct.

3 Q. And Mr. Pitts was not copied on those communications
4 either, was he?

5 A. No, sir.

6 Q. Okay. Now, neither you nor your mother ever asked Mr.
7 Pitts any questions about what he was doing on behalf of
8 the LLC. Correct?

9 A. Correct.

10 Q. Neither you nor your mother ever attempted to set up a
11 meeting with Mr. Pitts or to ask him questions about the
12 work he was doing on behalf of the LLC. Correct?

13 A. Yes, correct.

14 Q. Neither you nor your mother ever emailed or otherwise
15 attempted to communicate with Mr. Pitts regarding the work
16 he was doing on behalf of the LLC. Correct?

17 A. Yes, sir.

18 Q. Now, Doctor Burton, when I deposed you, do you
19 remember me asking you questions about why it was that you
20 brought a lawsuit against Carroll Pitts? Do you remember
21 me asking you those questions?

22 A. Yes, sir.

23 Q. And I think you said, "Well, because something was
24 wrong with the transaction that took place, and as my
25 understanding, he was our corporation attorney." Does that

1 Q. You remember in 2010 when you were asked about this
2 lawsuit against Mr. Pitts and you were asked about what Mr.
3 Pitts' malpractice was you said "I don't know." You
4 remember that?

5 A. Yes, sir.

6 Q. And then, Doctor Burton, later on in that same
7 deposition you were asked again, "You're going to bring a
8 lawsuit against Mr. Pitts for malpractice. What are your
9 claims for malpractice," and you said again, sir, "I don't
10 know," didn't you?

11 A. Yes, sir.

12 Q. Those are all the questions I have. Thank you, sir.

13 THE COURT: Redirect.

14 MR. JELLENIK: Yes, Your Honor.

15 Excuse me, Your Honor.

16 MR. OUTTEN: I don't mean to interrupt but just a
17 housekeeping matter. I need to move Ten, Eleven and Twelve
18 which are the interrogatory answers, the second
19 interrogatories, and the settlement agreement into
20 evidence. I believe I neglected to do that.

21 Forgive me for interrupting.

22 THE COURT: Any objection.

23 MR. JELLENIK: No.

24 THE COURT: In without objection.

25 (WHEREUPON, DEFENDANT'S EXHIBITS NUMBERS TEN, ELEVEN

- 24 A. Yes, sir.
- 25 Q. Where?
- 1 A. In Rock Hill, South Carolina.
- 2 Q. And what was your primary area of practice, sir?
- 3 A. Real Estate.
- 4 Q. Did you concentrate on transactions or litigation or
- 5 both in real estate?
- 6 A. Transactions.
- 7 Q. And how long ago did you retire, sir?
- 8 A. About - about three years ago.
- 9 Q. Do you know Doctor Burton, the plaintiff in this case?
- 10 A. Not personally.
- 11 Q. Did you know Marjorie Cato Burton, his mother?
- 12 A. Again, not personally. I don't think I ever met her.
- 13 Q. Have you ever heard of the T.E. Cato Estate, LLC?
- 14 A. Yes, sir.
- 15 Q. What was it?
- 16 A. That LLC was a Limited Liability Company formed
- 17 amongst the heirs of T.E. Cato.
- 18 Q. And were you the - the attorney that worked on
- 19 preparing the documents for that?
- 20 A. Yes, sir.
- 21 Q. Okay. And who asked you to do that?
- 22 A. James Thomas Cato, who I will call Tommy or Tom if
- 23 that's okay.

1 but on other subjects, did you ever have occasion to
2 represent them?

3 A. I don't believe so.

4 Q. Okay. In what capacity did you understand you were
5 representing Mr. Cato when you took responsibility?

6 A. Well, I represented him as the proposed general
7 manager or head guy, or whatever, of this proposed LLC.

8 Q. All right. And did you also understand you were going
9 to be working with the LLC itself when it was formed?

10 A. Not at that point. The only thing I was hired to do
11 or retained to do was to put together the organizational
12 document to create an entity to hold title to the property
13 and invest in a manager the ability to talk to prospective
14 buyers ---

15 Q. Okay.

16 A. --- to sell it.

17 Q. And did you also prepare the deed? You were also
18 supposed to prepare the deed to put the properties into the
19 LLC?

20 A. Yes.

21 Q. When you were - When you were retained, did you and
22 Mr. Cato, you had agreed on the scope of what you were
23 going to do?

24 A. I believe so. We were to prepare that organizational
25 document, do such filings as were necessary to make it an

1 official organization and to prepare a Quitclaim Deed from
2 the then owning heirs into the LLC.

3 Q. Okay. Is that agreement in-writing anywhere?

4 A. I - I don't know if that's in-writing. I know the
5 results were in-writing.

6 Q. When you say the - I'm sorry?

7 A. The results of the document creating the LLC and the
8 Deed.

9 Q. Oh, in other words the documents that you were to
10 prepare exist. You prepared them; is that right?

11 A. That's correct.

12 Q. All right. What I'm asking is the agreement between
13 you and Mr. Cato as to who you were presenting and what you
14 were supposed to do, is there any kind of letter or other
15 written instrument that - that formalizes that or records
16 that?

17 A. Well, there - There's a statement for services
18 rendered that - which was rendered after that was
19 accomplished.

20 Q. That's the invoice that you sent out I want to say
21 around July 20 of 2007. Correct?

22 A. I - I don't remember a date to even talk about it.

23 Q. All right. I - I think that's in the record as I
24 understand it, so I'm not going to try to deal with that
25 right now, but that's the only thing that you recall?

1 gave him my comments on that and told him he could share it
2 with the family if he liked.

3 Q. Was that the running to the bank thing that you
4 mentioned before?

5 A. It is. And then over a period of - At that time or
6 perhaps a day or more later, I was advised by Mr. Cato that
7 when Joshua Vann, who's an attorney with Thomas - I mean
8 with Morton and Gettys was representing Thomason, and did I
9 think he could handle the whole transaction and I told him
10 absolutely yes.

11 Q. All right. And did there come a time - During that
12 August period that I just mentioned, did there come a time
13 when you became aware that any of the heirs was raising a
14 question with respect to the Letter of Intent?

15 A. We understood or were informed or advised that
16 Marjorie Burton was not going to sign a deed. No, I - Let
17 me strike that and go back.

18 Were advised that Josh Vann representing the buyer, or
19 his office, had made a title examination of the property
20 they sought to by and which is pretty normal for buyers to
21 do, particularly if you're paying a million dollars for it.
22 So he did that and we were advised that there was a problem
23 concerning what's called the old roadbed or the new roadbed
24 and there was either an addendum to the exist - to the
25 contract between Thomason and Cato or it was a new

1 Q. Yes, sir.

2 A. I don't know that that's a fact or not.

3 Q. All right. Let's - Let's do it this way. The August
4 4 letter - I forget the exhibit number. The one that we
5 talked about --

6 MR. JELLENIK: Hold on a second, sir. I'm sorry.

7 Q. Now, if you go to Exhibit Fifty-three which we talked
8 about before. That's a copy of the August 4 letter that
9 was in your office and there's a copy in the same -
10 basically the same email in the Big White Book.

11 This is asking - This and the August 20 email, which
12 we've also talked about - that's Exhibit Twenty; I'm
13 sorry, this happens this way but that's where they are -
14 and these exhibits point out that the Burtons were trying
15 to find out what was going on.

16 Did you ever take any action, any action to
17 communicate with the Burtons about the questions they
18 raised in the August 4 or the August 20 email?

19 A. No, the Burtons had their own attorney. I don't
20 generally interfere with other attorneys' representation of
21 their client.

22 Q. And you know they had their own attorney how?

23 A. Because there was correspondence from Dale Dove to
24 start with and Doug Gay a little bit latter that said they
25 were there attorneys.

1 Q. Yes, sir. But that was in, as I understand it, 2008.

2 This --

3 A. Well --

4 Q. I'm talking here about August of 2007.

5 A. I understood that Dale Dove had been the Burton's
6 attorneys for a number of years.

7 Q. All right. Sir, all I'm asking is did you ever
8 communicate with them?

9 A. No, not ---

10 Q. All right.

11 A. --- when they had their own attorney.

12 Q. Do you understand - would - Would you agree that the
13 issue - Well, let's put it this way. Isn't it true that
14 the issues that are raised in the Burton's letter relate
15 directly to Mr. Cato's authority, his ability to do what he
16 did the way he did it?

17 A. I'm - I'm - I mean, you're going back and forth
18 between this message, that message and this provision and
19 that provision. I'm sorry. I just can't follow all that.

20 Q. Uh-huh. The August 4 email we went through --

21 A. I don't know what August 4 ---

22 Q. Let me put it this way. I think --

23 A. --- email means.

24 Q. Huh?

25 A. You say August 4th email. I don't know what that

1 a title search done by someone qualified to do it.

2 Q. But in this transaction?

3 A. In this transaction, we have family members who are
4 going to deed the property to a company or association or
5 whatever. They're going to continue to own shares in that
6 equal to their shares as tenants in common of the property.
7 They just - If there is a problem with title, they just
8 passed it through to themselves.

9 Q. In this transaction, if you will putting in quotes the
10 sellers were the heirs; is that correct?

11 A. They were the grantors.

12 Q. I'm sorry. I couldn't hear.

13 A. They were the grantors.

14 Q. Yes. And the buyer in quotes are the grantees?

15 A. Right.

16 Q. Was the LLC?

17 A. That's right.

18 Q. And you were representing the LLC?

19 A. I was representing James Thomas Cato as managing
20 member of - or manager director, whatever.

21 Q. I mean, we can do this if you like, but isn't it true
22 that you also - you represented Mr. Cato and you also
23 represented the LLC? We can go back --

24 A. No. No, sir. No.

25 Q. All right. Hold on a minute.

1 Q. All right, sir. So your opinion is that you were
2 representing whom?

3 A. James Thomas Cato as general manager of T.E. Cato
4 Estate, LLC.

5 Q. And at no time did you seek to represent the LLC?

6 A. I don't think so at anytime.

7 Q. And did you communicate that to anybody?

8 A. I'm not sure anybody asked me.

9 Q. Well --

10 A. I - I have repeated many times that throughout this
11 transaction, our client or my client was Tom Cato. All the
12 way through. That didn't go so far and then crawl over
13 here to pick up some other person. We have been on direct
14 line of representing Tom Cato since day-one till now.

