

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUL 28 2017

SC Court of Appeals

Case No. 2014-CP-26-8367 (Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC.....
Respondents

V.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, J. Floyd Swilley SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

I
Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Wendell Causey are the
Appellants

THE RECORD ON APPEAL

VOLUME II of II

Nate Fata, Esq. (SC Bar No. 009866)
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Attorney for Appellants

Rule 1.7 Conflict of Interest, Comments, provide:

[1] **Loyalty and independent judgment are essential elements in the lawyer's relationship to a client.** Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. (Emphasis added).

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.

The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

The Comments to 1.7 Conflict of Interest further provide:

[21] A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.

The Court should disqualify Leiter due to the conflict. As stated in the March 2012

Article from Los Angeles Lawyer:

Dual representation of the corporation and individual defendants in a derivative proceeding which asserts a claim of serious wrongdoing by those in control of the corporation is considered improper because a potential conflict of interest exists between counsel's duty to the corporate entity and counsel's relationship with the individual defendants. Citing 13 Fletcher, Cyclopedia of Corporations, §6025.

The allegations in this action are serious and include claims of misappropriation of funds and diverting funds to the benefit of the general partners and the detriment of the limited partners. These payments have been documented. The Court should disqualify Leiter from representation. Furthermore, any 809 Holdings' counsel should not represent other Defendants in this or a related action as that dual representation will necessarily interfere with the lawyer's duty of loyalty and independent judgment.

CONCLUSION

Based on the foregoing, Plaintiffs' Motions should be granted in their entirety.

Respectfully submitted,



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Surfside Beach, South Carolina
April 20, 2015

EXHIBIT

A

000303

**Sage Financial Group LLC
Capital Structure for Pawn Deal
3/8/2012**

<u>809 Holdings LP</u>			
~~Partnership & Notes Structure~~			
<u>6/10/2009</u>			
SMG Partners, LLC	GP	50%	
WCP Enterprises LLC	GP	50%	
		100%	
<u>3/23/2011</u>			
SMG Partners, LLC	GP	42.0%	
WCP Enterprises LLC	GP	42.0%	
GSB Enterprises LLC	LP	3.5%	
Gabe Barnhill IRA	LP	12.5%	
		100%	
<u>Note Holders @1% / 1.5% INTEREST</u>		<u>LP-NOTES</u>	
10/2/2010	\$ 56,000.00		
11/2/2010	\$ 56,000.00		
12/2/2010	\$ 131,000.00		
1/2/2011	\$ 131,000.00		
2/2/2011	\$ 179,000.00		
3/2/2011	\$ 179,000.00		
4/2/2011	\$ 196,000.00	\$ 41,000.00	
5/2/2011	\$ 196,000.00	\$ 66,000.00	
6/2/2011	\$ 196,000.00	\$ 115,000.00	
7/2/2011	\$ 196,000.00	\$ 115,000.00	
8/2/2011	\$ 196,000.00	\$ 162,500.00	
9/2/2011	\$ 196,000.00	\$ 162,500.00	
10/2/2011	\$ 196,000.00	\$ 162,500.00	
11/2/2011	\$ 196,000.00	\$ 162,500.00	
12/2/2011	\$ 196,000.00	\$ 162,500.00	
1/2/2012	\$ 196,000.00	\$ 162,500.00	
2/2/2012	\$ 196,000.00	\$ 162,500.00	
3/2/2012	\$ 196,000.00	\$ 162,500.00	

<u>QC Financing LLC</u>			
~~Partnership & Notes Structure~~			
<u>9/13/2010</u>			
David Wilkinson	GP	50%	
SMG Partners, LLC	GP	25%	
WCP Enterprises LLC	GP	25%	
		100%	
<u>8/11/2011</u>			
David Wilkinson	GP	75%	
GSB Enterprises LLC	LP	25%	
		100%	
<u>Factored Notes & Interest Holders</u>			
9/1/2010	\$ 6,180.00		
10/1/2010	\$ 6,360.00		
11/1/2010	\$ 49,285.00		
12/1/2010	\$ 126,930.00		
1/1/2011	\$ 139,845.00		
2/1/2011	\$ 189,080.00		
3/1/2011	\$ 195,427.40		
4/1/2011	\$ 228,278.20		
5/1/2011	\$ 293,728.50		
6/1/2011	\$ 319,806.15		
7/1/2011	\$ 354,161.75		
8/1/2011	\$ 439,302.40		
9/1/2011	\$ 460,628.65		
10/1/2011	\$ 462,476.50		
11/1/2011	\$ 490,987.98		
12/1/2011	\$ 513,088.15		
1/1/2012	\$ 535,131.33		
2/1/2012	\$ 566,959.03		
3/1/2012	\$ 580,288.43		

<u>Quick Cash Pawn</u>			
~~Partnership & Notes Structure~~			
<u>10/19/2010</u>			
David Wilkinson	GP	100%	
		100%	
<u>Factored Notes & Interest Holders</u>			
9/1/2010	\$ 6,180.00		
10/1/2010	\$ 6,360.00		
11/1/2010	\$ 49,285.00		
12/1/2010	\$ 126,930.00		
1/1/2011	\$ 139,845.00		
2/1/2011	\$ 189,080.00		
3/1/2011	\$ 195,427.40		
4/1/2011	\$ 228,278.20		
5/1/2011	\$ 293,728.50		
6/1/2011	\$ 319,806.15		
7/1/2011	\$ 354,161.75		
8/1/2011	\$ 439,302.40		
9/1/2011	\$ 460,628.65		
10/1/2011	\$ 462,476.50		
11/1/2011	\$ 490,987.98		
12/1/2011	\$ 513,088.15		
1/1/2012	\$ 535,131.33		
2/1/2012	\$ 566,959.03		
3/1/2012	\$ 580,288.43		
Holds Pawn License, Firearms License & Retail License.			

