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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

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

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

vs.

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

**AMENDED RECORD ON APPEAL
VOLUME I**

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vs.

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FILED-CLERK OF COURT
 STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE PAUL D. WICKENSIMMER

2015 MAY 5 PM 4 27

China Construction America
 Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
 A/k/a MSPS Steel Fabricators

Defendants.

**RULE TO SHOW CAUSE AND
 ORDER OF REFERENCE**
 (Case. NO.: 2014-CP-23-1871)

Judgment having been rendered, an Execution issued, a *Nulla Bona* return made to said Execution, the Petitioner having moved for an examination of the Respondent, pursuant to the provisions of §15-39-310, *et seq.*, as amended; it is therefore,

ORDERED that **MS Production Solutions LLC a/k/a MSPS Steel Fabricators**, DO APPEAR before **The Honorable Charles B. Simmons, Jr., Master-In-Equity for Greenville County, Greenville County Courthouse, 305 East North Street, Courtroom 5, Greenville, South Carolina, on the 2nd day of June, 2015, at 2:30 a.m.(p.m.)**, to answer under oath concerning your assets; TO SHOW CAUSE why your property should not be applied towards satisfaction of the Judgment set out in the Petition; to SHOW CAUSE why a Receiver of Respondent's property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South Carolina Code Ann. (Law. Co-op. 1976).

The Master-in-Equity will entertain and rule upon all motions necessary to dispose of this

matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt and has authority to enter a Final Order. Any appeal from the Master-in-Equity is directly to the Supreme Court.

IT IS FURTHER ORDERED that the Respondent is hereby restrained and enjoined from making any transaction or transfer or other disposition of property belonging to him/it which is not exempt from execution pending further Order of this Court.

YOU ARE FURTHER ORDERED PRODUCE A COPY OF THE FOLLOWING DOCUMENTS TO COUNSEL FOR PLAINTIFF ON, OR BEFORE, FIVE (5) BUSINESS DAYS BEFORE THIS HEARING:

1. Bank statements for all bank accounts owned in whole or in part by Defendants for the past year.
2. Pay stubs for the past five (5) years.
3. Federal and State Tax returns for the past five (5) years.
4. Insurance Policies [home, automobile, real estate, etc...].
5. Records of any real estate owned, either in whole or in part.
6. Records of vehicles and boats.
7. Any inventories of personal property.
8. Copies of any contracts entitling you to payment of money.
9. Any personal financial statements prepared for any reasons either by your self or by any independent sources, with any applicable notes attached thereto from the past five (5) years and, if not reflected in such statements, a complete description of any and all contingent liabilities, including guarantees, by you.
10. Any and all year-end financial statements of any corporation, partnership, trust, or other business entity in which you hold directly or indirectly a 10% interest (balance sheet statements and statement of income and expenses) audited and unaudited for the last three years of the respective entities with any applicable notes attached thereto and any subsequently prepared

financial reports or statements prepared by the entity or on its behalf for any reason.

11. Any and all documents and financial records that relate to, refer to, or describe, recount, or are in any way related to any transfer of or pledge, hypothecation, gift, assignment, or granting of a security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One Hundred Dollars (\$100) in any single transaction from the past five (5) years to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.
12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

IF YOU DO NOT APPEAR IT MAY RESULT IN THE APPOINTMENT OF A RECEIVER AND AWARDING THE PLAINTIFF/PETITIONER SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUESTED. YOU MAY ALSO BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.

Greenville, South Carolina

1 MAY, 2015

s/Robin B. Stilwell
Presiding Circuit Court Judge, Greenville County
STILWELL / 2158

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendants.

IN THE COURT OF COMMON PLEAS

Case NO.: 2014-CP-23-1871

**ORDER OF DEFAULT
AGAINST MS PRODUCTION
SOLUTIONS LLC**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 MAR 5 PM 3:50

**TO: THE DEFENDANT MS PRODUCTION SOLUTIONS LLC A/K/A MSPS STEEL
FABRICATORS:**

THIS MATTER CAME before the Court upon Motion of Plaintiff China Construction America of South Carolina, Inc. ("Plaintiff"), for an Order of Default against the Defendant, MS Production Solutions LLC A/k/a MSPS Steel Fabricators ("Defendant").

IT APPEARS from the Affidavit of Default filed by counsel for the Plaintiff that the Summons and Complaint were properly served upon the Defendant and that no Answer, Motion, Notice of Appearance or other responsive pleading has been filed with the Court or served on Plaintiff by the Defendant within the time prescribed by law.

IT FURTHER APPEARS, and I so hold, that the Defendant is in default herein and that the Plaintiff is therefore entitled to an Order of Default/~~Entry of Default~~ to be entered against the above-named Defendant.

IT FURTHER APPEARS, and I so hold, that upon motion of the Plaintiff, the Plaintiff will be entitled to a hearing to set the damages in this case.

ENTERED COMPUTER

IT FURTHER APPEARS, and I so hold that the Plaintiff in this matter has complied with Rule 55 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that an Order of Default be entered against the Defendant and that upon Motion by the Plaintiff, the Plaintiff be entitled to the relief this Court deems proper.

AND IT IS SO ORDERED.



Presiding Judge
Thirteenth Judicial Circuit

Dated: 7/31/14

Greenville, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America of South
Carolina, Inc.,

Petitioner,

v.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-1871

**ORDER ON MOTION TO SET ASIDE
CONVEYANCES**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MICHELSMEIER
2015 OCT 13 AM 11 38

This matter came before me on October 2, 2015, 2:00 PM, pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property.

Present at the hearing were Plaintiff's counsel, Caitlin Heyward, and Defendant's counsel, Rhett Burney. This Court heard extensive argument from both lawyers.

BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. Respondent did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against Respondent in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners maintain that from at least August, 2013 to May 2015, the owner and sole proprietor of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. At the supplemental proceedings hearing held on June 2, 2015, Mr. Sprenger testified that his wife is



not an employee of the company. Notwithstanding being served a copy of the Rule to Show Cause, Petitioner contends that Respondent transferred an additional \$60,000 from the MSPS Bank of America account to Patricia Sprenger on May 27, 2015 in violation of this Court's Order enjoining Respondent from making any transaction or transfer or other disposition of property which is not exempt from execution.

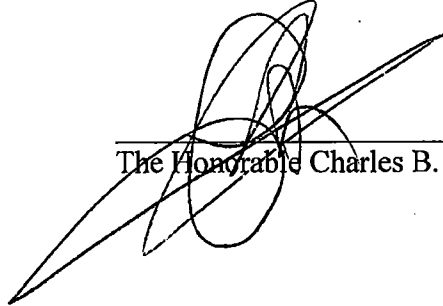
Patricia Sprenger testified at her deposition on September 21, 2015, that she withdrew a substantial portion of the monies transferred to her from MSPS in cash and is storing approximately \$50,000.00 of that money at the home she shares with Manfred Sprenger, the Principal of MSPS. Respondent disputes the characterization of these monies and the availability of the funds, contending they were repayments for un-documented loans made to the LLC.

Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the issues before me and the parties hereto.
2. Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS") has made some amount of cash or check transfers to Patricia Sprenger.
3. Manfred Sprenger, the Principal and Sole Proprietor of MSPS, appears to have some degree of access to the \$50,000.00 in cash transferred from the MSPS account to Patricia Sprenger. However, and important to note, is that neither Manfred Springer nor Patricia Sprenger are parties to this lawsuit.
4. Respondent is reminded that it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any "loans" or "capital contributions" not evidenced by any note or other proper loan documentation.

5. Until a judicial determination can be made as to the fraudulent nature of the transfers, if any, MSPS is directed to exercise reasonable efforts to recover the \$50,000.00 transferred to Patricia Sprenger on May 27, 2015. Whatever such funds are recovered, those funds shall be held in trust at the law office of Turner and Burney, PC on or before October 9, 2015. Further, and while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.



The Honorable Charles B. Simmons

Greenville, South Carolina

10/8, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2301871

China Construction America Of South Carolina Inc vs. MS Production Solutions LLC

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

NOTICE

This is a notice to you that an Order on Motion to Set Aside Conveyances in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 13th day of October, 2015.

Court Reporter:

PRESIDING JUDGE -

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC
233 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
China Construction America of South)
Carolina, Inc.,)
)
Petitioner,)
)
v.)
)
MS Production Solutions LLC a/k/a)
MSPS Steel Fabricators,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-23-1871

AMENDED
ORDER ON MOTION TO SET ASIDE
CONVEYANCES

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL B. WICKENMER
2015 OCT 27 PM 4 17

This matter came before me on October 2, 2015, 2:00 PM, pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property.

Present at the hearing were Plaintiffs counsel, Caitlin Heyward, and Defendant's counsel, Rhett Burney. This Court heard extensive argument from both lawyers.

BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. Respondent did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against Respondent in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners maintain that from at least August, 2013 to May 2015, the owner and sole proprietor of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. At the supplemental proceedings hearing held on June 2, 2015, Mr. Sprenger testified that his wife is



not an employee of the company. Notwithstanding being served a copy of the Rule to Show Cause, Petitioner contends that Respondent transferred an additional \$60,000 from the MSPS Bank of America account to Patricia Sprenger on May 27, 2015 in violation of this Court's Order enjoining Respondent from making any transaction or transfer or other disposition of property which is not exempt from execution.

Patricia Sprenger testified at her deposition on September 21, 2015, that she withdrew a substantial portion of the monies transferred to her from MSPS in cash and is storing approximately \$50,000.00 of that money at the home she shares with Manfred Sprenger, the Principal of MSPS. Respondent disputes the characterization of these monies and the availability of the funds, contending they were repayments for un-documented loans made to the LLC.

Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the issues before me and the parties hereto.
2. Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS") has made some amount of cash or check transfers to Patricia Sprenger.
3. Manfred Sprenger, the Principal and Sole Proprietor of MSPS, appears to have some degree of access to the \$50,000.00 in cash transferred from the MSPS account to Patricia Sprenger. However, and important to note, is that neither Manfred Springer nor Patricia Sprenger are parties to this lawsuit.
4. Respondent is reminded that it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any "loans" or "capital contributions" not evidenced by any note or other proper loan documentation.

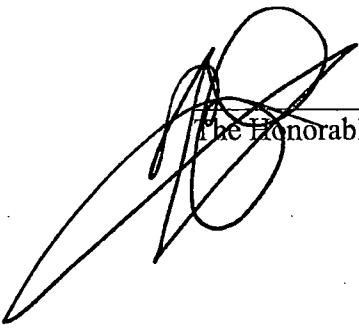
5. Until a judicial determination can be made as to the fraudulent nature of the transfers, if any, MSPS is directed to exercise reasonable efforts to recover the \$50,000.00 transferred to Patricia Sprenger on May 27, 2015. Whatever such funds are recovered, those funds shall be held in trust at the law office of Turner and Burney, PC on or before October 9, 2015. Further, and while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.

6. This Court has not at this time rendered any decision(s) regarding the propriety or impropriety of the purported fraudulent transfers. The determination of the fraudulent nature of the transfers is held in abeyance until further order of this Court.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

Greenville, South Carolina

10/26 2015


The Honorable Charles B. Simmons

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
China Construction America of South Carolina, Inc.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
MS Production Solutions LLC a/k/a MSPS Steel Fabricators,	)	
	)	
Respondent.	)	

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 DEC 23 5 PM 11 20

THIS MATTER came before me for hearing on November 18, 2015, pursuant to (1) a Motion to Join Manfred Sprenger and Patricia Sprenger as parties, (2) a Motion to Quash and Motion for Protective Order, and (3) a Motion for Contempt. Appearing on behalf of Plaintiff was Caitlin E. Creswick, Esquire. Rhett D. Burney appeared on behalf of Respondent, Manfred Sprenger and Patricia Sprenger.

Based on the record before me, arguments by the lawyers, and their submitted written materials, I make the following findings of facts and conclusions of law:

Petitioner's Motion to Join Manfred Sprenger and Patricia Sprenger as Parties

- (1) On July 31, 2014, an Order of Default was entered against Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS").
- (2) After granting Petitioner's motion for damages hearing, the court entered an Amended Order of Judgment against MSPS in the amount of \$657,137.30 on January 29, 2015.
- (3) Petitioner's judgment was recorded against Respondent, and the Respondent has not made any payments toward the Judgment.



- (4) Execution has been issued to the Sheriff of Greenville County against Respondents and the writ has been returned NULLA BONA.
- (5) This Court held a hearing in these Supplemental Proceedings on June 2, 2015, during which Manfred Sprenger testified on behalf of MSPS.
- (6) During the hearing, Manfred Sprenger testified that he transferred certain funds to his wife, Patricia Sprenger, for no consideration, from the MSPS company bank account. While Plaintiff disagrees, he testified these funds represented his paycheck. The Court need not rule on this issue at this point.
- (7) Petitioner maintains the transfers to Patricia Sprenger from MSPS are in excess of \$282,600.00.
- (8) It appears that many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed.
- (9) Petitioner contends Respondent transferred \$60,000.00 in the form of a check made payable to Patricia Sprenger on May 27, 2015, after Respondent was served with a Rule to Show Cause on May 13, 2015, enjoining Respondent from transferring the company assets.
- (10) According to Plaintiff, Patricia Sprenger testified during her deposition on September 21, 2015 that she had \$50,000.00 of the May 27, 2015 transfer in cash in her home. This will be an issue that will be decided at future hearings and viewed in light of previously issued Orders.
- (11) The proposed Respondents/additional parties are citizens of Greenville County, South Carolina.



- (12) On September 23, 2015, Plaintiff filed a motion to set aside the fraudulent transfers, and this Court held that the relief sought (i.e., the return of the property to the judgment debtors) cannot be accorded among those already parties to these proceedings.
- (13) Manfred Sprenger and Patricia Sprenger claim an interest in the property transferred and the disposition of this action in their absence may (i) as a practical matter impair or impede their ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.
- (14) Based upon the aforesaid, and arguments of Counsel, Petitioner is hereby granted leave to join Manfred Sprenger and Patricia Sprenger as necessary parties to this Supplemental Proceeding.

Respondent's Motion to Quash

- (1) On October 21, 2015, Respondent filed a Motion to Quash and for Protective Order regarding a subpoena served on Saunders O'Dell, PA on October 6, 2014 and seeking information related to the accounting records of Manfred Sprenger, Patricia Sprenger, and MS Production Solutions, LLC.
- (2) I hereby limit Petitioner's subpoena to all documents and information that Saunders and O'Dell, PA relied upon in preparing the tax returns from October 2012, 18 months prior to the filing of the lawsuit, to present.
- (3) Any information labeled confidential or that constitutes a trade secret or price list is to be designated as CONFIDENTIAL and may only be disclosed or made available to "Qualified Persons" who are defined to consist exclusively of:
 - a. The Court and its personnel;

- b. Partners and associates of attorneys employed by the law firms of record representing the parties in these Supplemental Proceedings, and the respective clerical, paralegal, and secretarial staff employed or contracted by such law firms whose function require access to said CONFIDENTIAL MATERIAL for the purpose of these Supplemental Proceedings;
- c. Court reporters employed in connection with these Supplemental Proceedings;
- d. Any mediator, arbitrator or other person employed as part of any alternative dispute resolution; and
- e. Any other consultant or professional counsel for either party reasonably determines needs to be shown such CONFIDENTIAL MATERIAL to assist counsel in these supplemental proceedings, including but not limited to accountants, forensic accounts, and consultants, expert consultants, and/or expert witnesses.

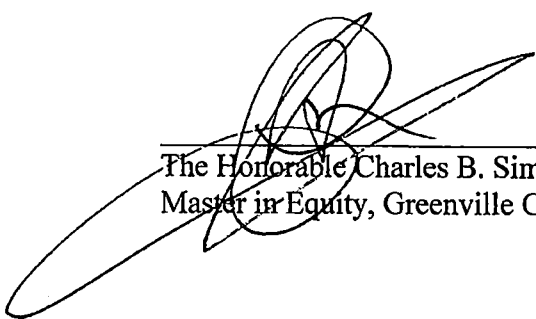
Petitioner's Motion for Contempt

- (1) An Order was entered on October 8, 2015, directing Respondent to exercise all reasonable efforts recover funds transferred to Patricia Sprenger from Respondent's account.
- (2) On October 22, 2015, Petitioner filed a Motion to Compel Respondent to comply with the October 8, 2015 Order and to hold Respondent in contempt of court and to impose sanctions.
- (3) On November 16, 2015, Respondent filed a Return to Petitioner's Motion for Contempt and sought attorneys' fees.
- (4) Based on the testimony from Manfred Sprenger, the Principal of MS Production Solutions, LLC, this Court orders Respondent to deposit \$8,000.00 into the trust account

of Rhett D. Burney, Esq. on or before November 20, 2015 to preserve said funds until such further proceedings can be had regarding the transfers.

- (5) Respondent's request for attorneys' fees is denied.

AND IT IS SO ORDERED.



The Honorable Charles B. Simmons
Master in Equity, Greenville County

Date: 12/21/15
Greenville, South Carolina

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2301871

FILED-V. CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 DEC 23 AM 11:21

China Construction America Of South Carolina Inc vs. MS Production Solutions LLC

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

NOTICE

This is a notice to you that an Order Ruling on Multiple Motions in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 23rd day of December, 2015.

Court Reporter:

PRESIDING JUDGE -

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC
233 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
	)	
China Construction America of South Carolina, Inc.,	)	
	)	
Petitioner,	)	ORDER SETTING ASIDE FRAUDULENT CONVEYANCES
	)	
v.	)	
	)	
MS Production Solutions, LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Sprenger and Patricia Sprenger,	)	
	)	
Respondents.	)	
	)	

THIS MATTER came before me for hearing on March 2, 2016, pursuant to Petitioner China Construction America of South Carolina, Inc.'s ("Petitioner" or "China") Motion to Set Aside Fraudulent Transfers. Appearing on behalf of Petitioner was Robert C. Osborne, III. Rhett D. Burney appeared on behalf of Respondents, MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS"), Manfred Sprenger ("Manfred") and Patricia Sprenger ("Patricia"). The Court heard testimony from Manfred Sprenger and Benjamin O'Dell as well as extensive argument from both lawyers. In addition to the testimony and argument of counsel, in reaching its decision, the Court reviewed the exhibits entered into evidence, the testimony of Manfred Sprenger from the earlier supplemental proceedings hearing and the deposition testimony of Manfred and Patricia Sprenger.

FACTUAL BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. MSPS did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against MSPS in the amount of \$657,137.30.

Petitioner commenced Supplemental Proceedings and a Rule to Show Cause was entered against MSPS on May 1, 2015. A Supplemental Proceedings hearing was held on June 2, 2015 and the court heard testimony from Manfred Sprenger. Notably, Manfred testified that his wife, Patricia, was not an employee of MSPS, nor an owner of MSPS. Petitioner took the depositions of both Manfred and Patricia on September 21, 2015. During her deposition, Patricia testified that although she was not an employee of MSPS, checks from the MSPS account were frequently made payable to her. Additionally, she testified the checks were written to her rather than Manfred because she was the one who would deposit the checks and it was easier for her to do so at the bank if the checks were in her name. Patricia further testified that she would make cash withdrawals from the Sprenger's personal account and keep the cash in their home. At her deposition, Patricia testified that she thought she had approximately \$50,000.00 in cash at her home. In his deposition, Manfred also testified that Patricia was not an employee of MSPS and that he was the sole owner of MSPS. Addressing the cash kept in their home, Manfred alleged that the amount was significantly less than \$50,000.00.

Following the depositions, Petitioner filed its Motion to Set Aside Fraudulent Transfers. A hearing on the motion was held on October 2, 2015. Petitioner argued that MSPS had fraudulently transferred money out of the company in an effort to avoid paying the judgment against it. Following the hearing, on October 27, 2015, this Court entered an order instructing MSPS to exercise reasonable efforts to recover the \$50,000.00 Patricia testified to in her deposition. This Court deferred ruling on the issue of the fraudulent transfers until a later date.

Another hearing involving the parties was held on November 18, 2015. At that hearing, Petitioner moved to add Manfred and Patricia Sprenger as parties to the action. Petitioner also moved to hold MSPS in contempt of the order entered on October 27, 2015 for failing to take

reasonable steps to recover the money Patricia testified to in her deposition. The court also addressed Respondent's Motion to Quash and for a Protective Order regarding a subpoena Petitioner served on Saunders O'Dell, P.A seeking information related to the accounting records of MSPS, Manfred Sprenger and Patricia Sprenger. On December 23, 2016 the Court entered an Order joining Manfred and Patricia Sprenger as parties to the Supplemental Proceedings. Ruling on Petitioner's Motion for Contempt, the court ordered that MSPS deposit \$8,000.00 into the trust account of its attorney until such further proceedings can be had regarding the transfers. Addressing the Motion to Quash and for a Protective Order, the Court limited the subpoena to records relied on by Saunders O'Dell in preparing the tax returns of the Respondents from October 2012 forward. The court also ordered that the records be labeled as confidential and only available for review to certain limited persons, including counsel for both parties. The Court again deferred on ruling on Petitioner's Motion to Set Aside Fraudulent Transfers until the parties had an opportunity to review the documents from Saunders O'Dell.

On March 2, 2016, the court addressed the merits of Petitioner's Motion to Set Aside Fraudulent Transfers. Petitioner asserted that from August 2013 to December 2015, Manfred wrote numerous checks to himself and Patricia, totaling \$361,393.84. Petitioner contends the payments from MSPS to Manfred and Patricia are fraudulent transfers in violation of S.C. Code §27-23-10 (referred to hereinafter as the "Statute of Elizabeth"). The Respondents contend the checks were written to reimburse Manfred for money he injected into the company to keep it running and also for his salary.

The transfers at issue can be divided into two categories. First, there are checks written from MSPS to Patricia dating from August 2013 to December 2015. In addition, there are checks from MSPS written to Manfred during that same period. In total, the checks alleged to be fraudulent transfers by Petitioner equal \$361,393.84. An index of all the transfers alleged by the

Petitioner to be fraudulent transfers is attached hereto as **Exhibit A**.

DISCUSSION

South Carolina's prohibition on fraudulent transfers/fraudulent conveyances, the Statute of Elizabeth, provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code § 27-23-10 (emphasis added). In *Durham v. Blackard*, the Court of Appeals, interpreting the Statute of Elizabeth, held that conveyances can be set aside in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993).

A. Checks From MSPS to Patricia Sprenger

Petitioner argues that the transfers from MSPS to Patricia should be set aside as fraudulent transfers because they were made with both fraudulent intent and because they were not based upon valuable consideration. Petitioner contends that these payments were fraudulent because MSPS intended to transfer money out of the business in an effort to avoid its creditors. Petitioner argues the payments to Patricia were not supported by valuable consideration because both she and Manfred previously testified that she was not an employee of MSPS. Finally, Petitioner argues that the timing of certain transfers near significant dates in the lawsuit evidence MSPS' intent to hinder, delay or defraud Petitioner from collecting its judgment.¹ The Respondents argue that the payments to Patricia were salary or loan repayments to Manfred. Respondents contend Manfred wrote the checks to Patricia so she could deposit into their joint bank account. Therefore, they were based upon valuable consideration and not made with fraudulent intent. Based on the record before me, witness testimony and the arguments of counsel, I find that the transfers to Patricia were not based upon valuable consideration, even though Manfred contends the checks were for his salary. The payments to Patricia are set aside as fraudulent transfers.

Due to the close relationship between MSPS and Patricia Sprenger, "the law imposes a duty on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing [testimony]." *Coleman v. Daniel*, 261 S.C. 198, 208, 199 S.E.2d 74, 79 (1973). Patricia has not provided the Court with sufficient evidence establishing that the transfers alleged to be fraudulent were bona fide and based upon valuable consideration. To the

¹ From March 2014 to May 2015, MSPS wrote checks to Patricia in the following amounts: \$40,000.00, \$27,000.00, \$70,000.00 and \$60,000.00. These checks are written close to significant dates in the lawsuit. The \$40,000.00 check was written less than a week before Petitioner filed suit. The \$27,000.00 check was written less than a week before the Order of Default Judgment was entered. The \$70,000.00 check was written approximately two weeks after MSPS was served with notice of the damages hearing. Finally, the \$60,000.00 check was written a week before the Supplemental Proceedings hearings began.

contrary, at their depositions, both Manfred and Patricia testified that Patricia was never an employee of MSPS. Manfred also testified that she was not an employee during the supplemental proceedings hearing. Furthermore, Respondents' accountant testified that Patricia was not an employee of MSPS for tax purposes. He further testified that Patricia was not taxed for the checks she received, but rather Manfred claimed the checks as his income. I find Respondent's argument that the checks were, in substance, salary intended for Manfred to be without sufficient evidentiary support.

Under the unique facts of this case and due to the absence of valuable consideration, a finding of fraudulent intent is not necessary. *See Durham v. Blackard*, 313 S.C. at 437, 438 S.E.2d at 262. Petitioner has shown that (1) MSPS was indebted at the time of the transfers to Patricia²; (2) the transfers were voluntary, i.e., not based upon valuable consideration; and (3) MSPS failed to retain sufficient assets to satisfy the judgment. *See id.* Nothing more is required for the court to set aside the transfers pursuant to the Statute of Elizabeth.

Although the funds transferred to Patricia are no longer in the hands of MSPS, the judgment debtor, South Carolina law still provides a basis for recovery. Pursuant to S.C. Code 15-39-410, a judge may order property of the judgment debtor which is currently in the hands of another person to be applied towards the debt. I find that MSPS improperly transferred its assets into the hands of Patricia. Petitioner is entitled to a full examination of Patricia to determine her assets. Petitioner shall be entitled to execute on any non-exempt assets of Patricia up to \$221,593.84 which represents the transfers from MSPS to Patricia dating from April 2, 2014, the date this lawsuit was filed, until December 24, 2015. *See Exhibit A.* The court finds that upon the filing

² The fact that Petitioner's judgment was not in place prior to some of the transfers at issue is irrelevant. "It is only necessary that the debt should have been in existence or the right of the action have [sic] accrued at or before the time of the transfer. It may be reduced to a judgment at a later date." *Albertson v. Robinson*, 371 S.C. 311, 317, 638 S.E.2d 81, 84 (2006).

of the lawsuit, MSPS was clearly on notice of Petitioner's claims and the transfers from MSPS to Patricia after that date should be set aside. The court chooses not to go behind the date of the filing of the lawsuit based on the unique facts of this case.

B. Transfers From MSPS to Manfred Sprenger

Petitioner also argues that transfers from MSPS to Manfred should be set aside as fraudulent transfers. Petitioner argues that MSPS made these payments to keep money out of the company so as to make collecting the judgment against MSPS impossible. MSPS set forth a number of arguments in support of its position that Petitioner is not entitled to set the payments from MSPS to Manfred. MSPS contends that regardless of this Court's finding on whether the payments were fraudulent transfers, a blanket mortgage covering all of MSPS assets precludes Petitioner from executing on any of MSPS' assets. MSPS also argues that the payments were repayments for personal loans that Manfred provided to MSPS in order to keep the business operating. As such, there were based upon valuable consideration and not made with fraudulent intent.

In response, Petitioner argues that the mortgagee's security interest in MSPS' deposit accounts and in the cash Patricia testified that was in their home was not perfected. Petitioner clarified that it only sought to execute on MSPS' deposit accounts and the cash it alleged was improperly transferred out of MSPS and currently being held in the Sprenger's home. Petitioner referred the Court to S.C. Code § 36-9-104 which states that a security interest in deposit accounts is only perfected through control. Petitioner also argues that a security interest in cash is also only perfected by possession or control. Furthermore, Petitioner contends that MSPS kept no documentation evidencing the loans from Manfred to MSPS such that it could prove that the payments were in fact due back to Manfred. Respondents argued that a one owner limited liability company was not required to execute loan documents when the money being loaned to the company was being loaned by the sole owner of the company. Finally, Petitioner argues that

even if these transfers were loan repayments, Manfred, acting as the controlling member of MSPS, impermissibly chose to repay himself before paying his creditors. Petitioner argues that Manfred is an unsecured creditor of MSPS and Petitioner's judgment lien took priority over the alleged debt owed back to Manfred. The Respondents argued that without the cash being deposited into MSPS account by Manfred the company could not survive. Additionally, the Respondents argued that had Manfred intended to defraud creditors he would not have put his own money into the company to keep it running. The Respondents further argued that Manfred was entitled to a salary and presented records showing many months where he did not pay himself because the company had poor cash flow.

Despite the lack of records evidencing the loans and the fact that Manfred failed to properly differentiate his individual assets from those of MSPS, I find that the transfers from MSPS to Manfred should not be aside as fraudulent transfers. First, there is a significant question concerning the security interests noted above, second, from the bank records admitted into evidence clearly show that Manfred often made loans to MSPS that were necessary to keep the business bank accounts from having a negative balance. On more than one occasion, without the loans from Manfred, MSPS' bank account would have had a negative balance. And, the evidence also shows that Manfred would be repaid some of these amounts, albeit without proper documentation, by MSPS.

Therefore, I find and so hold that Petitioner is not entitled to set aside the payments from MSPS to Manfred.

ORDER

For the reasons set forth herein, this Court hereby sets asides up to \$221,593.84 in payments from MSPS to Patricia as fraudulent transfers dating from April 2, 2014 (the date the

lawsuit was filed) through December 24, 2015. It is ordered that the \$8,000.00 put into the trust account of counsel for the Respondents following the November 18, 2015 hearing be paid to Petitioner within thirty (30) days of the entry of this Order. It is further ordered that Petitioner be entitled to a full examination of Patricia within 30 days from the entry of this Order to determine if any assets that were improperly transferred from MSPS to Patricia remain. The Petitioner is entitled to recover any remaining non-exempt assets from those improperly transferred from MSPS to Patricia between April 2, 2014 and December 24, 2015, up to \$221,593.94

This Order shall remain valid until Petitioner either recovers the \$221,593.84 in assets hereby found to be fraudulent transfers or the judgment against MSPS is satisfied. However, this Order shall not be construed as a judgment against Patricia. It is intended only to allow the Petitioner to recover the assets improperly transferred from MSPS to Patricia, up to \$221,592.84.

IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW EXHIBIT 'A'

EXHIBIT A

2014-CP-23-01871
 Order Setting Aside Fraudulent Conveyances
 Exhibit A- Index of Transfers

INDEX OF TRANSFERS

	Date	Check No.	Payable To The Order Of	Amount
1.	8/29/2013	53663	Patricia Sprenger	\$7,000.00
2.	9/27/2013	53716	Patricia Sprenger	\$7,000.00
3.	10/30/2013	53751	Patricia Sprenger	\$7,000.00
4.	11/26/2013	53784	Patricia Sprenger	\$7,000.00
5.	2/25/2014	53894	Patricia Sprenger	\$7,000.00
6.	3/27/2014	53948	Patricia Sprenger	\$40,000.00
7.	3/27/2014	53946	Patricia Sprenger	\$7,000.00
8.	4/28/2014	54042	Patricia Sprenger	\$7,000.00
9.	5/14/2014	54079	Patricia Sprenger	\$1,600.00
10.	5/29/2014	54084	Patricia Sprenger	\$7,000.00
11.	6/24/2014	54119	Patricia Sprenger	\$7,000.00
12.	7/30/2014	54165	Patricia Sprenger	\$27,000.00
13.	8/27/2014	54191	Patricia Sprenger	\$7,000.00
14.	9/29/2014	54255	Patricia Sprenger	\$70,000.00
15.	9/29/2014	54252	Patricia Sprenger	\$7,000.00
16.	11/3/2014	54283	Patricia Sprenger	\$7,000.00
17.	12/22/2014	54341	Patricia Sprenger	\$7,000.00
18.	5/27/2015	54522	Patricia Sprenger	\$60,000.00
19.	6/23/2015	54548	Patricia Sprenger	\$7,000.00

20.	8/12/2015	54598	Manfred Sprenger	\$7,000.00
21.	9/22/2015	55055	Manfred Sprenger	\$7,000.00
22.	9/23/2015	55057	Manfred Sprenger	\$14,000.00
23.	9/24/2015	54806	Patricia Sprenger	\$499.56
24.	10/6/2015	55060	Manfred Sprenger	\$7,000.00
25.	10/8/2015	55701	Patricia Sprenger	\$499.56
26.	10/15/2015	55708	Patricia Sprenger	\$499.56
27.	10/22/2015	55716	Patricia Sprenger	\$499.56
28.	10/29/2015	55723	Patricia Sprenger	\$499.56
29.	11/5/2015	55730	Patricia Sprenger	\$499.56
30.	11/12/2015	55737	Patricia Sprenger	\$499.56
31.	11/18/2015	55118	Manfred Sprenger	\$10,000.00
32.	11/19/2015	55743	Patricia Sprenger	\$499.56
33.	11/27/2015	55749	Patricia Sprenger	\$499.56
34.	12/3/2015	55139	Manfred Sprenger	\$10,000.00
35.	12/3/2015	55757	Patricia Sprenger	\$499.56
36.	12/7/2015	55140	Manfred Sprenger	\$2,800.00
37.	12/10/2015	55766	Patricia Sprenger	\$499.56
38.	12/17/2015	55774	Patricia Sprenger	\$499.56
39.	12/24/2015	55782	Patricia Sprenger	\$499.56
40.	12/24/2015	55790	Patricia Sprenger	\$499.56
TOTAL				\$361,393.84



Greenville Common Pleas

Case Caption: China Construction America Of South Carolina Inc vs. MS
Production Solutions LLC , defendant, et al
Case Number: 2014CP2301871
Type: Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2016-06-07 16:28:50 page 13 of 13

ELECTRONICALLY FILED - 2016 Jun 07 4:57 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2301871

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2014-CP-23-01871

China Construction America of South
Carolina, Inc.,

Plaintiff,

vs.

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

Defendants.

ORDER

The Court issued its Order filed June 7, 2016 dealing with a myriad of issues relative to Plaintiff attempting to collect a previously entered judgment. Plaintiff and Defendants have filed motions pursuant to Rule 59(e), S.C.R.C.P.

In that the respective motions, as well as telephone conference calls with counsel, sufficiently set forth the basis of the respective motions, a formal hearing with oral arguments is not necessary. See, Pollard v. County of Florence, 444 S.E.2d 534 (S.C. App. 1994).

The Court finds that the Order filed June 7, 2016 sufficiently encompasses and addresses the issues raised in the Rule 59 motions. As such, both motions are denied.

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE ON PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: China Construction America Of South Carolina Inc vs. MS
Production Solutions LLC , defendant, et al
Case Number: 2014CP2301871
Type: Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2016-08-02 11:26:44 page 2 of 2

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendants.

IN THE COURT OF COMMON PLEAS

Case. NO.: 2014-CP-23-1871

ORDER OF JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMEN
2014 DEC 24 AM 10 41

WLB

THIS MATTER came before the undersigned for a damages hearing on November 16, 2014 at 11:03 AM. Appearing on behalf of Plaintiff was Caitlin E. Creswick, Esquire. Defendant did not appear.

Counsel for Plaintiff called one witness, Peng Yang, a representative of China Construction America of South Carolina, Inc . Mr. Yang testified that the Defendant MS Production Solutions LLC ("MSPS") and Plaintiff entered into a Contract in the amount of \$1,093,242.89 for the Defendants to deliver steel for a construction project at Irmo High School ("the Project"). Mr. Yang further testified that Defendant was paid \$1,005,958.53 before being terminated for cause. Evidence was presented showing that the Defendant failed to deliver a majority of the steel under the Contract. Defendant did deliver some steel, over half of which was defective. The cost to fix the defective steel and to obtain cover for the non-delivered steel was \$537,700.76. The evidence demonstrated that the difference between the remaining balance on Plaintiffs' Construction Contract, \$87,284.36, and the cost to obtain cover was \$450,416.40.

It further appears, and I so hold, that the Plaintiff is entitled to interest on this

JH
#1g2

debt at the contract rate of 8.75% annum, for total interest of \$49,885.16 (August 12, 2014–November 17, 2014, 462 days at the per diem rate of \$107.97).

Additional evidence demonstrated that MSPS caused the project to delay 5 months for which Plaintiff has incurred additional costs as well as attorneys fees. Pursuant to the Contract, it also appears, and I so hold, Plaintiff is entitled to \$150,000 in costs for delay and \$6,835.74 in attorney's fees as a result of Defendant's actions.

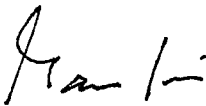
At the conclusion of all testimony and the presentation of evidence, Counsel for Plaintiff requested that this Court enter a Judgment against the Defendants in the amount of \$657,137.30.

Defendant did not appear at the hearing and thus offered no testimony or documentary evidence disputing the damages claimed by Plaintiffs.

BASED ON THE EVIDENCE AND TESTIMONY presented at the damages hearing, I FIND AND HOLD that the greater weight of the evidence showed that Judgment should be entered against the Defendants in the amount of the \$657,137.30.

IT IS THEREFORE ORDERED that a Judgment be entered in favor of China Construction America of South Carolina, Inc. against the Defendants, MS Production Solutions, LLC in the amount of \$657,137.30.

AND IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

Columbia, South Carolina

December 23, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2301871

China Construction
America Of South Carolina
Inc

MS Production Solutions
LLC

MSPS Steel Fabricators

2014 DEC 24

FILED-CLERK OF COURT
GREENVILLE
PAUL B. WICK
CLERK

WLF

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
China Construction America Of South Carolina Inc	MS Production Solutions LLC	\$657,137.30

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

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

Ma / m

2138

12/23/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 12-24-14, and a copy mailed first class or placed in the appropriate attorney's box on 12/29/14 to attorneys of record or to parties (when appearing pro se) as follows:

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200
Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC 233
Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

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

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendant.

IN THE COURT OF COMMON PLEAS

Case. NO.: 2014-CP-23-1871

ENTERED COMPUTER

AMENDED ORDER OF JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINGER
2015 JAN 29 PM 4:25

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It further appears, and I so hold, that the Plaintiff is entitled to interest on this

Verified

Copy mailed to Attorney per
Wester Jones #172

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Additional evidence demonstrated that MSPS caused the project to delay 5 months for which Plaintiff has incurred additional costs as well as attorneys fees. Pursuant to the Contract, it also appears, and I so hold, Plaintiff is entitled to \$150,000 in costs for delay and \$6,835.74 in attorney's fees as a result of Defendant's actions.

At the conclusion of all testimony and the presentation of evidence, Counsel for Plaintiff requested that this Court enter a Judgment against the Defendant in the amount of \$657,137.30.

Defendant did not appear at the hearing and thus offered no testimony or documentary evidence disputing the damages claimed by Plaintiffs.

BASED ON THE EVIDENCE AND TESTIMONY presented at the damages hearing, I FIND AND HOLD that the greater weight of the evidence showed that Judgment should be entered against the Defendant in the amount of the \$657,137.30.

IT IS THEREFORE ORDERED that a Judgment be entered in favor of China Construction America of South Carolina, Inc. against the Defendant, **MS Production Solutions, LLC a/k/a MSPS Steel Fabricators** in the amount of \$657,137.30.

AND IT IS SO ORDERED.



Presiding Judge
13 Judicial Circuit

Columbia, South Carolina

January 28, 2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO

China Construction America)
Of South Carolina, Inc.)

2014-CP-23-1871

Plaintiff)

SUMMONS
(Jury Trial Demanded)

Vs.)

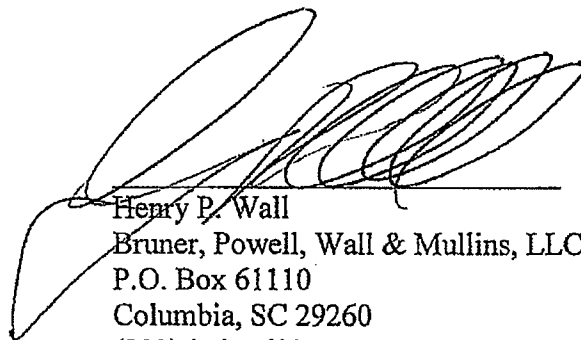
MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)

Defendant.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL C. HORTON, CLERK
2014 APR 2 PM 4 31

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned subscriber at Post Office Box 61110, Columbia, South Carolina 29260, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Henry P. Wall
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for *China Construction America of S.C. Inc.*

Columbia, South Carolina
March 3/21 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO

China Construction America)
Of South Carolina, Inc.)

2014-CP-23-1871

Plaintiff)

COMPLAINT

(Jury Trial Demanded)

Vs.)

MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)

Defendant.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FBI R. HARRISON
2014 APR 2 PM 4 31

Plaintiff, China Construction America of South Carolina, Inc. ("CCA"), complaining of the Defendant, MS Production Solutions LLC ("MSPS") would show:

GENERAL FACTUAL AND JURISDICTIONAL ALLEGATIONS

1. CCA is a South Carolina corporation engaged in the business of general construction contracting.
2. MSPS is, upon information and belief, a South Carolina corporation engaged in the business of steel fabrication and manufacture with its principal place of business in Greenville County.
3. Proper Jurisdiction and venue lies in this court as the Defendant is a domestic corporation and Greenville County is Defendant's principal location.
4. CCA previously entered into a contract with School District Five of Lexington and Richland Counties ("the District") for the construction of additions and renovations to Irmo High School ("the Project") pursuant to a sealed bid submitted to the District.

5. CCA relied in part upon a bid or price quotation it had received from MSPS in submitting its bid to the District.
6. CCA issued a notice of intent to award a contract to MSPS on or about November 16, 2012 (see **attached exhibit A**) based upon MSPS's bid and promise to fabricate and deliver the steel required to complete the Project for the price of \$986,212.00, plus taxes. Subsequently, China and MSPS executed a written contract pursuant to which MSPS agreed to fabricate and deliver the steel required to complete the Project for the lump sum, firm-fixed price of \$986,212.00, plus taxes. A true copy of the contract is attached at **exhibit B**.
7. Among other things, the contract required MSPS to manufacture and deliver the structural steel requirements for the Project in accordance with the Project plans and specifications and according to the schedule of CCA. MSPS further expressly and impliedly warranted the steel to be supplied under the contract. MSPS further agreed to indemnify CCA from and against any and all manner of damages or losses to CCA which would result from MSPS's breach, including attorney's fees and consequential damages.
8. The contract required MSPS to:
 - a. fabricate and deliver the materials in a timely manner;
 - b. fabricate the materials in a good, adequate, and workmanlike manner, free of defect and missing components;
 - c. perform the contract in good faith and in cooperation with CCA;
 - d. perform the contract work in manner so as not to delay, impair, impede, or hinder CCA;
 - e. deliver materials in accordance with the Project requirements;
 - f. properly pay for labor, materials, equipment and other services arising from MSPS's scope of work;

- g. indemnify and reimburse CCA for any damages or losses CCA may incur as a consequence of MSPS's negligence, a failure to perform, or breach of the obligations of the contract;
 - h. complete the contract work without suspension or abandonment;
 - i. comply with the implied obligation of good faith and fair dealing.
8. This court has jurisdiction over this matter as Defendant's principal place of business is Greenville County.

BY WAY OF A FIRST CAUSE OF ACTION
(Breach of Contract)

9. During the course of the Project, MSPS breached the contract by:
- a. failing to fabricate and deliver the materials in a timely manner and abandoning the Project;
 - b. failing to fabricate the materials in a good, adequate and workmanlike manner;
 - c. failing to perform the contract in good faith and cooperate with CCA;
 - d. failing to perform the contract in a manner so as to avoid delay, impairing, impeding or hindering CCA;
 - e. failing to deliver materials in accordance with the Project requirements, and in particular, requiring CCA to pay extra storage fees, additional payments and double payments as a condition to performance and delivery in an extortionate and deceitful manner;
 - f. failing to properly pay for labor, materials, equipment and other services arising from MSPS's scope of work;
 - g. failing to indemnify and reimburse CCA for the damages or losses CCA incurred as a consequence of MSPS's negligence, a failure to perform, or breach of the obligations of the contract;
 - h. failing to complete the contract and refund the unearned payments MSPS has received;

- i. failing to comply with the implied obligation of good faith and fair dealing.
- j. Withholding from CCA materials which CCA had already paid for.
- 10. MSPS abandoned the Project and anticipatorily repudiated the contract with CCA.
- 11. CCA terminated MSPS for default and obtained cover.
- 12. As a consequence of the foregoing, CCA has been damaged in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial, for which MSPS is liable.

BY WAY OF A SECOND CAUSE OF ACTION
(Breach of Warranty)

13. MSPS expressly and impliedly warranted that its materials would conform to the Project requirements, that its materials would be fit for the purpose of the Project and be sufficient to complete the full scope of work as per the Project plans and specifications.

14. MSPS breached the warranties in that the materials did not fully conform to the Project requirements, were not fit for the purpose of the Project and the materials it provided were not sufficient and adequate to complete the full and entire scope of work as per the Project plans and specifications.

15. As a consequence of the foregoing breach of warranty, CCA has been damaged and MSPS is liable to CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial.

BY WAY OF A THIRD CAUSE OF ACTION
(Indemnity)

16. MSPS agreed to indemnify CCA for any added costs, including fees and expenses arising from MSPS's failure to complete the contract in whole or in part,

17. MSPS is therefore liable to CCA for all costs China has reasonably incurred arising from or related to MSPS's failure to complete the contract, including reasonable attorney's fees.

18. As a consequence of the foregoing, CCA has been damaged and MSPS is liable to CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars) to include attorney's fees and expenses of litigation, the exact amount to be proven at trial.

BY WAY OF A FOURTH CAUSE OF ACTION
(Negligence)

19. MSPS owed a duty of care to CCA to safeguard, protect, store, and safely deliver materials which CCA had purchased and paid for in accordance with the contract until the materials arrived at the Project site (F.O.B).

20. MSPS failed to exercise due care in the safeguarding, storage, and delivery of the materials and MSPS's breach of this duty proximately caused CCA to be damaged thus requiring CCA to acquire materials from alternate sources which were lost, misplaced, damaged, destroyed, stolen and/or mis-manufactured due to MSPS's negligence.

21. As a consequence of the foregoing negligence, CCA has been damaged and MSPS is liable to CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial.

BY WAY OF A FIFTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

22. MSPS engaged in unfair and deceptive trade practices in performing this contract, and MSPS has in the past engaged in such practices repetitively or such practices have the propensity of repetition and therefore adversely affect the public interest to wit:

a. MSPS fabricates materials for buyers and then, having taken advance payments and deposits, extorts and demands additional payments from customers, including CCA in order to merely increase its profits to the detriment of the general public at large, particularly builders of public construction projects;

b. MSPS fabricates materials for buyers and then, demands and extorts additional undisclosed "storage fees" and other hidden charges from its customers, including CCA, in order to merely increase its profits to the detriment of the general public at large, particularly builders of public construction projects;

23. MSPS has therefore knowingly and intentionally violated the South Carolina Unfair Trade Practices Act, S. C. Code §39-5-10 (et. seq.) and is liable to CCA for actual damages, treble damages, and attorney's fees in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial.

BY WAY OF A SIXTH CAUSE OF ACTION
(Promissory Estoppel)

24. As an alternative cause of action, in the event that the contract between the parties were to be determined to be void or voidable, CCA reasonably relied upon the price quote of MSPS in incorporating MSPS's bid into the over-all bid for the Project.

26. MSPS is therefore estopped to deny the obligation to deliver the steel to the Project and MSPS's failure to deliver the materials has damaged CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars), for which MSPS is liable, the exact amount to be proven at trial.

WHEREFORE, The Plaintiff, CCA prays for judgment against MSPS for actual, special, consequential and treble damages in an amount in excess of \$400,000.00 (four hundred thousand dollars), the exact amount to be proven at trial, for attorney's fees and for the costs of this action, for a trial by jury, and for such other and further relief as this Court deems just and proper.

BRUNER, POWELL WALL
& MULLINS, LLC



Henry P. Wall
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693; (803) 254-5719 (fax)

*Attorneys for the Plaintiff,
China Construction America of S.C. Inc.*

Columbia, South Carolina
March 31, 2014

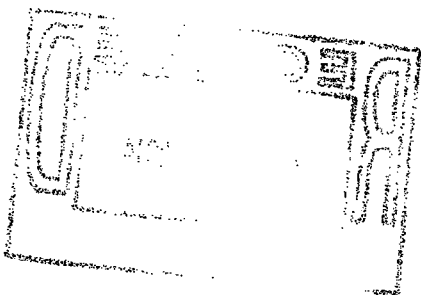


EXHIBIT A



China Construction America of South Carolina, Inc.

700 Saturn Parkway, Columbia, SC 29212 Tel: (803) 771-2777 Fax: (803) 771-2377

November 16, 2012

MSPS Steel Fabricator
233 Beverly Road
Greenville, SC 29609

Phone: 864-244-6505

Fax: 864-244-0837

Attn: Manfred Sprenger <manfred@szabosteel.com>

RE: Intent to Award
Additions & Renovations to Irmo High School

Dear Mr. Sprenger,

Base on Intent to Award received from District Five of Lexington & Richland Counties, China Construction intends to enter into a contract agreement with your firm for furnishing materials for the following portion of work as defined by plans, specifications, addendums and alternates:

<u>Specification</u>	<u>Description</u>
05-1200	Structural Steel Framing (Material only)
05-2100	Steel Joist Framing (Material only)
05-3100	Steel Decking (Material only)
05-5000	Metal Fabrications (Material only)
05-5100	Metal Stairs (Material only)
05-5213	Pipe and Tube Railings (Material only)
05-7113	Fabricated Metal Spiral Stairs (Material only)
05-7300	Decorative Metal Railings (Material only)

for a lump sum of \$986,212.00 (FOB jobsite) plus taxes, which includes all materials, fabrications, engineering, delivery, testing, taxes, insurance, license, fees and permit to complete all the work mentioned above in accordance with the drawings and specs. Alternate No. 1-3 have been accepted and included in the above price. The above price includes Aluminum entry gate per A0.81, Aluminum Ornamental fence at Field House roof stair per A8.81.

Under separate cover a formal Purchase Order will be issued for your execution.

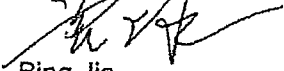
CCASC's Contact on this project:

Project Manager	Superintendent
Adam Whitley	Jeff Whitfield
Phone: 803-771-2777	Cell: 803-600-5655
Cell: 803-600-7331	

Please proceed with required submittals, schedule of values, personnel assignments, insurance certificates, emergency contact numbers etc., as may be required by your portion of the work.

We look forward to a successful project with your participation.

Very Truly Yours,

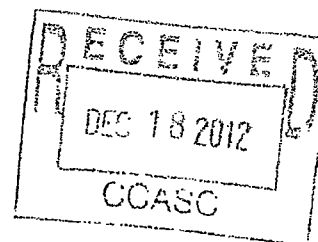
A handwritten signature in black ink, appearing to read 'Bing Jia', written over a horizontal line.

Bing Jia
Preconstruction Manager
China Construction America of South Carolina, Inc.

EXHIBIT B



China Construction America Of SC
 700 Saturn Pkwy
 Columbia, SC 29212
 Ph: (803)771-2777



Purchase Order

To : MSPS Steel Fabricator
 233 Beverly Road
 Greenville, SC 29609
ATTN: Manfred Sprenger
Ship To : 6030 Wescott Road
 Columbia SC 29212
 Attn : China Const.

Order # : IHSAD-MSPSF-01
Date : 12/07/12
Job : Irmo High School
Additions & Renovations

Description :

05-1200	Structural Steel Framing (Material only)
05-2100	Steel Joist Framing (Material only)
05-3100	Steel Decking (Material only)
05-5000	Metal Fabrications (Material only)
05-5100	Metal Stairs (Material only)
05-5213	Pipe and Tube Railings (Material only)
05-7113	Fabricated Metal Spiral Stairs (Material only)
05-7300	Decorative Metal Railings (Material only)

Ordered By	Delivery Date	Ship Via	F.O.B	Terms
CCASC			jobsite	Net 30 days

Description	Quantity	Unit	Rate	Amount	Tax (7%)
Steel materials (see exhibit #4 for details)	1	LS	\$986,212.00	\$986,212.00	\$69,034.84

China Construction America Of SC *12-12-12* Date

[Signature]
 MSPS Steel Fabricator

Total: \$986,212.00 \$69,034.84
12-12-12 Date



Project: Additions & Renovations to Irmo High School

Terms and Conditions

1. Contract Documents

The contract documents consist of (1) this agreement; (2) modifications issued subsequent to the execution of the agreement between the Owner and CCASC, which is related to this agreement; (3) modifications to this agreement issued after execution of this agreement; (4) other documents acknowledged by both parties.

All provisions of the Contract Documents for the project, in any fashion whatsoever, to this Order are incorporated herein by reference and made a part hereof. With respect to the work covered by this Order and in the performance hereof, Supplier shall assume all the obligations and risks which CCASC has assumed towards the Owner pursuant to the provisions of the above referenced Contract Documents. The Contract Documents are available for inspection by the Supplier during normal working hours at CCASC's office. In case of any dispute between CCASC and Supplier, in any way relating to or arising from any act or omission of the Owner or involving the Contract Documents, Supplier agrees to be bound to CCASC to the same extent that CCASC is bound to the Owner by the terms of the Contract Documents.

2. Material and Workmanship

Supplier expressly warrants that all material and work covered by this Order will conform to the Contract Documents and that it will be merchantable, of good material and workmanship, free of latent defect, and fit and sufficient for purposes for which it is ordered by CCASC. Warranties required by the Contract Documents will begin to run from the date specified in the Contract Documents.

3. Time of Performance

Supplier shall furnish materials within the scheduled time as called for on the face of this Order or in the Contract Documents and any failure by Supplier to so furnish materials shall give CCASC the right to cancel any undelivered balance of this Order without additional charge to CCASC. TIME IS OF THE ESSENCE in the performance of this Order. Supplier shall give CCASC 48 hours notice of all deliveries and said deliveries shall be made during working hours between 7:00 AM and 3:00 PM, or as requested by CCASC.

4. Liability and Indemnification

Supplier shall be liable to CCASC and shall indemnify CCASC for any added costs (including court costs and attorneys' fees) CCASC incurs as a result of, arising out of, or in connection with the performance of this Order or due to Supplier's failure, for whatever reason, to perform any of its obligations under this Order, in whole or in part, in accordance with its terms. This indemnity applies regardless of any active and/or passive negligent act or omission of CCASC or its agents or employees. Supplier, however, shall not be obligated under this Order to indemnify CCASC for the sole negligence or willful misconduct of CCASC or its agents or employees.

5. Supply Bonds

☐ Supplier shall furnish a supply bond to CCASC on the form attached hereto and in the amount reflected thereon from a corporate surety company acceptable to CCASC.

☐ The premium for said bond will be paid directly by CCASC as an addition to the price of this



China Construction America of SC, Inc

Project: Additions & Renovations to Irmo High School

Provide all materials, fabrications, engineering, testing, taxes, insurance, license, fees, permit and submittals, samples, insurance, close-out documents, etc. to complete all the work listed in Purchase Order in accordance with the plans, specifications, addendums, alternate 1, 2, 3 and Construction Schedule issued by CCASC for the captioned project. The prices will be unchanged throughout the completion of the project. Purchase Order including its attachments supersedes all prior proposals, negotiations, and other documents, either written or oral.

Attachments

- Exhibit #1 - Terms and Conditions
- Exhibit #2 - Insurance Requirements
- Exhibit #3 – Jobsite Direction
- Exhibit #4 – Scope of work

Initial: 
Initial: TW



China Construction America of SC, Inc
Terms and Conditions

Attachment #1
Order.

- ☐ The premium for the supply bond is included in the price of this Order.
- ☐ Supply bond not required.

6. Termination

CCASC shall have the right to terminate all or any part of this Order for convenience by providing Supplier with a written notice of termination, which shall be effective upon receipt by Supplier. If this Order is terminated for convenience, Supplier shall be paid as its sole and exclusive remedy the amount representing costs which are due from the Owner for Supplier's materials or work, as provided in the Contract Documents, conditioned upon and after payment therefore by the Owner to CCASC.

If Supplier shall fail to perform any obligations under this Order, CCASC may terminate Supplier's performance of all or any part of this Order for default. In the event of such termination, CCASC may, in addition to all other rights and remedies, which shall continue unabated, purchase substitute items or services elsewhere and hold Supplier liable for any excess costs incurred. Should it be determined that a termination for default was improper, such termination shall be deemed a termination for convenience and Supplier's sole and exclusive remedy shall be as provided in the case of termination for convenience.

7. Inspection and Acceptance

a. Supplier shall provide appropriate facilities at all reasonable times for inspection by CCASC or Owner of the work and materials provided under this Order, whether at the Project site or at any place where such work or materials may be in preparation, manufacture, storage, or installation. Supplier shall promptly replace or correct any work or materials which CCASC or Owner shall reject as failing to conform to the requirements of this Order, whether or not CCASC and/or the Owner previously accepted the materials and/or the work. If Supplier does not so provide replacements or make corrections within the time set forth in the Contract documents, or if a time is not set forth therein, within (14) days after receipt of written notice from CCASC, CCASC shall have the right to make the corrections and Supplier shall be liable to CCASC for the cost thereof. If, in the opinion of CCASC, is not expedient to correct or replace all or any part of rejected work or materials, then CCASC, at its option, may deduct from the payments due, or to become due, to Supplier such amount as, in CCASC's reasonable judgment, will represent (i) the difference between the fair value of the rejected work and materials and the value thereof if it complied with this Order, or (ii) the cost of correction, whichever CCASC determines is more appropriate.

b. Supplier's remedy for wrongful rejection of work pursuant to Section a. shall be limited to CCASC's remedy under the Contract Documents if rejection is by the Owner or by CCASC at request of the Owner. CCASC shall be liable for Supplier's increased direct costs caused by wrongful rejection of materials or work, if the Owner was not involved in the rejection.

c. The work shall be accepted according to the terms of the Contract Documents. Unless expressly agreed by CCASC in writing, entrance and use by Owner or CCASC shall not constitute acceptance of the materials or work.

8. Delivery

Supplier shall insure and be responsible for the items provided hereunder until such time as they have been delivered and unloaded at their destination and accepted by CCASC.

9. Liens

Supplier agrees to furnish, prior to any payments hereunder, evidence satisfactory to CCASC,



China Construction America of SC, Inc
Terms and Conditions

Attachment #1

the Owner or both that payment has been made for all labor and materials used in filing Order. If requested, Supplier shall furnish at the time of payment a bill of sale and a release of liens on CCASC's standard form. In the event liens or claims of any kind are filed by anyone in relation to this Order, Supplier shall have the lien or claim discharged, within three (3) days of receipt of written notice, by posting a bond or other security, and if not so discharged, CCASC may discharge the lien or claim and hold Supplier responsible for all costs in connection therewith, including attorney's fees.

10. Patents

In the event that any third party asserts against CCASC or Owner a claim for patent infringement, royalties or licensing fees with respect to use or sale of items purchased herein, Supplier agrees to indemnify CCASC or Owner for all costs, damages and expenses, including court costs and attorney's fees.

11. Acceptance of Order

This Order may only be accepted by Supplier's signing and returning to CCASC the acknowledgment copy of this Order within 10 days after the date of this Order. No modification of the terms of this Order shall be effective unless and until expressly accepted by CCASC in writing.

12. Complete Agreement

This Order represents the entire agreement between the parties hereto with respect to the matters covered herein. No other previous agreements, representations, proposals, bid, warranties, or other matters, oral or written, shall be deemed to bind to parties hereto.

13. Changes

CCASC may, at any time, unilaterally or by agreement with Supplier, without notice to the sureties, make changes in the work covered by this Order. Payment on account of such changes in any way relating to or arising from any act or omission of the Owner or involving the Contract Documents shall only be made if, when and to the extent CCASC receives payment from the Owner on account of the change. This is a condition precedent to entitlement. Changes directed by CCASC independent of the Owner and the Contract Documents shall be paid for in accordance with the payment terms set forth herein. Supplier agrees to provide any certifications reasonably required by CCASC and/or the Contract Documents including certification of claims, and to indemnify CCASC for any and all liability arising from any false or misleading certifications submitted by Supplier.