15 Q. And knowing as you've testified that Mr. Cato had
16 communicated to others that you would try to - you - you
17 were there to protect all the partners ---

18 A. I understand that.

19 Q. --- and you did not recognize any obligation on your
20 part in that respect?

21 A. I did not acknowledge that fact. I read it when Tom
22 Cato put it in there. I think - I think it was put in
23 there twice at different times. We - In trying to resolve
24 in my mind Tom's thinking behind that, I consider that we
25 did prepare the LLC documents in mind that all people, all

1 misstate anything here. Obviously, with the lines on that
2 were put in afterward, okay, because the new roadbed didn't
3 exist in 1968. The only thing --

4 THE COURT: Well, you can't testify to all of that.

5 MR. JELLENIK: I - I - I.

6 THE COURT: I don't think. I mean, I - we're getting
7 --

8 MR. JELLENIK: All - all I'm trying to do is clarify
9 what plat is versus what - what was added to it by
10 somebody. That's all I'm saying.

11 THE COURT: This is not the plat as recorded?

12 MR. JELLENIK: It is the plat as - As I understand it,
13 it is. The plat is recorded except that somebody added
14 these lines simply to show where the new roadbed is and
15 that's - This came in the Big White Book from Mr. Cato.
16 That's what the source is. This is Exhibit 186 from the
17 Big White Book.

18 THE COURT: Go ahead.

19 A. Well, if that's the question, then this old roadbed
20 and the new roadbed were not included in that Deed.

21 Q. All right. If that's the case, then if the old
22 roadbed was not included, okay ---

23 A. Right there.

24 Q. --- then that's what - that's what made the Thomasons
25 --

1 A. That's what gave rise to the necessity of having a
2 Quitclaim Deed ---

3 Q. Right.

4 A. --- to get this back in and that's correct.

5 Q. Okay.

6 MR. JELLENIK: Now, at - at the risk of depriving
7 everybody of this view, I'm going to try and close this up
8 and I - I would - I would ask, I guess, that this be
9 identified - marked for identification as an exhibit
10 number, and I don't know which one that we're up to.

11 MADAM COURT REPORTER: Sixty.

12 MR. JELLENIK: Sixty. I don't know how we're going to
13 duplicate this but.

14 THE COURT: Well, for right now, let's just put it
15 aside.

16 MR. JELLENIK: All right.

17 THE COURT: We can put it on this table over here and
18 we'll --

19 MR. JELLENIK: All right. That's fine.

20 THE COURT: Is that all right, Wanda? You know where
21 it is.

22 MADAM COURT REPORTER: Yes, sir.

23 THE COURT: I won't let anybody touch it.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER SIXTY,
25 PREMARKED FOR IDENTIFICATION.)

1 Q. And you also had copies -- as we discussed yesterday,
2 exchange of emails on August 4th and August 20th, we went
3 over that yesterday?

4 A. My answer remains the same as it was yesterday.

5 Q. And that's fine. And with regard to the -- to Deed
6 into the LLC that you prepared ---

7 A. Yes, sir.

8 Q. --- with regard to that Deed, we've also already
9 discussed that that was a General Warranty Deed; is that
10 correct?

11 A. It is so styled, yes.

12 Q. And we've also discussed that you did not secure a
13 title search with respect ---

14 A. We did not do a title search. We were not asked to do
15 a title search.

16 Q. And we've - finally in this regard, we've discussed
17 that the old roadbed tract wasn't included in that Deed, is
18 that correct, and it's in a Deed that you prepared?

19 A. I think that that appears to be right.

20 Q. Okay. Would you please review Section 6.4 on page 8
21 of the Operating Agreement and I'll -- I'd ask you to look
22 at the opening of 6.4 and subsection (a).

23 A. All right. I - I see that.

24 Q. All right. Given the fact that the members of the LLC
25 executed General Warranty Deeds and given the fact that the

1 A. Well, I - I'm not going to read in what the intentions
2 were of the agreeing parties as to whether the roadbed
3 tract was in there or out of there or was intended to be
4 sold or not intended to be sold.

5 Q. I'm not asking you that, sir?

6 THE COURT: I think what he's asking is what's the
7 effect of the General Warranty Deed? If I give you a
8 General Warranty Deed, am I going to back up the title of
9 the property, is that sort of where you're going?

10 MR. JELLENIK: Yes, sir.

11 A. Yes, sir. That was - the Judge just made a statement
12 that is appropriate.

13 Q. Thank you. And the individual members are responsible
14 for that, because they individually signed the Deed; is
15 that correct?

16 A. The individual sellers have a responsibility under a
17 General Warranty Deed to convey what's intended to be
18 conveyed.

19 Q. All right. Thank you. With regard to - during your
20 testimony, you've been referring to Mr. Cato, Tommy or Tom
21 Cato; is that correct?

22 A. That's correct.

23 Q. Thank you. Could I ask you to turn to Exhibit 55,
24 please?

25 A. I have that.

1 A. I believe that's right, but I'm - I'm not going to.

2 Q. So on that basis, wouldn't it be correct to understand
3 that you did perform some title work on this?

4 A. Within the meaning of what the trade would say is
5 title work, that's - this would be such a slim part of a
6 piece of title work. If I've identified in my own mind
7 what a GIS research is, which I think it is just to
8 determine who supposedly owns the property but as far as
9 doing a title search that that's not much of it.

10 Q. If you - may I direct your attention, sir, to the
11 entry for - I'm - I'm on page two. Forgive me.

12 A. Right.

13 Q. May I direct your attention to the entry for 5/21/07?

14 A. Okay.

15 Q. That says "Research probate records and titles." Did
16 I read that correctly, sir?

17 A. You did.

18 Q. And you performed work on probate records and titles;
19 is that correct?

20 A. To a - to an extent that's right, and in order to have
21 a proper deed, it is required that you have certain
22 derivation information in that deed to tell where that
23 grantor or grantors, where they got the property. How did
24 they have an interest in and why are they there signing the
25 deed. So in order to - to have a derivation clause where

1 in this particular case some of the present owners had
2 inherited the property from their parents or mother or
3 father or whatever, in order to properly do a derivation
4 clause, then you've got to recite in the deed where those
5 particular heirs got their interest and in order to do
6 that, the easiest way to do it was to look at the estate
7 records of those who had died to determine what it showed
8 were the people who inherited that interest. So to that
9 extent, we did do research in the probate records. But
10 this is a very simple matter. All of the estates were
11 administered here and it's just a simple matter of looking
12 up Mr. Jones or Long or Cato or whoever ---

13 Q. Mm-hmm.

14 A. --- and get the name of the heirs. That would put it.
15 It's not an intensely title search.

16 Q. Is - Isn't it true that you also billed on this
17 invoice for work prepare - and I don't know that you were
18 paid. I think you testified yesterday you may not have
19 been paid for that. You also billed for work performed
20 after you gave the papers to Mr. Cato that he took around
21 to have the heirs sign; is that correct?

22 A. I'm not sure where that falls in here.

23 Q. All right. If I can suggest to you that - well, let's
24 -- let's just go to the - let's go to the next page and
25 this would be RBH 001329. Let me know when you get there.

1 conduct, the extent to which in my judgment a duty was owed
2 by Mr. Pitts, duties breached, damages proximately caused.

3 Q. Okay.

4 A. Whether his conduct measured up to the standard of
5 care expected of lawyers in South Carolina.

6 MR. OUTTEN: Your Honor, we'd offer Professor Freeman
7 as an expert in the field of lawyer's duties and
8 malpractice and factual settings involving LLC's and real
9 estate transactions on behalf of LLC's and their members.

10 THE COURT: Any voir dire?

11 MR. JELLENIK: No, sir.

12 THE COURT: And I find he's qualified.

13 Q. Professor Freeman what have you done to prepare to
14 testify here today?

15 A. Well, I've tried to prepare as well as I can. I've
16 read what I believe to be the operative documents, the real
17 estate documents. I've reviewed them. I've reviewed Mr.
18 Pitts' deposition actually a couple of times. I've
19 reviewed all of the exhibits to Mr. Pitts' deposition a
20 couple of times, read Mr. Burton's deposition. I've read
21 Mr. Versey's affidavit and report or his testimony. I have
22 read Mr. Higgins' first deposition, his second deposition.
23 I've read Judge Hayes' Order which starts off with a quote
24 from Shakespeare, a memorable Order in a memorable case.
25 I've -- I've read the outcome of the partition action, the

1 were supposed to protect and now -- now you're lashing out
2 and suing them and - and then it just snowballs from there
3 and that was a bad judgment. That was wrongful behavior
4 and it caused problems. It caused - it caused a litigation
5 which leads to legal expenses of which there are
6 substantial legal expenses. Not to mention and issue out
7 there as to whether or not the Estate actually was paid -
8 got what it should have out of this property. Mr. Thomason
9 we know says the property was worth -- we now see it says
10 the property was a million-and-a-half. There's other
11 documents --

12 MR. OUTTEN: I object to Mr. Freeman testifying about
13 what Mr. Thomason said the property is worth.

14 THE COURT: Well, if he relied on that to reach his
15 opinion, I think he can do that, so I overrule your
16 objection.

17 A. It's a fact that I take into account as an expert in
18 having reviewed these documents. Take into account - the
19 appraisals that came in were all over a million dollars.
20 Mr. - well, Defense Counsel's appraisal was - was closer to
21 a million. Mr. Jellenik's was somewhat higher and, of
22 course, Thomason was higher yet. A fact not taken into
23 account by the Defense appraisal was that Thomason actually
24 owned adjacent property. I don't know that they took that
25 into account in adding to the value. But I'm not here to -

1 to be an appraiser.

2 I'm just here to say that there are issues that were
3 created that never should have seen the light of day. The
4 Trust suffered financially. The LLC ended up with a mess
5 on its hands. And then, of course, the lawyers get in and
6 - and it - it just goes kind of ballistic from there. So
7 duty is owed. Duty of competence in my judgment was not
8 discharged.

9 The duty to explain - to understand and discharge the
10 scope of employment, 1.2, was not handled properly. If you
11 accept what Tommy said which is I hired him to protect me
12 and them and to watch our backs and to see that this is
13 done right, because clearly the Trust was not being
14 protected in any way, shape or form at all, and then gets
15 attacked later in the game.