PAY

PAY

LEND @ 3%

LEND

000304

EXHIBIT

B

000305

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at O'clock & min M
APR 17 2003
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (1)

IN RE:

John F. Swilley, a/k/a
Floyd Swilley,

Debtor.

Shadow Factory Films Ltd., Co.,
an Oklahoma Limited Liability Company,

Plaintiff,

v.

John F. Swilley, a/k/a
Floyd Swilley

Defendant.

C/A No. 02-09234-W

Adv. Pro. No. 02-80347-W

ENTERED
ORDER **APR 17 2003**
R. S. S.
Chapter 7

THIS MATTER comes before the Court upon the Motion for Summary Judgment (the "Motion") filed by Shadow Factory Films Ltd., Co. ("Plaintiff"). Plaintiff urges the Court to apply the principles of res judicata, collateral estoppel, or judicial estoppel to bar John F. Swilley ("Debtor" or "Defendant") from asserting that the debt arising from prior litigation with Plaintiff is dischargeable. With Defendant thus estopped, Plaintiff asks the Court to grant its Motion pursuant to Federal Rule of Bankruptcy Procedure 7056 and declare that the debt at issue is excepted from discharge pursuant to 11 U.S.C. §523(a)(2) and §523(a)(4).¹ In response, Defendant argues that res judicata does not apply in this case because the judgment resolved a tort action and not the issue of dischargeability. Defendant also argues that collateral estoppel cannot be applied because the prior

¹ Further references to the Bankruptcy Code shall be by section number only.

judgment does not contain an actual finding of fraud and because there is no unity of parties. Finally, Defendant argues that the District Court for the Western District of Oklahoma lacked jurisdiction to consider the dischargeability of the debt because only bankruptcy courts can decide this issue. After considering the pleadings filed in the adversary proceeding, the attached materials from the prior litigation presented in support of the Motion, and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. On December 29, 2000, Plaintiff filed a Complaint against Defendant, Protocol Asset Management Trust, Laurel Knuckles ("Ms. Knuckles"), Antony Abirached, A. Abira Financial Associated Ltd., and Loli Trade & Finance Establishment, Ltd in the United States District Court for the Western District of Oklahoma (the "Oklahoma litigation"). Generally, the Oklahoma litigation arose from a dispute concerning a venture capital agreement whereby the above-listed defendants agreed to lend or participated in an agreement to lend Plaintiff \$125,000,000 over a ten year period.
2. On March 7, 2002, Defendant, in both an individual capacity and as Trustee for Protocol Asset Management Trust, and Ms. Knuckles executed a Settlement Agreement (the "Settlement Agreement") with Plaintiff to resolve the Oklahoma litigation. In the Settlement Agreement, the parties stipulate to three initial points. First, they agree that Plaintiff's causes of action include a

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

claim for money acquired by false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement, and larceny. Next, the parties stipulate that they seek to settle all claims asserted or that could have been asserted in the Oklahoma litigation. Finally, the defendants stipulate "that one or more of Plaintiff's claims are of such character and nature that they cannot be discharged in bankruptcy."

3. Based upon these initial stipulations in the Settlement Agreement, the parties then agree to have a judgment entered against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, in the amount of \$300,000 on Plaintiff's claims that are not dischargeable in bankruptcy. The Settlement Agreement provides that the journal entry of the judgment shall reflect that the pleadings in the Oklahoma litigation are deemed to have been amended to assert claims of such character and nature that they cannot be discharged in bankruptcy. The Settlement Agreement then provides that the journal entry of judgment shall "recite agreement and stipulation of the Parties and a factual finding by the Court that, *inter alia*, the judgment is entered on one or more of those claims that are of such character and nature that they cannot be discharged in bankruptcy and that as a result thereof the judgment is not dischargeable in bankruptcy."

4. On March 8, 2002, Plaintiff, Defendant, and Ms. Knuckles participated in a settlement conference before the Honorable Magistrate Gary Purcell of the United States District Court for the Western District of Oklahoma. Judge Purcell thoroughly reviewed the terms of settlement and announced his understanding of the parties' settlement on the record. Specifically, Judge Purcell stated that the parties agree to have findings and a judgment entered against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, on Plaintiff's claims that are not dischargeable in bankruptcy in the amount of \$300,000. Judge Purcell also indicated that the

parties agree that any pleadings should be amended to assert claims that cannot be discharged in bankruptcy, and he found that it was clear that the agreement anticipates that no part of the judgment is capable of being discharged in bankruptcy.

5. During the settlement conference, Judge Purcell asked Defendant and his counsel if they understood and agreed to the terms of the Settlement Agreement. Both Defendant and his counsel responded affirmatively. Defendant also indicated that he was not threatened or forced to enter into the Settlement Agreement.

6. On March 11, 2002, the Honorable Stephen P. Friot, United States District Judge for the Western District of Oklahoma, entered the Journal Entry of Judgment (the "Oklahoma Judgment") resolving the Oklahoma litigation. The court recognized that Defendant, Ms. Knuckles, and Protocol Asset Management Trust stipulated to certain facts, and, based upon these facts, the court found that the claims Plaintiff asserted against them were of such character and nature that they cannot be discharged in bankruptcy. The court further found that, to the extent the pleadings were ambiguous, the court deemed them amended to assert claims of such nature and character that they cannot be discharged in bankruptcy. The court then entered the Oklahoma Judgment against Defendant and Ms. Knuckles on one or more of the nondischargeable claims and accordingly held that the Oklahoma Judgment was excepted from discharge. The Court entered a judgment against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, in the amount of \$300,000. Attorneys for Plaintiff and Defendant, Ms. Knuckles, and Protocol Asset Management Trust provided consensual signatures indicating that they agreed to and approved of the Oklahoma Judgment.