14. Withholding and Payment

CCASC may withhold amounts otherwise due under this Order, or under any other arrangement between the parties, to cover CCASC's reasonable estimate of any costs, liquidated damages or liability CCASC has incurred or may incur for which Supplier may be responsible under this Order or under any other arrangement between the parties. Appropriate adjustments to withholdings shall be made when the exact amounts owed are determined. Payment to Supplier expressly is conditioned upon receipt by CCASC of payment from the Owner for the materials and/or work provided by Supplier pursuant to this Order.

15. On-Site Work

If Supplier's workers will be at the jobsite at any time, Suppliers agrees to adhere to the safety requirements of CCASC and to provide adequate proof of Workers' Compensation Insurance.

16. Approvals

Supplier shall deliver to CCASC copies of shop drawings, cuts, samples, material lists and other submissions required by CCASC, the Owner, or the Contract Documents within sufficient time so as not to delay performance of the Project. CCASC's review of shop drawings, cuts, samples, material



China Construction America of SC, Inc
Terms and Conditions

Attachment #1

lists and other submission shall not relieve the Supplier from responsibility for errors of any sort therein, or from the necessity of furnishing any work required by the Contract Documents.

17. Taxes

Except as otherwise provided by this Order and/or the Contract Documents, Supplier agrees to pay and comply with and hold CCASC harmless against the payment of all Federal, State and local contributions, taxes, duties or premiums, arising out of this Order, including use or other duties or taxes of whatever nature levied or assessed against the Owner, CCASC or Supplier arising out of this Order, including interest of penalties.

18. Title and Risk of Loss

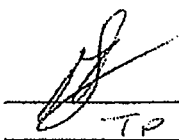
Title to all material to be supplied under this Order shall be transferred free and clear of all encumbrances and Supplier shall retain no legal or equitable interest in any such material. Title shall pass to CCASC or, if the contract Documents so provide, the Owner upon the earliest of (a) delivery, (b) payment, or (c) the time set forth in the Contract Documents. Regardless of title, Supplier shall have the sole responsibility for risk of loss with respect to the materials until final acceptance by the Owner or CCASC.

19. Liability Insurance and Worker's Com.

As a company policy, CCASC require the Supplier to provide a copy of liability insurance certificate and list CCASC, the Architect and the Owner as additional insured. Also, a copy of worker's com. certificate shall be provided to CCASC for file.

20. Submittals

In conformance with the schedule established by CCASC, furnish all shop drawings, schedules, samples, technical data, or other specified information required for the Owner's and/or Architect's approval. In the event of a disapproved substitution, the Supplier will be solely responsible to provide the specified materials/ equipment in accordance with CCASC's Schedule.

Initial: 

Initial: TP



China Construction America of SC, Inc
Insurance Requirements

Attachment #2

Project: Additions & Renovations to Irmo High School

Insurance Requirements

China Construction America of SC, Inc. requires all Subcontractors and/or Suppliers to carry liability insurance according to the contract documents.

The Insurance Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of work until date of final payment and termination of any coverage required to be maintained after final payment.

Liability Insurance shall include all major divisions of coverage and be on a Commercial basis including the following:

1. Premises – Operations.
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal and Advertising Injury.
5. Contractual, including specified provision for Supplier's obligations under Terms and Conditions (Attachment #1)
6. Broad Form Property Damage including Completed Operations.
7. Owned, Non-Owned and Hired Motor Vehicles.

The insurance shall be not less than the following limits, or greater if required by law or other provisions of this Contract:

- (1) Commercial General Liability:

(a) General Aggregate (per project)	\$1,000,000
(b) Products/Completed Operations	\$1,000,000
(c) Personal and Advertising Injury	\$1,000,000
(d) Each Occurrence	\$1,000,000
(e) Fire Damage (Any one Fire)	\$50,000
(f) Medical Expense (Any one person)	\$5,000
- (2) Business Auto Liability (including All Owned, Non-Owned, and Hired Vehicles):

(a) Combined Single Limit	\$1,000,000
OR	
(b) Bodily Injury & Property Damage (each)	\$750,000
- (3) Worker's Compensation:

(a) State	Statutory
(b) Employer's Liability	\$100,000 Per Accident
	\$500,000 Disease, Policy Limit
	\$100,000 Disease, Each Employee



China Construction America of SC, Inc
Insurance Requirements

Attachment #2

Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with Contractor prior to commencement of the Work. In addition to Certificates of Insurance, the Subcontractor/Supplier shall supply a written endorsement to the Subcontractor/Supplier's general liability insurance policy that names Owner, the Architect and China Construction America of SC, Inc. as additional insured. The endorsement shall provide that the Subcontractor /Supplier's liability insurance shall be primary, and that any liability insurance of Contractor shall be secondary and noncontributory.

For informational purposes, the Subcontractor/Supplier is advised that Worker's Compensation Insurance is required for all Owners and executive officers of entities incorporated in the State of South Carolina.

The Aggregate Limits of Insurance required herein shall apply in total, to this Subcontract/PO only. This shall be indicated on the insurance certificate or an attached policy amendment.

The insurance policies and certificates of Insurance required by this Subcontract /PO shall contain a provision that no material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such Certificates of Insurance shall have effect unless the Contractor has been given at least thirty (30) days' prior written notice. Subcontractor/Supplier shall provide a minimum of thirty (30) days written notice to Contractor of any proposed reduction of coverage limits, including every coverage limit identified above, or substitution of insurance carriers.

In no event shall any failure of the Contractor to receive certified copies or certificates of policies required under this Subcontract /PO or to demand receipt of such certified copies or certificates prior to the Subcontractor/Supplier's commencing the Work be construed as a waiver by the Contractor of Subcontractor/Supplier's obligations to obtain insurance pursuant to this document. The obligation to procure and maintain any insurance required herein is a separate responsibility of the Subcontractor/ Supplier and independent of the duty to furnish a certified copy or certificate of such insurance policies.

It is Subcontractor/Supplier's responsibility to carry Property Insurance to protect him against loss or damage of materials and equipments on the site (not incorporated into the construction), stored off site or in transit.

The Subcontractor/Supplier must list the Owner, the Architect and China Construction America of SC, Inc. as additional insured.

Initial: 
Initial: _____



Project: Additions & Renovations to Irmo High School

Scope of Work

Supply and deliver all the following materials in Purchase Order in accordance with the plans, specifications, addendums, alternates and Construction Schedule issued by CCASC for the captioned project, and provide submittals, insurance, close-out documents, etc. The Purchase Order including its attachments supersedes all prior proposals, negotiations, and other documents, either written or oral.

Section 051200 – Structural Steel Framing (Material only)

Section 052100 – Steel Joist Framing (Material only)

Section 053100 – Steel Decking (Material only)

Section 055000 – Metal Fabrications (Material only)

Section 055100 – Metal Stairs (Material only)

Section 055213 – Pipe and Tube Railings (Material only)

Section 057113 - Fabricated Metal Spiral Stairs (Material only)

Section 057300 - Decorative Metal Railings (Material only)

The Scope of Work shall include, but is not necessarily limited to, the following items:

1. Furnish structural steel members, including steel beams, columns, tubes, catwalk framing, steel lintels, connection plates and angles, shear studs, threaded rods, anchor bolts, connection bolts, nuts, and washers as shown or required by drawings and specifications.
2. Provide steel lintels, brick relieving angles, bent plates, perimeter angles, roof angles and channels as required by drawings and specifications.
3. Provide shop priming or galvanizing finishes for steel materials as required by specifications.
4. Furnish steel joists, joist permanent and temporary bracing, bridging, anchors, bolts, nuts and other accessories as required by drawings and specifications.
5. Furnish metal roof deck, composite floor deck, noncomposite form deck, deck angles, deck closures and accessories such as deck screws as shown or required by drawings and specifications.
6. Furnish all the miscellaneous metals except stainless steel as shown or required by drawings and specifications, including, but not limited to the followings: roof ladders, shipping ladders per A1.32, auditorium sign framing per 2/S1.37, cage ladder per A1.31, elevator pit ladders, removable steel grate ramp & landing per 2/A5.36, wall bracing per 6,7,9,10/S0.03, DBA at slab edge per 5, 6/S0.05, new bracing for existing bar joist per S3.11, S3.21, perforated panel at stair X per A8.34, steel grating platforms at Auditorium & Field house, floor opening frame per 7/S0.05, RTU supports per 5/S0.04, elevator hoist beams & sills, bollards, roof opening frame per 10/S0.04, framings in existing roof per 3/S3.21.
7. Furnish metal stairs with rails, wiremesh panels and all other necessary components as shown or required by drawings and specifications.



China Construction America of SC, Inc
Scope of Work

Attachment Number Three (4)

8. Furnish all the pipe railings and the accessories as per drawings and specifications, including handrails, guardrails, rails for stairs, roof top guardrails per A1.24, etc.
9. Furnish metal spiral stairs with all accessories as per drawings and specifications.
10. Furnish aluminum entry gate per A0.81 and aluminum ornamental fence & gate at Field House roof stair per A8.81.
11. Provide design calculations with engineering stamps, and provide field measurements as necessary on stairs and rails prior to fabrication.
12. Supplier understands this is a multi-phased project requiring multiple deliveries. Supplier will work with CCASC in order to accommodate the project master schedule. Should supplier fails to achieve and maintain the Construction Schedule provided by CCASC, The supplier agrees that from the compensation to be paid, the general contractor shall retain as liquidated damages the amount of \$1000.00 per calendar day, for each calendar day that the actual construction time required to achieve Final Completion exceeds the specified or adjusted Subcontract Time for Final Completion as outlined in Construction Schedule.

Initial: _____

Initial: _____



MS Production Solutions LLC
Steel Fabricator

ENTERED COMPUTER

Certified mail

Thursday, May 29, 2014

Att: Court of Commons Pleas
Mr. Paul Wickensimer

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL A. WICKENSIMER
2014 JUN 3 AM 9 45

Please give to Judge and attach to filed case No.

Case No: 2014-CP-23-1871

Ladies and Gentlemen of the Court

MSPS would like to respond as follows to the claim filed by China Construction a company owned by the Republic of China.

1. MSPS received a schedule from above company which forced MSPS to have fabrication drawings made in a short period of time.
2. MSPS was able to get the drawings for the field house and fabricated per supplied schedule. China Construction failed to receive the building construction permit for months. MSPS stored the material for the field house until May 2013. This material per schedule was supposed to be delivered Feb. 2013.
3. MSPS completed the delivery for all Cate modifications/ renovations on time.
4. MSPS submitted the fabrication drawings to China Construction a company owned by the Republic of China in Jan 2013 per schedule.



MS Production Solutions LLC

Steel Fabricator

China Construction failed to return the drawings to MSPS in time and MSPS received the drawings in May 2013.

5. The Master schedule received from MSPS did call for the steel delivery for the Auditorium to start in July 2013. Due to the massive delays not caused by MSPS caused by China Construction MSPS was harmed financially in the \$ 500,000.00 range. MSPS was unable to take new work due to the size of the project but was harmed since there was this massive delay.
6. The steel was fabricated and stored at MSPS property for 7 months.
7. MSPS never did receive any updated schedule from China Construction.
8. MSPS was unable to finish the project since the stairs and cat walk drawings have not been approved and MSPS received those approved as late as Dec. 2013. This was when the steel was supposed to be already installed.
9. The balance on the purchase order was \$ 180,000.00 at the time China construction sent a 48hr notice which MSPS accepted. MSPS had to get new work in and was unable to wait for China construction to submit drawings.

This balance should have allowed China Construction to purchase the balance of material somewhere else as they threatened in their 48hr notice.

China Construction had a person in charge of drawings and submittals from Feb 2013 until end of July 2013 which did not have a clue about construction.



MS Production Solutions LLC

Steel Fabricator

10. I would hope that the court will not decide to allow just anyone to have a judgment without having to proof first that what they claim they have is legal and correct. Otherwise anybody can file a judgment and if the money is not there for expensive lawyers and long drawn case which can cost a fortune the person who does file the claim will get money if this is based on truth or not.

11. If this is the case we are having a serious problem with the legal system.

Sincerely

Manfred Sprenger

AFFIDAVIT OF SERVICE

COPY

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2014-CP-23-1871

FILED - CLERK OF COURT

GREENVILLE CO. S.C.

PAUL B. WICKENSIMER

Plaintiff:

CHINA CONSTRUCTION AMERICA OF S.C., INC.

2014 MAY 12 AM 8 54

vs.

Defendant:

MS PRODUCTION SOLUTION, LLC

For:

Bruner, Powell, Robbins, Wall & Mullins, LLC

PO Box 61110

Columbia, SC 29260

Received by A Woman's Touch, LLC to be served on MS Production Solution, LLC c/o Manfred Spregner as Registered Agent, 233 Beverly Road, Greenville, Greenville County, SC 29609.

I, Florence Burns, being duly sworn, depose and say that on the 2nd day of May, 2014 at 11:24 am, I:

served a CORPORATION by delivering a true copy of the CIVIL ACTION COVERSHEET, SUMMONS, COMPLAINT and EXHIBITS A & B with the date and hour of service endorsed thereon by me, to: Marcell Spregner as Project Manager (Son) for MS Production Solution, LLC, at the address of: 233 Beverly Road, Greenville, Greenville County, SC 29609, and informed said person of the contents therein, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Description of Person Served: Age: 34, Sex: m, Race/Skin Color: white, Height: 6', Weight: 185, Hair: salt & pepper, Glasses: n

I certify that I am a U.S. Citizen, over the age of 18, have no interest in the above action, and have proper authority in the jurisdiction in which this service was made. The person receiving the process was informed of its content.

Casey N. Evans

Notary Public

State of South Carolina, County of Anderson

Commission Expires Feb. 19, 2018

Subscribed and Sworn to before me on the 5th day of May, 2014 by the affiant who is personally known to me.

Casey N. Evans
NOTARY PUBLIC

My Commission expires:

2/19/2018

Florence Burns

Florence Burns
Process Server

A Woman's Touch, LLC
214 River Oaks Circle
Piedmont, SC 29673
(864) 444-9168

Our Job Serial Number: AWT-2014000258
Ref: 9-948.131

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
China Construction America	)	
Of South Carolina, Inc.	)	
	)	
Plaintiffs,	)	
	)	VERIFIED PETITION FOR
vs.	)	SUPPLEMENTAL PROCEEDINGS
	)	(Case. NO.: 2014-CP-23-1871)
	)	
MS Production Solutions LLC	)	
A/k/a MSPS Steel Fabricators	)	
	)	
Defendants.	)	
	)	

PETITIONER WOULD RESPECTFULLY SHOW:

That heretofore Petitioner recovered and recorded judgment against Respondent MS Production Solutions LLC a/k/a MSPS Steel Fabricators ("Respondent") as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated, Respondent having failed and refused to satisfy same:

JUDGMENT ENTERED:	January 28, 2015 in Greenville County
JUDGMENT ROLL # :	2014-CP-23-1871
AMOUNT DUE :	\$657.137.30, plus interest as accrued

1. That execution thereafter was duly issued to the Sheriff of Greenville County against Respondent and said Sheriff has returned same NULLA BONA.
2. That upon information and belief, the Respondent has assets in the County not exempt from levy which Respondent unjustly refuses to apply toward satisfaction of said judgment.
3. That Petitioner is informed and believes that it is entitled under the law and statutes to have an examination of Respondent in supplementary proceedings and to ascertain and discover any and all property and assets, real, personal, or mixed, and wheresoever situated,

belonging to Respondent; or in which Respondent could claim any interest, solely or in conjunction with any person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

4. In addition, Petitioner is entitled to the appointment of a receiver of Respondent for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE Petitioner prays that this court do inquire into the matters hereinabove alleged and that it issue such order or orders granting relief to which Petitioner believes it is entitled, for all expended and statutory costs allowable for this proceeding, and for such other and further relief and remedies as may be allowable and which the Court may deem proper.

And further Petitioner requests this matter be referred to the Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure with authority to enter a final order with any appeal being directly to the South Carolina Supreme Court.

BRUNER, POWELL, WALL & MULLINS, LLC



Joey R. Floyd

Henry P. Wall

Caitlin C. Heyward

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803) 252-7693

Attorneys for Petitioner

China Construction America of South Carolina, Inc.

April 13, 2015

VERIFICATION

PERSONALLY appears Caitlin C. Heyward, who first being duly sworn, deposes and says that he is the attorney for the Petitioning judgment creditor and that he has read the foregoing Petition and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true; that he is the attorney for the Petitioner and is authorized to make this oath on their behalf.

Caitlin Heyward
Caitlin C. Heyward
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13 DAY OF April, 2015

L. M. Wan
Notary Public for South Carolina
My Commission Expires: 01/22/2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators.

Defendants.

IN THE COURT OF COMMON PLEAS

Case NO.: 2014-CP-23-1871

NOTICE OF MOTION AND MOTION
FOR ORDER OF DEFAULT
AGAINST MS PRODUCTION
SOLUTIONS LLC

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/MSR
2014 JUL 29 PM 9 03

**TO: THE DEFENDANT MS PRODUCTION SOLUTIONS LLC A/K/A MSPS STEEL
FABRICATORS**

The Plaintiffs, China Construction America of South Carolina, Inc., by and through their undersigned attorneys hereby, move for an Order of Default/Entry of Default against the Defendant MS Production Solutions LLC A/k/a MSPS Steel Fabricators in the above-captioned case pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Motion is based upon the pleadings and the Affidavit of Default filed with the Clerk of Court's Office.

**BRUNER, POWELL,
WALL & MUELLINS, LLC**

Henry P. Wall
Post Office Box 61110
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29204
(803) 252-7693
Attorney for the Plaintiffs

July 25, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendants.

IN THE COURT OF COMMON PLEAS

Case NO.: 2014-CP-23-1871

**ORDER OF DEFAULT
AGAINST MS PRODUCTION
SOLUTIONS LLC**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHAGEN
2014 AUG 5 PM 3 52

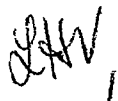
**TO: THE DEFENDANT MS PRODUCTION SOLUTIONS LLC A/K/A MSPS STEEL
FABRICATORS:**

THIS MATTER CAME before the Court upon Motion of Plaintiff China Construction America of South Carolina, Inc. ("Plaintiff"), for an Order of Default against the Defendant, MS Production Solutions LLC A/k/a MSPS Steel Fabricators ("Defendant").

IT APPEARS from the Affidavit of Default filed by counsel for the Plaintiff that the Summons and Complaint were properly served upon the Defendant and that no Answer, Motion, Notice of Appearance or other responsive pleading has been filed with the Court or served on Plaintiff by the Defendant within the time prescribed by law.

IT FURTHER APPEARS, and I so hold, that the Defendant is in default herein and that the Plaintiff is therefore entitled to an Order of Default/~~Entry of Default~~ to be entered against the above-named Defendant. 

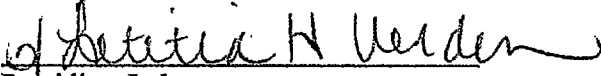
IT FURTHER APPEARS, and I so hold, that upon motion of the Plaintiff, the Plaintiff will be entitled to a hearing to set the damages in this case.



IT FURTHER APPEARS, and I so hold that the Plaintiff in this matter has complied with Rule 55 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that an Order of Default be entered against the Defendant and that upon Motion by the Plaintiff, the Plaintiff be entitled to the relief this Court deems proper.

AND IT IS SO ORDERED.


Presiding Judge
Thirteenth Judicial Circuit

Dated: 7/31/14
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

China Construction America)
Of South Carolina, Inc.)

Plaintiffs,)

vs.)

MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case. NO.: 2014-CP-23-1871

**AFFIDAVIT OF DEFAULT
& NON-MILITARY SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2014 JUL 29 PM 9 03

I, Henry P. Wall, being first duly sworn, depose and say as follows:

1. I am a Member of the firm of Bruner, Powell, Wall & Mullins, LLC in Columbia, South Carolina, and our firm represents the Plaintiff, China Construction America of South Carolina, Inc. ("Plaintiff"), in the above-captioned matter.

2. As evidenced by the Affidavit of Service attached hereto as "Exhibit A", the Civil Action Coversheet, Summons and Verified Complaint in this action was served on the Defendant MS Production Solutions LLC A/k/a MSPS Steel Fabricators ("Defendant") on May 12, 2014.

3. More than thirty (30) days have elapsed since the service of the Complaint on the Defendant and no reply, motion, notice of appearance, request for extension, or responsive pleadings have been served on Plaintiff by this same Defendant or his counsel within the time prescribed by Rule 55 of the South Carolina Rules of Civil Procedure.

4. More than thirty (30) days have elapsed since the service of the Complaint on this Defendant and no appearance has been made by this Defendant or its counsel in this action, thus

relieving Plaintiff of the requirement under Rule 55(b)(2) of the South Carolina Rules of Civil Procedure of providing the Defendant three (3) days' notice prior to its application for default judgment.

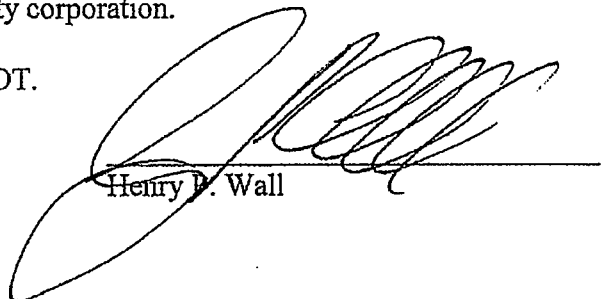
5. I am informed and believe that this same Defendant is now in default under the South Carolina Rules of Civil Procedure 6 and 55.

6. I am familiar with the provisions of 50 U.S.C.A. App. Sect. 520, Soldiers and Sailors Civil Relief Act of 1940, and to induce the Court to enter a default judgment against this same Defendant, represents to the Court that from my file in this matter, and upon information and belief, the Defendant is not in the military service of the United States and is not entitled to the protection of the Soldiers and Sailors Civil Relief Act of 1940, nor any amendments thereto. Moreover, the Defendant is a limited liability corporation.

FURTHER AFFIANT SAYETH NOT.

SWORN TO BEFORE ME
this _____ day of _____, 2014

_____(L.S.)
Notary Public for South Carolina
My Commission expires _____(SEAL)



Henry D. Wall

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

China Construction America)
of South Carolina, Inc.)

Plaintiff)

Vs.)

MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)

Defendant.)

IN THE COURT OF COMMON PLEAS

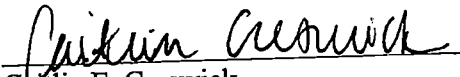
CASE NO 2014-CP-23-1871

**NOTICE OF MOTION AND
MOTION FOR DAMAGES HEARING**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. NICKENSIMER
2014 SEP 5 PM 2 13

WILL YOU PLEASE TAKE NOTICE that the Plaintiff China Construction America of South Carolina, Inc., by and through its undersigned counsel, hereby moves the Honorable Court for a hearing to determine the amount of damages to which it is entitled pursuant to an Order of Default entered against Defendant MS Production Solutions LLC in the above-captioned case pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. This Motion is based upon the Order of Judgment signed by the Honorable Letitia H. Verdin for the Thirteenth Judicial Circuit on July 31, 2014 and filed on August 4, 2014, a copy of which is attached hereto as "Exhibit A". Plaintiff hereby moves for a damages hearing to be set for this action.

BRUNER, POWELL, WALL & MULLINS, LLC



Caitlin E. Creswick

Henry P. Wall

Post Office Box 61110

1735 St. Julian Place, Suite 200

Columbia, South Carolina 29204

(803) 252-7693

Attorney for the Plaintiff

September 4, 2014
Columbia, South Carolina

PRINTED COMPUTER

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO 2014-CP-23-1871

China Construction America
of South Carolina, Inc.)

Plaintiff)

CERTIFICATE OF SERVICE

Vs.)

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators)

Defendant.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 SEP 5 PM 2 13

I, the undersigned employee of the law office of Bruner, Powell, Wall and Mullins, LLC, Attorneys for Plaintiff, do hereby certify that on September 4th, 2014, I have served a copy of the foregoing Notice of Motion and Motion for Damages Hearing in connection with the above-referenced case placing the same in the U.S. mail, postage paid to:

Manfred Spregner
MS Production Solutions LLC
233 Beverly Rd.
Greenville, SC 29609

Nancy Stagg

Nancy Stagg

Columbia, South Carolina

FILED-CLERK OF COURT
 STATE OF SOUTH CAROLINA GREENVILLE CO. S IN THE COURT OF COMMON PLEAS
 PAUL B. WICKENSIMMER

COUNTY OF GREENVILLE) Case. NO.: 2014-CP-23-1871

2015 SEP 23 PM 1 59

China Construction America
 Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
 A/k/a MSPS Steel Fabricators

Defendants.

**NOTICE OF MOTION AND MOTION
 FOR EXECUTION AND TO SET ASIDE
 FRAUDULENT TRANSFERS AND
 REQUEST FOR EXPIDTED HEARING**

NOTICE IS HEREBY GIVEN that Plaintiff China Construction America Of South Carolina, Inc. ("China Construction") by and through its undersigned counsel, will move before The Honorable Charles B. Simmons, Jr., Master-in-Equity, as soon as the Court will allow this motion to be heard due to the exigent circumstances stated herein,¹ for an order setting aside fraudulent transfers by Defendant of non-exempt property pursuant to S.C. Code Ann. § 27-23-10(A). The debtor is an LLC and is not entitled to any exemptions provided in the Homestead Exemption statute.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this action on April 2, 2014. Plaintiff prayed for damages in excess of \$400,000.00 in its Complaint. The defendant did not answer or otherwise respond to Plaintiff's

¹ Plaintiff is seeking to execute on cash which Defendant fraudulently transferred to Patricia Sprenger, who testified during her deposition on September 21, 2015, that she withdrew the money in cash from her personal account and is keeping at least \$50,000.00 of it in the bedroom of her home. (Withdrawal slips attached hereto as **Exhibit A**); Dep. Patricia Sprenger, p. 30:1-31:9, 38:17-23, excerpts attached hereto as **Exhibit B**). The funds are cash, liquid assets, easily

Complaint and was held in default. On January 29, 2015, after a damages hearing, the judge filed an Amended Order of Judgment against Defendant in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners discovered that from at least August, 2013, the date of Defendant's breach, to May 2015,² the owner of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. At the supplemental proceedings hearing, Mr. Sprenger testified that his wife is not an employee of the company and the payments were made without consideration. (Tr. p. 9:12-20, Excerpts from Hearing Transcript attached hereto as **Exhibit C**; See also Patricia Sprenger Dep. 12:6-22, **Exhibit B**). Manfred Sprenger also withdrew \$25,000 from the MSPS' Bank of America Account on October 2, 2014. A list and copies of the checks written from the MSPS account are attached hereto as **Exhibit D**. A copy of the \$25,000.00 withdrawal is attached hereto as **Exhibit E**. Not only was MSPS insolvent at the time the checks were written, these checks were written pre-judgment, post-judgment, and some of the checks were written after the Rule to Show Cause was issued (filed May 5, 2015 and served May 13, 2015), MSPS knew about the pending litigation and MSPS knew it owed Plaintiff money.

A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. (A copy of the Rule to Show Cause and Affidavit of Service are attached hereto as **Exhibit F**). Notwithstanding being served a copy of the Rule to Show Cause, Defendant fraudulently transferred an additional \$60,000 from the MSPS Bank of America account to his wife on May 27, 2015 in violation of this Court's order enjoining defendant from making any transaction or

transferrable, and subject to execution without any available exemption.

² Plaintiff has received banking records for January 1, 2012- May 2015. Plaintiff is awaiting supplemental banking records from May 2015 to present.

transfer or other disposition of property which is not exempt from execution. Mr. Sprenger testified that he knowingly transferred money to himself in spite of the judgment against MSPS.³ (Manfred Sprenger Dep. 5:8-6:20; 46:1-13, excerpts from Manfred Sprenger Dep. attached hereto as **Exhibit G**).

As such, Plaintiff moves for an order setting aside all of the fraudulent transfers by Defendant of non-exempt property pursuant to S.C. Code Ann. § 27-23-10(A). In total, the Plaintiff respectfully requests that this court set aside \$314,600.00 in fraudulent transfers.

ARGUMENT

It is well-established in South Carolina that a debtor may not transfer or convey property to frustrate or impede a creditor. To that point, the Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2007). Our courts have applied the Statute of Elizabeth to set

³ Manfred and Patricia both testified that they are continuing to receive payments from MSPS despite the Rule to Show Cause. Manfred testified he has received at least one \$14,000.00 payment since June of 2015 (Manfred Sprenger Dep. 11:25-13:3, **Exhibit G**) and Patricia testified she has received at least two additional \$7,000 payments since June of 2015 (Patricia

aside conveyance in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

Mathis v. Burton, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)); see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). Funds proven prima facie to belong to a judgment debtor in the hands of a third party may be reached in supplementary proceedings. Lynn v. International Broth. of Firemen and Oilers, 228 S.C. 357, 90 S.E.2d 204 (1955).

Furthermore, Defendant acted with the requisite intent to establish a fraudulent conveyance. Courts often evaluate the particular circumstances of the transfer for “badges of fraud.” Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) (“Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as ‘badges of fraud.’ The badges tend to excite suspicions as to the Bona fides of a challenged conveyance.”); see also In re Addison, 540 F.3d 805, 811-12 (8th Cir. 2008). South Carolina has generally recognized the following badges of fraud:

[I]nsolvency or indebtedness of the transferor, lack of consideration

Sprenger Dep. 33:23-34:1, Exhibit B).

for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property. Id.; see also In re Jones, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); In re Ducate, 369 B.R. 251 (Bankr. D.S.C. 2007).

Here, all transfers to Patricia Sprenger constitute fraudulent transfers because she is not and has never been employed by MSPS, and Defendant testified that those transfers were made absent any valuable consideration. Patricia is has a close relationship between the transferor as she is the wife of Manfred Sprenger, the President of MSPS. Further, the debtor is retaining possession of the property at his home in his bedroom and is allowing his wife to spend the funds as she sees fit.