16 The duty to give information was not discharged,
17 because there was no communication whatsoever that I could
18 tell from Mr. Pitts to the Burton Trust. Things being
19 funneled through Tommy and that leads predictably to
20 disputes. The withdrawal, one of the basic rules is once
21 you stop representing somebody as he says he did when --
22 when the conveyance was done and even though he keeps
23 getting documentation onward and even though he says in a
24 email which has been no doubt featured in the trial that go
25 communicate my "take it to the bank" view on this to

1 to be?

2 A. I understood him to have statutory authority vested in
3 a manager. I did not, I guess that's a broad question. I
4 understood that he would have the authority to consummate
5 the transaction and if that kind of gets to the point.

6 Q. Did there come a time when, was any document ever
7 presented to you defining the scope or the extent or the
8 existence of his authority?

9 A. Yes. We were provided at some point with a copy of
10 the Articles of Organization of the company which designate
11 the company as being manager-managed and Tommy Cato as
12 being the manager, and then we were also provided with a
13 copy of the Operating Agreement of the company which also
14 designates him as the manager.

15 Q. All right. And you had an opportunity to review those
16 documents before the closing?

17 A. Yes.

18 Q. Did there come a time when there was a document
19 executed called Amendment to Contract?

20 A. Yes, there did.

21 Q. And could you, was that on or about December 6, 2007?

22 A. I honestly don't recall the date, but that was
23 certainly well on the way to the closing date.

24 Q. In the ballpark. All right. Excuse me for just a
25 second. Pardon me. Could you turn in your exhibit book

1 please, do you have, that white binder there is an exhibit
2 book? May I ask you to turn to Exhibit Eleven, please?

3 A. Okay.

4 MR. JELLENIK: Forgive me for just a moment. Forgive
5 my ignorance, but has this exhibit been admitted yet?

6 MADAM COURT REPORTER: Just a moment, please.

7 Plaintiff's Seven?

8 THE COURT: Eleven.

9 MADAM COURT REPORTER: I'm sorry. I don't have it.

10 MR. JELLENIK: All right. Well, let - Let's do it
11 quickly. Could we mark the Amendment to Contract as
12 Plaintiff's Exhibit Eleven?

13 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER ELEVEN,
14 PREMARKED FOR IDENTIFICATION.)

15 Q. And, Mr. Vann, have you, do you recognize that
16 document?

17 A. I do.

18 Q. Is this the document you were talking about just a
19 moment ago?

20 A. These - It's the document you asked me about, yes.

21 Q. All right.

22 MR. JELLENIK: And I would ask that this - I would
23 move to have this admitted into evidence.

24 MR. OUTTEN: No objection, Your Honor.

25 THE COURT: In without objection.

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER ELEVEN,
2 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

3 MR. JELLENIK: All right.

4 Q. Would you be kind enough to summarize what this
5 document says?

6 A. Sure. As alluded to in earlier testimony, when we
7 searched title to the property which was the subject of the
8 contract, we discovered that the property that we'd been
9 referred to as "The Areas" was not vested in the selling
10 LLC but was rather still vested in the members. Because
11 Thomason wished to proceed to closing and that this was
12 replacement property in a like-kind exchange, the agreed
13 upon remedy or way of dealing with this title defect was to
14 escrow a portion of the purchase price until title could be
15 cleared on the areas and to institute a partition action.

16 Q. All right. Let me ask a question just to clarify one
17 item. You indicated and, and make sure I say this right.
18 You've indicated that the areas, the title to the areas
19 wasn't in the shape you expected, so you had to enter into
20 this arrangement to fix it?

21 A. Right.

22 Q. Did you intend and I, I don't care what the answer is,
23 I just want to make sure we understand it correctly. Did
24 you mean to say the areas or did you mean to say the
25 roadbed tract? And I don't care what the answer is, but I

1 tract, and then you proposed a resolution as I understand
2 it?

3 A. Yes.

4 Q. And as I understand it, what you proposed was that all
5 of the heirs would sign a Quitclaim Deed for the roadbed
6 tract to Thomason Apartments, LLC, did I get that right?

7 A. I cannot recall whether the Quitclaim Deed was to T.E.
8 Cato Estate or to Thomason Apartments, but the idea would
9 be to get that undivided interest in the right place,
10 ultimately, yes.

11 Q. And I think there was some confusion between Mr.
12 Jellenik and, and Mr. Pitts yesterday. You were the one
13 who prepared the Quitclaim Deed; is that right?

14 A. I did prepare a Quitclaim Deed, yes.

15 Q. And ---

16 MR. JELLENIK: And, Your, you, excuse me. Your Honor,
17 I'm not sure it's up to Mr. Outten to characterize whether
18 there was confusion or not.

19 THE COURT: Well, I, I sustain whatever that is.

20 All right. Go ahead.

21 MR. OUTTEN: I'm sorry, Your Honor. I thought it was
22 undisputed, but I, I will continue.

23 Q. Let me see if I have this right, because I'm not a
24 commercial transaction lawyer, but you searched the title
25 and the roadbed tract had been somehow deeded out and then

1 back in, and so it wasn't included in the Deed prepared
2 from the heirs into the LLC, do I have that right?

3 A. That's right.

4 Q. And so you may have been in the courtroom and there is
5 some testimony that Mr. Pitts should have done a title
6 search even though he wasn't asked to, but did you hear
7 that?

8 A. Yes, I did.

9 Q. All right. Now, if I understand this right, Mr. Vann,
10 if Carroll Pitts had done a title search, then it would
11 have been the same proposed resolution that you proposed;
12 isn't that right?

13 A. That, that would be the way to get title from point A
14 to point B, yes.

15 Q. Okay. So even if Mr. Pitts had proposed or had
16 conducted a title search, discovered the issue that you
17 discovered, then the solution to that I'll say is a
18 Quitclaim Deed of the roadbed tract either into the LLC or
19 to Thomason. Right?

20 A. Right.

21 Q. And what you proposed, Mr. Vann, was a simple,
22 effective solution to this issue you discovered. Right?

23 A. In my mind.

24 Q. And all of the heirs agreed to sign the Quitclaim Deed
25 so that the closing could go forward, correct, except the

1 Burton Trust. Right?

2 A. Yes.

3 Q. So all six, if I have the number right, all six of the
4 heirs agreed to sign a Quitclaim Deed once they, the, this
5 issue was identified so that the closing on December 12th
6 could close all of the property, the sale would be
7 completed. Right?

8 A. That's right.

9 Q. And for whatever reason, the Burton Trust refused the
10 Quitclaim Deed. Right?

11 A. Apparently.

12 Q. And you were asked some questions about the amendment.
13 As I understand it, the amendment was the result of a
14 meeting between you and one or more of the Thomasons and
15 Mr. Cato, do I have that right?

16 A. Yes, I think that's correct.

17 Q. All right. And there are several parts to the
18 amendment but one paragraph, and I think it's paragraph 3
19 says that the heirs agree to bring a partition action?

20 A. Right.

21 Q. Right?

22 A. Right.

23 Q. And if I understand that correctly, they're agreeing
24 to bring a partition action so that they can complete the
25 sale to Thomason. Right?

1 Q. Based on the evidence that you've heard and read, had
2 the Deed-in been performed within the standard of care,
3 would there have been this Quitclaim Deed issue?

4 A. No. That's - that's what I meant, that - that - that
5 this created the opportunity for her to assert her rights
6 that - that had not been protected.

7 Q. And how did she protect herself? How did Mrs. Burton
8 protect herself?

9 A. My understanding is by refusing to sign the Quitclaim
10 Deed.

11 Q. And what were the consequences of that as you
12 understand?

13 A. The - the purchasers made an agreement with either Mr.
14 Cato or him and the remaining members of - of the LLC other
15 than the Trust, that they would - would consummate the sale
16 at a reduced price and everyone would cooperate in a
17 partition action against the Trust to obtain its remaining
18 twenty percent in the old roadbed.

19 Q. And did that happen?

20 A. Yes.

21 Q. And did Mr. Pitts breach his duty of competence?

22 A. Yes.

23 Q. Did he breach his duty of diligence?

24 A. Yes.

25 Q. And are you aware of whether or not Mr. Pitts was

1 A. Hi, Sam.

2 Q. How are you?

3 A. I'm good. How are you?

4 Q. I'm good. You've expressed an opinion that Carroll
5 Pitts represented Marjorie Cato Burton. Correct?

6 A. Yes.

7 Q. And you testified that the primary focus of whether an
8 attorney/client relationship existed was the subjective
9 expectation of the client. Right?

10 A. That's correct.

11 Q. And, Mr. Virzi, Dr. Burton testified that Mr. Pitts
12 never represented Marjorie Cato Burton, personally or
13 individually, at any time. Correct?

14 A. Correct.

15 Q. Dr. Burton testified that Mr. Pitts was the lawyer for
16 the LLC. Correct?

17 A. I believe so, yes.

18 Q. And Dr. Burton said that if he filed a lawsuit, it
19 would be on behalf of the LLC suing Mr. Pitts. Right?

20 A. I don't recall that, but I don't dispute that he may
21 have said that.

22 Q. Let's talk a little bit more about whether or not the
23 Burton Trust manifested a belief that Carroll Pitts was its
24 lawyer, okay?

25 A. Okay.

1 Q. You testified that Marjorie Cato Burton would have to
2 have a contemporaneous belief that Mr. Pitts was her lawyer
3 in order for there to be an attorney/client relationship.

4 Right?

5 A. That's correct.

6 Q. And you testified that we don't know whether or not
7 Marjorie Cato Burton had a subjective belief that Mr. Pitts
8 was her lawyer before or after the closing that took place
9 in December of 2007. Right?

10 A. I don't recall those exact words, but I - I recall
11 that there is no evidence of her - her subjective belief at
12 the time.

13 Q. We do know, Mr. Virzi, that the Burton Trust paid
14 Attorney Dale Dove in late 2007 or early 2008 to quote,
15 make heads or tails of all of this to try to figure out
16 what was going on." Right?

17 A. That sounds right.

18 Q. And do you remember at your deposition when I asked
19 you if there was any evidence in the record that Marjorie
20 Cato Burton had a subjective belief that Mr. Pitts was her
21 lawyer, remember that question?

22 A. Yes.

23 Q. And you said, "Outside that implication and the hiring
24 of counsel to sue him for malpractice and the caption of
25 the case, I'm not sure if it exists beyond that." Is that

1 what you said?

2 A. That's correct. I don't think we have her testimony
3 as to what she believed at the time the work was being
4 done.

5 Q. Mr. Virzi, we don't have any statements from Marjorie
6 Cato Burton in the record, none, that would manifest this
7 subjective belief that Mr. Pitts was her lawyer, do we?