7. The Oklahoma Judgment is final, and there was no appeal of it.

8. On August 5, 2002, Defendant filed his Voluntary Petition seeking Chapter 7 relief.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure, applicable to adversary proceedings under the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 7056, provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56. Summary judgment is appropriate "if the evidence is such that a reasonable jury could not return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether summary judgment is appropriate, the court must view all evidence in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The moving party has the initial burden to show that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Celotex Corp v. Catrett, 477 U.S. 317, 332 (1986). Once this initial showing is made, the burden of production shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324; see also Fed. R. Civ. P. 5(e). In meeting this burden, the nonmoving party "must do more than simply show that there is some metaphysical

doubt as to the material facts and must demonstrate there is a genuine issue for trial.” Matsushita, 475 U.S. at 586-87; see also Campbell v. Deans (In re J.R. Deans Co.), 249 B.R. 121, 128 (Bankr. D. S.C. 2000) (quoting Dunes Hotel Assoc. v. Hyatt Corp. (In re Dunes Hotel Assoc.), 194 B.R. 967, 976 (Bankr. D. S.C. 1995)) (“[T]he party opposing summary judgment may not merely rely on his pleadings but must set forth specific facts which controvert the moving party’s facts and which show the existence of a genuine issue for trial.”). The Court should grant summary judgment “against a party who fails to make a showing sufficient to establish the evidence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Dunes Hotel Assoc., 194 B.R. at 976 (citing Celotex, 477 U.S. at 322).

B. Application of the Summary Judgment Standard to the Motion

Res judicata

Res judicata is a broad principle that prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding. See Brown v. Felson, 442 U.S. 127, 131 (1979); In re The Roof Doctor, C/A No. 97-01648-W, slip op. at 3 (Bankr. D. S.C. Aug. 26, 1998) (citing In re Varat Enterprises, Inc., 81 F.3d 1310 (4th Cir. 1996)). The elements of res judicata are the following: (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits. See Grausz v. Englander, 321 F.3d 467, 472 (4th Cir. 2003); Keith v. Aldridge, 900 F.2d 736, 739 (4th Cir. 1990). “On the merits” is a term of art and does not necessarily mean that the issues were actually litigated and is substantially different and broader than the “actually litigated” element of collateral estoppel.

See Fed. Ins. Co. v. Gilson (In re Gilson), 250 B.R. 226, 236 (Bankr. E.D. Va. 2000). To determine whether the claim was previously available to a party in the earlier suit, the Fourth Circuit has adopted a transactional approach whereby it considers whether the roots of both actions arise from the same series of operative facts. See Grausz, 321 F.3d at 473; Keith, 900 F.2d at 739.³

In dischargeability proceedings, however, the use of res judicata is limited. In Felson, the Supreme Court held that bankruptcy courts are not confined to reviewing the judgment and record of a prior state court proceeding when considering the dischargeability of debt. See 442 U.S. at 139. The Court supported this conclusion by reasoning that allowing state courts to determine the dischargeability of a debt undercuts statutory policy that favors resolving dischargeability issues in bankruptcy courts. See id. at 136. Moreover, the Court questioned the merit of requiring parties to address dischargeability issues in state court and preserve them for subsequent determination by a bankruptcy court when the issues are not yet ripe because no bankruptcy case has been filed. See id. at 137; see also Tatge v. Tatge (In re Tatge), 212 B.R. 604, 608-09 (B.A.P. 8th Cir. 1997) (declining to apply res judicata to a prepetition state court judgment incorporating the parties' settlement agreement that classified debts as dischargeable and reasoning that, at the time of the decree, no bankruptcy petition had been filed and no cause of action under §523 existed). Accordingly, the Court held that bankruptcy courts could consider all the evidence, including a plaintiff's failure to pursue allegations of fraud and deceit during the prior state court proceeding, and look beyond the judgment and record of the prepetition state court proceeding to determine

³ The Court notes that, in Keith, the Fourth Circuit found that consent judgments can have preclusive effect if the parties intended to foreclose litigation of a claim through a settlement agreement. See 900 F.2d at 741; see also Nash County Bd. of Educ. v. Biltmore Co., 640 F.2d 484, 487 (4th Cir. 1981).

whether a debt is excepted from discharge. See Felson, 442 U.S. at 139.

Felson effectively prohibits the blanket application of res judicata to prepetition state court determinations regarding the dischargeability of debts, and this principle has seemingly been applied to prepetition federal cases as well. See Gilson, 250 B.R. at 238. For example, in Strube Celery & Vegetable Co., Inc. v. Zois (In re Zois), 201 B.R. 501, 511 (Bankr. N.D. Ill. 1996), the bankruptcy court found that a federal district court's classification of a debt owed as nondischargeable was not res judicata as to the dischargeability of the debt. In Zois, the court reasoned that the district court lacked jurisdiction to reach this conclusion because, when it found that the debt was nondischargeable, no bankruptcy case had been filed. See also Coopers & Lybrand, Ltd. v. Gibbs (In re Gibbs), 107 B.R. 492, 497 (Bankr. D. N.J. 1989) (finding that a federal district court lacked subject matter jurisdiction to define a debt owed under a judgment as nondischargeable where no bankruptcy case had been filed). Moreover, the bankruptcy court found that the issue of dischargeability had not been litigated in the prior proceeding but was simply included in the language of the order. Cf. Saler v. Saler (In re Saler), 217 B.R. 166, 170 (E.D. Pa. 1998) (holding that a stipulation approved by a bankruptcy court that classified debts as excepted from discharge barred a redetermination of the issue of dischargeability in a subsequent bankruptcy case); Policemen's & Firefighters' Ret. Fund of Covington v. Tranter (In re Tranter), 245 B.R. 419, 420 (Bankr. S.D. Fla. 2000) (finding that a prior determination by a bankruptcy court that a debt was excepted from discharge was binding in another proceeding to except the same debt from debtor's discharge in debtor's subsequent bankruptcy case).