Many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed. Immediately prior to China filing this lawsuit, MSPS transferred \$40,000 to Patricia Sprenger on March 27, 2014. China Construction filed this lawsuit against MSPS on April 2, 2014. In addition to several \$7,000 transfers post-filing, checks for \$27,000, \$60,000, and \$70,000 were made payable to Patricia Sprenger on July 30, 2014, May 27, 2015 and September 29, 2014 respectively. Ms. Sprenger testified that she "does not trust banks" and deposits the cash into a joint account she maintains with Manfred Sprenger. (Patricia Sprenger Dep. p. 17:13-18:11, **Exhibit B**). She then withdraws the cash, leaving a low balance in her First Citizens account, and stores the cash in her home. (**Exhibit A**). Mr. Sprenger testified that he has access to the funds and uses them as he needs it. When Patricia Sprenger was questioned regarding the location of the cash at the September 21, 2015 deposition, Mr. Sprenger interrupted the deposition and attempted to thwart

Ms. Sprenger's answer:

Q: You're not sure out of the \$60,000 how much is in cash?

A: I think around 50.

Q: 50?

A: Yeah.

Q: You have \$50,000 in cash right now?

A: Yeah, I think.

Q: Is it at your home?

A: Yes.

Q: Where in your home?

MR. SPRENGER: We are not going to say that because that's—

MS. HEYWARD: Excuse me. You may not speak. You're not being deposed at this time.

THE WITNESS: In my bedroom.

(Patricia Sprenger Dep. 30:6-20, **Exhibit B**).

The circumstances of MSPS's voluntary post-judgment transfers to Patricia Sprenger meet at least seven of the nine badges of fraud. "Although the presence of a single factor, i.e. badge of fraud, may cast suspicion on the transferor's intent, the confluence of several in one transaction generally provides conclusive evidence of actual intent to defraud." Gilchinsky v. Nat'l Westminster Bank, 732 A.2d 482, 490 (N.J. 1999). MSPS (1) was indebted to Plaintiff at the time of the post-judgment transfers; (2) did not receive any consideration for the e transfers, as Defendant simply transferred the money from the corporate account to the wife of its

principal, who is a non-employee of MSPS; (3) transferred the funds to Patricia Sprenger, the person with whom the company President clearly has the closest relationship; (4) Manfred Sprenger reserved the benefit of the funds for himself personally and for MSPS as he saw fit; (5) retained possession of the funds; (6) was insolvent at the time of the transfers; and (7) is concealing the funds by keeping them in cash at the home of Manfred and Patricia Sprenger and refusing remit the funds to its attorney to hold in trust.

As such, Plaintiff requests an Order

- (1) setting aside and executing against all monies and transfers to Patricia Sprenger and Manfred Sprenger as set forth herein, including but not limited to the \$50,000.00 in cash at the home of Manfred and Patricia Sprenger;
- (2) directing Manfred Sprenger and Patricia Sprenger to pay all monies and transfers to Plaintiff that each received by way of the transfers from MSPS, including but not limited to the \$50,000.00 in cash in their home, as partial satisfaction of the judgment against MSPS; and
- (3) Directing Manfred Sprenger and Patricia Sprenger to provide an accounting of all monies transferred to them, including but not limited to the \$50,000.00 in cash in their home.

The grounds for this Motion are as follows:

- (1) Plaintiff obtained a judgment against Defendant;
- (2) Defendant has failed to take any action to stay execution of the judgments against them;
- (3) S.C. Code Ann. 15-39-410 provides that the Court can order "any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied";
- (4) Plaintiff is informed and believes that the intentional efforts of Manfred Sprenger and Patricia Sprenger to delay, deceive and hinder the collection of the judgment coupled with any further delay will substantially impair Plaintiff's ability to collect on its judgment against MSPS.

BRUNER, POWELL, WALL & MULLINS, LLC



Caitlin Creswick Heyward

Joey R. Floyd

Post Office Box 61110

1735 St. Julian Place, Suite 200

Columbia, South Carolina 29204

(803) 252-7693

Attorney for the Plaintiff

September 22, 2015

Columbia, South Carolina

EXHIBIT A

MANFRED SPRENGER
PATRICIA R SPRENGER
PL 664-24-4700
300 SHAD BARK CIRCLE
SUNFISHVILLE, SC 29080

04-03-14 DATE

1387

04-03-14 DATE

04/03/14 422040 0017 480534345809CC \$7,000.00

First Citizens

P. Sprenger

DDA Debit - (04/03/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PL 664-24-4700
300 SHAD BARK CIRCLE
SUNFISHVILLE, SC 29080

04-21-14 DATE

1390

04-21-14 DATE

04/21/14 422042 0020 480534345809CC \$6,000.00

First Citizens

P. Sprenger

DDA Debit - (04/21/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PL 664-24-4700
300 SHAD BARK CIRCLE
SUNFISHVILLE, SC 29080

04-24-14 DATE

1393

04-24-14 DATE

04/24/14 422042 0017 480534345809CC \$20,000.00

First Citizens

P. Sprenger

DDA Debit - (04/24/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PL 664-24-4700
300 SHAD BARK CIRCLE
SUNFISHVILLE, SC 29080

05-15-14 DATE

051662

05-15-14 DATE

05/15/14 422042 0017 480534345809CC \$1545.63

First Citizens

P. Sprenger

DDA Debit - (05/15/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PL 664-24-4700
300 SHAD BARK CIRCLE
SUNFISHVILLE, SC 29080

11-13-14 DATE

1312

11-13-14 DATE

11/13/14 422042 0051 480534345809CC \$20,000.00

First Citizens

P. Sprenger

DDA Debit - (11/13/2014)

FIRST CITIZENS

CHECKING / SAVINGS / OTHER MISCELLANEOUS DEBIT

11/13/14

1079803

* 480534345109

* 53 \$ 299.39

DDA Debit - (11/13/2014)

Branch: 422
Seq: 24
Batch: 004394
Date: 04/03/14

P. Sprenger

(Back)

Branch: 422
Seq: 40
Batch: 004518
Date: 04/21/14

P. Sprenger

(Back)

Branch: 422
Seq: 24
Batch: 004548
Date: 04/24/14

P. Sprenger

(Back)

Branch: 422
Seq: 22
Batch: 004683
Date: 05/15/14

P. Sprenger

(Back)

Branch: 422
Seq: 8
Batch: 005837
Date: 11/13/14

P. Sprenger

(Back)

Branch: 422
Seq: 9
Batch: 005840
Date: 11/13/14

P. Sprenger

(Back)

FIRST CITIZENS CHECKING / SAVINGS / MVA MISCELLANEOUS DEBIT BK 08

THIS IS TO ADVISE THAT WE HAVE THIS DATE

1152916

ACCOUNT NUMBER: 480534345809

NAME: Patricia Sprenger

AMOUNT: \$1339.16

DDA Debit - (06/08/2015)

MANFRED SPRENGER PATRICIA R SPRENGER
P.O. BOX 4100
200 SHADDAUX CIRCLE
SIMPSONVILLE, SC 29080

DATE: 06-04-15

AMOUNT: \$500.00

FOR: P. Sprenger

DDA Debit - (06/10/2015)

MANFRED SPRENGER PATRICIA R SPRENGER
P.O. BOX 4100
200 SHADDAUX CIRCLE
SIMPSONVILLE, SC 29080

DATE: 07-15-13

AMOUNT: \$400.00

FOR: P. Sprenger

DDA Debit - (07/15/2013)

MANFRED SPRENGER PATRICIA R SPRENGER
P.O. BOX 4100
200 SHADDAUX CIRCLE
SIMPSONVILLE, SC 29080

DATE: 08-21-13

AMOUNT: \$1,500.00

FOR: P. Sprenger

DDA Debit - (08/21/2013)

FIRST CITIZENS CHECKING / SAVINGS / MVA MISCELLANEOUS DEBIT BK 08

THIS IS TO ADVISE THAT WE HAVE THIS DATE

759709

ACCOUNT NUMBER: 480534345809

NAME: Patricia Sprenger

AMOUNT: \$989.00

DDA Debit - (07/16/2013)

Branch: 422
Seq: 42
Batch: 007543
Date: 06/08/15

(Back)

Branch: 422
Seq: 41
Batch: 007566
Date: 06/10/15

(Back)

Branch: 422
Seq: 25
Batch: 00242
Date: 07/15/13

(Back)

Branch: 422
Seq: 11
Batch: 00274
Date: 08/21/13

(Back)

Branch: 422
Seq: 11
Batch: 002442
Date: 07/16/13

(Back)

EXHIBIT B

1 get into it, is why you're here today. We are
2 talking about some transfers that were made to you
3 personally.

4 A. I'm a homemaker.

5 Q. Okay. We'll get there.

6 All right. Mr. Sprenger testified in
7 court back in June that you have never worked for
8 MSPS. Is that correct?

9 A. I go only sometimes in for cleaning the
10 business and put things on paper in folders. This
11 is all what I do sometimes, not there often.

12 Q. Okay. So you're not an employee of MSPS?

13 A. No, I'm not.

14 Q. You have never been an employee of MSPS?

15 A. No, I've never been.

16 Q. You've never been paid as an employee of
17 MSPS?

18 A. No, I never get money.

19 Q. Okay. You never had a W2 --

20 A. No.

21 Q. -- with MSPS?

22 A. No.

23 Q. Okay. Do you have access to the MSPS
24 business account, checking account?

25 A. Only I can sign checks, but I don't know

1 everything we say.

2 A. Okay.

3 Q. So I know the tendency in normal
4 conversation is to respond and sometimes we talk
5 over each other, but for the purposes of the
6 record, so it will read clearly, I'll try and wait
7 for you to finish what you have to say if you wait
8 for me to finish what I have to say.

9 Okay. So it's your testimony today that
10 the check that's written in your name for \$7,000 --

11 A. Yes.

12 Q. -- is not actually for you, it's for your
13 husband, it's his salary?

14 A. Yes.

15 Q. Do you recall -- if you flip to the second
16 page of Exhibit 3, do you recall this check dated
17 4/28/2014 in the amount of \$7,000 made out to you
18 in your name?

19 A. Yes.

20 Q. Did you deposit that check in a bank
21 account?

22 A. I deposit this, yes, in our private
23 account.

24 Q. In your private account?

25 A. Yes.

1 Q. Okay. Do you recognize the check on
2 page 3 dated May 14, 2014?

3 A. Yes.

4 Q. That's in the amount of \$1,600, correct?

5 A. It's my name on, yes.

6 Q. Right. Do you know why that number is
7 different than the usual \$7,000 number?

8 A. No, I don't know, no.

9 Q. You don't know why you get --

10 A. No.

11 Q. -- that money?

12 A. No.

13 Q. Okay. Flip to page 6, the sixth page of
14 that document. It's a check in the amount of
15 \$27,000 made out to you?

16 A. Yes.

17 Q. Do you recognize that document?

18 A. Yes.

19 Q. That's a check made out to you in your
20 name?

21 A. Yes.

22 Q. Which you deposited in your personal
23 account?

24 A. Yes.

25 Q. Would that be your account at First

1 Citizens?

2 A. Our account.

3 Q. It --

4 A. Our private account.

5 Q. That would be your private account at
6 First Citizens?

7 A. My husband and mine.

8 Q. It's a joint account?

9 A. Yes.

10 Q. The joint account at First Citizens?

11 A. Yeah.

12 Q. Okay. Do you have any idea why this check
13 was written?

14 A. Yes.

15 Q. Why?

16 A. He gave me the check because it was
17 easier. It's his money. When he puts his name in,
18 a lot of time he forgets signing the check, and
19 this is I say, can you put my name in? Then I
20 don't have to remember him signing the check. And
21 why he put -- gave me \$27,000, I don't know.

22 Q. You don't know?

23 A. No.

24 Q. Okay.

25 A. He says I have to put this in the bank.

1 Q. How much -- do you have any of the money
2 in cash at this time?

3 A. Yes.

4 Q. How much?

5 A. I'm not exactly sure.

6 Q. You're not exactly sure out of \$60,000 how
7 much is in cash?

8 A. I think around 50.

9 Q. 50?

10 A. Yeah.

11 Q. You have \$50,000 in cash right now?

12 A. I think, yeah.

13 Q. Is it at your home?

14 A. Yes.

15 Q. Where in your home?

16 MR. SPRENGER: We are not going to say
17 that because that's --

18 MS. HEYWARD: Excuse me. You may not
19 speak. You're not being deposed at this time.

20 THE WITNESS: In my bedroom.

21 BY MS. HEYWARD:

22 Q. In your bedroom?

23 A. Yes.

24 Q. So you've spent approximately \$10,000 of
25 the \$60,000 on other things like bills. Is that

1 correct?

2 A. Not bills. I didn't say bills. I pay my
3 bills with my --

4 Q. The 7,000?

5 A. The \$7,000, what he takes out for his work
6 at the company.

7 Q. Okay.

8 A. Because we have to pay the bills with
9 something.

10 Q. Other than the First Citizens account, do
11 you have any other bank accounts in the United
12 States?

13 A. No.

14 Q. Do you have any bank accounts outside of
15 the United States?

16 A. No.

17 Q. Do you have any private investment
18 accounts?

19 A. Me?

20 Q. Yes.

21 A. Not me.

22 Q. Personally.

23 A. I don't know, no. I don't have stuff like
24 this.

25 Q. Stock?

1 Q. Okay. So First Citizens is your only
2 banking relationship?

3 A. It is only my banking. I don't have
4 another bank account.

5 Q. Do you loan anybody any money? Do you
6 enter into any loan transactions?

7 A. No.

8 Q. No, okay.

9 Since June 2015, has MSPS written you any
10 more checks?

11 A. June 2000 -- I think was one month he
12 didn't pay. Now, I can tell you, yes, I took
13 \$7,000 for putting in the bank account from the
14 60,000, yeah, because one month he was not paying
15 because he didn't have the money for paying.

16 Q. Okay. So from the 60,000 you -- I'm
17 sorry. Go ahead. You can finish.

18 A. Last month -- end of last month or
19 beginning of this month, he -- yeah, he paid \$7,000
20 again, but we put -- I put that money back from the
21 60,000 because he was -- he didn't have the money
22 he said.

23 Q. Since June you've received one \$7,000
24 check?

25 A. June, July, August. One or two. I

1 can't -- I have to check. I have to look up.

2 Q. Okay. Any other checks for any other
3 amount of money?

4 A. No.

5 Q. Does MSPS give you any other kind of
6 payment in the form of -- does MSPS pay your cell
7 phone bill or any of your other bills?

8 A. No. I pay all of it with this money, the
9 7,000, all bills from home.

10 Q. So that's the only kind of --

11 A. Yes, yes.

12 Q. Okay. Just for the record, I'm going to
13 finish that. I know that you know what I'm going
14 to ask.

15 But the \$7,000 checks and the checks in
16 the other amounts that we've mentioned, those are
17 the only types of contributions or payments that
18 you receive from MSPS. Is that correct?

19 A. Yes.

20 Q. Okay. Just briefly. This is Exhibit 4.

21 (DEPO. EXH. 4, Copies of Checks, was
22 marked for identification.)

23 BY MS. HEYWARD:

24 Q. Ms. Sprenger, I just handed you what I've
25 marked as Plaintiff's Exhibit Number 4. Do you

1 A. Yeah, I think this is the same. Sometimes
2 I take out and sometimes I take back.

3 Q. Okay. 4/24/14, there's one that's
4 significantly larger in the amount of \$29,000. Do
5 you know where that money is?

6 A. I think I took this out, but then
7 sometimes he need -- put cash back in his business
8 account. When you look on his business account,
9 then you can see sometimes he puts cash back, and
10 this is when he needs it for paying because we are
11 not leaving this much money on the private account
12 because I don't trust the banks anymore.

13 Q. I understand. I'm just trying to
14 determine if that money is available in cash in
15 your home?

16 A. No, no, it's not.

17 Q. How much cash do you have in your home?

18 A. I think \$50,000 right now.

19 Q. Okay. So of the \$60,000 check that you
20 recently received, you have \$50,000 and that is the
21 entire amount of cash --

22 A. This is all what I have -- what we have at
23 home.

24 Q. Is that also your testimony in regard to
25 the first check on page 4 in the amount of

EXHIBIT C

1 can afford it as a company.

2 Q Whenever you do good on a job or something like that?

3 A Yeah.

4 Q Kick yourself some money? Is that what you'll do?

5 A Yeah.

6 Q About how often do you do that?

7 A Recently -- the last couple of years, not because we all
8 know the economy was bad. The last three months I even didn't
9 write my wife a check because there was no -- that's why I had to
10 borrow the money to the company to be able to pay the current
11 bills.

12 Q What's your wife's position with the company?

13 A None. She's my wife. She helps out at the office
14 occasionally, yes.

15 Q But she's not an employee?

16 A She's not an official employee on the payroll.

17 Q But you make the checks payable to your wife?

18 A Yeah.

19 Q On a monthly basis?

20 A Yeah.

21 Q When do you typically pay that \$7,000 to your wife: first
22 of the month, end of the month?

23 A It varies, whenever -- I like to do it at the end of the
24 month but since general contractors' checks usually come in at
25 the end of a month, and we know how reliable they are, it might

INDEX OF TRANSFERS TO PATRICIA SPRENGER

1.	8/29/2013	\$7,000.00
2.	9/27/2013	\$7,000.00
3.	10/30/2013	\$7,000.00
4.	11/26/2013	\$7,000.00
5.	2/25/2014	\$7,000.00
6.	3/27/2014	\$40,000.00
7.	3/27/2014	\$7,000.00
8.	4/28/2014	\$7,000.00
9.	5/14/2014	\$1,600.00
10.	5/29/2014	\$7,000.00
11.	6/24/2014	\$7,000.00
12.	7/30/2014	\$27,000.00
13.	8/27/2014	\$7,000.00
14.	9/29/2014	\$70,000.00
15.	9/29/2014	\$7,000.00
16.	11/3/2014	\$7,000.00
17.	12/22/2014	\$7,000.00
18.	5/27/2015	\$60,000.00
TOTAL		\$289,600.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPIING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
854-244-6505

BANK OF AMERICA, NA
87-442/533

53716

9/27/2013

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

DO NOT WRITE, STAMP OR SIGN
IN THESE SPACES

Branch 422
Seq 111
Batch: 003675
Date: 05/30/13

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESPONSE TO "ADDITIONAL INFORMATION"

AS THE LAST FR. IN THE LINE, I'VE BEEN
Secure Plus Credit. I'm the only way
your risk is 0%.

To learn how to get your business
C.A.D. OFFER, call 1-800-555-1111
1-800-555-1111 or visit
www.cad-offer.com. I'll be right there.

REPLICATING, FORGING OR ALTERING THIS CHECK IS EXTREMELY DIFFICULT DUE TO CHECKLOK'S SECURITY FEATURES.

[illegible]

Electronic Endorsements		Bank #	Endrs Type	TRN	RRC	Bank Name
Date	Sequence					
09/30/2013	000006700127723	53201487	-1	N		FIRST-CITIZENS BANK
09/30/2013	000006700127723	53100300	Undetermined	Y		FIRST-CITIZENS BANK
10/01/2013	002292579707	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

[illegible]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
11/01/2013	000006700039876	53201487	-1	N		FIRST-CITIZENS BANK
11/01/2013	000006700039876	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/04/2013	002992149475	112002080	Col Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

Capture Date: 11/29/2013 Sequence #: 3492589370

CASH ONLY IF ALL CHECKS & SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
67-448/530

53784

11/26/2013

PAY TO THE ORDER OF Patricia Sprenger \$ -7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

[illegible]

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
11/27/2013	000006700121656	53201487	-1	N		FIRST-CITIZENS BANK
11/27/2013	000006700121656	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/29/2013	003492589370	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America



Capture Date: 04/01/2014 Sequence #: 3692767781

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
67-448/539

53948

3/27/2014

PAY TO THE ORDER OF **Patricia Sprenger** \$ **40,000.00

Forty Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

VOID AFTER 90 DAYS

ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Branch: 422
Seq: 1/3
Batch: 004360
Date: 03/31/14

As the signer of this check, I hereby certify that the funds are available for payment and that the check is not altered, forged, or otherwise invalid. I warrant that the check is not altered, forged, or otherwise invalid.

REPLICATING, FORGING OR ALTERING THIS CHECK IS EXTREMELY DIFFICULT DUE TO CHECKLOCK™ HIGH SECURITY FEATURES

1. MICR LINE: The MICR line at the bottom of the check is used by banks to process checks. It is a series of numbers and letters that are printed in a special font.

2. VOID WATERMARK: A large, faint watermark is visible in the background of the check. It reads "VOID" and is used to prevent counterfeiting.

3. SECURITY PAPER: The check is made of a special security paper that is designed to be difficult to replicate.

4. CHECKLOCK™: This is a high security feature that is used to protect the check from being altered or forged.

5. VOID AFTER 90 DAYS: The check is void after 90 days from the date of issue. This is to prevent the use of old checks.

6. VOID AFTER 100 MILES: The check is void after 100 miles from the place of issue. This is to prevent the use of checks from other areas.

7. VOID AFTER 1000 DOLLARS: The check is void after 1000 dollars. This is to prevent the use of large checks.

8. VOID AFTER 1000 CHECKS: The check is void after 1000 checks. This is to prevent the use of multiple checks.

9. VOID AFTER 1000 DOLLARS AND 1000 CHECKS: The check is void after 1000 dollars and 1000 checks. This is to prevent the use of large checks and multiple checks.

10. VOID AFTER 1000 DOLLARS, 1000 CHECKS, AND 1000 MILES: The check is void after 1000 dollars, 1000 checks, and 1000 miles. This is to prevent the use of large checks, multiple checks, and checks from other areas.

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/31/2014	000006700106884	53201487	-1	N		FIRST-CITIZENS BANK
03/31/2014	000006700106884	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/01/2014	003692767781	112002080	Co1 Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY IF ALL CIRCLED SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
87-448/539

53946

3/27/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

VOID AFTER 90 DAYS

[illegible]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/31/2014	000006700106885	53201487	-1	N		FIRST-CITIZENS BANK
03/31/2014	000006700106885	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/01/2014	003692767782	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

CASH ONLY • ALL ENDORSEMENTS • SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

54042

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-5505

BANK OF AMERICA, NA
Aiken, SC 29801
67-448/539

4/28/2014

PAY TO THE ORDER OF Patricia Sprenger \$ -7,000.00

Seven Thousand and 00/100 DOLLARS

A TAMPER RESISTANT TONER AREA

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

VOID FOR 60 DAYS

MEMO

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/29/2014	000006700065340	53201487	-1	N		FIRST-CITIZENS BANK
04/29/2014	000006700065340	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/30/2014	002692250909	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY IF ALL CHECK LOCK SECURITY FEATURES LOYED ON BACK (SEE DATE AND TAMPERING OR COPYING)

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
854-244-6505

BANK OF AMERICA, NA
AIKEN, SC 29801
67-448/533

54079

5/14/2014

PAY TO THE ORDER OF Patricia Sprenger \$1,600.00

One Thousand Six Hundred and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

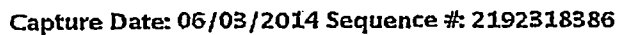
MEMO

2011 INUIT INC. 4 1715-423-33-0070

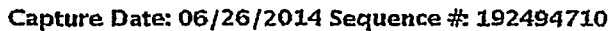
1 TAMPER RESISTANT TONER/INK

Validated Drye

[illegible]Mon Jul 06 17:40:43 CDT 2015

[illegible]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
06/02/2014	000006700213949	53201487	-1	N		FIRST-CITIZENS BANK
06/02/2014	000006700213949	53100300	Undetermined	Y		FIRST-CITIZENS BANK
06/03/2014	002192318386	112002080	Col Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						



Electronic Endorsements

Page 364 of 710

Print Reg:#20150706000491

Mon Jul 06 17:40:43 CDT 2015

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
08/01/2014	000006700144615	53201487	-1	N		FIRST-CITIZENS BANK
08/01/2014	000006700144615	53100300	Undetermined	Y		FIRST-CITIZENS BANK
08/04/2014	004092069795	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Capture Date: 09/05/2014 Sequence #: 3092679726

CASH ONLY  SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COUNTERFEITING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 28609
864-244-6505

BANK OF AMERICA, NA
AIKEN, SC 29801
87-448/539

54191

8/27/2014

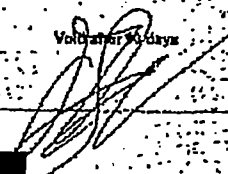
PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

A TAMPER RESISTANT TONER AREA A.

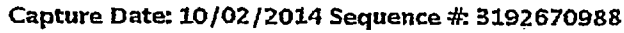
Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO



[illegible]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/04/2014	000006700207606	53201487	-1	N		FIRST-CITIZENS BANK
09/04/2014	000006700207606	53100300	Undetermined	Y		FIRST-CITIZENS BANK
09/05/2014	003092679726	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						



Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
10/01/2014	000006700045270	53201487	-1	N		FIRST-CITIZENS BANK
10/01/2014	000006700045270	53100300	Undetermined	Y		FIRST-CITIZENS BANK
10/02/2014	003192670988	112002080	Col Bank	N		BANK OF AMERICA, NA.
No Payee Endorsements Found						

Bank of America



Capture Date: 12/30/2014 Sequence #: 3692776258

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6505		BANK OF AMERICA, NA Aiken, SC 29801 87-448/538		54341
PAY TO THE ORDER OF Patricia Sprenger		\$ 7,000.00		12/22/2014
Seven Thousand and 00/100 DOLLARS				
Patricia Sprenger 308 Shagbark Circle Simpsonville SC 29680				
A TAMPER RESISTANT TONER AREA A				
VOID LINE				
ENDORSE HERE P. Sprenger				
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE SERIALIZED 422 Batch 006187 Date 12/29/14				
As the savest, this check Lock-in Secure P us check new help reduce your risk of fraud and liability. To learn how to protect your business, call our check fraud experts at 1-800-548-0333 or visit www.integritycheck.com/Integritycenter				
SECURITY FEATURES: Multi-Color Pressure Backgroun CheckLock™ Watermark Heat Sensitive Ink Security Border or Microprint Lines Chemically Sensitive Paper Fugitive Ink on Back Toner Adhesion Tamper Resistant Toner Area Visible Fibers Invisible Fibers VOID Indication Security Watermark on Backset				
VOID Indication Security Watermark on Backset				

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/29/2014	000006700155638	53201487	-1	N		FIRST-CITIZENS BANK
12/29/2014	000006700155638	53100300	Undetermined	Y		FIRST-CITIZENS BANK
12/30/2014	003692776258	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
05/29/2015	000006700066443	53201487	-1	N		FIRST-CITIZENS BANK
05/29/2015	000006700066443	53100300	Undetermined	Y		FIRST-CITIZENS BANK
06/01/2015	004092616344	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America



Capture Date: 10/02/2014 Sequence #: 3742827687

Bank of America



Check ☐ Savings Withdrawal ☐ **DEBIT**

Please Check Proper Box.

Not Negotiable - Withdrawals are permitted only through Payment to the depositor.

Date 10/2/14

01-2008
40-14-3175B

Name and Address

MS Production Solution, Inc

233 Beverly Rd

Greenville SC 29609

Telephone No. (N/A)

twenty five thousand 00/100

Dollars

Save time in line and help us avoid errors. The next time you make a withdrawal, please use your pre-printed withdrawal slips for your account.

X

Customer Signature

Total Withdrawal

\$: 25000.00

For SC Use Only

Trans 00034 10/02/2014 10:35
Entty/ NSC CC 7331700 TL 00007
Account 223012111036
R/TH 540570139
Official Check Sale
\$25,000.00
03/15
*****CKCHSC*****

Seq: 264

Batch: 501831

Date: 10/02/14

Seq: 00264 10/02/14
BAT: 501831 CC: 0057331700
WT: 01 LTPS: Atlanta ET
SC: Fine Kueit SC-SC2-541

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
10/02/2014	3742827687	11000138	-1	Y		BANK OF AMERICA, NA

No Payee Endorsements Found

EXHIBIT F

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE PAUL B. WICKENSIMER

2015 MAY 5 PM 4 27

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendants.

RULE TO SHOW CAUSE AND
ORDER OF REFERENCE
(Case. NO.: 2014-CP-23-1871)

Judgment having been rendered, an Execution issued, a *Nulla Bona* return made to said Execution, the Petitioner having moved for an examination of the Respondent, pursuant to the provisions of §15-39-310, *et seq.*, as amended; it is therefore,

ORDERED that MS Production Solutions LLC a/k/a MSPS Steel Fabricators, DO APPEAR before The Honorable Charles B. Simmons, Jr., Master-In-Equity for Greenville County, Greenville County Courthouse, 305 East North Street, Courtroom 5, Greenville, South Carolina, on the 2nd day of June, 2015, at 2:30 a.m.(p.m.), to answer under oath concerning your assets; TO SHOW CAUSE why your property should not be applied towards satisfaction of the Judgment set out in the Petition; to SHOW CAUSE why a Receiver of Respondent's property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South Carolina Code Ann. (Law. Co-op. 1976).

The Master-in-Equity will entertain and rule upon all motions necessary to dispose of this

matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt and has authority to enter a Final Order. Any appeal from the Master-in-Equity is directly to the Supreme Court.

IT IS FURTHER ORDERED that the Respondent is hereby restrained and enjoined from making any transaction or transfer or other disposition of property belonging to him/it which is not exempt from execution pending further Order of this Court.

YOU ARE FURTHER ORDERED PRODUCE A COPY OF THE FOLLOWING DOCUMENTS TO COUNSEL FOR PLAINTIFF ON, OR BEFORE, FIVE (5) BUSINESS DAYS BEFORE THIS HEARING:

1. Bank statements for all bank accounts owned in whole or in part by Defendants for the past year.
2. Pay stubs for the past five (5) years.
3. Federal and State Tax returns for the past five (5) years.
4. Insurance Policies [home, automobile, real estate, etc...].
5. Records of any real estate owned, either in whole or in part.
6. Records of vehicles and boats.
7. Any inventories of personal property.
8. Copies of any contracts entitling you to payment of money.
9. Any personal financial statements prepared for any reasons either by your self or by any independent sources, with any applicable notes attached thereto from the past five (5) years and, if not reflected in such statements, a complete description of any and all contingent liabilities, including guarantees, by you.
10. Any and all year-end financial statements of any corporation, partnership, trust, or other business entity in which you hold directly or indirectly a 10% interest (balance sheet statements and statement of income and expenses) audited and unaudited for the last three years of the respective entities with any applicable notes attached thereto and any subsequently prepared

financial reports or statements prepared by the entity or on its behalf for any reason.