8 A. That's right. We have not heard it from her mouth.

9 Q. And, in fact, Mr. Virzi, there were no communications,
10 no emails, no telephone calls from David Burton or Marjorie
11 Cato Burton to Carroll Pitts. Correct?

12 A. Not directly, correct.

13 Q. And there was nothing that would have prevented
14 Marjorie Cato Burton or David Burton from sending an email
15 to Carroll Pitts and asking questions about the legal work
16 he was doing. Correct?

17 A. Well, she did send email and ask questions, but she
18 sent them to - the conduit, Tommy Cato, rather than
19 directly to Mr. Pitts.

20 Q. All right. Let me ask you that question again, okay?

21 There was nothing that would have prevented Marjorie
22 Cato Burton or David Burton from sending an email to
23 Carroll Pitts asking questions about the legal work he was
24 doing was there?

25 A. No. I don't think so. In fact, those emails that I

1 with a eighty - just hard to tell, a very, very high
2 adjustment. It was - it was difficult to compare the tract
3 to other pieces of property.

4 Q. And was it appropriate to both net out the unusual
5 property and take a reduction based on the topography to
6 reach your final opinion of the value?

7 A. Yes, sir.

8 MR. ROSBRUGH: Objection. Leading.

9 THE COURT: All right. Rephrase your question.

10 Q. What was the appropriate way to reach the final value
11 of the property to take into account both the flood plain
12 and the slope?

13 A. Well, it's - it's typical to when you're appraising a
14 piece of property wherein you're adjusting it to the
15 comparables, you - you look at the physical characteristics
16 as one of the adjustments we typically make and in this
17 instance, we had - had two issues we were trying to deal
18 with.

19 One was the flood plain issue which stated what - I'll
20 refer to it as the bottom of the tract. And in addition to
21 that, we also had a very steep topography issue we were
22 dealing with. Rather than combine the two, we netted out
23 the flood plain issue so we could just deal with the
24 remaining topography issue which in itself, the remaining
25 land, once we had netted out the flood plain area, was

1 steeply sloping, so we also had to make an additional
2 adjustment to the remaining topography.

3 Q. And, Mr. Haskell, according to your appraisal, what
4 was the total value of Areas A, B, C and D at the time - on
5 December 12th, 2007?

6 A. The combined value of the tracts was
7 one-million-sixteen thousand dollars.

8 Q. And what was the sales price of Areas A, B, C and D
9 from the T.E. Cato Estate to Thomasson Apartments, LLC?

10 A. Now, it's my understanding based on the documents
11 supplied to me, it was one million dollars.

12 Q. Thank you, Mr. Haskell. Please answer any questions
13 that Mr. Rosbrugh may have.

14 CROSS-EXAMINATION

15 CORBIN HASKELL BY MR. ROSBRUGH:

16 Q. Good morning, again, Mr. Haskell?

17 A. Good morning.

18 Q. Mr. Haskell, I want to go through your report a little
19 bit and talk about it in some detail. Looking at Area A

20 ---

21 A. Yes, sir.

22 Q. --- correct, that's the irregularly shaped area?

23 Correct?

24 A. Yes, sir.

25 Q. And I think that you've got a diagram of it on

1 had - had obtained it at a different time in a different
2 way and several of them apparently through estate. So Mr.
3 Pitts apparently checked the probate records to - to verify
4 derivations, and I think he also testified that - that
5 based on the - based on his bill to the LLC, he did some
6 other just online checking to confirm ownership and
7 prepared the deed based on that.

8 Q. And was it a breach of the standard of care for Mr.
9 Pitts to prepare the deeds in the way you've just
10 described?

11 A. No.

12 Q. Please explain.

13 A. Well, that - that - that would be typical in a - in a
14 family situation such as this. This is - this is a fairly
15 common occurrence. Unfortunately, heirs owning real
16 property just doesn't never seen to work out very well. I
17 - And so this - this happens a lot and - and so by the time
18 a lawyer gets it and the idea is we - we got to have a
19 solution and our solution - this is a pretty common one -
20 we'll put it all in a single entity and market it.

21 Sometimes you get a variation of that and sometimes
22 you set up separate entities and mix and match and swap
23 properties. But - but regardless in my - in my experience,
24 family members just can't imagine that they would pay you
25 or pay a title abstractor to search the title to their own

1 property. And so almost always, you would - you would take
2 the information that the family members, or in this case
3 the designated manager, and you'd take that information.
4 You'd satisfy yourself that it's sufficient to prepare a -
5 a deed that can be recorded. To my point, you got to have
6 derivations and oftentimes, a family member is not going to
7 have the derivation. So they got to do enough to get a
8 derivation but, otherwise, yes, you would proceed on that
9 basis and that'd be commonly done.

10 Q. In a commercial transaction like this, is it a breach
11 of the standard of care for a lawyer like Mr. Pitts to
12 prepare a General Warranty Deed without doing a full title
13 search?

14 A. Not at all.

15 Q. And please explain.

16 A. Well, I - I'm - I'm not sure, frankly, what the focus
17 on the General Warranty Deed is, but I - I want to be
18 clear. There really - in this situation, there are only
19 two choices. We've heard a lot about Quitclaim Deeds in a
20 - in another context, but you would not convey this
21 property from the heirs into the LLC with a Quitclaim
22 because, typically, in South Carolina, a Quitclaim is - is
23 code for there's some issue. We don't - Either there's
24 some question about title and, of course, Quitclaim means
25 I'm not giving any warranty of any kind. I'm just whatever

1 identified that earlier section in the Operating Agreement
2 that specified the so-called major decisions that did
3 require unanimity, by specifying in the Operating Agreement
4 which does require unanimity, you've excluded the sale of
5 real estate. So that's my long-winded way of saying I
6 think even if you want to apply the statute, you end up
7 with the result that - that Tommy Cato had the authority to
8 sell it.

9 Q. Okay.

10 A. To sell all the real estate. Excuse me.

11 Q. Okay. Mr. Higgins, have you heard Plaintiff's expert
12 opine about Mr. Pitts left them with a fight? Have you
13 heard that testimony?

14 A. I have.

15 Q. Do you have an opinion about that?

16 MR. ROSBRUGH: Your Honor?

17 THE COURT: I sustain the objection.

18 BY MR. OUTTEN:

19 Q. Mr. Higgins, do you have an opinion in this case about
20 what caused the partition action?

21 A. I - I do.

22 Q. And what is that opinion?

23 A. The - The Burton Trust's failure to agree to sign and
24 - and - and sign the Quitclaim Deed.

25 Q. And based on your review of the record and your

1 purpose.

2 Q. All right. Mr. Higgins, I'm just about finished and I
3 want to wrap up here. Do you have an opinion regarding
4 whether or not there was an attorney/client relationship
5 between Mr. Pitts and the Burton Trust?

6 A. Yes. It's my opinion there was no attorney/client
7 relationship.

8 Q. And do you have an opinion after your review of the
9 record in this case about whether or not Mr. Pitts breached
10 the standard of care with regard to the services he
11 performed?

12 A. I do have an opinion, and I do not believe he breached
13 the standard of care.

14 Q. Mr. Higgins, do you have an opinion about whether or
15 not any alleged act or omission of Mr. Pitts proximately
16 caused any damage to the Burton Trust?

17 A. I do have an opinion on that and do not believe
18 anything he did proximately caused any damages to the
19 Burton Trust.

20 Q. Okay. And have you familiarized yourself with the
21 damages issues in this case?

22 A. I have.

23 Q. Okay. And do you have an opinion regarding whether or
24 not the Burton Trust was damaged by any act or omission of
25 Mr. Pitts?

1 A. I do have an opinion and don't believe that they have
2 - that the Burton Trust has been damaged.

3 Q. Now, we've touched on this but I - but I want to make
4 sure I give you an opportunity to give a - a complete
5 answer to this. Were there practical considerations which
6 influenced or affected your opinions in this case?

7 A. Yes.

8 Q. What were those practical consideration?

9 A. Well, I confess this is likely to be repetitive, but I
10 want to point out, this is a pretty common situation:
11 unhappy heirs or heirs who want to dispose of property. So
12 much has been made about this, but it's - but it's pretty
13 basic arrangement.

14 Second of all as a transactional lawyer, I think you
15 look at the client's goal, the objectives of the
16 transaction. In this case again, get the property sold
17 through a single entity and distribute the proceeds and
18 that was - was clearly done, at least with Nine Hundred
19 Thousand of the million dollar purchase price for these
20 areas. So from my perspective, you can't ignore the - the
21 context which is that this was largely a successful
22 transaction. And I think that's relevant to - to the - to
23 an overall analysis of the - of the lawsuit.

24 Q. And have you seen a transaction or transactions
25 similar to this in your practice over the last twenty-five

Ex 53

Pitts, Carroll

From: Marvin Burton [SloanMBurton@hotmail.com]
Sent: Saturday, August 04, 2007 1:42 PM
To: Tommy Cato
Subject: Questions about TE Cato LLC letter?

Tommy,

Marvin and I received your email letter dated 8/1/2007 concerning the offer to the heirs of TE Cato as it relates to the property currently owned in joint by the heirs of my father TE Cato (see copy of your email below in blue text).

----- Original Message -----

From: CharlmsOff@aol.com
To: smburton@intrex.net; dburton4@nc.rr.com; teamjohnson@charterinternet.com; JONESCLIPPER@aol.com; treblard@comcast.net; bcato03@earthlink.net
Sent: Wednesday, August 01, 2007 10:26 AM
Subject: Cato Estate Area A, Area B, Area C, and Area D available as a package

Marjie Donn Helen Bob Cathy
Marvin Clipper Tom Jane
Bud Albert
Phil Sara

The LLC is offering to sell you Areas A, B, C, and D for \$1,000,000.00 or more.
Terms are cash at closing to be within 60 days.

You may be able to develop those pieces or list them for sale or just hold them for an investment. I want to give each in the family a chance to bid on these properties.

Any bids must be in to me before noon on 8/3/07.

J.T.Cato
General Manager
T.E.Cato L.L.C.

I have a few questions concerning the intent of the letter if you don't mind clarifying several points?

Would you please address the following questions with a response:

1. The LLC is offering to sell each heir all of the lots addressed as area A,B,C and D in the estate. What is your purpose for offering the heirs, the opportunity to purchase areas A,B,C and D at this point in time?
2. Where, and how did you obtain a price of \$1,000,000 dollars or more, as the purchase price for the land in areas A,B,C and D? Is this dollar amount based on some sort of formula you obtained or

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created, or is it from an appraised value for that property that you have obtained from an appraiser?