Based upon Felson's principles limiting the blanket application of res judicata to prepetition cases addressing the issue of dischargeability and because of other provisions of this Order, the Court

denies this aspect of Plaintiff's Motion. This Court is given the opportunity to look beyond the Oklahoma Judgment and the record of the Oklahoma litigation to decide whether Defendant's actions render his obligation excepted from discharge pursuant to §§523(a)(2) and (a)(4).

Collateral Estoppel

While the application of res judicata has been limited in dischargeability proceedings, the narrower concept of collateral estoppel can be applied more easily. See Grogan v. Garner, 498 U.S. 279, 285 n. 11 (1991); Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 19 (4th Cir. 1997). Collateral estoppel precludes relitigation of an issue decided previously in judicial or administrative proceedings provided the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in an earlier proceeding. See Hagan v. McNallen (In re McNallen), 62 F.3d 619, 624 (4th Cir. 1995). When applying the principle of collateral estoppel, the Court typically looks to the forum state's law of collateral estoppel; however, this case deals with a prior judgment from a federal court. See McNallen, 62 F.3d at 624. In this situation, the Court must consider the principles of federal collateral estoppel. See Nestorio v. Associates Commercial Corp., 250 B.R. 50, 55 (D. Md. 2000); Shearer v. Dunkley (In re Dunkley), 221 B.R. 207, 212 (Bankr. N.D. Ill. 1998); Federal Trade Comm'n v. Harrell (In re Harrell), C/A No. 98-06980-W, Adv. Pro. No. 98-80266-W, slip op. at 8 (Bankr. D. S.C. Apr. 22, 1999). For federal collateral estoppel to apply, the proponent must establish the following elements: (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum. See

Sec. & Exch. Comm'n v. Zandford, 238 F.3d 559, 562 (4th Cir. 2001), rev'd on other grounds by 535 U.S. 813 (2002); Sedlack v. Braswell Services Group, Inc., 134 F.3d 219, 224 (4th Cir. 1998).

The undisputed material facts indicate that some of these elements are satisfied. First, there is no dispute as to the identity of issues. In the Oklahoma Judgment, the court considered allegations of acquiring money by false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement, and larceny, the presumptive grounds for a debt to be declared nondischargeable pursuant to §523(a)(2) and §523(a)(4), and the court found that the amount of the judgment was not dischargeable in bankruptcy. Likewise, the issue in this proceeding is whether the debt is excepted from discharge pursuant to §523(a)(2) and §523(a)(4). Second, the undisputed material facts also demonstrate that the Oklahoma Judgment is final and was not appealed. Third, the record of the Oklahoma litigation reflects that Defendant was represented by counsel and that he participated in a sophisticated legal setting in two levels of the Federal District Court for the Western District of Oklahoma. Moreover, the transcript of the Settlement Conference reflects that Judge Purcell meticulously reviewed and announced the terms of the Settlement Agreement and asked Defendant if he understood and agreed to the terms. Defendant clearly agreed to the terms and had a full and fair opportunity to defend against Plaintiff's causes of action.

There is a question whether the Oklahoma Judgment satisfies the actually determined element.⁴ The Oklahoma Judgment is a consent order that settles the Oklahoma litigation. Ordinarily, when a case is settled rather than litigated to a judgment, the settlement does not give rise to collateral estoppel unless it is clear that the parties intended the settlement to have such an effect.

⁴ Several cases refer to the this element as "actually litigated." The Court will use actually litigated and actually determined synonymously.

See Arizona v. California, 530 U.S. 392, 414 (2000) (“[S]ettlements ordinarily occasion no issue preclusion (sometimes called collateral estoppel), unless it is clear . . . that the parties intended their agreement to have such an effect.”); Halpern v. First Georgia Bank, 810 F.2d 1061, 1064 (11th Cir. 1987) (“[T]he central inquiry in determining the preclusive effect of a consent judgment is the intention of the parties as manifested in the judgment or other evidence.”). Generally, courts have examined the parties’ intent in two ways. One approach focuses on whether the settlement or consent judgment includes sufficient facts to support a finding that a debt is excepted from discharge. See, e.g., Levinson v. United States, 969 F.2d 260, 264 (7th Cir. 1992) (declining to apply collateral estoppel where the consent judgment did not include sufficient facts to support a finding that the debtor’s fraud rendered the debt excepted from discharge); Halpern, 810 F.2d at 1064-65 (finding that the parties intended a prior state court consent order to operate as a final adjudication where the order included detailed factual findings sufficient to satisfy §523(a)(2)(A) as well as specific language providing that liability under the judgment will be excepted from discharge in any bankruptcy case); Giaimo v. Detrano (In re Detrano), 266 B.R. 282, 291 (E.D. N.Y. 2001) (affirming the bankruptcy court’s decision to decline to apply collateral estoppel where the settlement order did not contain stipulated facts that would establish that a debt was nondischargeable under §523(a)(4)); Kohlenberg v. Baumhaft (In re Baumhaft), 271 B.R. 517, 522-23 (Bankr. E.D. Mich. 2001) (applying collateral estoppel and granting summary judgment where the settlement agreement related to a consent judgment listed specific facts allowing the court to conclude a debt was excepted from discharge pursuant to §523(a)(2)(A) and (B) and where the agreement provided that the parties would not object to the dischargeability of the debt in any subsequent bankruptcy proceeding); Mustaine v. Kennedy (In re Kennedy), 243 B.R. 1, 12 (Bankr. W.D. Ky. 1997) (finding that the