11. Any and all documents and financial records that relate to, refer to, or describe, recount, or are in any way related to any transfer of or pledge, hypothecation, gift, assignment, or granting of a security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One Hundred Dollars (\$100) in any single transaction from the past five (5) years to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.
12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

IF YOU DO NOT APPEAR IT MAY RESULT IN THE APPOINTMENT OF A RECEIVER AND AWARDING THE PLAINTIFF/PETITIONER SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUESTED. YOU MAY ALSO BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.

Greenville, South Carolina

1 MAY, 2015

s/Robin B. Stilwell
Presiding Circuit Court Judge, Greenville County
STILWELL / 2158

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE COUNTY THE COURT OF COMMON PLEAS
PAUL B. WICKENSIMER

COUNTY OF GREENVILLE

2015 MAY 5 PM 4 27

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendants.

VERIFIED PETITION FOR
SUPPLEMENTAL PROCEEDINGS
(Case. NO.: 2014-CP-23-1871)

PETITIONER WOULD RESPECTFULLY SHOW:

That heretofore Petitioner recovered and recorded judgment against Respondent MS Production Solutions LLC a/k/a MSPS Steel Fabricators ("Respondent") as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated, Respondent having failed and refused to satisfy same:

JUDGMENT ENTERED: January 28, 2015 in Greenville County
JUDGMENT ROLL # : 2014-CP-23-1871
AMOUNT DUE : \$657,137.30, plus interest as accrued

1. That execution thereafter was duly issued to the Sheriff of Greenville County against Respondent and said Sheriff has returned same NULLA BONA.

2. That upon information and belief, the Respondent has assets in the County not exempt from levy which Respondent unjustly refuses to apply toward satisfaction of said judgment.

3. That Petitioner is informed and believes that it is entitled under the law and statutes to have an examination of Respondent in supplementary proceedings and to ascertain and discover any and all property and assets, real, personal, or mixed, and wheresoever situated,

belonging to Respondent; or in which Respondent could claim any interest, solely or in conjunction with any person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

4. In addition, Petitioner is entitled to the appointment of a receiver of Respondent for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE Petitioner prays that this court do inquire into the matters hereinabove alleged and that it issue such order or orders granting relief to which Petitioner believes it is entitled, for all expended and statutory costs allowable for this proceeding, and for such other and further relief and remedies as may be allowable and which the Court may deem proper.

And further Petitioner requests this matter be referred to the Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure with authority to enter a final order with any appeal being directly to the South Carolina Supreme Court.

BRUNER, POWELL, WALL & MULLINS, LLC



Joey R. Floyd

Henry P. Wall

Caitlin C. Heyward

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803) 252-7693

Attorneys for Petitioner

China Construction America of South Carolina, Inc.

April 13, 2015

VERIFICATION

PERSONALLY appears Caitlin C. Heyward, who first being duly sworn, deposes and says that he is the attorney for the Petitioning judgment creditor and that he has read the foregoing Petition and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true, that he is the attorney for the Petitioner and is authorized to make this oath on their behalf.

Caitlin Heyward
Caitlin C. Heyward
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13 DAY OF April, 2015

L. M. Warr
Notary Public for South Carolina
My Commission Expires: 01/22/2018

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2014-CP-23-1871 Court Date: 6/2/2015 2:30 pm

Plaintiff:

CHINA CONSTRUCTION AMERICA OF SOUTH CAROLINA, INC.

vs.

Defendant:

MS PRODUCTION SOLUTION, LLC A/K/A MSPS STEEL FABRICATORS

For:

Bruner Powell

PO Box 61110

Columbia, SC 29260

Received by A Woman's Touch, LLC to be served on MS Production Solutions, LLC a/k/a MSPS Steel Fabricators c/o Registered Agent Manfred Sprenger, 233 Beverly Road, Greenville, Greenville County, SC 29609.

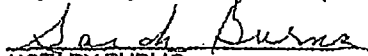
I, Florence Burns, being duly sworn, depose and say that on the 13th day of May, 2015 at 9:29 am, I:

served a REGISTERED AGENT by delivering a true copy of the RULE TO SHOW CAUSE AND ORDER OF REFERENCE, VERIFIED PETITION FOR SUPPLEMENTAL PROCEEDINGS, and PETITIONER'S FIRST SET OF POST-JUDGMENT INTERROGATORIES TO MS PRODUCTION SOLUTION LLC A/K/A MSPS STEEL FABRICATORS with the date and hour of service endorsed thereon by me, to: Manfred Sprenger as Registered Agent at the address of: 233 Beverly Road, Greenville, Greenville County, SC 29609 on behalf of MS Production Solutions, LLC a/k/a MSPS Steel Fabricators, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 65, Sex: M, Race/Skin Color: White, Height: 5'9", Weight: 210, Hair: Grey, Glasses: Y

I certify that I am a U.S. Citizen, over the age of 18, have no interest in the above I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 13th day of May, 2015 by the affiant who is personally known to me.

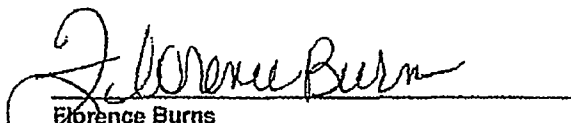

NOTARY PUBLIC

My Commission expires:

Sarah J. Burns, Notary Public

State of South Carolina,

My Commission Expires 9/9/2021


Florence Burns
Process Server

A Woman's Touch, LLC
214 River Oaks Circle
Piedmont, SC 29673
(864) 444-9168

Our Job Serial Number: AWT-2015000451
Ref: 9-948.131

EXHIBIT G

1 \$350,000, and then when -- as my wife said, when I
2 need the money again, I'll pay -- I give it back to
3 the company as a loan again.

4 Q. So this is just determined by you.
5 There's no formal -- most people, most business
6 people, keep a paper trail so when they get audited
7 or when they file taxes it is clear where the money
8 is coming in and where the money's coming out. Is
9 it your testimony today that does not exist?

10 A. There is a paper trail. There is a check
11 written to me. My accountant does my annual tax
12 return, so he knows of -- he can see in my
13 bookkeeping that there's checks written to me.
14 It's called member draw. So what other means of
15 documents are you referring to?

16 Q. A loan document between you and the
17 corporation.

18 A. Maybe I need to make -- as my lawyer
19 advised me after the \$7,000 dispute here to --
20 which I -- before out of convenience I wrote it to
21 my wife. It was always written to me. But it was
22 convenient. And now I changed it back as since my
23 lawyer advised me to do so, to make it, again,
24 payable to Manfred Sprenger instead of --

25 Q. Have you since paid yourself money since

1 the hearing in June?

2 A. I think two maximum. This month I haven't
3 paid myself. Last month I got -- I think once in
4 July I didn't.

5 Q. Okay. How much money did you pay
6 yourself?

7 A. Maybe \$14,000.

8 Q. \$14,000?

9 A. Yeah.

10 Q. And where is that money now?

11 A. In my wife's account -- in our personal
12 account.

13 Q. Your personal account doesn't have very
14 much money in it. I'll represent that to you.

15 A. Uh-huh.

16 Q. Is it in cash?

17 A. That's what you asked my wife already.
18 Yes, there's cash at home.

19 Q. So the \$14,000 that you recently paid
20 yourself in the last two months is in cash?

21 A. Recently since May.

22 Q. What about since June?

23 A. June, I would have to go back and see
24 exactly how many pay -- or how much I paid myself,
25 but what I'm saying is the 7,000 monthly payment

1 I'm trying to pay monthly haven't happened the
2 last -- since June frequently every month. Maybe
3 was once or twice maximum.

4 Q. In the last four weeks, did you pay
5 yourself?

6 A. No.

7 Q. In the last eight weeks, did you pay
8 yourself?

9 A. No.

10 Q. In the last 12 weeks, did you pay
11 yourself?

12 A. Oh, the last eight weeks. Sorry. Except
13 the \$7,000 -- I think I paid myself in
14 August \$7,000.

15 Q. Okay.

16 A. And I don't -- I need to go back in
17 June or July, but I don't think I did in July. I
18 think in June I did, but not in July.

19 Q. Okay. So if I were to count up all of the
20 money that you've paid yourself since you purchased
21 the company, anything over \$350,000, what is that?

22 A. Profit.

23 Q. Profit?

24 A. Uh-huh.

25 Q. Okay.

1 A. We discussed it already, yes. When I felt
2 that I could, I wrote a check to my wife and hope
3 that we can finally pay ourselves back what we
4 borrowed the company.

5 Q. You are aware that there is a -- over a
6 \$500,000 judgment against MSPS at this time?

7 A. There is, yes.

8 Q. Right. Did you feel that the company
9 could write you a \$60,000 check in May? Did you
10 feel the company was in a position to do that
11 knowing you had a 500,000 -- \$560,000 judgment?
12 How do you determine if the company can pay you?

13 A. I just did, I guess.

14 Q. You just do?

15 A. Yeah.

16 Q. You have other judgments against you too,
17 don't you?

18 A. Do what now?

19 Q. There are other judgments against you. Is
20 that correct?

21 A. I don't know.

22 Q. You don't know?

23 A. Are there? I'm sure you do know.

24 Q. You don't know if there are judgments
25 against -- as the president of MSPS, you are not

FILED - C. 211 OF COURT
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
COUNTY OF GREENVILLE PAUL B. WICKENSIMER Civil Action No.: 2014-CP-23-1871

2015 SEP 23 PM 1:59
China Construction America
of South Carolina, Inc.

Plaintiffs,

v.

MS Production Solutions LLC
a/k/a MSPS Steel Fabricators

Defendants.

CERTIFICATE OF SERVICE

I, Annie Rich, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on this 22nd day of September, 2015, I served the Notice of Motion and Motion to Set Aside Fraudulent Transfers and Request for Expedited Hearing upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rhett Burney, Esquire
Turner & Burney
628 N.E. Main Street
Simpsonville, SC

Annie Rich
Annie Rich

Columbia, South Carolina

DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION	NET AMOUNT
09/22/15	CLERK OF COURT, GREENVILLE COUNTY FILING FEE - MOTION TO SATISFY FRAUDULENT TRANS - #9-948.131	9-948.131	25.00		25.00

CHECK DATE	CONTROL NUMBER	TOTALS ▶	Gross:	Ded:	Net:
09/22/15	44390		25.00	0.00	25.00

PLEASE DETACH THIS REMITTANCE ADVICE BEFORE DEPOSITING CHECK

BRUNER, POWELL, WALL & MULLINS, LLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
P.O. BOX 61110 803/252-7693
COLUMBIA, SC 29260-1110

FIRST CITIZENS BANK
AND TRUST COMPANY OF SOUTH CAROLINA
COLUMBIA, SC
67-604-539

CHECK NO. 44390

DATE 09/22/15 CHECK AMOUNT *****\$25.00

*** TWENTY-FIVE & 00/100 DOLLARS

PAY
TO THE
ORDER
OF: CLERK OF COURT, GREENVILLE COUNTY
202 COURTHOUSE
305 E. NORTH STREET
GREENVILLE, SC 29601

GENERAL ACCOUNT

[Signature]



Details on back

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

PAUL D. WILKINSON

IN THE COURT OF COMMON PLEAS

2015 OCT 22 PM 12 45

NOTICE OF MOTION AND MOTION
TO COMPEL DEFENDANT TO
COMPLY WITH THIS COURT'S
ORDER, TO HOLD DEFENDANT IN
CONTEMPT OF COURT AND TO
IMPOSE SANCTIONS

(Case. NO.: 2014-CP-23-1871)

TO: RHETT BURNEY, COUNSEL FOR DEFENDANT

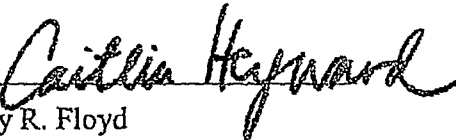
YOU WILL PLEASE TAKE NOTICE that the Plaintiff, China Construction America Of South Carolina, Inc. ("China Construction"), by and through its undersigned counsel, will move before the Greenville County Master in Equity, at the Greenville County Master in Equity's Office, located at 305 East North Street, Greenville, SC, on the tenth (10th) day after service hereof, or as soon thereafter as the Court may schedule, for an Order to Compel the Defendant to comply with this Court's Order issued October 8, 2015 and filed October 13, 2015 ("Order") because the Defendant has failed to recover or turn over any of the \$60,000.00 to Rhett D. Burney to be held in trust. China Construction further moves for an Order to hold Defendant in Contempt of Court and to award sanctions, including but not limited to, attorney's fees and costs of this motion, based upon the Defendant's repeated, willful and intentional failure to comply with the orders of this Court.

The undersigned certifies that she consulted with counsel for the Defendants in a good faith

effort to resolve the subject-matter of this motion prior to filing the same.

An Order was entered on October 8, 2015, directing Defendant to exercise all reasonable efforts to recover the \$60,000.00 transferred to Patricia Sprenger from Defendant's account. (Exhibit A). Defendant was to turn over all funds recovered to Rhett Bruney, Esq., counsel for Defendant, to be held in trust until a judicial determination could be made as to Plaintiff's entitlement to the funds. Counsel for Defendant indicated that Defendant has failed to turn over any monies pursuant to the October 8, 2015 Order because "the Sprengers take the position that the money is theirs." (Exhibit B). By failing to exercise any efforts to recover the transferred monies, Defendant is attempting to substitute its own judgment for the Court's and make its own determination as to who is entitled to the funds transferred from Defendant's account. As such, Defendant is refusing to comply and acting in willful violation of this Court's Order.

BRUNER, POWELL, WALL & MULLINS, LLC

By: 

Joey R. Floyd
Caitlin C. Heyward
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Attorneys for Plaintiff

October 19, 2015

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
China Construction America of South
Carolina, Inc.,

Petitioner,

v.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-1871

**ORDER ON MOTION TO SET ASIDE
CONVEYANCES**

FILED-CLERK OF COURT
GREENVILLE, CO. S.C.
PAUL B. WICKENS
2015 OCT 13 PM 11:33

This matter came before me on October 2, 2015, 2:00 PM, pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property.

Present at the hearing were Plaintiff's counsel, Caitlin Heyward, and Defendant's counsel, Rhett Burney. This Court heard extensive argument from both lawyers.

BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. Respondent did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against Respondent in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners maintain that from at least August, 2013 to May 2015, the owner and sole proprietor of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. At the supplemental proceedings hearing held on June 2, 2015, Mr. Sprenger testified that his wife is



not an employee of the company. Notwithstanding being served a copy of the Rule to Show Cause, Petitioner contends that Respondent transferred an additional \$60,000 from the MSPS Bank of America account to Patricia Sprenger on May 27, 2015 in violation of this Court's Order enjoining Respondent from making any transaction or transfer or other disposition of property which is not exempt from execution.

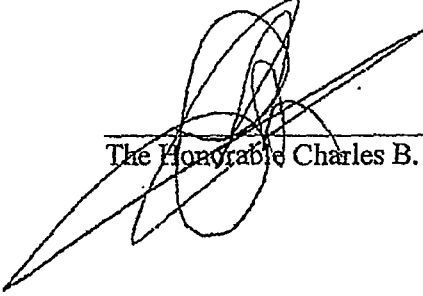
Patricia Sprenger testified at her deposition on September 21, 2015, that she withdrew a substantial portion of the monies transferred to her from MSPS in cash and is storing approximately \$50,000.00 of that money at the home she shares with Manfred Sprenger, the Principal of MSPS. Respondent disputes the characterization of these monies and the availability of the funds, contending they were repayments for un-documented loans made to the LLC.

Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the issues before me and the parties hereto.
2. Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS") has made some amount of cash or check transfers to Patricia Sprenger.
3. Manfred Sprenger, the Principal and Sole Proprietor of MSPS, appears to have some degree of access to the \$50,000.00 in cash transferred from the MSPS account to Patricia Sprenger. However, and important to note, is that neither Manfred Springer nor Patricia Sprenger are parties to this lawsuit.
4. Respondent is reminded that it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any "loans" or "capital contributions" not evidenced by any note or other proper loan documentation.

5. Until a judicial determination can be made as to the fraudulent nature of the transfers, if any, MSPS is directed to exercise reasonable efforts to recover the \$50,000.00 transferred to Patricia Sprenger on May 27, 2015. Whatever such funds are recovered, those funds shall be held in trust at the law office of Turner and Burney, PC on or before October 9, 2015. Further, and while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.



The Honorable Charles B. Simmons

Greenville, South Carolina

10/8, 2015

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2301871

China Construction America Of South Carolina Inc vs. MS Production Solutions LLC

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

NOTICE

This is a notice to you that an Order on Motion to Set Aside Conveyances in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 13th day of October, 2015.

Court Reporter:

PRESIDING JUDGE -

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC
233 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

EXHIBIT B

Caitlin Heyward

From: rdburney@gmail.com on behalf of Rhett Burney [rdburney@turnerandburney.com]
Sent: Friday, October 16, 2015 8:52 AM
To: Caitlin Heyward
Subject: Re: China/MSPS

It's my understanding the Sprengers take the position the money is theirs. Have you seen a copy of which order the judge signed?

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

628 N.E. Main Street
Simpsonville, SC
p: 864-228-1616 | f: 864-228-6722 | email: rdburney@turnerandburney.com
www.turnerandburney.com

On Fri, Oct 16, 2015 at 8:38 AM, Caitlin Heyward <cheyward@brunerpowell.com> wrote:
Mr. Burney,

Please respond to my inquiry regarding the status of the funds in trust.

Sent from my iPhone

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

13th JUDICIAL CIRCUIT

FILED - CLERK OF COURT

GREENVILLE, SC 29601

CASE NO.: 2014-CP-23-1871

PAUL D. WICKENS

China Construction America Of South
Carolina, Inc.

2015 OCT 22 PM 12 45

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

MS Production Solutions LLC a/k/a MSPS
Steel Fabricators

Defendant.)

Plaintiff's Attorney: Caitlin C. Heyward, Bar No. 101158 Address: 1735 St. Julian Place, Suite 200 P.O. Box 61110 Columbia, SC 29260 Phone: (803) 252-7693 Fax _____ E-mail: cheyward@brunerpowell.com Other: _____	Defendant's Attorney: Rhett D. Burney, Bar No. _____ Address: 628 NE Main Street Simpsonville, SC 29681 Phone: 864-228-1616 Fax _____ E-mail: rdburney@turnerandburney.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to compel, to hold defendant in contempt of court and to impose sanctions Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 10/19/2015 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) Civil Action No.: 2014-CP-23-1871

China Construction America
of South Carolina, Inc. 2015 OCT 22 PM 12 45

Plaintiffs,

v.

CERTIFICATE OF SERVICE

MS Production Solutions LLC
a/k/a MSPS Steel Fabricators

Defendants.

I, Annie Rich, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on this 19th day of October, 2015, I served the Notice of Motion and Motion to Compel Defendant to Comply with This Court's Order, to Hold Defendant in Contempt of Court and to Impose Sanctions upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rhett Burney, Esquire
Turner & Burney
628 N.E. Main Street
Simpsonville, SC

Annie Rich
Annie Rich

Columbia, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.

* Of Counsel
** Also Admitted in District of Columbia

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III

AUTHOR'S E-MAIL: ARICH@BRUNERPOWELL.COM

October 19, 2015

Via U.S. Mail

The Honorable Charles B. Simmons, Jr.
Greenville County Master in Equity
305 East North Street, Suite 313
Greenville, SC 29601

RECEIVED

OCT 21 2015

GREENVILLE COUNTY
MASTER IN EQUITY

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

Dear Judge Simmons:

Enclosed please find an original and one (1) copy of the *Notice of Motion and Motion to Compel Defendant to Comply with this Court's Order, to hold Defendant in Contempt of Court and to Impose Sanctions*, and a \$25.00 check made payable to the Greenville County Master-in-Equity. I ask that you return one filed copy to me in the envelope provided.

Thank you for your attention to this matter. If you should have any questions, please do not hesitate to call me.

With my kindest regards, I am,

Sincerely,

Annie Rich

Annie Rich

Legal Assistant to Caitlin C. Heyward

CCH/ar

Enclosures

CC: Rhett Burney, Esquire
Pei Tang

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
China Construction America of South)
Carolina, Inc.,)
) Petitioners,)
v.)
MS Production Solutions, LLC a/k/a)
MSPS Steel Fabricators,)
) Respondents.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-23-1871

**NOTICE OF MOTION AND
MOTION TO JOIN PARTIES**

FILED
GREENVILLE CO. S.C.
PAUL A. WILSON, CLERK
2015 OCT 12 PM 2:07

The Petitioner, China Construction America of South Carolina, Inc. (China Construction”), by and through its undersigned counsel, hereby gives notice that it will move on the tenth (10th) day after service hereof, or at such time thereafter as the Court schedules, before The Honorable Charles B. Simmons, Master-In-Equity for Greenville County, 305 E. North Street, Greenville, South Carolina, for an order pursuant to Rule 19, SCRCP, joining Manfred Sprenger and Patricia Sprenger as parties to these Supplemental Proceedings because they are indispensable parties for the purpose of adjudicating Petitioners’ claims that the Respondents made transfers of monies which should be set aside pursuant to South Carolina law. The grounds for the motion are as follows:

(1) On July 31, 2014, an Order of Default was entered against Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators (“MSPS”).

(2) After granting Petitioner’s motion for damages hearing, the court entered an Amended Order of Judgment against MSPS in the amount of \$657,137.30 on January 29, 2015.

(3) Petitioner’s judgment was recorded against Respondent, and the Respondent has not made any payments toward the Judgment.

(4) Execution has been issued to the Sheriff of Greenville County against Respondents and the writ has been returned same NULLA BONA.

(5) This Court held a hearing in these Supplemental Proceedings on June 2, 2015, during which Manfred Sprenger testified on behalf of MSPS.

(6) During the hearing, Manfred Sprenger testified that he transferred \$7,000 monthly to his wife, Patricia Sprenger, for no consideration from the MSPS company bank account.

(7) In addition, a subpoena of the bank records of MSPS revealed that Manfred Sprenger transferred substantial additional amounts of money in the form of checks made payable to the Patricia Sprenger, all of which were deposited and withdrawn in cash from the personal joint bank account of Manfred and Patricia Sprenger.

- a. The transfers to Patricia Sprenger are in excess of \$282,600.00.
- b. Many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed.
- c. Notably, on May 27, 2015, Respondent transferred \$60,000.00 in the form of a check made payable to Patricia Sprenger, after Respondent was served with a Rule to Show Cause on May 13, 2015, enjoining Respondent from transferring the company assets.
- d. Patricia Sprenger testified during her deposition on September 21, 2015 that she still has \$50,000.00 of the May 27, 2015 transfer **in cash** in her home.
- e. Even in the face of the Rule to Show Cause, Respondent continued to write additional monthly checks to Patricia Sprenger without consideration.

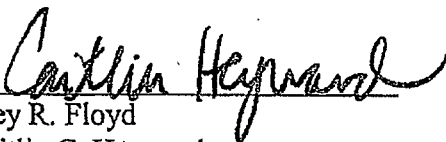
(8) Petitioners are informed and believe all of the transfers set forth above should be set aside pursuant to the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A) (2007), and other applicable law.

(9) The proposed Respondents/additional parties are citizens of Greenville County, South Carolina.

(10) Because Plaintiff's motion to set aside fraudulent transfers, filed on September 23, 2015, seeks an order setting aside the transfers of property described above, the relief sought (i.e., the return of the property to the judgment debtors) cannot be accorded among those already parties to these proceedings. Petitioners are informed and believe the proposed Respondents claim an interest in the property transferred and that the disposition of the action in their absence may (i) as a practical matter impair or impede their ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

WHEREFORE, Petitioners pray that the Court issue an order joining Manfred Sprenger and Patricia Sprenger as Respondents to these proceedings.

BRUNER, POWELL, WALL & MULLINS, LLC


Joey R. Floyd
Caitlin C. Heyward
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Petitioner

October 6, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America Of South Carolina, Inc.
☒ Plaintiff

v.

Ms Production Solutions Llc A/K/A Msps Steel
Fabricators
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-23-1871

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
CLERK OF COURT
GREENVILLE, S.C.
PAUL A. WOODS, CLERK
OCT 12 PM 2 07

Plaintiff's Attorney:
Caitlin Creswick Heyward, Bar No. 101158
Address:
PO Box 61110, Columbia, SC 29204
phone: 803-252-7693 fax: 803-254-5719
e-mail: cheyward@brunerpowell.com other:

Defendant's Attorney:
N/A, Bar No.
Address:
phone: fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

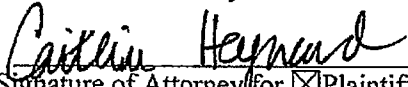
Nature of Motion: Motion to Join Parties

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 6, 2016
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00 to the clerk of court
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
China Construction America of South)
Carolina, Inc.,)
)
Petitioners,)
)
v.)
)
MS Production Solutions, LLC a/k/a)
MSPS Steel Fabricators,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-23-1871

CERTIFICATE OF SERVICE

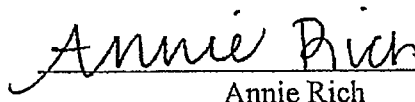
FILED-CI
GREENVILLE, S.C.
PAUL D. WICKENS
2015 OCT 12 PM 2 07

I, Annie Rich, an employee of Bruner, Powell, Wall & Mullins, LLC, do hereby certify that on this 6th day of October, 2015, I served the attached **NOTICE OF MOTION AND MOTION TO JOIN PARTIES** in the above-referenced case upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rhett Burney, Esquire
Turner & Burney
628 N.E. Main Street
Simpsonville, SC
Attorneys for the Respondent

Ms. Patricia Sprenger
307 Shagbark Circle
Simpsonville, SC 29680
VIA CERTIFIED MAIL

Mr. Manfred Sprenger
307 Shagbark Circle
Simpsonville, SC 29680
VIA CERTIFIED MAIL


Annie Rich

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
	)	
China Construction America of South Carolina, Inc.,	)	
	)	
Petitioner,	)	NOTICE OF MOTION AND MOTION TO
	)	ALTER OR AMEND
	)	
v.	)	
	)	
MS Production Solutions LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Spenger and Patricia Sprenger	)	
	)	
Respondent.	)	

TO: DEFENDANT AND HIS ATTORNEY.

PLEASE TAKE NOTICE that Petitioner, through its undersigned counsel, will move before the Honorable Charles B. Simmons, Master-In-Equity for Greenville County, at the Greenville County Courthouse, ten (10) days from the service hereof or at such other time and place as may be designated by the Court, for an Order of the Court, pursuant to Rule 59(e), SCRCF, altering or amending that certain Decree of the Honorable Charles B. Simmons, in the above-captioned action dated June 7, 2016 (a copy of which is attached hereto) and received by Petitioner's Counsel by electronic notification on June 7, 2016.

Petitioner will move that the Order on Motion to Set Aside Fraudulent Conveyances be altered or amended upon the following grounds:

1. The Court erred in finding the transfers from the Defendant MS Production Solutions, LLC to Manfred Sprenger were not fraudulent transfers within the meaning of §27-23-10.
2. The Court erred in limiting Petitioner's recovery to fraudulent transfers dating from April 2, 2014, the date the lawsuit was filed, through December 24, 2015.
3. The Court erred in limiting Petitioner's recovery to transfers made from MS Production

Solutions, LLC to Patricia Sprenger from April 2, 2014, the date the lawsuit was filed, to December 24, 2015.

4. The Court failed to identify the “unique facts” that justify limiting recovery of the fraudulent transfers prior to the date of this lawsuit.
5. The Court failed to make a determination that there is no perfected security interest in the cash Patricia testified is in her home pursuant to S.C. Code § 36-9-104.
6. The Court failed to make a determination that there is no perfected security interest in the deposit accounts of Defendant MS Production Solutions, LLC pursuant to S.C. Code § 36-9-104.
7. The Court failed to make a determination that Petitioner is entitled to execute upon the deposit accounts of Defendant MS Production Solutions, LLC.
8. The Court failed to consider that Ms. Sprenger was made a party to this lawsuit and was aware of the judgment against MS Production Solutions at the time she accepted many of the fraudulent transfers. Petitioner is not obligated to chase down money fraudulently obtained by Patricia Sprenger or determine whether Patricia Sprenger is still in possession of the money.
9. Petitioner is entitled to a judgment against Ms. Sprenger should she not repay all monies owed within thirty (30) days of this Court’s Order or within a reasonable time as the Court may require.

[SIGNATURE PAGE TO FOLLOW]

BRUNER POWELL WALL & MULLINS, LLC

BY: s/s Caitlin Creswick Heyward
Henry P. Wall
Caitlin Creswick Heyward
Robert C. Osborne
1735 St. Julian Place, Suite 200 (29204)
P.O. Box 61110
Columbia, SC 29260
(803) 254-7693

Date: June 16, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
	)	
China Construction America of South	)	
Carolina, Inc.,	)	
	)	
	)	MOTION TO RECONSIDER,
Plaintiff,	)	ALTER OR AMEND
	)	PURSUANT TO RULE 59(e),SCRCP
v.	)	
	)	
MS Production Solutions LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Sprenger, and Patricia Sprenger	)	
	)	
Defendants.	)	

TO THE HONORABLE CHARLES B. SIMMONS, JR.:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorney, hereby move before the Presiding Charles B. Simmons, Jr. Master in Equity, Thirteenth Judicial Circuit, for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure reconsidering, altering, or amending the Order Setting Aside Fraudulent Conveyances recorded in the Greenville County Clerk of Court's office on June 7, 2016. A copy of the Order Setting Aside Fraudulent Conveyances is attached and incorporated herein by reference.

Defendants ask that the court reconsider, alter, and/or amend the Order Setting Aside Fraudulent Conveyances based upon the following grounds:

1. The Honorable Trial Court erred in finding that the checks written to Patricia Sprenger by MS Production Solutions LLC (hereinafter referred to as "MSPS") from April 2, 2014 through December 24, 2015 as shown on Attachment "A" of the order were a fraudulent conveyance.
2. That the Honorable Trial Court erred in finding that the checks written to Patricia Sprenger by MSPS from April 2, 2014 through December 24, 2015 lacked consideration.