3. Since all of us already own 1/5 of this property, have you taken into account the fact that this \$1,000,000 amount may be requiring an heir to purchase this land as a whole which that heir could already own 1/5 of, which could mean that any specific heir might be paying for some of the land that they already own?
4. I noticed that you make the statement that you "want to give each in the family a chance to bid on these properties". What are your intentions for offering each heir this opportunity; in other words, what is your next step after the heirs offer or don't offer a bid on the land?
5. We also noticed that the email letter states that "Any bids must be in to me before noon on 8/3/2007"? I know for a fact that David didn't even get the letter until Friday 8/3/2007, although he did receive the email two days before.
6. When you came to visit us on Friday June 1st, 2007, you asked me to sign a letter that allowed you to be a spokesperson for TE Cato LLC as the general manager. As I understood from your explanation of the purpose of that letter at that time, the letter allows you to act as a spokesperson for all of the heirs so that we present a unified front with any developers that may be interested in purchasing or developing the specified land. I personally thought this was a good idea, and I just want to clarify that as general manager, all of the heirs have granted you the ability to only negotiate and record any offers for the land on all of the heirs behalf; however, any final decision to sell or not sell the areas A,B,C, and D or any of the property jointly held by the heirs of TE Cato still rests with all of the heirs coming to a unanimous decision as to what should or should not be done with the property, and obviously doesn't rests solely with any one heir or individual. I'm not trying to be pain or ruffle any feathers, I just want to make sure that all of us are on the same page. The email letter seems to leave open an unresolved answer as to what may or may not be done with the land if any of the heirs do not offer any bids. Without specifying the reason for the offer to the heirs, I wanted to make sure that by accident you don't mistakenly proceed to far in the negotiating process without the proper authorization from all of the heirs. I for one have no desire nor do I cherish, any legal problems or lawsuits from any attorneys representing any developers thinking that somehow your speaking as the TE Cato LLC general manager somehow, represents a legitimate offer on all of the heirs behalves as it relates to the property. The last thing we all need, is a lawsuit from a developer's attorney that misunderstands your authority.
7. Finally, could you please mail me a copy of the letter that I signed on June 1st, when you came to our house. I have not yet received a copy of that letter.

Finally, I would also like to make you aware just for your knowledge, that after talking to our accountant, the fact that any sell of the land would have a significant impact on me in regards to capital gains tax, since the cost basis of the sell of the land would date back to 1957 when I inherited my portion of the land from my dad. Upon my demise, my children would have a stepped-up cost basis and the amount of taxes would be minimized tremendously for our family. Any current sell of the land will

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have to be significant to offset this huge capital gains tax that I would incur.

Regards,
Your Aunt,

Marjorie C. Burton

8/15/2007

RBH 001076

PX053-003

002144

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
IN THE SIXTEENTH JUDICIAL CIRCUIT

James Thomas Cato, Helen Cato Jones,)
Donn S. Johnson, Jane Cato West, Robert)
Lee Cato and Cathy Cato Evans,)

Case No. 2008-CP-46-3171

Petitioners,)

vs.)

David Alan Burton as Successor Trustee for)
Marjorie Cato Burton as Trustee of the)
Sloan Marvin Burton and Marjorie Cato)
Burton, AB Living Trust, and in the Right)
and on behalf of T.E. Cato Estate, LLC;)
Marjorie Cato Burton Living Trust; and)
The SC Department of Transportation,)

Respondents.)

David Alan Burton as Successor Trustee for)
Marjorie Cato Burton as Trustee of the)
Sloan Marvin Burton and Marjorie Cato)
Burton, AB Living Trust, and in the Right)
and on behalf of T.E. Cato Estate, LLC;)

Third-Party Plaintiff,)

vs.)

Thomasson Apts., LLC,)

Third-Party Defendant.)

Thomasson Apts., LLC,)

Fourth-Party Plaintiff,)

vs.)

T.E. Cato Estate, LLC, James Thomas Cato,)
Helen Cato Jones, Donn S. Johnson,)
Jane Cato West, Robert Lee Cato,)
and Cathy Cato Evans, and David)
Alan Burton,)

)
Fourth-Party Defendants.)
)

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") dated April 4, 2013, is made and entered by, between, and among James Thomas Cato; Helen Cato Jones; Douglas E. Jones; Albert M. Jones; Sara L. Jones; Donn S. Johnson; Jane Cato West; Robert Lee Cato; Cathy Cato Evans; The Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, which is referenced in the above-captioned action as David Alan Burton as Successor Trustee for Marjorie Cato Burton as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, but will be referred to hereinafter as "the Burton Trust"; Marjorie Burton; Sloan Marvin Burton; David Alan Burton, individually and as Successor Trustee of the Burton Trust; T.E. Cato Estate, LLC ("Cato, LLC"); Thomasson Apts., LLC ("Thomasson"); Broadus L. Thomasson, Sr.; B. Lee Thomasson, Jr.; B. Heath Thomasson; and Matthew J. Thomasson.

RECITALS:

WHEREAS, the property involved in this case was formerly owned by Thomas Edward Cato ("T.E. Cato"), who died on November 23, 1957 and ownership of this property later vested in the heirs of T.E. Cato and their successors, namely Marjorie Cato Burton through the Burton Trust, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, and James Thomas Cato ("T.E. Cato Heirs");

WHEREAS, on various dates ranging from May 30, 2007 to June 16, 2007, the T.E. Cato Heirs executed Articles of Organization of Cato, LLC;

WHEREAS, on the same day that each of the T.E. Cato Heirs executed the Articles of Organization of Cato, LLC, they each executed a deed in order to convey to Cato, LLC nine

tracts of land: Lots 42, 14, 13, 98, 175, and Areas A, B, C, and D, with such deed being recorded July 10, 2007 with the York County Clerk of Court in Book 9248 at Page 138, with the property being more particularly described therein ("Cato Deed");

WHEREAS, on August 3, 2007, James Thomas Cato, on behalf of Cato, LLC, executed a Letter of Intent regarding the sale of Areas A, B, C, and D to Thomasson for \$1,000,000 ("Letter of Intent");

WHEREAS, it was later discovered that the legal description of Areas A, B, C, and D was not complete or correct because a certain piece of property described as the Roadbed Tract was not part of Area B;

WHEREAS, in December 2007, Cato, LLC and Thomasson entered into an Amendment to Contract, wherein all the members of Cato, LLC, except the Burton Trust, ratified the terms of the Letter of Intent and agreed to file an action for partition of the Roadbed Tract and to seek a private sale to Thomasson of the Roadbed Tract for \$100,000.00 ("Amendment to Contract");

WHEREAS, on December 12, 2007, James Thomas Cato, on behalf of Cato, LLC, for consideration of \$900,000.00 paid by Thomasson, executed a general warranty deed conveying to Thomasson Areas A, B, C and D, less the Roadbed Tract, which deed is dated December 12, 2007 and recorded December 17, 2007 with the York County Clerk of Court in Book 9673 at Page 150, with the property being more particularly described therein ("Thomasson Deed");

WHEREAS, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, and James Thomas Cato filed the above-captioned action against the Burton Trust for partition and the Burton Trust asserted various counterclaims and a Third-Party Complaint against Thomasson;

WHEREAS, Thomasson asserted counterclaims against the Burton Trust and a Fourth-Party Complaint against Cato, LLC, James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, and David Alan Burton (the above-captioned case including all counterclaims, the third-party complaint, and the fourth-party complaint all as amended shall be collectively referred to as "the Action");

WHEREAS, in the Action, the Burton Trust challenged the validity of the Cato Deed, the Thomasson Deed, challenged Cato, LLC's authority to enter into the various transactions referenced above, and challenged Thomasson's ownership of the subject property;

WHEREAS, the parties have now amicably resolved their differences and disputes and by this Settlement Agreement, the parties wish to memorialize that resolution, to resolve the Action, to dismiss the claims asserted against each other with prejudice, and to waive and renounce any and all claims the parties have asserted against each other or could have asserted against each other in the Action or in any way related to the subject property, the Cato Deed, the Letter of Intent, the Amendment to Contract, the Thomasson Deed, the creation or operation of Cato, LLC, or the claims asserted in the Action, and to confirm that Thomasson shall henceforth own Areas A, B, C, and D and the Roadbed Tract free and clear of any right, title, claim, or interest of any of the other parties herein; and

WHEREAS, Marjorie Burton, Sloan Marvin Burton, Broadus L. Thomasson, Sr., B. Lee Thomasson, Jr., B. Heath Thomasson, Matthew J. Thomasson, Douglas E. Jones, Albert M. Jones, and Sara L. Jones, are not parties to the Action but are parties to this Settlement Agreement to effectuate the agreement between the parties to resolve the Action in the manner set forth herein; and

NOW, THEREFORE, James Thomas Cato, Helen Cato Jones, Douglas E. Jones, Albert M. Jones, Sara L. Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, the Burton Trust, Marjorie Burton, Sloan Marvin Burton, David Alan Burton, Cato, LLC, Thomasson, Broadus L. Thomasson, Sr., B. Lee Thomasson, Jr., B. Heath Thomasson, and Matthew J. Thomasson (hereinafter sometimes collectively referred to as "the Parties") enter into this Settlement Agreement in exchange for the mutual promises, covenants, representations, and warranties contained herein, together with other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and further agree as follows:

1. INCORPORATION OF RECITALS. The above Recitals are incorporated herein and made a part of this Settlement Agreement.

2. COMPLETE RESOLUTION. It is the intent of this Settlement Agreement to resolve, fully and forever, any and all claims between the parties that were asserted or that could have been asserted in the Action pursuant to the terms contained herein, and to confirm that Thomasson henceforth owns the Roadbed Tract and Areas A, B, C, and D free and clear of any claim, right, title or interest of any of the other parties herein.

3. CONSIDERATION. For and in consideration of the total sum of Two Hundred Forty Nine Thousand and no/100 (\$249,000.00) Dollars paid to the Burton Trust by or on behalf of Thomasson, Cato, LLC, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, and James Thomas Cato, and the Assignment set forth in paragraph 7 of this Settlement Agreement, and the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to execute and deliver this Settlement Agreement and to be fully bound by its terms and to dismiss the claims asserted in the Action with prejudice.