consent order did not manifest an intent for the judgment to be conclusive where the judgment at issue was a blanket entry of judgment on the fraud counts of a complaint and contained no discussion of culpability); Estate of Samson v. Ward (In re Ward), 194 B.R. 53, 58 (Bankr. D. S.C. 1995) (denying summary judgment motion because the form order entered resolving a trial after the parties reached a settlement was silent as to the exact terms of settlement or the basis for the judgment but suggesting that collateral estoppel could be appropriate if the evidence indicated that a party confessed to committing a particular type of fraud or defalcation that would preclude discharge); Pasada Del Rey v. Pearson (In re Pearson), 120 B.R. 396, 399 (Bankr. N.D. Tex. 1990) (declining to apply collateral estoppel because there were insufficient facts in the consent order to establish that the debt was excepted from discharge); Fisher v. Heatly (In re Fisher), C/A No. 92-73995, Adv. Pro. No. 92-8250, slip op. at 8 (Bankr. D. S.C. Feb. 1, 1993) ("Without the legal basis for the court's findings or a discussion or record of the elements constituting the plaintiff's burden of proof, this Court is unable to determine whether the plaintiff in the state court proved and whether that court properly considered the elements and issues of fraud as are required for a finding of non-dischargeability pursuant to 11 U.S.C. section 523. Therefore, the issues raised by 11 U.S.C. section 523(a)(2) and this lawsuit were not actually litigated."); see also Nissan v. Weiss (In re Weiss), 235 B.R. 349, 358-59 (Bankr. S.D. N.Y. 1999), aff'd by 255 B.R. 115 (S.D. N.Y. 2000) (finding that a confession of judgment satisfied the actually litigated requirement and applied collateral estoppel to find that the debts at issue in the judgment were excepted from discharge where the confession of judgment represented a confession to each claim in the complaint, including fraud and breach of fiduciary duty). Other courts review prior consent or settlement orders to determine if it is clear that the parties intended the prior litigation to have a collateral estoppel effect. Courts using this

approach have applied collateral estoppel even if the prior judgment does not contain specific stipulated or court-found facts to support a conclusion that a debt would be excepted from discharge pursuant to §523. See, e.g., Peoples Bank of Dickson v. Duke (In re Duke), 172 B.R. 575, 579 (M.D. Tenn. 1994) (applying collateral estoppel to bar the debtor from arguing that her debt at issue was discharged when she asserted in a prior criminal matter that the debt would be excepted from discharge); Doughty v. Hill (In re Hill), 265 B.R. 270, 279 (Bankr. M.D. Fla. 2001) (concluding that a consent judgment without specific factual findings but with a specific stipulation to an amount of fraud damages satisfied the actually litigated element in a subsequent proceeding regarding dischargeability); Buglione v. Berlinger (In re Berlinger), 246 B.R. 196, 201 (Bankr. D. N.J. 2000) (applying collateral estoppel to a prior settlement order declaring that certain debts arising from a divorce proceeding would be excepted from discharge where it was evident the parties intended to settle an intentional tort claim and intended the settlement to survive a bankruptcy discharge); Smith v. Smith (In re Smith), 189 B.R. 240, 244 (Bankr. D. N.H. 1995) (declining to apply collateral estoppel because the prior judgment contained neither findings that the court could rely on to determine dischargeability or a statement indicating that the judgment would be excepted from discharge); Smith v. Beeson (In re Smith), 128 B.R. 488, 491 (Bankr. S.D. Fla. 1991) (finding the issue of the debtor's fraud was sufficiently litigated in the prior state court proceeding to invoke collateral estoppel from language in the settlement agreement treating the judgment against the debtor as excepted from discharge).

Upon reviewing the Oklahoma Judgment, the Settlement Agreement, and the settlement conference transcript, the Court concludes that the parties clearly intended the Oklahoma Judgment to have preclusive effect as to the dischargeability of the amount owed under the judgment. The

language of the Oklahoma Judgment is unequivocal and thoroughly describes the judgment amount as nondischargeable, and the language is much more than a mere statement that the debt would be excepted from discharge. Cf. Klingman v. Levinson, 831 F.2d 1292, 1296 (7th Cir. 1987) (finding that language in a consent decree providing that the debt at issue would not be dischargeable in a bankruptcy proceeding illustrated the parties' intent for the decree to have preclusive effect). Indeed, the Oklahoma Judgment indicates that the parties intended to conclusively resolve the issue of dischargeability by agreeing that (1) the pleadings are deemed amended to assert claims that cannot be discharged in bankruptcy, (2) the Oklahoma Judgment is entered on one or more of the claims that are of such character and nature that they cannot be discharged in bankruptcy, (3) the Oklahoma Judgment is based upon a factual finding by the Court, and (4) the Oklahoma Judgment is not dischargeable in bankruptcy. Moreover, during the settlement conference, Judge Purcell carefully reviewed all of the terms of the Settlement Agreement, and he asked the parties whether they agreed to and understood these terms, including terms that indicated the judgment would be based upon factual findings. Defendant clearly acknowledged that he willingly accepted the terms, including the provisions concerning the nondischargeability of the debt. To this Court, the settlement materials clearly illustrate that the parties intended the Oklahoma Judgment to be the final resolution of the dispute, including the future dischargeability of the debt, and this Court will honor and enforce that intent. While the Oklahoma Judgment does contain a detailed enumeration of findings of fact, this step is not necessary when it is clear that the Oklahoma court relied on the factual basis that Defendant, Ms. Knuckles, and Protocol Asset Management Trust acknowledged and stipulated to prior to the entry of the Oklahoma Judgment in finding that the debt it represents would be excepted from discharge. In other words, the Oklahoma Judgment is based on factual findings that were

agreed upon and established in an unappealed order and record. For these reasons, the Court finds that the Oklahoma Judgment satisfies the actually litigated element of collateral estoppel.⁵