3. That the Honorable Trial Court erred in finding that the checks written to Patricia Sprenger by MSPS from April 2, 2014 through December 24, 2015 lacked consideration when the evidence showed that such payments were actually salary payments for her husband, Manfred Sprenger.
4. The Honorable Trial Court erred in ordering that the \$8,000.00 held in trust by Defendants' attorney be paid to the Plaintiff.
5. The Honorable Trial Court erred in ordering that the \$8,000.00 held in trust be paid to Plaintiff rather than returned to Manfred Sprenger.
6. The Honorable Trial court erred in failing to find that the payments made to Patricia Sprenger by MSPS were actually payments for Manfred Sprenger's salary when such payments were taxed as Manfred Sprenger's income per his accountant.
7. The Honorable Trial court erred in finding that there was no valuable consideration for the payments made to Patricia Sprenger, even though both Manfred Sprenger, Patricia Sprenger, the accountant, and MSPS's historical pay schedule supported the position that the payments were for Manfred Sprenger's salary.
8. The Honorable Trial court erred in allowing Patricia Sprenger's assets to be used to repay the money she received from MSPS without Patricia being served any pleadings putting her on notice that such was being requested by the Plaintiff.
9. The Honorable Trial court erred in requiring Patricia Sprenger to return \$221,592.84 (or that her assets be used to satisfy the \$221,592.84 she received from MSPS.)
10. The Honorable Trial court erred in requiring Patricia Sprenger to return any money (or requiring that her assets be taken) to satisfy the \$221,592.84 she received from MSPS when she was never put on notice of the litigation pending between China and MSPS,

nor was she informed that the money she was receiving from MSPS could be ordered to be returned.

11. The Honorable Trial court erred in requiring Patricia Sprenger to return the money (or that her assets be used to satisfy the \$221,592.84 she received from MSPS) that she received from MSPS beginning April 2, 2014 when no evidence was presented to show when the contract dispute between China Construction and MSPS began.
12. The Honorable Trial court erred in requiring Patricia Sprenger to return the money that she received from MSPS beginning April 2, 2014 (or that her assets be used to satisfy the \$221,592.84 she received from MSPS) when no evidence was presented to show when MSPS breached its contract with the Plaintiff.
13. That the Honorable Trial court erred in requiring Patricia Sprenger to return the money she was paid by MSPS (or that her assets be used to satisfy the \$221,592.84 she received from MSPS) without first having an action filed against her by a receiver as required by S.C. Code Section 15-39-460.
14. That although the Honorable Trial Court found that its order was not a judgment against Patricia Sprenger, the order has the erroneous effect of a judgment as it authorizes Patricia Sprenger's assets to be seized in order to repay the money transferred to her by MSPS.
15. That the Honorable Trial Court erred by excluding a finding from its order that MSPS is insolvent.

Respectfully submitted,

TURNER & BURNEY, P.C.

/s/ Rhett D. Burney

Attorney for Defendants

628 NE Main Street

Simpsonville, SC 29681

Ph.: (864) 228-1616

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of)
South Carolina, Inc.,)
Plaintiff,)

vs.)

MS Production Solutions LLC a/k/a)
MSPS Steel Fabricators,)
Defendant.)

TRANSCRIPT OF TESTIMONY

June 2, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Caitlin Creswick Howard, Esquire
Joey R. Floyd, Esquire
Attorneys for the Plaintiff

Rhett D. Burney, Esquire
Attorney for the Defendant

Wanda E. Fudge, CCR
Court Reporter

1 BY THE COURT: Y'all ready to move into testimony?

2 MR. FLOYD: Yes, Your Honor. May it please the Court.

3 BY THE COURT: For the record, this is 2014-1871, China
4 Construction versus MS Production. Here today on supplemental
5 proceedings.

6 And the original judgment was a little over \$657,000.00,
7 correct?

8 MR. FLOYD: Yes, Your Honor.

9 BY THE COURT: Has any portion of that been paid or credited?

10 MR. FLOYD: None, Your Honor.

11 BY THE COURT: Okay. All right. Anything before your client
12 comes around?

13 MR. BURNEY: No, sir.

14 BY THE COURT: All right. Sir, if you would come around to
15 the witness stand and bring any documents you might have with
16 you.

17 **MANFRED SPRINGER**, BEING FIRST DULY SWORN, TESTIFIED AS
18 FOLLOWS:

19 BY THE COURT: If you'll state your full name.

20 THE WITNESS: Manfred Springer.

21 BY THE COURT: Mr. Springer, what is your capacity with MS
22 Production Solutions, LLC?

23 THE WITNESS: Owner/President.

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

25 MR. FLOYD: May it please the Court, Your Honor?

1 BY THE COURT: Yes, sir.

2 DIRECT EXAMINATION BY MR. FLOYD:

3 Q Mr. Springer, my name is Joey Floyd, and I represent the
4 Plaintiff in this case, China Construction America of South
5 Carolina, Inc. I'm going to be asking you a series of questions
6 about your assets here today. Some of these documents you may
7 have there in front of you, some of them I may have here. We'll
8 try to work as best we can with these exhibits if that's okay
9 with you.

10 Can you tell me who the members of MS Production Solutions,
11 LLC are?

12 A It's just me.

13 Q Just you. And does MS -- I'm going to call it MSPS. Does
14 that suit you?

15 A That's shorter and easier.

16 Q Yeah. So, when I refer to MSPS today, I'm going to be
17 talking about MS Production Solutions, LLC.

18 A I understand.

19 Q Does MSPS do business as any different trade names?

20 A When MSPS Production Solution purchased the company in 2007,
21 the company name was Zabel Steel or D.P. Dillon and they did
22 business under Zabel Steel. That was the original company owner.
23 So, I did all of the d/b/a as Zabel Steele.

24 Q All right. Do you also do business as MSPS Steel
25 Fabricators?

1 A No. It's just called -- since it's shorter, it's just
2 easier--

3 Q MSPS?

4 A --to say MSPS.

5 Q All right. You have produced a spreadsheet showing various
6 equipment. Are you familiar with that?

7 A Yes.

8 Q Does MSPS own all of that equipment?

9 A MSPS does own all of that or Small Business Loan does.

10 Q Is there a loan that you're talking about?

11 A It's a small business loan when I purchased the company.

12 Q And who is that small business loan through?

13 A Right now -- it has been sold a couple of time as is usually
14 the case -- but right now it's First Bank out of St. Louis.

15 MR. FLOYD: Presumably, that's the information that I didn't
16 get?

17 MR. BURNEY: Yeah. I've got---

18 MR. FLOYD: That's fine. We'll probably continue it.

19 MR. BURNEY: All right.

20 Q Now, tell me about this small business loan here. Is it --
21 do they have a Security Agreement in all of this stuff?

22 A Yes, sir.

23 Q Is there a filed UCC as well?

24 A Oh, God! There were so many documents signed. I know there
25 was personal security and all of that as small business loans

1 work, I guess.

2 Q Are you current on the loan today?

3 A Yes. May I say something?

4 Q Sure.

5 A It just was reduced, agreed by First Bank, to a lesser

6 amount for the balance of the year due to economy. That's a

7 monthly amount.

8 Q What's your monthly obligation?

9 A \$5,500 at this point.

10 Q How much was it before it was reduced?

11 A \$14,500. I don't -- that's just rough numbers. It's not to

12 the decimal.

13 Q Roughly \$14,000?

14 A Yeah, yeah.

15 Q But nowadays, it's down to \$5,500?

16 A \$5,500.

17 Q And where would you have been paying this loan out of? What

18 bank account?

19 A Bank of America.

20 Q All right. Tell me about the loan that the SBA -- you call

21 it a SBA loan?

22 A Yes.

23 Q Does it have a mortgage on a building as well?

24 A It has everything: receivables, property, the building, the

25 equipment, everything.

1 Q Okay. We'll go through that when we get to it. All right.

2 So, you bank with Bank of America?

3 A Yes, sir.

4 Q You have a checking account there, right?

5 A Yes, sir.

6 Q Do you have any other banking relationships?

7 A Currently?

8 Q Right.

9 A MSPS? No.

10 Q How about you individually?

11 A Me?

12 Q Where do you bank, individually?

13 A It's MSPS, right, who's on trial here or is that relevant
14 where I bank individually?

15 Q Yes, sir. I think it is.

16 THE WITNESS: It is?

17 BY THE COURT: Mr. Springer, you have a very fine lawyer. If
18 he objects, then he's going to tell me he objects. We'll leave
19 the lawyering up to them today. Okay?

20 THE WITNESS: Okay. All right.

21 A It's First Citizens.

22 Q First Citizens Bank?

23 A Yeah.

24 Q Do you keep your personal account separate from your
25 business account?

1 A Yeah.

2 Q How much do you pay yourself a month?

3 A \$7,000.

4 Q Do you take any of your business money that you receive and
5 put it in First Citizens Bank?

6 A I pay a bonus occasionally or if I put money back into the
7 business, which obviously has to happen to pay the bills
8 occasionally, then I take that money back out again later. Yes.

9 Q All right. That was probably not a good question that I
10 asked. I'm going to ask again. Do you take receivables that you
11 get from third parties and put that money in First Citizens Bank?

12 A No, sir.

13 Q Have you ever done that?

14 A No, sir.

15 Q You were just talking about some loans, that you loaned the
16 company money from time to time?

17 A Yes, sir.

18 Q Do you sign notes when you do that?

19 A No.

20 Q Do you just transfer money---

21 A I just transfer a check from First Citizens into the Bank of
22 America account, and then later I take it out again.

23 Q Do you write checks or do you do wire transfers?

24 A Checks.

25 Q So, all of those types of loans would be -- I would see

1 evidence of checks?

2 A Yes, sir.

3 Q When was the last time you loaned the company money?

4 A I'm guessing, but I think it was about February of this
5 year.

6 Q And has the company paid you back?

7 A The company paid me back.

8 Q How much did you loan the company?

9 A \$40,000.

10 Q How often do you do these types of loans on an annual basis?

11 A Maybe once a year.

12 Q So, if I see a -- I'll see \$7,000 checks written from Bank
13 of America to you personally?

14 A Uh-huh (affirmative).

15 Q And they'll be a handwritten check, right?

16 A No, a printed check.

17 Q A printed check, but you will deposit that in First
18 Citizens?

19 A That's correct.

20 Q Do you pay yourself bonuses, you say?

21 A Occasionally, yes.

22 Q How do you determine how much the bonuses are?

23 A It's -- if there is money which I can spare from the
24 company, I just -- because I don't pay myself salary. I pay to
25 my wife. And those bonuses are just maybe \$20,000 for me when I

1 can afford it as a company.

2 Q Whenever you do good on a job or something like that?

3 A Yeah.

4 Q Kick yourself some money? Is that what you'll do?

5 A Yeah.

6 Q About how often do you do that?

7 A Recently -- the last couple of years, not because we all
8 know the economy was bad. The last three months I even didn't
9 write my wife a check because there was no -- that's why I had to
10 borrow the money to the company to be able to pay the current
11 bills.

12 Q What's your wife's position with the company?

13 A None. She's my wife. She helps out at the office
14 occasionally, yes.

15 Q But she's not an employee?

16 A She's not an official employee on the payroll.

17 Q But you make the checks payable to your wife?

18 A Yeah.

19 Q On a monthly basis?

20 A Yeah.

21 Q When do you typically pay that \$7,000 to your wife: first
22 of the month, end of the month?

23 A It varies, whenever -- I like to do it at the end of the
24 month but since general contractors' checks usually come in at
25 the end of a month, and we know how reliable they are, it might

1 be middle of next month when I can pay her.

2 Q All right. Does MSPS have any other bank accounts besides
3 this one bank account at Bank of America?

4 A No.

5 Q No payroll account?

6 A No.

7 Q Everything is done out of the single---

8 A Yes, yes.

9 Q How many employees does MSPS have?

10 A Six.

11 Q By my calculations, you've gone through about \$300,000 over
12 the past year in your bank account? Does that sound about right,
13 from deposits?

14 A Deposits and bill payments, yeah, that sounds about right.

15 Q How much do you have in your account today?

16 A As of today? \$16,000 or \$17,000.

17 BY THE COURT: And this is the corporate account, correct?

18 THE WITNESS: Yes, Your Honor.

19 Q We're talking about your---

20 A Yes, Bank of America, MS Production account.

21 Q Does MSPS have credit cards?

22 A Yes.

23 Q Where are the credit cards? Discover, Visa?

24 A Oh, Visa.

25 Q All Visa cards?

1 A American Express.

2 Q So, you have a Visa card and an American Express card?

3 A Yes, sir.

4 Q Are those strictly used for business purposes?

5 A Mainly, yes.

6 Q Are there any personal expenses on those?

7 A No.

8 Q All right. Does MSPS own any vehicles?

9 A No.

10 Q Has it owned any vehicles?

11 A At the time when I bought the company, it owned four

12 vehicles. They are very old and not functioning anymore.

13 Q Did you sell them?

14 A They're out in the yard.

15 Q Are they running?

16 A No.

17 Q Did you just quit using them?

18 A Yes. Well, maybe I need to explain a little bit because

19 when I bought the company, this company made exclusively stairs

20 and rails, and they delivered their own material to job sites. I

21 changed the company to structural steel company, and I use

22 subcontractors to ship the material, trucking companies.

23 Q Do you have a particular trucking company that you use all

24 of the time?

25 A One is called Plumley, the other one is called STi. STi,

1 yes. There's three or four.

2 Q Of your main go-to carriers that you use?

3 A Yeah. Well, we get the prices to compare.

4 Q All right. Does MSPS own any trucks?

5 A No.

6 Q Does it deliver any of its own stuff?

7 A Yes. I did in the back of my truck.

8 Q In your truck?

9 A Yeah.

10 Q But you own your truck personally?

11 A Uh-huh (affirmative).

12 Q Does the company---

13 THE COURT REPORTER: Is that a yes?

14 THE WITNESS: Yes. I'm sorry. Yes.

15 Q We have to answer verbally so she can pick up the answers.

16 A I understand.

17 Q She's been incredibly patient. Usually they yell at you

18 whenever you answer too many times nonverbally.

19 A You know, the habit is huh-huh, no, uh-uh---

20 Q That's what we do in everyday conversation. Does MSPS have

21 any trailers that it uses?

22 A No, sir.

23 Q So, all of this hauling is subcontracted out?

24 A Yes, sir.

25 Q Does the company pay for your vehicle?

1 A No, sir.

2 Q Does the company give you a vehicle stipend?

3 A No, sir.

4 Q Does it give anybody a vehicle stipend?

5 A No, sir.

6 Q Does your company -- or does the company pay for your wife's
7 vehicle?

8 A No, sir.

9 Q Anybody's vehicle?

10 A No, sir.

11 Q Does the company have a 401(k) program?

12 A No, sir.

13 Q Does it have any stocks?

14 A No, sir.

15 Q Does it have any money market accounts?

16 A No, sir.

17 Q Has it contributed any money to any retirement account?

18 A No, sir.

19 Q IRAs and that sort of stuff?

20 A No, sir.

21 Q Do you have an IRA?

22 A No, sir.

23 Q Does your wife have an IRA?

24 A No, sir.

25 Q Do you have any retirement funds at all?

1 A No, sir, the company.

2 Q The company is your anticipated retirement?

3 A Yes, sir.

4 Q How much do you currently owe on the small business loan?

5 A It's definitely a million, fifty-one I believe.

6 Q A million dollars?

7 A \$1,051,000.

8 Q And it has a mortgage on the building; is that right?

9 A It has what?

10 Q Does it have a mortgage on a building?

11 A Yes.

12 Q That you own?

13 A Yes.

14 Q So, MSPS owns the building?

15 A No, no, no. Well, the building on the property, yes. MSPS

16 does not own a building.

17 Q Who owns the building?

18 A What building are you referring to?

19 Q You indicated to me earlier, just a few minutes ago, that

20 this small business loan has a mortgage on some property. Does

21 MSPS own any land?

22 A The land which the fabrication shop is on, yes.

23 Q Okay.

24 A But that's owned by a small business loan.

25 Q Whose name is the property titled in?

1 A MS Production Solution.

2 Q LLC?

3 A Yes.

4 Q It's in the name of the LLC?

5 A Yes.

6 Q However, the bank has a lien against the mortgage?

7 A That's correct.

8 Q What's the value of that property?

9 A I think this year's tax value was \$225,000.

10 Q Is there a building on it as well?

11 A Yes.

12 Q Have you had it appraised recently?

13 A No, sir.

14 Q When was the last time you had it appraised?

15 A Small business loan dated 2007.

16 Q What was the appraised value?

17 A Land and building, \$280,000 it says right here. I have it

18 right in front of me.

19 Q Is there any additional collateral that secures that loan

20 beyond the land?

21 A Equipment.

22 Q The equipment?

23 A Yes, sir.

24 Q Is there any other collateral?

25 A No, sir.

1 Q Did you pledge your house, your personal residence?
2 A The equity in the house, yes.
3 Q They have a second mortgage on your home?
4 A Second mortgage on my house, yes.
5 Q How much is the second mortgage?
6 A There is no second mortgage. I don't know how that works,
7 but we had to -- we have a first mortgage with Wells Fargo, and I
8 bought the house for \$425,000. I think -- this might not be
9 accurate, but Wells Fargo account is about 350. So, whatever the
10 difference from the resale value, I would guess would go to small
11 business loan.
12 Q So, you write Wells Fargo a check every month for your
13 personal residence?
14 A Yes, sir.
15 Q And is that personal residence titled in your name?
16 A Yes, sir.
17 Q Or is it in your wife's name?
18 A My name.
19 Q Exclusively your name?
20 A I really don't recollect.
21 Q Okay. Does MSPS pay your mortgage for you?
22 A No, sir.
23 Q It's paid out of your personal account?
24 A Yes, sir.
25 Q How much is your mortgage payment every month?

1 A Oh, I don't know. My wife does it every month. I really
2 don't know. I think it's around \$2,000 but, again, I don't write
3 that check. My wife does it.

4 Q Is the account that you put your paycheck in that is written
5 to your wife, is that in your name or in your wife's name?

6 A In mine and my wife's.

7 Q It's a joint account?

8 A Yes.

9 Q Do you have any other banking relationships besides the
10 banking relationship that you have with First Citizens
11 personally?

12 A Me?

13 Q Yes.

14 A I don't think so. I wouldn't -- no.

15 Q Do you have a bank account at Wells Fargo?

16 A Yes. Well, no bank account, the mortgage account.

17 Q Do you have -- sometimes they will require you to open an
18 account---

19 A No. We have no bank account there.

20 Q So, to the best of your knowledge, as you sit here today,
21 the only personal bank account that you have is an account at
22 First Citizens?

23 A Yes.

24 Q Do you also have a savings account at First Citizens,
25 personally?

1 A Personally, no.

2 Q Does MSPS have a savings account somewhere?

3 A No.

4 Q Okay. All right. Let's talk about your jobs right now.

5 What active jobs does MSPS have today?

6 A Currently, we are working on a movie theater in North

7 Augusta. It's 80 percent complete. And the next project -- and

8 again, I don't know for sure because general contractors are very

9 unreliable when it comes to their schedule -- should be in

10 Brevard, a housing building. And then after that, we have a

11 hotel, a Hyatt, in Flexport, Virginia. That's it.

12 Q So, you currently have three projects?

13 A Working on one. I only can work one after the other. I'm a

14 small company.

15 Q So, you are currently working on the movie theater?

16 A Yes, sir.

17 Q But you haven't started the two: the Brevard housing project

18 nor the hotel in West Virginia, right?

19 A Which, as I said, Brevard housing should start towards the

20 end of June and then the hotel some time in August.

21 Q All right. So, how much is your receivable on the movie

22 theater project? How much are you owed?

23 A How much -- do I what now?

24 Q How much is MSPS owed on the movie theater?

25 A \$100,000.

1 Q All right. What else are you owed money on or what else is
2 MSPS owed money on?

3 A Do we want to go back a couple of years?

4 Q Well, let's start with the most current outstanding
5 receivable and we'll---

6 A Currently, it's just for the approval drawings for the next
7 project, Brevard, since the drawing is coming close. So, that is
8 currently \$8,000 for the Brevard project for drawings which we
9 made already for approval.

10 Q And the general contractor on that project is Brantley
11 Construction; is that right?

12 A Yes, sir.

13 Q Who's the general contractor on the movie theater?

14 A Pinkerton & Law out of Atlanta.

15 Q All right.

16 A Now, we want to go back to what is owed to MSPS?

17 Q On the hotel in West Virginia, are you owed any money on
18 that at this point in time?

19 A No.

20 Q Okay. So, yes, let's work backwards, the most recent
21 receivable and work backwards.

22 A Yeah. Well, in 2011 a general contractor didn't pay MSPS
23 \$550,000.

24 Q Who?

25 A D.S. Simmons out of North Carolina. In 2012, a general

1 contractor didn't pay MSPS \$75,000, and the project manager sat
2 across the table at the meeting and said, "Manfred, what you
3 going to do, sue me over \$75,000? The lawyers cost you more."

4 Q Who is that?

5 A Out of Winston Salem. I forgot the name, but I can get you
6 that name.

7 Q Did you sue them?

8 A Why do you think I did not hire a lawyer when it came to
9 China Construction? I went to lawyers and they told me that they
10 want \$30,000 check right upfront so they could start looking into
11 the case, and I couldn't afford that at that time.

12 Q Okay.

13 A It's that simple.

14 Q So, that's two receivables. Did you have more receivables?

15 A Over the many years, yes. And it's always smaller amounts,
16 and the general contractors tell you straight into your face,
17 "Manfred, that's what we billed into our profit already."

18 Q Do you have some sort of report that you can run that will
19 show me the receivables?

20 A The old ones?

21 Q Yes.

22 A Those old -- yeah.

23 Q 2012, 2013, 2014?

24 A There was even a court here -- a court case with D.S.

25 Simmons for \$550,000.

1 Q Who is MSPS' insurance agent?

2 A What insurance are you referring to?

3 Q All insurance.

4 A Worker's comp and liability?

5 Q Yes.

6 A Oh my goodness!! Is it State? No---

7 Q IPF Corporation, IPFS Corporation?

8 A Yeah, I think.

9 Q What are they supplying you with?

10 A Worker's comp and liability insurance. It's a program out
11 of Columbia.

12 Q Okay. Do you have other insurance that you use?

13 A No.

14 Q Who insures your property or MSPS's property for casualty
15 insurance such as fire, flood, that sort of stuff?

16 A That's liability insurance I would think?

17 Q That's a general liability policy, but I don't know --
18 that's a property and casualty. Do you have an insurance agent
19 that you use--

20 A Yes.

21 Q --to help you with that? Who is that?

22 A The one I just referred to, I have to give you the name.
23 He's out of Columbia. I didn't know that I -- Rhett, did I give
24 you that information? I don't think so.

25 Q Are you doing something right now for Benning Construction

1 Company?

2 A Yeah. That's the movie theater in North Augusta.

3 Q I see a recent invoice in here for about \$166,000?

4 A That's correct.

5 Q So, it's not \$100,000? That should be \$166,000?

6 A No. That's paid and the invoices have been, the material

7 that was paid about a week ago and I paid all of the material

8 with that. And the \$100,000 that I referred to was what still

9 open--

10 Q They still owe you?

11 A --on that project and I billed just now for the stairs which

12 \$35,000 and I have to bill, because the materials just came in,

13 for two big material which is another \$30,000, and then I will

14 have to bill for the seating area steel which is about \$40,000.

15 Q So, as you sit here today, this invoice is dated 4/24/2015

16 for \$166,695.57, you're telling me you've been paid that money?

17 A Yes, sir.

18 Q Okay. Where did you deposit that money?

19 A I didn't deposit in the full amount because they paid me as

20 the truckloads got billed. So, that bill got split up into four

21 different payments so that the total then ended up being

22 \$166,--- yes.

23 Q Sometime between April 24, 2015 and today's date, we should

24 see four deposits or four checks from Benning Construction

25 totaling \$166,000?

1 A Yes.

2 Q Would that money have been deposited into MSPS's bank
3 account at Bank of America?

4 A Yes, sir.

5 BY THE COURT: Mr. Floyd, just for time management, the
6 matter was only set for thirty minutes. I've got other matters
7 at 3:00.

8 MR. FLOYD: I was keenly aware of that.

9 BY THE COURT: All right.

10 MR. FLOYD: That's why -- did you see me check the time just
11 a few minutes ago?

12 BY THE COURT: I didn't see that.

13 MR. FLOYD: I did. I checked the time just to make sure. I
14 thought that it was---

15 BY THE COURT: Good lawyers normally do. So, I appreciate
16 that.

17 Q Are you familiar with a set of post-judgment interrogatories
18 and Requests for Production being served upon you?

19 A No.

20 Q Did you get served a packet for this hearing?

21 A Oh, yes, sir. Yes.

22 Q Did you read all of that stuff?

23 A Yes, sir and then I met with my counsel.

24 Q Okay. So, you gave him whatever it was that you had, right?

25 A Yes.

1 Q Okay.

2 A As far as I am aware, yes.

3 Q You said the package that you were served with providing you
4 with notice of the hearing, you gave all of that stuff to your---

5 A Yes.

6 Q So, your lawyer should have it. If he doesn't, I'll make
7 sure he does.

8 A Yes.

9 Q Tell me who your suppliers are, who do you pay for steel?

10 A It's different ones. DuBose Steel is my main supplier, then
11 Saginaw Steel---

12 Q Where are they from?

13 A DuBose is from Rosewood, North Carolina, and Saginaw Steel,
14 I believe, is from Columbia, South Carolina. And Sisken, they
15 are from Spartanburg, South Carolina.

16 Q How do you spell that?

17 A Sisken, S-i-s-k-e-n.

18 Q Any other suppliers that you would be paying bills?

19 A Paint.

20 Q Paint?

21 A Yes, paint; Porter here in Greenville or PNG, I think, is
22 their short name. Detailers---

23 Q Detailers?

24 A Making drawings, different ones.

25 Q That's not a company name. You're talking about just a

1 group of people that are detailers?

2 A People, companies, small companies which make drawings for
3 me.

4 Q Drawings?

5 A Drawings, yes.

6 Q How many of those are there?

7 A I usually go between two or three.

8 Q What are their names?

9 A They are in India, Mac Tech Steel is one, and the other one
10 is AK -- please, I'm just going off my memory. That might be
11 wrong.

12 Q That's two. Is there another one that you can think of?

13 A Yeah. There's BJ Design.

14 Q And all of these companies are located in India?

15 A Yes, sir.

16 Q Are there any other suppliers that you would be paying money
17 to or MSPS would be paying money to?

18 A Suppliers for trucking companies.

19 Q We talked about a few of those.

20 A Yeah.

21 Q Anybody else that you can think of? As I go through your
22 checks, I want to understand who you're paying, who MSPS is
23 paying.

24 A Suppliers, at this point, no; probably power bill, and phone
25 bill and things like that.

1 Q Do you own an interest in any other LLCs?

2 A There's one company which is called MSPS Group but has zero
3 sales, zero -- when the tax return is being filed, it's always
4 zero. The reason why this company has had to be made was I had a
5 401(k) from my previous work and they insisted that this money is
6 being moved into the small business loan. So, in order to get
7 this money out, I had to make this company which then could,
8 before I was able to make MS Production Solution, to handle the
9 401(k) money which was \$155,000.

10 Q What did you do with that money?

11 A It went into, as working capital, into the company and that
12 was part of the requirement -- what you see here working capital
13 approximately \$188,000 was a requirement from SBA loan that I
14 bring so much working capital personally.

15 Q So, you liquidated your retirement account to have capital?

16 A Yes, sir.

17 Q All right. When did you take out that SBA loan?

18 A When? 2007; signature was August 17, 2007.

19 Q All right.

20 MR. FLOYD: Judge, there are, I think, some SBA documents, I
21 don't think, we have but I want to get those and look at those,
22 and I would also like for the Court to remind him, Mr. Springer,
23 of the injunction that's in place about the LLC. To the extent we
24 can, I would like to move to execute on these assets unless they
25 are indeed subject to some other security interest.

1 BY THE COURT: All right. Before I hear on that, any
2 questions of Mr. Springer?

3 MR. BURNEY: No, I don't have any questions.

4 BY THE COURT: Are you finished with Mr. Springer?

5 MR. FLOYD: Per our affidavit, I do want to hold open as we
6 continue to sift---

7 BY THE COURT: Thank you, Mr. Springer. You can go back and
8 have a seat.

9 THE WITNESS: Thank you.

10 (witness excused)

11 BY THE COURT: All right. Now, I would be glad to hear from
12 you, Mr. Floyd.

13 MR. FLOYD: Okay. Judge, these assets that I discovered
14 today -- there are some assets. I'm not sure what's in the box
15 here with the SBA loan and all of that sort of stuff, but for
16 purposes of securing China Construction's position, I would like
17 to move to execute on those assets.

18 BY THE COURT: Specifically, what assets are you referring
19 to?

20 MR. FLOYD: The equipment of the company and the bank
21 account that he's testified that he has at Bank of America.

22 BY THE COURT: Is there any valuation on the equipment?

23 MR. FLOYD: He has provided an evaluation, about \$191,000,
24 roughly.

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

1 MR. BURNEY: Your Honor, I don't think that valuation is
2 correct. I think that is what he's referring to, that \$191,000,
3 that was the purchase price back in 2007. There's an SBA loan of
4 a balance of a million dollars. Of course, it's guaranteed by
5 the federal government. They control all of that. Of course,
6 they've got liens on the real estate; they've got liens on the
7 inventory; they've got liens on the equipment; they have liens on
8 the accounts receivable; they have liens on the bank accounts;
9 they have a lien on everything. So, if you were going to require
10 all of that to be liquidated, I think you're going to have to
11 make the federal government come in here and state their position
12 on why their secured lien would not take priority over a judgment
13 out there.

14 BY THE COURT: All right. So, is the SBA -- I'm assuming
15 it's of record and properly recorded?

16 MR. BURNEY: It is, yes.

17 BY THE COURT: And do you know when it was recorded?

18 Mr. Floyd, have you seen whatever he's referring to?

19 MR. FLOYD: I haven't. No, Your Honor.

20 MR. BURNEY: I've got a disk of all of that. I thought we
21 had previously sent that to him by way of a disk, Your Honor.