4. CONSENT ORDER AND DISMISSAL OF ACTION. The parties to the Action through their counsel shall present to the presiding Judge of the York County Court of Common Pleas a Consent Order which dismisses all claims asserted in the Action with prejudice, finds and concludes the properties that are the subject of the Action-- Areas A, B, C, and D, and the Roadbed Tract-- are henceforth owned by Thomasson free and clear of any right, title, claim, or interest of the other parties to the Action, finds and concludes that the Cato Deed and the Thomasson Deed are henceforth valid, and approves and incorporates this Settlement Agreement. A copy of the Consent Order to be presented to the Court is attached hereto as **Exhibit A**.

5. QUITCLAIM DEED. James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, and the Burton Trust (in their individual capacities and as members of Cato, LLC), as well as Marjorie Burton, Sloan Marvin Burton, David Burton, Cato, LLC, Douglas E. Jones, Albert M. Jones, and Sara L. Jones shall execute a quitclaim deed, in a recordable form prepared by Thomasson conveying all of their right, title, and interest in Areas A, B, C, and D, and the Roadbed Tract to Thomasson with such quitclaim deed to also include in its legal description more recent surveys of these properties commissioned by Thomasson. A copy of this quitclaim deed is attached hereto as **Exhibit B**. As a condition of this Settlement Agreement, the quitclaim deed described herein shall be sent to and held in Trust by Thomasson's attorney, Demetri K. Koutrakos, and not deemed legally delivered unless the Consent Order is entered and filed with the York County Clerk of Court after which the quitclaim deed shall be deemed legally delivered and may be recorded, provided that, if the Consent Order is not entered and filed, then the quitclaim deed shall be null, void, and of no force or effect, it shall not be deemed legally delivered, and the signature pages for such

quitclaim deed shall immediately be returned to the attorneys of record for the respective signatories. The Parties agree and acknowledge that James Thomas Cato, as manager and authorized member of Cato, LLC, has the full and complete authority to execute the quitclaim deed on behalf of Cato, LLC and to also execute this Settlement Agreement and all associated documents on behalf of Cato, LLC.

6. SCDOT CONSENT ORDER. This Settlement Agreement is further conditioned upon the entry and filing of a consent order which orders that the quitclaim deed recorded November 4, 2006 with the York County Clerk of Court in Book 8577 at Page 187, wherein the South Carolina Department of Transportation ("SCDOT") quitclaimed its interest in the Roadbed Tract to Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, Helen C. Jones, Donn S. Johnson, Robert Lee Cato, James Thomas Cato, Martha Jane Cato West, and Cathy Cato Evans, be reformed by correcting the name of the grantees in that deed to David Alan Burton as Successor Trustee to Marjorie Cato Burton as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, Helen C. Jones, Donn S. Johnson, Robert Lee Cato, James Thomas Cato, Martha Jane Cato West, and Cathy Cato Evans and dismisses the SCDOT as a party to the Action. A copy of this Consent Order is attached hereto as **Exhibit C**.

7. ASSIGNMENT OF CATO, LLC ASSETS. Cato, LLC shall convey certain rights, assets, and interests to the Burton Trust per the Assignment attached hereto and incorporated herein as **Exhibit D**.

8. OBLIGATIONS UNDER CONTRACTS. Upon the execution of this Settlement Agreement, all obligations of Thomasson and Cato, LLC, Helen Cato Jones, Donn S. Johnson, James Thomas Cato, Jane Cato West, Robert Lee Cato, and Cathy Cato Evans under the Letter

of Intent and the Amendment of Contract shall be deemed satisfied with no further payment from Thomasson due thereunder.

9. RELEASES.

A. The Burton Trust, Marjorie Burton, Sloan Marvin Burton, and David Burton, including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities hereby remise, release, and forever discharge Cato, LLC, James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Douglas E. Jones, Albert M. Jones, and Sara L. Jones, including without limitation, their heirs, successors and assigns, in full of and from any and all claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity, either known or unknown at this time, apparent or not apparent, related in any manner whatsoever to the Letter of Intent, the Amendment to Contract, Areas A, B, C, and D, the Roadbed Tract, the Cato Deed, the Thomasson Deed, Lots 42, 14, 13, 98, 175, the creation, management, or operation of Cato, LLC, or the claims set forth in the Action, including any claims which were, or which could have been, set forth by The Burton Trust, Marjorie Burton, Sloan Marvin Burton, or David Burton against Cato, LLC, James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Douglas E. Jones, Albert M. Jones, or Sara L. Jones in the Action.

B. Cato, LLC, James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Douglas E. Jones, Albert M. Jones, and Sara L. Jones, including without limitation, their heirs, successors and assigns, hereby remise, release, and forever discharge the Burton Trust, Marjorie Burton, Sloan Marvin Burton, and David

Burton, including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities of and from any and all claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity, either known or unknown at this time, apparent or not apparent, related in any manner whatsoever to the Letter of Intent, the Amendment to Contract, Areas A, B, C, and D, the Roadbed Tract, the Cato Deed, the Thomasson Deed, Lots 42, 14, 13, 98, 175, the creation, management, or operation of Cato, LLC, or the claims set forth in the Action, including any claims which were, or which could have been, set forth by Cato, LLC, James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Douglas E. Jones, Albert M. Jones, or Sara L. Jones against the Burton Trust, David Burton, Marjorie Burton, or Sloan Marvin Burton in the Action.

C. Thomasson, Broadus L. Thomasson, Sr., B. Lee Thomasson, Jr., B. Heath Thomasson, and Matthew J. Thomasson, including, without limitation, their heirs, successors, assigns, employers, employees, predecessor companies, successor companies, subsidiary companies, parent companies, affiliate companies, related companies, divisions, any and all past, present and future members and managers remise, release, and forever discharge James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Cato, LLC, the Burton Trust, Marjorie Burton, Sloan Marvin Burton, David Burton, Douglas E. Jones, Albert M. Jones, and Sara L. Jones, including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities of and from any and all claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity,

either known or unknown at this time, apparent or not apparent, related in any manner whatsoever to the Letter of Intent, the Amendment to Contract, Areas A, B, C, and D, the Roadbed Tract, the Cato Deed, the Thomasson Deed, or the claims set forth in the Action, including any claims which were, or which could have been, set forth by Thomasson Broadus L. Thomasson, Sr., B. Lee Thomasson, Jr., B. Heath Thomasson, or Matthew J. Thomasson against James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Cato, LLC, the Burton Trust, David Burton, Marjorie Burton, Sloan Marvin Burton, Douglas E. Jones, Albert M. Jones, or Sara L. Jones in the Action.

D. James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Cato, LLC, the Burton Trust, Marjorie Burton, Sloan Marvin Burton, David Burton, Douglas E. Jones, Albert M. Jones, and Sara L. Jones, including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities remise, release, and forever discharge Thomasson, Broadus L. Thomasson, Sr., B. Lee Thomasson, Jr., B. Heath Thomasson, and Matthew J. Thomasson including, without limitation, their heirs successors, assigns, employers, employees, predecessor companies, successor companies, subsidiary companies, parent companies, affiliate companies, related companies, divisions, related entities, successors in title, any and all past, present and future members and managers of and from any and all claims, demands, liabilities, claims of ownership and title, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity, either known or unknown at this time, apparent or not apparent, related in any manner whatsoever to the Letter of Intent, the Amendment to Contract, Areas A, B, C, and D, the Roadbed Tract, the Cato Deed, the Thomasson Deed, or the claims set forth in the Action, including any claims which were, or

which could have been, set forth by James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Cato, LLC, the Burton Trust, David Burton, Marjorie Burton, Sloan Marvin Burton, Douglas E. Jones, Albert M. Jones, or Sara L. Jones against Thomasson, Broadus L. Thomasson, Sr., B. Lee Thomasson, Jr., B. Heath Thomasson, or Matthew J. Thomasson in the Action.

E. Cato, LLC remises, releases, and forever discharges James Thomas Cato, Helen Cato Jones, Donn S. Johnson, Jane Cato West, Robert Lee Cato, Cathy Cato Evans, Cato, LLC, the Burton Trust, Marjorie Burton, Sloan Marvin Burton, David Burton, Douglas E. Jones, Albert M. Jones, and Sara L. Jones, including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities of and from any and all claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity, either known or unknown at this time, apparent or not apparent, related in any manner whatsoever to the Letter of Intent, the Amendment to Contract, Areas A, B, C, and D, the Roadbed Tract, the Cato Deed, the Thomasson Deed, or the claims set forth in the Action, including any claims which were, or which could have been, set forth by Cato, LLC in the Action.

10. ATTORNEYS' FEES. Each party shall bear its own costs, expenses and attorneys' fees in connection with this matter. To the extent a party to this Settlement Agreement files a legal action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.

11. NO ADMISSION OF LIABILITY. The Parties acknowledge and agree this settlement is a complete compromise of the matters involving disputed issues of law and fact.

The Parties understand and agree that this settlement is not to be construed as an admission of liability on the part of any party, all of whom expressly deny liability.

12. REPRESENTATION AND COMPREHENSION OF DOCUMENT. Except as to the promises, covenants, representations, and warranties contained herein and in the documents attached hereto, as applicable, no party is relying on any collateral, oral or written representations, or promise as an inducement to enter into this Settlement Agreement. All previous agreements between the parties regarding the subject matter hereof are merged herein. The terms of this Settlement Agreement are fully understood and voluntarily accepted by the Parties, and are not subject to modification or waiver except by means of a writing signed by the Parties. The Parties acknowledge and represent to each other that they have read this Settlement Agreement carefully, understand it, and have had the advice of counsel before signing same.

13. WARRANTY OF CAPACITY TO EXECUTE SETTLEMENT AGREEMENT. Each party represents and warrants that he, she, or it is properly identified and has the authority to enter into this Settlement Agreement and execute the associated documents. Each party represents and warrants that he, she, or it has not otherwise sold, assigned, transferred, conveyed or disposed of all or any portion of the claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation, causes of action, assets, and titles referred to in this Settlement Agreement and/or in the documents attached hereto, except as specifically stated herein or the documents incorporated by reference into this Settlement Agreement. Furthermore, the parties represent and warrant that no other person or entity related to him, her, or it has any interest in the property that is the subject of the Action or the claims asserted in the Action.

14. UNANIMOUS CONSENT OF THE MEMBERS OF CATO, LLC. By executing this Settlement Agreement, those parties to this Settlement Agreement who are members of Cato,

LLC represents, individually and as members of Cato LLC, that (s)he or it consents to Cato, LLC entering into this Settlement Agreement and executing this Settlement Agreement.