The Court also finds that the issue of dischargeability was a necessary part of the Oklahoma litigation. The original complaint includes specific allegations of acquiring money under false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement and larceny, and the Oklahoma court and the settlement materials recognize these allegations and buttress them further by a specific provision amending the complaint to ensure the allegations are pled sufficiently to support a finding of nondischargeability. This specificity leads the Court to conclude that the determination that the elements of §523(a)(2) and §523(a)(4) on which the Oklahoma Judgment was found to be nondischargeable were a necessary part of the proceeding. See Nissan v. Weiss (In re Weiss), 235 B.R. 349, 359 (Bankr. S.D. N.Y. 1999), aff'd by 255 B.R. 115 (S.D. N.Y. 2000).

For the above stated reasons, the Court concludes that all of the elements of federal collateral estoppel are satisfied. Accordingly, the Court applies the principle to bar Defendant from arguing

⁵ Although the Court's prior cases involving collateral estoppel in the context of a dischargeability proceeding are slightly different from the case at bar, the finding that the Oklahoma Judgment was actually litigated is consistent with rulings in prior cases. For example, the Court previously applied collateral estoppel to default judgments where the judgments resulted in implicit findings satisfying the elements of subsections of §523. See, e.g., Stroud v. Read (In re Read), C/A No. 98-08285-W, Adv. Pro. No. 98-80295-W, slip op. at 9-10 (Bankr. D. S.C. Jul. 1, 1999); Brown v. Evans (In re Evans), C/A No. 98-05148-W, Adv. Pro. No. 98-80212-W, slip op. at 11 (Bankr. D. S.C. Apr. 26, 1999); Fed. Trade Comm'n v. Harrell (In re Harrell), C/A No. 98-06980-W, Adv. Pro. No. 98-80266-W, slip op. at 15 (Bankr. D. S.C. Apr. 23, 1999). Arguably, a default judgment is less "actually litigated" than a settlement or consent order that both parties participate in drafting and then in presenting to a court for approval. Further, the Court has previously held that a prior judgment could clearly establish that a punitive damages award was based upon actions that were willful and malicious without making specific findings of willfulness or maliciousness. See Read, at 6.

that the debt represented by the Oklahoma Judgment is dischargeable and grants Plaintiff's Motion.

Judicial Estoppel

"Judicial estoppel precludes a party from adopting a position that is inconsistent with a stance taken in prior litigation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process." John S. Clark Co. v. Faggert & Frieden, P.C., 65 F.3d 26, 28-29 (4th Cir. 1995); see also In re Brown, C/A No. 01-12506-B, slip op. at 5-6 (Bankr. D. S.C. Jun. 4, 2002); Dunes Hotel Associates v. Hyatt Corp. (In re Dunes Hotel Associates), C/A No. 94-75715-W, Adv. Pro. No. 95-8042-W, slip op. at 8-9 (Bankr. D. S.C. Feb. 12, 1997). "Acting on the assumption that there is only one truth about a given set of circumstances, the courts apply judicial estoppel to prevent a party from benefitting itself by maintaining mutually inconsistent positions regarding a particular situation. As we have previously observed, the doctrine is invoked to prevent a party from 'playing fast and loose with the courts,' from 'blowing hot and cold as the occasion demands,' or from attempting 'to mislead the courts to gain unfair advantage.'" King v. Herbert J. Thomas Mem'l Hosp., 159 F.3d 192, 196 (4th Cir. 1998). "Because the rule is intended to prevent improper use of judicial machinery, judicial estoppel is an equitable doctrine invoked by a court at its discretion." 1000 Friends of Maryland v. Browner, 265 F.3d 216, 226 (4th Cir. 2001).

In the Fourth Circuit, there is no specific formula for applying judicial estoppel; however, the presence of the following factors is generally required: (1) the party to be estopped must be asserting a position that is factually incompatible with a position taken in a prior judicial or administrative proceeding and the position sought to be estopped must be one of fact rather than law or legal theory; (2) the prior inconsistent position must have been accepted by the tribunal; and (3)

the party to be estopped must have taken inconsistent positions intentionally for the purpose of gaining unfair advantage. See 1000 Friends, 265 F.3d at 226-27; Lowery v. Stovall, 92 F.3d 219, 224 (4th Cir. 1996); Dunes Hotel, at 9. Of these factors, the third is the most critical. See Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co., 232 F.3d 383, 390 (4th Cir. 2000) (citing Lowery, 92 F.3d at 224). Judicial estoppel, however, will not be applied where the party's inconsistent positions results from inadvertence or mistake. See King, 159 F.3d at 196-97.