22 BY THE COURT: All right. Let me suggest this. I'm going to
23 continue the restraining order and give Mr. Floyd a chance to
24 look through the documents, and then we can either do a telephone
25 conference call or reconvene if necessary.

1 So, Mr. Springer, let me tell you what this means from a
2 practical matter. You're going to continue to do business, try
3 to be as successful as you can. But you can't sell anything, or
4 convey anything, or transfer anything or incur any new debt
5 without your attorney as well as the attorney for China
6 Construction being aware and agreeing to it. This just maintains
7 the status quo until the attorneys have an opportunity to go
8 through all of the exhibits.

9 Is 30 days realistic, Mr. Floyd?

10 MR. FLOYD: I would like to have 45 just so I can do some
11 research and all of that.

12 BY THE COURT: Any problem with that?

13 MR. BURNEY: That's fine. Judge, just so I'm clear so he's
14 clear, when you say sell anything, you mean sell assets, not
15 sell---

16 BY THE COURT: Absolutely, yes. Thank you.

17 MR. BURNEY: Because that's what he does.

18 BY THE COURT: Anything outside the normal course of
19 business.

20 MR. BURNEY: Right.

21 BY THE COURT: All right. Mr. Floyd, if you would prepare a
22 short Order, share it with counsel and then email it directly to
23 my court reporter.

24 So, is there anything else we need on the record at this
25 point?

1 MR. FLOYD: There's just some outstanding discovery, and
2 they've got time to respond to that. I was just making sure he's
3 got it.

4 BY THE COURT: Okay. All right. If y'all run into any
5 hiccups or problems, a conference call normally gets things
6 resolved.

7 MR. FLOYD: Yes, sir.

8 MR. BURNEY: Thank you.

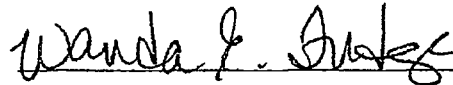
9 BY THE COURT: All right. Thank y'all so much.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 2nd of
8 June 2015.

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

11 June 26, 2015

12
13 

14 Wanda E. Fudge, CCR

15 Certified Court Reporter
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of
South Carolina, Inc.,

Plaintiff,

vs.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,

Defendants.

TRANSCRIPT OF TESTIMONY

October 2, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Caitlin C. Heyward, Esquire
Attorney for the Plaintiff

Rhett D. Burney, Esquire
Attorney for Defendant

Wanda E. Fudge, CCR
Court Reporter

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

3 MR. BURNEY: No, Judge, just that my client's here. He's
4 got the flu. So, I have him out in the lobby area if that's
5 okay. If I need him, I'll call him.

6 BY THE COURT: Well, if you want him in here, sitting on the
7 very back row, I'm okay with that too.

8 MR. BURNEY: Well, I figured we would all be okay keeping
9 him out there.

10 BY THE COURT: All right. Then for the record, this is
11 2014-1871, China Construction versus MS Productions.

12 This arises out of a judgment, from what I understand, that
13 was entered January 29th of this year in a little bit in excess of
14 \$657,000.

15 So, I think I understand the purpose of the motion, but if
16 you could just state on behalf of Plaintiff what is being sought
17 here this afternoon with this particular motion.

18 MS. HEYWARD: Yes, Your Honor. I prepared a notebook just
19 for ease of reference. I have given a copy to opposing counsel.
20 May I approach?

21 BY THE COURT: Certainly. Is this something you want marked
22 as an exhibit?

23 MS. HEYWARD: Yes. You can go ahead and mark it as an
24 exhibit.

25 BY THE COURT: All right. Just hand it to my court reporter

1 then.

2 Mark it as Plaintiff's 1 for today's date.

3 (Notebook of Exhibits, 1 through 10, entered into evidence
4 as Plaintiff's Exhibit No. 1)

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

6 MS. HEYWARD: You'll find in the notebook in Tab 6 a copy of
7 the motion that I filed with the Court. I believe you already
8 have it. Essentially, China Construction obtained a judgment
9 against the Defendant for \$650,000, in excess of that. The
10 Defendant never appeared. We held supplemental proceedings
11 before Your Honor, and Joey Floyd in our office took testimony of
12 Mr. Manfred Sprenger who is the sole proprietor of the Defendant
13 who testified that he had been making \$7,000 payments to his wife
14 for no consideration on a monthly basis. We contend that those
15 were fraudulent transfers, and we held the proceedings open so
16 that we could continue discovery. Throughout that discovery
17 process, I discovered that there were several significant
18 transfers that were made in addition to the \$7,000 monthly
19 transfers.

20 On May 1st of 2015, a Rule to Show Cause was entered. It was
21 filed on May 5th. On May 15th the Rule to Show Cause was served,
22 and on May 27th MSPS caused a \$60,000 check made payable to
23 Patricia Sprenger from the corporate account to be deposited into
24 the joint bank account of Manfred Sprenger and his wife Patricia
25 Sprenger.

1 BY THE COURT: All right. Now, Manfred Sprenger is the sole
2 member of the LLC, correct?

3 MS. HEYWARD: Yes. That's correct.

4 BY THE COURT: Patricia Sprenger is his wife?

5 MS. HEYWARD: That's right. And they have a joint account.
6 The check was written to his wife and deposited in her account---

7 BY THE COURT: All right. But neither Manfred nor Patricia
8 Sprenger individually are parties to this lawsuit at this point?

9 MS. HEYWARD: No, they're not but the principal of the
10 corporation is the one that's causing the transfers to be made,
11 and he also has access to the money.

12 BY THE COURT: Okay.

13 MS. HEYWARD: Which I also included the full transcript of
14 both his deposition, Mr. Sprenger's deposition, and Mrs.
15 Sprenger's deposition as well as the transcript of the hearing
16 back in June before Your Honor. I will point you to some of that
17 testimony in a moment, but those are tabs 1, 2, and 4 in the
18 notebook that I handed you.

19 So, \$50,000 was then withdrawn shortly after the \$60,000
20 check was made from the individual account. At the deposition
21 Mrs. Sprenger admitted to keeping \$50,000 of that money in cash
22 in her bedroom. So, I filed a motion for an expedited hearing
23 because we contend that the fraudulent transfer that's not
24 secured by the Small Business loan -- the UCC filing statement is
25 included in the notebook as Exhibit 7; it does not cover cash nor

1 does the Security Agreement of the Small Business loan which is
2 Tab 5.

3 We are first in time -- the Defendant claims that we are not
4 entitled to the money because there are other judgments out there
5 that were filed before us, but we are first in time in regards to
6 the cash fraudulent transfers and we are entitled to those.

7 There are several other arguments that Defendant makes. The
8 first one is that the Statute of Elizabeth has no application to
9 these facts. I believe the transfer of cash money into -- from a
10 corporate account to a personal account that the fraudulent
11 transfer does apply under the Statute of Elizabeth. I just
12 received opposing counsel's Brief two days ago, but I'm happy to
13 brief that issue for the Court if you would like me to.

14 BY THE COURT: Let me kind of -- it helps me and I think
15 perhaps would be cleaner on the record if we kind of tried to go
16 issue by issue.

17 MS. HEYWARD: Okay.

18 BY THE COURT: So, first, as relates to today's hearing,
19 your client is seeking these cash funds that have come via the
20 LLC into Patricia Sprenger's possession?

21 MS. HEYWARD: That's right. And we have -- if you go to Tab
22 6, we have a summary of what those are. It would be Tab 6,
23 Exhibit D. There's a total there at the bottom, \$289,600 in the
24 total in fraudulent transfers that we're seeking at this point.

25 BY THE COURT: And is your client seeking that these funds

1 be held in an escrow account pending further discovery and
2 further court proceedings or is your client seeking that they be
3 paid towards the judgment?

4 MS. HEYWARD: We're seeking that they be paid towards the
5 judgment, especially the \$50,000 that was admitted to being in
6 the couple's home. I'm especially concerned with the judgment
7 that was made in violation of the Court's Rule to Show Cause and
8 injunction that was placed upon Mr. Sprenger. He testified he
9 understood he was enjoined from transferring money and he did it
10 anyway after the injunction, and that was \$60,000; \$10,000 of
11 that is unaccounted for and not admitted to being in possession
12 of Defendant or his wife, but they did admit that they have
13 access to \$50,000.

14 I will say that since the deposition that we held last week,
15 Mr. Sprenger has now provided a conflicting affidavit to his
16 testimony and he now claims that he can only account for \$8,500,
17 but that does not conform with the testimony of his wife. It
18 doesn't surprise me that he's now claiming he doesn't know where
19 that money is after the fact, but we contend that it is in his
20 possession.

21 BY THE COURT: All right. Is there an issue -- because I
22 understand the Plaintiff's position in part is that Patricia
23 Sprenger has these liquid assets, correct?

24 MS. HEYWARD: Right.

25 BY THE COURT: Any concern over the fact that the Court is

1 being asked to grant relief against a nonparty?

2 MS. HEYWARD: I believe that the Court may grant relief in
3 this case because it is the principal at this company that is
4 causing the transfers to be made and, in fact, has access to the
5 transfers that are made. They're in his joint account and/or his
6 home. He testified that he uses the money as he pleases. He has
7 just as much access to that as she does, and he can, just as he
8 caused the transfers to be made, he can cause the money to come
9 back to try to -- to the Plaintiff.

10 BY THE COURT: All right.

11 MS. HEYWARD: I'm happy to file a motion to add them as
12 parties to this lawsuit, but---

13 BY THE COURT: Let me hear from Mr. Burney. Issue or not an
14 issue?

15 MR. BURNEY: Well, I think under the statute, 15-39-460, you
16 have to file an action against an individual to claim that they
17 have funds that they're trying to seek. So, I think that would
18 be an issue, but, Your Honor, I don't even think we get that far
19 once we start looking at the facts and the sources of this money
20 and why the transfers were being made, and I'll address that now
21 if you want me to.

22 BY THE COURT: Yes. Let me hear from you.

23 MR. BURNEY: Let me -- let me just hand to the Court
24 quickly a timeline.

25 BY THE COURT: I've read the materials. At least, in part,

1 it's your client's position that he has loaned money to the LLC.
2 He has gotten money back from the LLC. His salary has been
3 withheld. He's gotten salary later in the form of cash, and I
4 think Mrs. Sprenger says the same thing. So, I'm familiar with
5 that part of it.

6 MR. BURNEY: Sure and that's great. And that timeline I
7 gave you kind of, for us visual people, kind of shows how the
8 transfers have been made. If we look at that \$40,000 and the
9 \$25,000, Your Honor, that was put into the account this year,
10 you'll see under the exhibits that we provided to the Court, the
11 bank statements -- if Mr. Sprenger had not put that money in,
12 there would have been a negative balance in the company on both
13 of those months by several thousand dollars each time.

14 There's about five or six employees to this business. He's
15 one of them, a small business. So, he's having to put money into
16 the business to keep it running. When you start looking at a
17 fraudulent transfer, if there was going to be fraud, he wouldn't
18 be putting his own money into the company. That wouldn't make
19 any sense. He's simply doing it because if nobody else did,
20 there would not be any money to run this company. He puts the
21 money in; they buy materials; materials are then manufactured,
22 sold to the customer; and he gets his money that he loaned the
23 company back out.

24 BY THE COURT: I think that's typical in a lot of LLCs. I
25 understand that. Where are the Promissory Notes to establish

1 those transactions?

2 MR. BURNEY: They don't. They don't. It's just he looks
3 at himself as the company because he's the -- it's so small. He
4 doesn't go through the process of doing a Promissory Note.

5 BY THE COURT: Once funds go into the LLC, then wouldn't a
6 creditor have priority over those claims or it goes back to the
7 member of an LLC without some type of paper trail?

8 MR. BURNEY: Well, I think their paper trail is just the
9 pure transactions and the intent. If they had -- their intent is
10 to get it back because if we're not there, the company wouldn't
11 keep running. So, they hope that, "Hey, if you see our bank
12 statements are not going to add up at the end of the month and
13 it's going to be in the red, then why would we not put money into
14 the account to keep it running?" It's simply a small-man
15 operation---

16 BY THE COURT: Again, I don't debate that at all, but do you
17 have some authority that says once the funds flow into the LLC
18 that a creditor would not have at that point some type of
19 priority position?

20 MR. BURNEY: I don't have -- no, I don't have any authority
21 that would say that. I think you start looking at the intent at
22 that point in time for the money. You know, why is it being put
23 in there? Like I say, if he had the intent to defraud, he
24 wouldn't put money in. He would be taking more money out. He
25 would be paying himself more than \$7,000 a month. He would be

1 paying his wife. He would be paying everybody other than
2 creditors.

3 BY THE COURT: All right. How do you respond to Ms.
4 Heyward's argument that \$60,000 he paid out after the Restraining
5 Order was issued by this Court about no transfers outside of the
6 normal course of business?

7 MR. BURNEY: Well, that is their course of business. He
8 puts money in; he puts money out. So, when you tell him, "Don't
9 do anything that's not in the normal course of business," that
10 was his normal course of business, being a small operation. If
11 he's not putting money in, the business does not last because his
12 cash flow isn't as much throughout the year to allow that to
13 happen.

14 BY THE COURT: All right. Let me hear from you -- and I
15 think you've already addressed this. Let's say that the Court
16 finds a basis -- just purely for the sake of argument on a rainy
17 Friday afternoon -- to order that the funds be held in trust
18 pending litigation of these issues. Can the Court in the current
19 procedural status direct the Court -- the LLC to give the money
20 back?

21 MR. BURNEY: I don't think you can. I don't think you can.
22 I don't know how the LLC would get it back. I guess we're -- how
23 is the LLC going to tell the Sprengers to give the money back?
24 Obviously, the Court can. I think you have to name them as a
25 party. But then that brings us to the situation of that \$50,000

1 is not there. Ms. Heyward said that they said it was there. If
2 you look at the depositions -- I can pull those out for you --
3 but especially Mr. Sprenger's -- I just pulled the applicable
4 part.

5 Page 44 where he's asked about the \$50,000, Ms. Heyward
6 says:

7 "And is it also your testimony that \$50,000 in cash in your
8 home?"

9 Mr. Sprenger says, "I do not know that. Just me and my wife
10 are married 36 years. We trust each other. All our lives, joint
11 checking accounts, not as we know it is, it's usually now these
12 days that he has their account. We always trusted each other."

13 So, they're just using that account -- excuse me -- that
14 cash just to run the household. It's a typical husband/wife
15 situation where they're not accounting for that because there's
16 really no need. That's just how they operate.

17 BY THE COURT: All right. In her deposition, did Patricia
18 Sprenger say, "Yeah, I've got the fifty"?

19 Ms. Heyward?

20 MS. HEYWARD: Yes, Your Honor. She said that in her
21 deposition which is Tab 2, page 30, line 6 to 8,"

22 "You're not exactly sure out of \$60,000 how much is in cash?

23 "I think around 50.

24 "50?

25 "Yeah.

1 "You have \$50,000 in cash right now?

2 "I think, yeah.

3 "Is it at your home?

4 "Yes.

5 "Where in your home?

6 "MR. SPRENGER: We are not going to say that because
7 that's---"

8 And I interrupt and I say, "You may not speak. You're not
9 being deposed at this time.

10 "THE WITNESS: In my bedroom."

11 MR. BURNEY: And that's -- if you look at his affidavit,
12 one, he interrupted her because he didn't want people to know
13 they have cash in the house but, two, he had taken that \$25,000
14 out of that cash which he put in -- you'll see on the timeline --
15 July 15th. It's also shown in our Exhibit 5 of what we presented
16 to the Court earlier this week.

17 Again, if you go back at the bank records and look, if he
18 had not put that \$25,000 back into the account which was cash,
19 they would have been about \$4- or \$5,000 in the hole in their
20 bank account -- excuse me -- the company's bank account that
21 month.

22 BY THE COURT: All right.

23 MR. BURNEY: And then we have the whole situation where
24 he's not paying himself because the money is not there. He
25 missed several months -- and you'll see in that timeline, he

1 didn't take the first paycheck out until June of this year. Now,
2 if you started getting into the simple math, Your Honor, of what
3 he put into the company to help it float, that \$40,000 and that
4 \$25,000, you've got \$65,000 he put into the company this year to
5 keep it running. And then if you look at the \$7,000 that he
6 should be getting every month as his pay -- the company still
7 owes him money for this year. You can see that in Exhibit 1 of
8 ours where still as of August, he had \$47,000 in what he has not
9 paid himself.

10 So, it's not as clean as we would all like it, to have
11 Promissory Notes and all of that, but this is how these people
12 have been operating this small business and that's just how it's
13 done. A larger business, you've got more hands in the fire
14 holding on to things and more accountants. This is just how
15 they've run the small family business.

16 BY THE COURT: All right. Help me understand, Mr. Burney --
17 I know in one part of your memo you state that Manfred Sprenger
18 had used \$25,000 to pay off a judgment that had priority?

19 MR. BURNEY: Yes, sir. If you look at -- I'm assuming that
20 you received our notebook.

21 BY THE COURT: Yes, sir.

22 MR. BURNEY: Okay. If you look at Exhibit 5 -- I'm sorry --
23 Exhibit 7, that's the -- let me turn to it as well -- it should
24 say -- you see like a withdrawal slip that says Bank of America?

25 BY THE COURT: Yes, sir.

1 MR. BURNEY: \$25,000 on October 2, 2014. He went in and got
2 a cashier's check out of the Bank of America account which,
3 you'll see, the next page is to Stewart and Crouch. Do you see
4 that?

5 BY THE COURT: Yes, sir.

6 MR. BURNEY: And then you should have the other information
7 after that sending it to Dick Stewart, the \$25,000 to pay off a
8 lien they had against him previously.

9 BY THE COURT: All right. Ms. Heyward, what's the
10 significance, if anything, of payment of this judgment?

11 MS. HEYWARD: I questioned Mr. Sprenger about the withdrawal
12 slip during his deposition. I showed him a copy of it and asked
13 him if it was normal for him to withdraw \$25,000 in cash from the
14 business account, and he told me it was a deposit during the
15 deposition. I then confirmed it actually was a withdrawal and
16 for the first time when I received the admission from Mr. Burney
17 that I received a Satisfaction of Judgment and the corresponding
18 documents to show that it was paid towards that.

19 So, we are willing to give on that \$25,000 -- we think that
20 was back in October of 2014 -- and the \$50,000 most recent
21 transfer was in May of this year and the withdrawal of \$50,000
22 was in June of this year. So, I don't believe that money to pay
23 off that judgment came from that \$60,000. That money is still
24 there.

25 I want to direct a few other points, but I'll let Mr. Burney

1 continue if you have some more questions.

2 MR. BURNEY: Just -- I think we're looking at two different
3 \$25,000. We had \$25,000 that we put into the company this year.
4 That other \$25,000 went to pay off that lien. That's a
5 completely different---

6 BY THE COURT: In 2014?

7 MR. BURNEY: Yeah. That's a nonissue really.

8 BY THE COURT: Okay. All right. Let me -- before I let you
9 sit down, Mr. Burney, let me hear your argument a little bit more
10 on that the Statute of Elizabeth does not apply to liquid assets
11 such as money.

12 MR. BURNEY: Well, I think, one, in this situation the only
13 way it could apply is if there was some type of lack of
14 consideration even to get to that point concerning liquid monies.
15 But then I think we have to look at the priority of the mortgage
16 that we have with the federal government or the SBA, and it says
17 -- and we've outlined in our -- give it to the Court -- the
18 different pages of that mortgage. We pledge revenues, profits,
19 purchase orders, deposits, and all kinds of stuff. So, they
20 would -- that should be their money if, in fact, this were a
21 fraudulent transfer, but even then you start dealing with
22 priorities of the other lienholders.

23 BY THE COURT: All right. Let me ask, Ms. Heyward, is there
24 any issue over that the SBA loan has priority over your
25 client's---

1 MS. HEYWARD: No. The SBA loan does not have priority over
2 fraudulent transfers in cash. The SBA loan does not apply to
3 cash. The Security Agreement doesn't cover cash. The UCC
4 Agreement doesn't cover cash. We are first in time, the first in
5 right as to the fraudulent cash transfers.

6 BY THE COURT: All right. Obviously, I've not seen the UCC
7 or the terms and conditions of the SBA documents--

8 MS. HEYWARD: They are included in my notebook, on Tab 7 and
9 Tab 5.

10 BY THE COURT: All right. So, you're -- is the argument
11 then that the UCC and the other related documents, including the
12 note and mortgage, it's not a broad every asset everywhere, no
13 matter what type of lien or coverage?

14 MS. HEYWARD: It covers quite a bit. It does. It covers
15 inventory, the property the business is on, but it does not -- it
16 specifically does not cover cash.

17 BY THE COURT: Mr. Burney?

18 MR. BURNEY: It's his money. If you look at page 3 of the
19 mortgage, it says it covers, "all rents, revenues, issues,
20 profits, proceeds, income, royalties, accounts, health insurance
21 receivables, escrows, letter-of-credit rights, security deposits,
22 impounds, reserves, tax refunds and other rights to monies."
23 That's pretty broad. I think it covers everything. But, again,
24 I don't even think we get to that point because I don't think
25 there's a fraudulent conveyance. It's just a simple---

1 BY THE COURT: And I understand that. Okay. All right.
2 Now, Ms. Heyward, I would be glad to hear from you. You said you
3 had several other points you wanted me to hear?

4 MS. HEYWARD: I do. As to Mr. Burney's point as to no
5 consideration, I believe that's part of his argument, as to why
6 the Statute of Elizabeth doesn't apply, the first time that we
7 heard from Mr. Sprenger, he testified that he doesn't pay himself
8 a salary. If you turn to Tab 4 if you look at page 8, the bottom
9 of the page, line 20:

10 "Do you pay yourself bonuses, you say?

11 "Occasionally, yes.

12 "How do you determine how much the bonuses are?

13 "It's -- if there is money which I can spare from the
14 company, it's just because I don't pay myself salary."

15 He then had his wife testify and he testified that the
16 \$7,000 checks that are made out monthly to his wife are for his
17 salary after we had supplemental proceedings. He then also says
18 the same thing in another affidavit conflicting his testimony,
19 that it's more convenient for him to come up with some kind of
20 consideration argument. He's testified multiple times, as his
21 wife, throughout both depositions and the supplemental
22 proceedings hearing -- and in fact, in his affidavit, that his
23 wife was never an employee of the company. She received these
24 checks for no consideration. You don't simply pay a check to a
25 third party in payment to yourself.

1 He also conveyed that he's made all of these loans to the
2 company. There's not one documentation whatsoever. He's just
3 trying to stay judgment-free. He just decides willy-nilly when
4 he can take money in and when he can take money out. There are
5 several other judgments against him. He's just trying to remain
6 judgment proof by not keeping money in the corporate account, not
7 keeping money in his personal account, keeping it in his bedroom,
8 under his mattress, wherever to try to defraud this Court. He's
9 even doing it in the space of the injunction put on him back in
10 May.

11 I'm not sure what else could be evidence of a fraudulent
12 transfer in this case. He has pretty much done everything there
13 is to satisfy the elements of that which I outlined in my Brief.
14 I'm not sure what else he could do to prove that these are
15 fraudulent transfers.

16 And I also found it interesting opposing counsel produced to
17 me some of the tax returns of the Defendant. If you turn to Tab
18 8, there's his 2013 tax return, individual tax return. The
19 business does not file separately. So, this is Manfred and
20 Patricia Sprenger. If you look at line 7, wages, salaries and
21 tips, nothing. There's no withholding tax. There's nothing.
22 He's not paying himself a salary. If you look down at business
23 income or loss, \$50,000 (sic) and that corresponds with the
24 fourth page of the tax return, line 31, \$50,000.

25 He is basically just siphoning money from the company. He's

1 not taking a salary. He's not paying taxes on his salary. So,
2 if he's now claiming he's taking a salary, he's either lying on
3 his tax returns or he's lying in his deposition. And that's also
4 consistent with the 2014 tax return, if you flip to Tab 9, wages,
5 salaries, tips, line 7, there's no salary listed there. I have
6 not yet received the 2015 tax return, but I anticipate that in a
7 continuing obligation to post-judgment interrogatories and
8 requests for production once these are completed, we will receive
9 those.

10 Mrs. Sprenger testified that \$70,000 check to her was not a
11 loan on page 19 of her deposition. Mr. Sprenger has consistently
12 held that there are no loan documents. I'm just -- this man is
13 siphoning money from the corporation and trying to hide it from
14 its creditors. He knows and he testified that he knows that
15 China has a judgment against him, but he doesn't believe that we
16 had to be paid, and that's just not the way it goes.

17 BY THE COURT: All right. Anything else then on behalf of
18 China Construction?

19 MS. HEYWARD: I have a case here -- Durham v. Blackard which
20 I would like to hand up to the Court, somewhat analogous
21 situation, just stands for the longstanding proposition that one
22 must be just before one is generous. And in this case, Mr.
23 Sprenger has testified and made clear that it's more important to
24 him that he be paid for whatever loans he claims he's made to the
25 company before -- which have no documentation -- before China

1 gets paid on its judgment.

2 He also -- just one more brief point -- in his deposition he
3 claims that he's also repaying himself for capital contributions
4 he made to the company. He initially stated that the SBA loan
5 required him to pay \$188,000 in capital -- at the supplemental
6 proceedings hearing, page 26, line 13 to 14. That number
7 increased to \$350,000 in his deposition. There's no
8 documentation or backup that he made any kind of capital
9 contribution in the amount of \$350,000.

10 In fact, if you look at Tab 10 at the Operating Agreement
11 and you flip to page 3, Capital Provisions provide that Manfred
12 Sprenger provide only \$1,000 in capital contributions to the
13 company. So, as far as any right to be repaid for that, there's
14 simply no documentation. I would be interested if Defendant can
15 provide me with that, for his right to receive that.

16 BY THE COURT: All right. Anything else then from
17 Plaintiff?

18 MS. HEYWARD: No, Your Honor.

19 BY THE COURT: All right. Mr. Burney?

20 MR. BURNEY: I'll just work backwards, on that \$350,000
21 it's actually \$300,000 and that's -- it's one of our exhibits
22 that we put in, the very last exhibit with priorities of liens.

23 The tax returns, Your Honor, we put those in there just to
24 show you that Mrs. Sprenger is not an employee because they
25 didn't get the dual income tax credit. That's just accounting,

1 how they do it as far as showing his income, either his wages or
2 showing it as business income or loss from the company.

3 As far as to explain why these checks were written to
4 Patricia Sprenger, it was attached to our memo, her deposition,
5 page 18 and his deposition, page 11, she says in answer to her
6 question:

7 "He gave me the check because it was easier. It's his
8 money. When he puts his name in, a lot of time he forgets
9 signing the checks, and this is I say, can you put my name in?
10 Then I don't have to remember him signing the check."

11 And he explains in his deposition, he just does it because
12 he thought -- these people are both German. They had a
13 translator there for her. They thought that in order to deposit
14 money, your name has to be on the check. I've explained to him
15 now that doesn't have to be done. But you'll also see that in
16 these \$7,000 or any checks that he's written to her, they don't
17 include that as her income. She gets no income whatsoever.

18 But if you look back at all of the records -- I can argue
19 this all day long -- it's just he's putting money in to keep the
20 business running. I can assure you, he doesn't wish that were
21 the case. He wishes cash flow were such that the money was
22 always there, but it's not in some months. Otherwise, he would
23 be getting his -- he would pay himself every month. You see
24 that's not happening either. So, it's not a fraudulent transfer.
25 It's just bad accounting on their part because it's a small

1 business.

2 BY THE COURT: All right. Anything else then?

3 MR. BURNEY: No, sir.

4 BY THE COURT: All right. Here's what I'm going to do,
5 first, obviously, there's great controversy on both sides of
6 what, where, when, why and how. However, what I'm going to do is
7 to avoid funds being dissipated or secreted, I'm going to direct
8 that the LLC take all reasonable efforts to recapture this
9 \$50,000 within 7 days.

10 I don't think the Court has jurisdiction over Patricia
11 Sprenger or, for that fact, Manfred Sprenger. I certainly
12 anticipate, based on what counsel has told me today, that they
13 will be added in the very near future. I would certainly hope
14 that Mrs. Sprenger does not dissipate or secrete the funds.

15 And what I'm going to do, since there is such a significant
16 controversy, I'm going to direct that those funds that are
17 captured be placed in Mr. Burney's trust account.

18 All I'm trying to do is maintain the status quo and avoid
19 and prevent the funds being secreted or dissipated that may or
20 may not ultimately be paid out to Plaintiff in this matter. It
21 does appear that there are issues with the SBA, UCC and related
22 documents.

23 So, not necessarily asking if either one of you agree with
24 me because chances are you don't, but any clarification needed?
25 Ms. Heyward?

1 MS. HEYWARD: No, Your Honor. Seven days---

2 BY THE COURT: Clock starts today. And if you would do a
3 short Order and email it to my court reporter.

4 Again, the Court, I'm finding, does not have jurisdiction
5 over the individuals, but the Court clearly has jurisdiction over
6 the LLC and the LLC needs to exercise, as I noted, reasonable
7 efforts to have those funds paid into Mr. Burney's trust account.

8 MS. HEYWARD: Would the Court be willing to note that the
9 principal of the corporation has access to the funds currently?

10 BY THE COURT: Sure. You can put that in the proposed Order
11 you're going to send up.

12 Mr. Burney, any clarification needed?

13 MR. BURNEY: Yes. My apologies.

14 BY THE COURT: That's fine.

15 MR. BURNEY: Obviously, you heard my position that we state
16 that the \$50,000 is not there. Okay. So, in all reasonable
17 efforts -- I don't want there to -- I'm just trying to think
18 ahead and it will probably hit me when I walk out of here -- the
19 issues that that could cause.

20 BY THE COURT: That's why I'm leaving it purposely a little
21 bit on the vague side which is never a good thing for a court to
22 do, but once Patricia Sprenger is made a party, if it turns out
23 that she secreted, dissipated, whatever the label you put on them
24 on the funds, then she does so at her risk, but at this point I
25 don't have any jurisdiction over her to make a specific finding

1 one way or the other.