15. GOVERNING LAW. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina, without regard to conflicts of law principles.

16. SEVERABILITY. If any part or parts of this Settlement Agreement are held to be invalid or unenforceable, the Court shall nevertheless uphold and enforce the remaining provisions and construe the invalid portion(s), if any, as severable from the remaining terms of the Settlement Agreement.

17. ENTIRE DOCUMENT AND SUCCESSORS IN INTEREST. This Settlement Agreement, including all documents attached hereto or required herein, contains all agreements, conditions, promises, and covenants between the Parties regarding the matters addressed in it, and supersedes all prior or contemporaneous agreements, representations, or understandings with respect to the subject matter hereof. The Parties agree that the terms of this Settlement Agreement are contractual in nature and not a mere recital, and that these terms shall be binding on and inure to the benefit of the Parties' officers, employees, heirs, successors, and assigns.

18. CONSTRUCTION OF DOCUMENT. The Parties intend that the release provisions of this Settlement Agreement as set forth in paragraph 9 shall be construed as broadly and comprehensively as permitted by law.

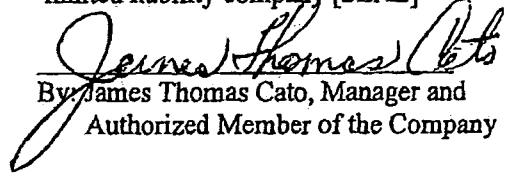
19. EFFECTIVENESS. This Settlement Agreement is effective upon execution by all parties subject to the entry of the consent orders referenced herein. All requirements of this Settlement Agreement shall be completed on or before May 22, 2013 unless otherwise agreed to by the Parties.

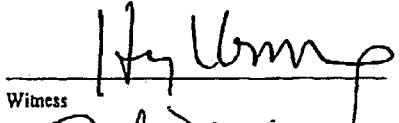
20. COUNTERPARTS AND SIGNING. This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. This Settlement Agreement may be executed by facsimile, which shall have binding effect. Copies of original execution pages of this Settlement Agreement shall have the same force and effect as the originals themselves.

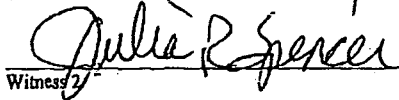
IN WITNESS WHEREOF, the Parties set forth their hands and seals on the dates set forth below.

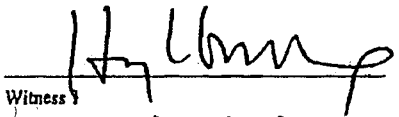
[SIGNATURES ON THE FOLLOWING PAGES]

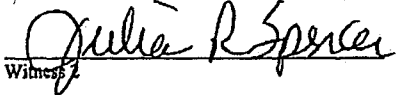
T.E. Cato Estate, LLC, a South Carolina
limited liability company [SEAL]

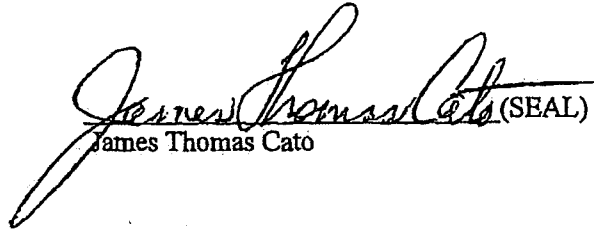

By James Thomas Cato, Manager and
Authorized Member of the Company


Witness


Witness 2


Witness 1


Witness 2

 (SEAL)
James Thomas Cato

Robert C. Hoar

Witness 1

Joseph [Signature]

Witness 2

Donn S. Johnson (SEAL)
Donn S. Johnson

Expire date as of
June 4, 2022

Ileshia Bernard
Witness 1 Signature

James Harper
Witness 2/Notary Signature

Jane Cato West (SEAL)
Jane Cato West

Case No: 2008-CF-46-3171

Margie P. Smith

Witness 1

Amy A. Moore

Witness 2

Robert Lee Cato (SEAL)

Robert Lee Cato

Donald J. Phelan
Witness 1

Phelan
Witness 2

Cathy Cato Evans (SEAL)
Cathy Cato Evans

Case # 2008-CP-46-3171

Court of Common Pleas

Lia Calyosvic
 Witness 1
[Signature]
 Witness 2

[Signature] (SEAL)
 Albert M. Jones 5/1/13
Helen Cato Jones by Albert M. Jones her Attorney-In-Fact
 Helen Cato Jones by Albert M.
 Jones, her Attorney-In-Fact

Tracie Cole

Witness 1

William Anderson

Witness 2

Douglas E. Jones (SEAL)
Douglas E. Jones

Helen Cato Jones by Douglas E. Jones, her Attorney-In-Fact.
Helen Cato Jones by Douglas E. Jones, her Attorney-In-Fact

Kayla Blum
Witness 1
Alicia Souder
Witness 2

Sara L. Jones (SEAL)
Sara L. Jones
Helen Cato Jones by Sara L. Jones
her Attorney-In-Fact
Helen Cato Jones by Sara L. Jones,
her Attorney-In-Fact
In-fact

Mark Lee

Witness 1

[Signature]

Witness 2

Mark Lee

Witness 1

[Signature]

Witness 2

Mark Lee

Witness 1

[Signature]

Witness 2

Mark Lee

Witness 1

[Signature]

Witness 2

Marjorie Cato Burton by David Alan Burton AIF (SEAL)

Marjorie Cato Burton by David Alan Burton as her Attorney-In-Fact

Sloan Marvin Burton (SEAL)

Sloan Marvin Burton by David Alan Burton as his Attorney-In-Fact

David Alan Burton (SEAL)
David Alan Burton, Individually

David Alan Burton (SEAL)
David Alan Burton, as Successor Trustee of the Sloan Marvin Burton and Marjorie Cato Burton AB Living Trust

RECEIVED
APR 16 2013

Roger B. Jellenik, Esq.

Thomasson Apts., LLC [SEAL]

Witness

By: _____
Authorized Member of the Company

Witness 2

Cleo Thomasson
Witness 1

Broadus L. Thomasson (SEAL)
Broadus L. Thomasson, Sr.

Denise W. Thomasson
Witness 2

Witness 1

B. Lee Thomasson, Jr. (SEAL)

Witness 2

Angela T. Will
Witness 1

B. Heath Thomasson (SEAL)
B. Heath Thomasson

Denise W. Thomasson
Witness 2

Witness 1

Matthew J. Thomasson (SEAL)

Witness 2

Thomasson Apts., LLC [SEAL]

Matthew Thomasson
By: Member/Agent,
Authorized Member of the Company

Hy Umm
Witness

Julia R. Spencer
Witness 2

Witness 1

Hy Umm
Witness 1

Julia R. Spencer
Witness 2

Witness 1

Hy Umm
Witness 1

Julia R. Spencer
Witness 2

Broadus L. Thomasson, Sr. (SEAL)

B. Lee Thomasson, Jr. (SEAL)
B. Lee Thomasson, Jr.

B. Heath Thomasson (SEAL)

Matthew Thomasson (SEAL)
Matthew J. Thomasson

Chas Thomas
Witness

Witness 2

Chas Thomas
Witness 1

Wendell Martin
Witness 2

Witness 1

Witness 2

Rayon T. Will
Witness 1

Wendell Martin
Witness 2

Witness 1

Witness 2

Thomasson Apts., LLC [SEAL]

Broadus L. Thomasson
By: General Manager
Authorized Member of the Company

Broadus L. Thomasson (SEAL)
Broadus L. Thomasson, Sr.

B. Lee Thomasson, Jr. (SEAL)

B. Heath Thomasson (SEAL)
B. Heath Thomasson

Matthew J. Thomasson (SEAL)

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

MARJORIE CATO BURTON as :
Trustee of the Sloan Marvin :
Burton and Marjorie Cato :
Burton AB Living Trust, by :
and through David A. Burton as :
Attorney-in-Fact, Individually :
and in the Right and on Behalf :
of T.E. Cato Estate, LLC, :
Plaintiff, : CIVIL ACTION NO. :
vs. : 2010-CP-46-2267
CARROLL M. PITTS, JR., ESQ., :
and ROBINSON BRADSHAW & HINSON, :
P.A., :
Defendants. :

DEPOSITION OF DAVID BURTON

DATE TAKEN: May 12, 2014
TIME BEGAN: 10:00 a.m.
TIME ENDED: 1:05 p.m.
LOCATION: Nelson Mullins Riley & Scarborough
1320 Main Street, 17th Floor
Columbia, South Carolina
REPORTED BY: Tami I. Watters, RPR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
(803) 212-0012

APPEARANCES:

TOMPKINS & MCMASTER, LLP
BY: MR. GEORGE HUNTER MCMASTER
1701 Richland Street
Columbia, South Carolina 29201
(803) 799-4499
ghm@tmmlaw.net
Representing the Plaintiff

LAW OFFICES OF ROGER B. JELLENIK
BY: MR. ROGER B. JELLENIK
1111 Broad Street, Box J
Camden, South Carolina 29020
(803) 424-1919
Representing the Plaintiff

NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: MR. SAM OUTTEN
Poinsett Plaza, 9th Floor
104 South Main Street
Greenville, South Carolina 29601
(864) 250-2297
sam.outten@nelsonmullins.com
Representing the Defendants

NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: MR. EVERETT E. MCMILLIAN
1320 Main Street
17th Floor
Columbia, South Carolina 29201
(803) 255-9487
everett.mcmillian@nelsonmullins.com
Representing the Defendants

I N D E X

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EXAMINATION	
By Mr. Outten	4
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E X H I B I T S

BURTON	DESCRIPTION	MARKED
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6	Letter of Intent	51
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1 settled, correct?

2 A Yes, sir.

3 Q And there was a Settlement Agreement
4 which was entered into by all the parties to the
5 partition action, correct?

6 A Yes, sir.

7 Q And did you have an opportunity to review
8 the Settlement Agreement before it was executed?

9 MR. MCMASTER: Objection as to form.

10 THE WITNESS: My attorney was there and
11 Mr. Jellenik. They did, yes, sir.

12 BY MR. OUTTEN:

13 Q Without telling me the substance of your
14 discussions with your lawyers, did you have an
15 opportunity to consult with your lawyers about the
16 terms of the Settlement Agreement?

17 A Yes, sir.

18

- - -

19 (Settlement Agreement marked Burton
20 Exhibit Number 2, for identification.)