In this case, the inconsistent position is that Defendant previously agreed to settlement terms and the entry of the Oklahoma Judgment based upon his stipulation and agreement to facts that rendered that debt excepted from discharge. Now, only a few months after consenting to the Oklahoma Judgment, Defendant attempts to deny this prior position, reject these facts, and argue that the Oklahoma Judgment is dischargeable. The elements are present to invoke judicial estoppel as Defendant asserts an inconsistent factual position that was accepted by the Oklahoma federal court during the settlement conference and by entry of the Oklahoma Judgment. While it has been held that judicial estoppel does not apply to the settlement of an ordinary civil suit because there is no judicial acceptance of anyone's position, in this case the federal court undertook a thorough effort to ensure the judgment was voluntary, complete and fully agreeable and therefore, there is sufficient judicial acceptance. See Lowery, 92 F.3d at 225 and Reynolds v. Commissioner of Internal Revenue, 861 F.2d 469, 473 (6th Cir. 1988). Moreover, these inconsistent positions are an attempt to gain an unfair advantage as Defendant previously resolved litigation, which sought a recovery of \$125,000,000 against him, for a significantly lesser amount conditioned upon its nondischargeability. In March 2002, Defendant adopted one position on dischargeability and less than five months later upon his filing bankruptcy, he argues a directly contrary position. In similar circumstances, other

courts applied judicial estoppel in the bankruptcy context to bar a debtor who previously agreed that certain debts were excepted from discharge from subsequently asserting that the debts were dischargeable. See Dunkley, 221 B.R. at 213 (applying judicial estoppel to bar the debtor from adopting the inconsistent legal position that debts incurred pursuant to his divorce or separation were dischargeable when the debtor had, in a prior bankruptcy case, entered into a stipulated settlement order that treated the debt as excepted from discharge); see also In the Matter of Cassidy, 892 F.2d 637, 642 (7th Cir. 1990) (applying judicial estoppel to bar the debtor from relitigating the issue of the dischargeability of his tax debts where the debtor previously urged the Seventh Circuit Court of Appeals to address the issue of discharge of his tax debts on appeal after his Tax Court proceeding, but, after receiving a ruling that the tax debts were excepted from discharge, the debtor returned to the bankruptcy court and argued that the Tax Court lacked jurisdiction to consider dischargeability). Likewise, because Defendant's position in the Oklahoma litigation was unequivocal and relied upon by Plaintiff and the court and he has now entirely reversed his position, this Court applies judicial estoppel in this case to bar Defendant from asserting that the underlying facts supporting the Oklahoma Judgment are insufficient to establish that the debt represented by the Oklahoma Judgment is excepted from discharge pursuant to §523(a)(2) and §523(a)(4). The Court has serious concerns about what appears to be Defendant's manipulation of the judicial process, and it will not countenance such gamesmanship.⁶

CONCLUSION

For the above stated reasons, the Court grants Plaintiff's Motion and

⁶ The Court also believes equitable estoppel or promissory estoppel may be additional principles that bar Defendant from disputing the agreed-upon facts supporting the determination that the debt represented by the Oklahoma Judgment is excepted from discharge.

ORDERS that the debt Defendant owes represented by the Oklahoma Judgment is excepted from discharge pursuant to §523(a)(2) and §523(a)(4).

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 17, 2003.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at 10:00 clock & min
APR 17 2003

IN RE:

John F. Swilley, a/k/a
Floyd Swilley,

Debtor.

Shadow Factory Films Ltd., Co.,
an Oklahoma Limited Liability Company,

Plaintiff,

v.

John F. Swilley, a/k/a
Floyd Swilley

Defendant.

C/A No. 02-09234-W

Adv. Pro. No. 02-80347-W

BRENDA K. ARGENT, CLERK
United States Bankruptcy Court
Columbia, South Carolina (13)

ENTERED

APR 17, 2003

R.S.S.

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion for Summary Judgment is granted and the debt John F. Swilley ("Debtor") owes as represented by the Journal Entry of Judgment entered by the United States District Court for the Western District of Oklahoma is excepted from discharge pursuant to 11 U.S.C. §§523(a)(2) and (a)(4).


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 17, 2003.

000325

EXHIBIT

C

000326

1.

1 STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and)
GSB Enterprises, LLC)

Plaintiff,)

v.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing LLC,)
Heath Causey, and Sage Financial)
Group, LLC)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

**DEFENDANTS' ANSWERS TO
SUPPLEMENTAL INTERROGATORIES**

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nate Fata, Esq.:

Defendants J. Floyd Swilley, J. Floyd Swilley, Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC supplement their Answers to Supplemental Interrogatories from Plaintiffs as follows:

1. Describe in detail the difference between QC Financing, LLC and the pawn shop in 2010 and 2011 and identify all documents which support your contention that Plaintiff was an owner in the pawn shop.

RESPONSE: These Defendants object to this interrogatory on the grounds that is vague and unduly confusing and it is combining two questions into one. Subject to the foregoing, these Defendants would show that QC Financing, LLC owned the inventory of

the pawn shop and the lease was in the name of QC Financing, LLC. Generally, Quick Cash Pawn was the trade name of QC Financing, LLC, except that David Wilkinson, the General Manager of QC Financing, LLC and Quick Cash Pawn, maintained the license in the pawn shop and the federal firearm license in his own name.

As to the Plaintiffs' ownership in QC Financing, SMG Partner, LLC conveyed its ownership in QC Financing, LLC to the Plaintiff, Gabriel Barnhill, through a Transfer of Membership Interest, a copy of which is attached. There are emails from David Wilkinson referencing Gabriel Barnhill's ownership in QC Financing, LLC, copies of which are attached. There is an affidavit from David Wilkinson submitted in 2012-CP-26-3104 that refers to Gabriel Barnhill being an owner in QC Financing, LLC, a copy of which is attached. Copies of correspondence from William W. DesChamps, III to Nate Fata, attorney for the Plaintiffs, indicate the Plaintiffs' relationship to QC Financing, LLC, a copy of which is attached.

2. For each QC Financing and the pawn shop, at the end of each month beginning August 2010 to December 2011, describe with particularity each item of inventory or collateral, its value and the identity of the individual who determined the value.