2 MR. BURNEY: Sure. And can we also put in the Order that
3 there is a genuine dispute over how much money was actually---

4 BY THE COURT: I'm just basing it on -- I'm basing that
5 \$50,000 on her deposition testimony, but certainly have no
6 problem with there being a footnote that the parties disagree
7 over that amount as well.

8 MR. BURNEY: Right because his testimony conflicted with
9 hers.

10 BY THE COURT: There are plenty of conflicts in this case.

11 MS. HEYWARD: Your Honor--

12 BY THE COURT: Yes, ma'am.

13 MS. HEYWARD: --just briefly, in my motion, I also requested
14 that we set aside all of the other transfers as well and request
15 an accounting.

16 BY THE COURT: Again, at this point, what I'm trying to do
17 is preserve what appears to be liquid assets. It may turn out
18 you're entirely correct and once these individuals are made
19 parties, then the Court will have everybody in front of it. Due
20 process rights will be satisfied. So, at this point, I'm
21 reaching out for that \$50,000.

22 Again, if you will put in the Order, the Court reminds the
23 parties that transfers may not be made outside of the normal
24 course of business, and the Court will certainly scrutinize any
25 transfers and reserves the right to make findings as appropriate

1 and necessary relative to contempt of court.

2 MS. HEYWARD: In regards to the claimed loan repayment, can
3 we also direct appropriation not to repay any alleged loans to
4 Mr. Sprenger individually or Mrs. Sprenger until it can be
5 determined judicially as to his right to those repayments just to
6 prevent the appropriate assets from being diluted?

7 BY THE COURT: Mr. Burney?

8 MR. BURNEY: If the company owes him money and they've been
9 paying it in the course of normal business throughout, then I
10 don't see where that -- I don't see how the Court can stop that.
11 And then we have from now on -- again, I told the Court that
12 there are cash flow issues with this business. We're still going
13 to have to loan this company money, and I'm hearing from the
14 Court that if we do a Promissory Note and then pay ourselves
15 back, that's the only way we're going to operate. Otherwise---

16 BY THE COURT: Moving ahead, absolutely, the Court expects
17 once -- and I know that many times people don't do it -- but once
18 you invite the state to incorporate an LLC, then you are holding
19 yourselves to that standard of being a separate and independent
20 corporation and that's certainly -- if there are legitimate
21 transactions with a Promissory Note and there's a paper trail,
22 then, yes, that's one thing but if -- I think counsel for
23 Plaintiff certainly has a valid right to say all of this going
24 back and forth, taking out of one pocket and putting in another
25 pocket, it's just not appropriate when there's a significant

1 judgment out there. I think that's a valid statement of law.

2 MR. BURNEY: And we may have to fight over the wording of
3 the Order. I know the Court---

4 BY THE COURT: Oh, certainly.

5 MR. BURNEY: Bear with us.

6 BY THE COURT: Y'all are good lawyers and if y'all get hung
7 up on some wordsmithing, we'll do a conference call.

8 MR. BURNEY: That will be fine.

9 BY THE COURT: But hopefully you will at least have gotten
10 what my intent is at this point.

11 All right. Thank y'all very much.

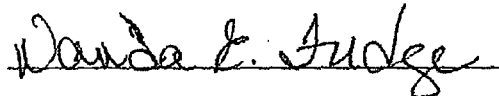
12 MR. BURNEY: Thank you.

13 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 2nd of
8 October 2015.

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

11 February 15, 2016

12
13 

14 Wanda E. Fudge, CCR

15 Certified Court Reporter
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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of)
South Carolina, Inc.,)
)
Plaintiff,)
)
vs.)
)
MS Production Solutions, LLC,)
et al,)
)
Defendants.)
_____)

TRANSCRIPT OF TESTIMONY

November 18, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Caitlin Heyward, Esquire
Attorney for the Plaintiff

Rhett Burney, Esquire
Attorney for the Defendant

***Danette P. Hanks, CCR
Court Reporter***

1 THE COURT: This is 2014-1871. We're here today on
2 ongoing supplemental proceedings. From my review of the file, I
3 think there are three different motions to be heard today. There
4 may be more, but I just want to go through what I have and then
5 hear from counsel before we move into the substance of the
6 motions.

7 First, we have China Construction's motion of October 12th,
8 2015 to join Manfred and Patricia Sprenger. And we also have
9 China Construction's motion of October 22, 2015 seeking to compel
10 sixty thousand dollars, and also for contempt and sanctions. And
11 then finally we have MS Production's motion to quash the subpoena
12 that Plaintiff has served on Saunders O'Dell, who apparently is
13 the accountant of the Defendant Respondent.

14 So, are there any other motions that need to be addressed at
15 this point?

16 MR. BURNEY: No, Your Honor.

17 MS. HEYWARD: Unless subsequent to determining those
18 motions if you'd like to address the fraudulent nature of the
19 transfers and make a ruling on that, or if you want to set
20 another hearing on that. That's up to you. But we're prepared
21 to have that heard today, as well.

22 THE COURT: Assuming the motion is granted; it may or
23 may not be. I haven't heard the arguments of very fine counsel.
24 Are you ready to move into the substantive issues or ---

25 MR. BURNEY: We are.

1 THE COURT: Okay. Then is Patricia Sprenger present?

2 MR. BURNEY: No, Your Honor.

3 THE COURT: All right. Then let me hear from you on
4 the motion to join.

5 MS. HEYWARD: I filed this motion to join the
6 individuals, Manfred and Patricia Sprenger. MS Production
7 Solutions is a Defendant in this lawsuit and we conducted several
8 discovery depositions, one of each Patricia and Manfred Sprenger,
9 in which both testified that money from the company account was
10 transferred to Patricia Sprenger by check made payable to her,
11 deposited into the joint account that Manfred and Patricia share,
12 and then withdrawn in cash and held in their home.

13 And a significant portion of that money is being held at
14 their residence. There's testimony indicating about fifty
15 thousand dollars in cash was being held at the residence. And we
16 contend that that is -- those transfers are fraudulent and which
17 are subject to the judgment that my client has against MS
18 Production Solutions. And we feel at this time it's necessary to
19 join the individuals, as well as the corporation, in order to
20 access those funds.

21 THE COURT: All right. First, Mr. Burney, are you
22 representing Manfred Sprenger and Patricia Sprenger?

23 MR. BURNEY: Yes, sir, individually, I am.

24 THE COURT: Then I'll be glad to hear your argument on
25 whether they should be joined. And as I recall from the motion,

1 joinder is sought under Rule 19.

2 MR. BURNEY: Judge, we think the only reason they --
3 that they should not be joined is that the Court should first
4 determine whether or not there was a fraudulent transfer.
5 However, if the Court determines that it's necessary to join
6 them, then it should be only for the limited purpose of being
7 able to set aside a fraudulent transfer; nothing else. We're not
8 getting into any more discovery. We've been through plenty of
9 discovery. But just to give the Court jurisdiction over them in
10 case the Court determines that there is some type of fraudulent
11 transfer. Not some -- not to look at them as a party, as MS
12 Productions is a party, where we're subject to the supplemental
13 proceedings, subject to the discovery and all of that. But just
14 for purposes of the Court exercising jurisdiction if the Court
15 determines a fraudulent transfer.

16 THE COURT: So let me ask, from Plaintiff's standpoint,
17 is it -- is joinder sought solely on the premise or position that
18 there have been fraudulent transfers of the funds?

19 MS. HEYWARD: It's on the premise that the individuals
20 have access and control of the money that was fraudulently
21 transferred to them. And because of the nature of the transfers,
22 it's cash, it's a liquid asset. You know, it can come and go. I
23 think continued discovery might actually be necessary in this
24 case. If the money is gone now, we need to figure out where it
25 is.

1 THE COURT: So does that help narrow your understanding
2 of what the motion is?

3 MR. BURNEY: It does. But again, one, I think before
4 the Court can order them to do anything, it would have to find
5 that there's a fraudulent transfer. And two, I think she said
6 that we're going to have ongoing discovery. We've already taken
7 their depositions. They've already provided all their bank
8 records and their returns. This case does have to end sometime,
9 Your Honor, as far as discovery.

10 THE COURT: I agree with that. Then I'm going to grant
11 the motion. I don't think I can make a determination one way or
12 the other on the fraudulent conveyance without the parties
13 involved particularly here, Manfred Sprenger and Patricia
14 Sprenger. And I think Rule 19 requires liberal construction.
15 But I will limit it to the allegations that have been raised that
16 these certain transfers of cash have been done violative of the
17 Statute of Elizabeth at 27-23-10(A), and at this point for no
18 other purpose.

19 So, again, that kind of, I guess, brings me back to my
20 earlier question. And I know there are still two outstanding
21 motions. But do both counsel wish to proceed on the fraudulent
22 conveyances or allegations of fraudulent conveyances here today?

23 MS. HEYWARD: Yes, Your Honor.

24 THE COURT: Okay. With the understanding that
25 apparently Patricia Sprenger, who has now been added, is not

1 present.

2 MS. HEYWARD: Yes, Your Honor.

3 THE COURT: All right.

4 MR. BURNEY: Judge, I would love to do it today, but I
5 came prepared to argue these three and didn't bring the whole
6 file as far as our exhibits that we would submit, as well.

7 THE COURT: I thought you just told me you wanted to
8 have the substance heard today?

9 MR. BURNEY: Your Honor, I meant the substance of these
10 three motions.

11 THE COURT: Okay.

12 MR. BURNEY: I'm sorry, Your Honor.

13 THE COURT: All right. Then let me hear from you on
14 the motion to quash the subpoena on Saunders O'Dell.

15 MR. BURNEY: Sure. Your Honor, I don't know whether or
16 not you have a copy of the subpoena in front of you.

17 THE COURT: Yes, sir, I do.

18 MR. BURNEY: It's very extensive. Saunders O'Dell is
19 the CPA of MS Productions. They've asked for letters, emails,
20 notes, messages, voicemail and such. I think it should be
21 limited in scope; one, as to just asking -- to be simply put, ask
22 for the supporting documentation of what O'Dell relied upon in
23 preparing the tax returns for MSPS. It would be much more
24 simple, rather than getting into this lengthy discovery that
25 they've asked for. They've also asked for the time period of

1 2012 through 2015. Judgment wasn't entered until 2015, so I'd
2 ask the Court to limit it in scope, as well. Also, what we have
3 provided O'Dell would be customer lists; just the names of people
4 that we've dealt with, our pricing sheets as to how we go out and
5 bid and such, and any type of supplier list, as well.

6 What we've talked about, Your Honor, is a confidentiality
7 agreement that the information that we -- if we do provide it,
8 the Court orders us to provide it, that it just be limited to the
9 eyes of the Court, the eyes of counsel, and if they want to hire
10 any experts to review it, as well, but not to allow it to be seen
11 by China Construction. Their construction company, they can take
12 this information that we have that we provided to our accountant
13 and then use it in their competitive nature against us. So we're
14 asking -- we don't have any problems producing the limited nature
15 of what has been provided to the CPA for purposes of preparing
16 the tax returns. But in addition to that, we think it should
17 just be for counsel's eyes only and any experts and not their
18 client.

19 THE COURT: All right. So from Plaintiff's standpoint,
20 is the information sought relative to the tax returns and what
21 documents the accounting firm relied upon to prepare those?

22 MS. HEYWARD: Yes. There are several red flags that
23 jumped out at us when we reviewed the tax returns. And the
24 backup to those tax returns we're extremely interested in. One
25 example is Manfred is claiming that the seven thousand dollar

1 transfers to his wife were payments to himself for his salary,
2 which he actually never claimed on his tax returns; that he
3 received any sort of salary. So he's not paying taxes on his
4 salary. I mean there are just several other areas that we want
5 to explore, and we believe that we're entitled to all of the
6 backup and everything that was provided to the accountant in
7 preparing these tax returns. Plaintiff's -- I mean, Defense
8 counsel is correct that the judgment wasn't entered in 2015, but
9 the breach of contract occurred and the money became due to China
10 in 2012. So we are looking at all of the transfers and all of
11 the money that was moved from 2012 forward. And we are perfectly
12 willing to enter into a confidentiality agreement. I don't think
13 withholding the information from my client is something that we
14 are willing to agree to.

15 Our client is entitled to have all records that are produced
16 in discovery in this case in order to make an informed decision
17 moving forward in this matter. Our client is a general
18 contractor. Defendant is a steel supplier subcontractor. Our
19 client never actually plans on going into business with the
20 Defendant again, and they're not competitors. He's a hired sub
21 in an area that our client doesn't work in. We're a GC. We just
22 supervise.

23 So from that perspective, the limiting aspect of the
24 subpoena, limiting that to just lawyers only doesn't make sense
25 to me.

1 THE COURT: All right. Here's what I'm going to do on
2 that motion. I do think Exhibit A is somewhat on the broad side.
3 I am going to require or allow all information that the
4 accountants relied upon in preparation of the tax returns. I'm
5 going to specifically exclude anything that is arguably a trade
6 secret or pricing information or otherwise confidential under the
7 Code. Also, I will enter into a Confidentiality Order that at
8 this point it's for attorneys' eyes only, as well as any forensic
9 experts that are necessary.

10 Do either one of you recall the date the lawsuit was filed?

11 MS. HEYWARD: April 2nd, 2014.

12 THE COURT: Okay. I will allow the information for
13 eighteen months prior to the lawsuit being filed through the
14 present time.

15 Let me ask you, and I'm not trying to invite new issues, but
16 I notice the subpoena is requiring the accountants to appear in
17 Columbia. Is that an issue?

18 MR. BURNEY: Judge, I guess they would have to speak to
19 that. I don't see the necessity of them appearing in Columbia if
20 they produce this information.

21 THE COURT: Well, I'm trying to be a little proactive
22 and avoid ---

23 MR. BURNEY: Sure. Let me ...

24 THE COURT: --- other issues.

25 MR. BURNEY: Judge, the subpoena I have just says that

1 they're to produce and permit this inspection at a place --
2 obviously I'm just assuming that was intended that the
3 information be sent there and not that they appear there to
4 present that information. If I'm incorrect, Ms. Heyward, I'm
5 sure will ---

6 MS. HEYWARD: That's correct, Your Honor.

7 THE COURT: So you're wanting at this point documents
8 only and not a deposition?

9 MS. HEYWARD: That's correct.

10 THE COURT: Okay. All right. Then I appreciate y'all
11 clarifying that.

12 And let me ask you, on the other motion, on the Order to
13 Compel, is that something we should go into here this morning or
14 is it better to address all of that at the same time when Manfred
15 Sprenger and Patricia Sprenger are present to testify?

16 Obviously what I don't want to do is have a situation where,
17 you know, Mr. Sprenger testified to A, says he gave the funds to
18 Ms. Sprenger and Ms. Sprenger is not present and then we've got
19 to come back at some later date and replot the same ground that
20 we have plowed earlier.

21 Y'all are good lawyers so I'll listen to you on guidance.

22 MS. HEYWARD: Well, at the time the Order was entered
23 into, it was against MSPS, so this motion to compel is in
24 relation to MSPS and not the individuals. And the issue is
25 whether or not they put forth -- MSPS put forth reasonable

1 efforts to obtain the funds. Like I mentioned in my motion,
2 these funds are liquid; they're in cash. I think each passing
3 day is tough for my client because that money can be spent,
4 transferred, moved somewhere else.

5 THE COURT: So do you wish to call Mr. Sprenger?

6 MS. HEYWARD: I do.

7 THE COURT: Sir, if you'd come around to the witness
8 stand, please, sir. Place your left hand on the bible and raise
9 your right hand.

10 Do you swear to tell the truth, whole truth and nothing but
11 the truth?

12 MR. SPRENGER: I do.

13 THE COURT: Thank you. Come around and have a seat,
14 please, sir.

15 And if you'll state your full name.

16 THE WITNESS: Manfred Sprenger.

17 THE COURT: Will you spell Sprenger for my court
18 reporter.

19 THE WITNESS: S-P-R-E-N-G-E-R.

20 THE COURT: All right. Thank you, sir.

21 All right. Your witness.

22 MANFRED SPRENGER,

23 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. HEYWARD:

1 Q. Mr. Sprenger, are you aware of the Order that was issued on
2 October 8th of this year directing MSPS to put forth all
3 reasonable efforts to recover cash that was transferred to
4 Patricia Sprenger?

5 A. Yes, I am. My lawyer advised me.

6 Q. And what efforts did you put forward to obtain those funds?

7 A. Say that again.

8 Q. What efforts did the company MSPS put forward to obtain
9 those funds?

10 A. I asked -- like I wrote a letter as MSPS to my wife and me
11 to return the funds to the company, which had been loaned from me
12 to the company.

13 Q. So you live with your wife; right?

14 A. Yes. I do.

15 Q. And you are also the principal of MSPS; correct?

16 A. Yes.

17 Q. Your wife testified that the cash was in the home that you
18 share with her; is that correct?

19 A. Yeah, I believe so, after you led her to that amount; yeah.

20 Q. And you testified that you had access to those funds?

21 A. I have access to everything we do have. I'm married since
22 thirty-six years and we have never had any secrets from each
23 other.

24 Q. Right. And so your reasonable efforts is that you signed a
25 letter to yourself saying that you ---

1 THE COURT: Is there a phone going off?

2 MR. SPRENGER: Oh, sorry.

3 THE COURT: Chris, if you'll take his phone, please,
4 ma'am.

5 MR. SPRENGER: I'm very sorry.

6 THE COURT: That's fine.

7 THE BAILIFF: Is it on?

8 MR. SPRENGER: I'll turn it off. Hold on one second.
9 I'm very sorry. I forgot.

10 THE COURT: Yes, sir. You can give the phone to my
11 bailiff. Thank you.

12 All right. Go ahead.

13 Q. So all you did to recover the funds was write a letter to
14 yourself and your wife signed by you saying that you should do
15 something; is that correct?

16 A. That is what my lawyer advised me to do that the Court asked
17 that I -- that MSPS takes reasonable effort to protect the money;
18 yes.

19 Q. Do you recall submitting an Affidavit sometime prior to
20 October -- the October 8th Order?

21 A. Can you repeat that?

22 Q. You submitted an Affidavit?

23 A. Yes.

24 Q. And do you recall in that Affidavit after the testimony in
25 which your wife -- after your wife testified that there was fifty

1 thousand dollars in your home that you indicated there was eight
2 thousand dollars in your home?

3 A. That's correct; yes. Because we went back -- you were
4 leading my wife to come up with the fifty thousand and it was not
5 her, you lead her because of her English. And then I went back
6 home and verified the amount and that is what I put in the
7 Affidavit.

8 Q. An interpreter was present at that deposition; isn't that
9 correct?

10 A. That's correct. But you were leading. Is it sixty, is it
11 forty, is it fifty? And then my wife said ---

12 Q. Mr. Sprenger, I'm not going to argue with you at this time.
13 The deposition transcript reads how it reads.

14 A. All right.

15 Q. Did you make any effort to obtain even that eight thousand
16 dollars and give it to Mr. Burney?

17 A. That was a loan I gave to MS Production Solutions to keep
18 paying salaries and bills.

19 Q. So you didn't return the eight thousand dollars because you
20 believed it wasn't ---

21 MR. BURNEY: Judge, I'm going to object. The issue is
22 whether or not MSPS took reasonable efforts; not whether Manfred
23 Sprenger individually had any duty to comply with the Court
24 Order.

25 THE COURT: Well, he's the -- he is MSPS. So noted for

1 the record. Go ahead. Overruled.

2 Q. So you made your own determination that China Construction
3 was not entitled to that money and that's why you didn't give it
4 to your client (verbatim); isn't that correct?

5 A. Because it was a my -- a loan from me to the company, which
6 the company paid me back.

7 Q. Are you aware ---

8 A. And also, if you will go and -- you have all the bank
9 records; correct? If you would look in there in June and July, I
10 paid the company back twenty-five thousand dollars -- or loaned
11 it again to the company to be able to pay bills again.

12 Q. Mr. Sprenger, is there a note evidencing a loan? Any loan
13 to ---

14 MR. BURNEY: Judge, again, we're beyond the scope of a
15 motion to compel.

16 THE COURT: I think that's a relevant inquiry.

17 Q. Is there a note evidencing a loan between you and MSPS?

18 A. As the Judge said, I am MSPS and I'm Manfred. And am I
19 entitled to a regular monthly pay since I lead the company and
20 run the company?

21 THE COURT: Mr. Sprenger, if you will answer the
22 question. Is there a written promissory note?

23 THE WITNESS: No, there has never been -- that practice
24 has been done over all those years; that I loan the company money
25 when the company needed it, or borrow ---

1 Q. Are you aware that the language of the October 8th Order
2 ordered you to return the money in trust so a judicial
3 determination can be made as to the nature of the money?

4 A. Uh-huh (Affirmative). But I ---

5 Q. But you made that determination instead of the Judge; is
6 that correct?

7 A. As my lawyer advised me, he said that I need to write this
8 letter to myself, reasonable efforts, which I did. And then
9 since I haven't gotten paid -- or since I did not receive salary,
10 I don't know what the legal term I should call it, since I'm the
11 company owner. I call it a monthly salary like we all get and
12 supposed to get. In the month of October, that money was used to
13 pay our bills, our personal like mortgages and you have a record
14 of those bank records, as well.

15 MS. HEYWARD: No further questions, Your Honor.

16 THE COURT: All right. Mr. Burney, any questions?

17 (WHEREUPON, Defendant Exhibit Number 1 was marked for
18 identification.)

19 **CROSS EXAMINATION**

20 **BY MR. BURNEY:**

21 Q. Mr. Sprenger, let me show you Defendant's Exhibit Number 1.
22 Is that the letter that you wrote on behalf of MS Productions
23 Solutions LLC to you and your wife requesting funds?

24 A. Yes, sir.

25 Q. That was dated when?

1 A. October 7th, 2015.

2 Q. Are those the reasonable efforts you believe that you are
3 required to take as the owner of MSPS to ---

4 A. Yes.

5 Q. --- obtain those funds?

6 A. That's correct.

7 MR. BURNEY: Your Honor, I move to introduce
8 Defendant's Exhibit 1.

9 (WHEREUPON, Defendant Exhibit Number 1 was admitted into
10 evidence.)

11 Q. And is that letter asking you and your wife to return any
12 funds that they may have -- that you may have that belong to
13 MSPS?

14 A. Yes, sir.

15 Q. And you individually, did you take the position that any
16 funds that you have are your individual funds and not MSPS's
17 funds?

18 A. Can you repeat that?

19 Q. Did you take the position individually that any funds that
20 you had in your home were your funds and not MSPS's funds?

21 A. Yes, sir.

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

23 THE COURT: All right. Anything else?

24 MS. HEYWARD: Just one brief question.

25 Under tab 12, this is attached to my motion.

1 (WHEREUPON, Plaintiff Exhibit Number 1 was marked for
2 identification.)

3 REDIRECT EXAMINATION

4 BY MS. HEYWARD:

5 Q. Mr. Sprenger, has your attorney showed you a copy of this;
6 do you know?

7 A. (Affirmative nod.)

8 THE COURT: Is that a yes?

9 MR. SPRENGER: Yes. I'm sorry.

10 THE COURT: Thank you. Yes, sir.

11 MS. HEYWARD: I'd like to move this email into evidence
12 as Plaintiff's Exhibit 1.

13 (WHEREUPON, Plaintiff Exhibit Number 1 was admitted into
14 evidence.)

15 Q. And is it true that this email states that it's my
16 understanding the position -- the Strengers take the position
17 it's theirs?

18 A. Uh-huh (Affirmative).

19 Q. And that's why you didn't return the money?

20 A. Uh-huh (Affirmative).

21 MS. HEYWARD: No further questions.

22 THE COURT: That's a yes?

23 MR. SPRENGER: Yes, sir.

24 THE COURT: All right. Thank you.

25 Anything else of Mr. Sprenger?

1 MS. HEYWARD: No, Your Honor.

2 MR. BURNEY: No, Your Honor.

3 THE COURT: All right. Thank you, sir, you can step
4 down.

5 All right. Anything else then for the record on behalf of
6 Plaintiff?

7 MS. HEYWARD: Just, Your Honor, I believe it's clear
8 that Mr. Sprenger decided to take this matter into his own hands
9 instead of allowing the Court to come up with a solution and make
10 a judicial determination as to the fraudulent nature of the
11 funds. And that's why he didn't turn it over to his attorney,
12 which is not reasonable and in direct violation of your October
13 8th Order.

14 THE COURT: All right. Mr. Burney?

15 MR. BURNEY: Judge, your Order did not order the
16 Sprengers to return any money. Your Order simply said that until
17 a judicial determination can be made, MSPS is to take reasonable
18 efforts to obtain that money. The only thing they can do is
19 write a letter and then the Sprengers individually took the
20 position that's not MSPS's money. There was nothing in your
21 Order that required the return of any money. So to find MSPS in
22 contempt of your Order would be to interpret your Order in a way
23 that it's not even written. They were just ordered to take
24 reasonable efforts.

25 THE COURT: All right. Here's what I'm going to do now

1 that the Sprengers are parties. Eight thousand dollars has to be
2 paid into your trust fund within forty-eight hours. It's going
3 to be held pending the outcome of the litigation.

4 Any discovery that needs to get done needs to get done, and
5 we need to get this thing resolved within the next ninety days at
6 the outside. If we need to have a hearing on the merits with
7 full examination of Manfred Sprenger and Patricia Sprenger -- and
8 I'll tell you, I am concerned that if there's no written note,
9 you know, I think the law is pretty clear that the individuals
10 don't get priority over creditors' claims. But we'll address
11 that at some later date.

12 So anything else we need to address at this point, Ms.
13 Heyward?

14 MS. HEYWARD: No, Your Honor. Just we're ready to
15 proceed on the merits as soon as Mr. Burney is and you are. And
16 we're ready to get that scheduled. We are absolutely ready to
17 get this case behind us, so ...

18 THE COURT: All right. Well, then if you can move as
19 expeditiously as possible with the Saunders O'Dell issue and then
20 if y'all will get with Ms. Kimbrell, my docket coordinator, and
21 let's try to get this set sometime in January, of course, working
22 around very fine lawyers' busy schedules.

23 And then, Ms. Heyward, if you'll prepare a short Order for
24 today's hearing and send a copy, of course, to Mr. Burney. And
25 then, you know, the subpoena does need to be limited, as was

1 stated earlier on the record.

2 So Mr. Burney, any clarification needed at this point?

3 MR. BURNEY: No, Your Honor.

4 THE COURT: Okay. All right. Yes, ma'am?

5 MS. HEYWARD: Just one moment, briefly, Your Honor.

6 Would you like me to prepare a proposed Confidentiality Order?

7 THE COURT: I'm going to trust that you and Mr. Burney
8 are going to be able to agree on that.

9 MS. HEYWARD: Okay. Thank you.

10 THE COURT: All right. Thank you.

11 MR. BURNEY: Thank you.

12

13

14 (Email from Mr. Burney to Ms. Heyward dated 10/16/15 entered
15 as Plaintiff Exhibit Number 1.)

16 (Letter from MS Production Solution to Mr. and Mrs. Sprenger
17 dated 10/07/15 entered as Defendant Exhibit Number 1.)

18

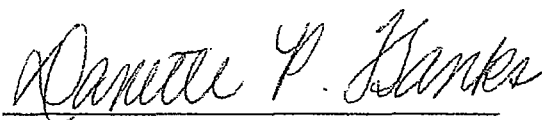
19

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

1 The undersigned, Danette P. Hanks, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 18th day
8 of November, 2015.

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

11 February 11, 2016

12 
13

14 Danette P. Hanks, CCR

15 Certified Court Reporter
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of)
South Carolina, Inc.,)

Plaintiff,)

vs.)

MS Production Solutions LLC a/k/a)
MSPS Steel Fabricators,)

Defendants.)
_____)

TRANSCRIPT OF TESTIMONY

March 2, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Robert C. Osborne, III, Esquire
Attorney for the Plaintiff

Rhett D. Burney, Esquire
Attorney for Defendant

Wanda E. Fudge, CCR
Court Reporter

I N D E X

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Benjamin Davis O'Dell				
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1 BY THE COURT: Anything we need to discuss before we go on
2 record?

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

4 MR. BURNEY: No, Your Honor.

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

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

10 MR. OSBORNE: Yes, sir.

11 BY THE COURT: Okay.

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

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

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

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

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

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

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 MR. BURNEY: Yes, sir.

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

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

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

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

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

10 THE WITNESS: Manfred Sprenger.

11 BY THE COURT: All right. Your witness.

12 MR. BURNEY: Thank you.

13 DIRECT EXAMINATION BY MR. BURNEY:

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

15 A That's correct.

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

17 A Yeah.

18 Q Let me show you what's been marked as Defendant's Exhibit

19 No. 1. Is that the mortgage to the Small Business
20 Administration?

21 A Yes, sir.

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

24 A Yes, sir.

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

1 A Yeah. Roughly, yeah.

2 Q What is the balance now?

3 A Approximately \$1,000,000.

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

6 BY THE COURT: All right.

7 MR. OSBORNE: No objection.

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

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

13 A That's correct.

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

16 A Yes, sir.

17 Q You also signed personal Guaranties for this loan?

18 A That's correct.

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

22 A That's correct. Yes.

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

1 A Yes, it does.

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

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

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

17 A "Together with all fixtures"---

18 Q Just answer that and then---

19 A Oh, yes, yes. Sorry.

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

22 A Yes, sir.

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

25 A Yes, sir.

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

5 A This paragraph?

6 Q Yes.

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

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

25 A Yes, sir.

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

3 A This here?

4 Q Yes, the mortgage.

5 A Yes, sir.

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

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

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

10 BY THE COURT: Page 33?

11 MR. BURNEY: Yes, sir.

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

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

14 BY THE COURT: All right.

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

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

17 MR. OSBORNE: Okay.

18 THE WITNESS: You can read mine.

19 BY THE COURT: All right.

20 Q Please read paragraph 43.

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

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

3 A Yes, sir.

4 Q Tract II is your personal home?

5 A Yes, sir.

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

10 BY THE COURT: What's your preference?

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

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

13 MR. BURNEY: Put both in.

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

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

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

20 MR. OSBORNE: We can stipulate to it.

21 BY THE COURT: Okay.

22 MR. BURNEY: My apologies.

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