21

- - -

22 BY MR. OUTTEN:

23 Q By the way, as a housekeeping matter, I
24 don't know if I asked you this question.

25 Does Exhibit 1 appear to be an accurate

1 A Yes.

2 MR. MCMASTER: Objection as to form.

3 BY MR. OUTTEN:

4 Q Without telling me the substance of any
5 communications, did you have consistent input with
6 your lawyers about this Settlement Agreement
7 throughout its negotiation?

8 MR. MCMASTER: Objection as to form.

9 THE WITNESS: I let my lawyers handle
10 most of this, yes, sir.

11 BY MR. OUTTEN:

12 Q Well, I'm not asking you that. I'm
13 asking you, did you have -- were you in constant
14 communication with your lawyers about the material
15 terms of the Settlement Agreement?

16 MR. MCMASTER: Objection as to form.

17 THE WITNESS: Yes, sir.

18 BY MR. OUTTEN:

19 Q Look at page 23, please.

20 A Okay.

21 Q You signed this agreement individually,
22 correct?

23 A Yes, sir.

24 Q You signed it as Successor Trustee of the
25 Sloan Marvin Burton and Marjorie Cato Burton

1 yes, sir.

2 Q All right. What's your understanding of
3 what that language means?

4 A That this transaction will do away with
5 everyone's complaint against the other; legal
6 complaints, etc.

7 Q Did you understand that all parties to
8 the partition action were giving up any existing or
9 future claims against one another by the execution
10 of this Settlement Agreement?

11 MR. MCMASTER: Objection as to form.

12 BY MR. OUTTEN:

13 Q Do you understand that?

14 A Yes, sir.

15 Q What's the net amount of money the
16 Burton Trust received from the settlement of the
17 partition action?

18 A From the settlement of the partition
19 action?

20 Q Yeah. It looks like, if you look at
21 page 5, there's a paragraph entitled
22 "Consideration."

23 Do you see that?

24 A Yes, sir.

25 Q And the first part of that paragraph

1 everything I've been through a benefit. I
2 don't see it that way.

3 BY MR. OUTTEN:

4 Q The Burton Trust benefited economically
5 from the partition action, did it not?

6 MR. MCMASTER: Objection as to form.

7 THE WITNESS: It got its fair share.

8 Let's put it that way.

9 BY MR. OUTTEN:

10 Q As determined by what? How do you define
11 fair share?

12 How do you -- what's that based on? Is
13 there a document? Is there an appraisal? Is there
14 anything out there to base your "fair share"
15 testimony on?

16 A No, sir.

17 MR. MCMASTER: Objection as to form.

18 THE WITNESS: Not that I know. There's
19 no appraisal. I've already testified about
20 that.

21 MR. MCMASTER: Move to strike.

22 BY MR. OUTTEN:

23 Q Or any document?

24 A Not that I'm aware of, no, sir.

25 Q Let me ask the question again, sir. The

1 Burton Trust benefited economically from the
2 partition action, did it not?

3 MR. MCMASTER: Objection as to form.

4 THE WITNESS: It received money, yes, for
5 the sale of the land that I felt my mother was
6 entitled to.

7 BY MR. OUTTEN:

8 Q The Burton --

9 A So if you want to call that a benefit,
10 that's what happened.

11 Q Did the Burton Trust receive monetary
12 proceeds from that lawsuit?

13 A Yes, sir.

14 Q Did it pay any other party any settlement
15 in that lawsuit?

16 A No, sir.

17 Q So I'm not sure your difficulty with the
18 question. The Burton Trust benefited economically
19 from the partition action, correct?

20 MR. MCMASTER: Objection, asked and
21 answered.

22 THE WITNESS: Fine. Yes, sir.

23 BY MR. OUTTEN:

24 Q This statement that you've referred to
25 several times in this e-mail we've marked as

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

JAMES THOMAS CATO, HELEN CATO JONES,
DONN S. JOHNSON, JANE CATO WEST,
LEE CATO AND CATHY CATO EVANS,

PLAINTIFFS,

-VS-

MARJORIE CATO BURTON,
AS TRUSTEE OF THE SLOAN MARVIN BURTON
AND MARJORIE CATO BURTON,
AB LIVING TRUST,

DEFENDANT.

DAVID ALAN BURTON, AS ATTORNEY-IN-FACT
FOR MARJORIE CATO BURTON, AS TRUSTEE
OF THE SLOAN CATO BURTON AND
MARJORIE CATO BURTON, AB LIVING TRUST,
AND IN THE RIGHT AND ON BEHALF OF
T.E. CATO ESTATE, LLC,

THIRD-PARTY PLAINTIFF,

-VS-

JAMES THOMAS CATO AND
THOMASSON APTS., LLC,

THIRD-PARTY DEFENDANTS.

THOMASSON APTS., LLC,

FOURTH-PARTY PLAINTIFF,

-VS-

T.E. CATO ESTATE, LLC,

FOURTH-PARTY DEFENDANT.

CASE NUMBER
2008-CP-46-3171

 COPY

DEPOSITION OF DAVID ALAN BURTON
ROCK HILL, SOUTH CAROLINA
MAY 10, 2010

REPORTER: WILLIAM H. WHITE

DALLAS REPORTING
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

RBH 000539

Handwritten notes:
R
7/19/2010

Appearances:

For the Plaintiffs -

Carroll M. Pitts, Jr., Esquire
Robinson, Bradshaw & Hinson, PA
140 East Main Street, Suite #420
P.O. Box 12070
Rock Hill, SC 29731

For the Defendant Marjorie C. Burton
and Third-Party Defendant David Alan
Burton, as Attorney-in-Fact for
Marjorie Cato Burton -

Roger B. Jellenik, Esquire
1111 Broad Street
Box J
Camden, South Carolina 29020

For the Fourth-Party Defendant,
T. E. Cato Estate, LLC -

Lucy L. McDow, Esquire
514 Oakland Avenue, 2nd Floor
P.O. Box 767
Rock Hill, South Carolina 29731-6767

For Third-Party Defendant/
Fourth-Party Plaintiff Thomasson
Apts, LLC

Demetri K. Koutrakos, Esquire
Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite #200
P.O. Box 1390
Columbia, South Carolina 29202-1390

William T. Moody, Esquire
Morton & Gettys
334 Oakland Avenue
P.O. Box 707
Rock Hill, South Carolina 29731

RBH 000540

I N D E X

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Exhibit 3 LLC Operating Agreement	Page 40
Exhibit 4 Title to Real Estate	Page 41
Exhibit 5 E-mail 6-23-07	Page 52
Exhibit 6 E-mail 8-4-07	Page 56
Exhibit 7 E-mail 8-20-07	Page 62
Exhibit 8 E-mail 8-21-07	Page 64
Exhibit 9 Handwritten letter, 10/22/07	Page 68
Exhibit 10 E-mail 12-26-07	Page 71
Exhibit 11 E-mail 12-26-07	Page 80
Exhibit 12 E-mail 12-26-07	Page 84
Exhibit 13 E-mail 12-26-07	Page 85

RBH 000541

1 attorney-client privilege. If it's any
2 further than that --

3 A. You just want the names of the --

4 By Mr. Koutrakos: (Resuming)

5 Q. Well, let's back up. Did somebody give you legal
6 advice as to whether or not you should deposit that
7 check?

8 Mr. Jellenik: That's --

9 Mr. Koutrakos: That's not privileged.

10 The fact that he received. I'm not asking him
11 what the legal advice is.

12 Mr. Jellenik: (To the Witness) Okay. You
13 can answer that.

14 By the Witness: (Resuming)

15 A. Yes, sir.

16 Q. And who was that?

17 Mr. Koutrakos: That's not legal advice.

18 You can answer that.

19 Mr. Jellenik: You can answer that, to the
20 extent that you know.

21 By the Witness: (Resuming)

22 A. Dale Dove and Doug Gay.

23 Q. And that information was given to you prior to the
24 depositing of the check?

25 A. Yes, sir.

Deposition of David Alan Burton

RBH 000669

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MAR 14 2016
SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Supplemental Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March __, 2016



MBRLAW, LLC
Matthew B. Rosbrugh
Post Office Box 292290
Columbia, South Carolina 29229
Telephone: 803.753.1432
Facsimile: 803.419.9614
Email: matt@mbrlawllc.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Marjorie Cato Burton as Trustee of the Sloan Marvin Burton
and Marjorie Cato burton, AB Living Trust by and through
David A. Burton as Attorney-in-Fact, Individually and in the
right and on behalf of T.E. Cato Estate, LLC, Appellant

RECEIVED

MAR 14 2016

SC Court of Appeals

v.

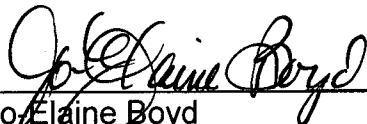
Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw & Hinson,
P.A., Respondents

Appellate Case No: 2015-001053

The Honorable John C. Hayes, III
York County
Circuit Court Case No: 2010-CP-46-02267

PROOF OF SERVICE

The undersigned hereby certifies that I have served the Supplemental Record on Appeal on counsel for Respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 14, 2016 addressed to their attorneys of record at Samuel W. Outten, Esq., Nelson, Mullins, Riley & Scarborough, Poinsett Plaza, Suite 900, 104 South Main Street, Greenville, South Carolina, 29601.


Jo Elaine Boyd

March 14, 2016



MBR Law, LLC

Post Office Box 292290
Columbia, South Carolina 29229
voice (803) 753-1432
facsimile (803) 419-9614
www.mbrlawllc.com
matt@mbrlawllc.com

March 11, 2016

Via Hand Delivery

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
MAR 14 2016
SC Court of Appeals

Re: Marjorie Cato Burton as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust by and through David A. Burton as Attorney-in-Fact, Individually and in the right and on behalf of T.E. Cato Estate, LLC, Appellant v. Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw & Hinson, P.A., Respondents; Appellate Case No: 2015-001053

Dear Ms. Kitchings:

Counsel of record has consented to filing a Supplemental Record on Appeal in the above referenced matter. Enclosed please find one unbound and seventeen bound copies of the Supplemental Record on Appeal. Also enclosed is the original and one copy of the Proof of Service.

Please return three clocked copies of the Supplemental Record on Appeal and one clocked copy of the Proof of Service to my courier.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew B. Rosbrugh", with a long, sweeping horizontal line extending to the right.

Matthew B. Rosbrugh