RESPONSE: The Defendants object to this interrogatory on the grounds that it is vague and unduly burdensome to request that each item of inventory or collateral be described with particularity. The information sought by the Plaintiffs can be found in the Point of Sale system that is the possession, custody and control of QC Financing, LLC, of which the Plaintiff, Gabriel Barnhill, is a member. Subject to the foregoing, the

Defendants would refer the Plaintiffs to the full inventory report prepared on or about August 10, 2011, which identifies, with particularity, each item of inventory, a copy of which is attached. This is the only itemized list of inventory in these Defendants' possession. These Defendants would also refer Plaintiffs to the documents previously provided, identified as Quick Cash Pawn Sep 2001 - March 2012 ledger income/expense synopsis, 00001 through 00007 and QC Financing No. 164. These Defendants have previously produced the week ending reports but are attaching the same as Week Ending Reports attached. Valuation of the inventory or collateral was determined by David Wilkinson. On information and belief, Mr. Wilkinson would determine the lowest market value based on information he obtained from the internet or his own sources.

809 Holdings LP had an inventory audit done in November and December, 2011. See the Memo to J. Floyd Swilley 809 Holdings LLC from Seigmund "Siggy" Chandliss subpoenaed documents 0016 through 0011 and the accompanying email from Bill Piner to Floyd Swilley, January 7, 2012.

These Defendants reserve the right to supplement this response.

3. Identify all documents which you contend creates a lien on any pawn shop asset.

RESPONSE:

- A. Master Factoring Agreement
- B. Confidential Private Placement Memorandum
- C. Letter of Intent
- D. Emails from David Wilkinson and Defendants (see attached)

E. Judgment obtained by 809 Holdings, LP against QC Financing, LLC in Civil Action No. 2012-CP-26-3104.

F. Canceled checks showing payment by QC Financing, LLC in accordance with the Master Factoring Agreement.

(i) Check #1098 on 9/02/11 in the amount of \$11,429.40 (see Plaintiffs' Bates # QC Financing BB&T Account xx48 0049).

(ii) Check #1129 on 10/17/11 in the amount of \$9,907.80 (see Plaintiffs' Bates # QC Financing BB&T Account xx48 0055).

These Defendants reserve the right to amend as discovery is ongoing.

4. Since 2003 to present, have you ever, directly or indirectly (through ownership in limited liability companies or other related entities in which you have an ownership interest), been involved in or participated in soliciting sums from investors? If yes, describe your involvement and the dates of involvement, the investment, the amount of money raised for that investment from investors, and state how much has been repaid to those investors.

RESPONSE:

A. William C. Piner, through WCP Enterprises, Inc. was involved in soliciting investors for 809 Holdings, LP beginning on or about September 1, 2010 through approximately March, 2011. Piner performed management functions for 809 Holdings, LP.

B. William C. Piner, through WCP Enterprises, Inc. was involved in soliciting

investors for Secured Asset Factoring Exchange, Inc. ("SAFE"), beginning on or about September 2, 2011 through approximately August 30, 2013. Piner performed management functions for SAFE.

C. J. Floyd Swilley, as J. Floyd Swilley Investment Advisors, was involved in soliciting investors for 809 Holdings, LP, beginning on or about September 1, 2010 through approximately March 2011. Swilley provided guidance and investor relations for 809 Holdings, LP.

D. J. Floyd Swilley, as J. Floyd Swilley Investment Advisors or Sage Private Equity Group, LLC, was involved in soliciting investors for SAFE, beginning on or about September 2, 2011 through approximately August 30, 2013. Swilley provided guidance and investor relations for SAFE.

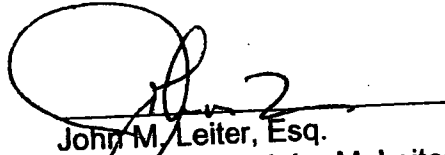
E. J. Floyd Swilley, through J. Floyd Swilley Investment Advisors, provided guidance and investor relations, for ComTrust, approximately in 2008. Mr. Swilley does not remember the exact dates.

F. Heath Causey did not directly solicit investors but had an indirect role as a financial officer for both 809 Holdings, LP and SAFE.

G. (1) \$197,500.00 was raised for 809 Holdings, LP; \$42,000.00 has been repaid.

(2) \$896,325.00 was raised for SAFE; \$533,659.00 has been repaid.

(3) \$45,000.00 was raised for ComTrust; it is not known how much has been repaid.



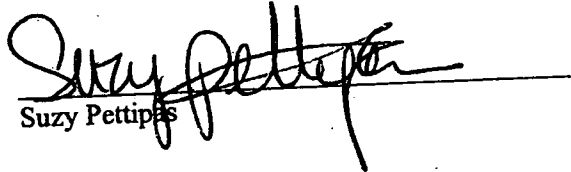
John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
October 30, 2014

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, certify the foregoing document was served via U.S. First Class Mail, postage prepaid, to the counsel of record on this 30th day of October, 2014, as follows:

Nate Fata, Esq.
Nate Fata, PA
PO Box 16620
Surfside Beach, SC 29587


Suzy Pettipas

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2014-CP-26-08367
	)	(Formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, LLC,	)
	)
Plaintiffs,	)
	)

vs.

**PLAINTIFFS' NOTICE OF MOTION
MOTION TO CONSOLIDATE**

J. Floyd Swilley, J. Floyd Swilley	)
Investment Advisors, Laurel K. Swilley,	)
SMG Partners, LLC, SMS Services, LP,	)
William C. Piner, WCP Limited, LLC,	)
809 Holdings, LP, QC Financing, LLC,	)
Heath Causey, and Sage Financial	)
Group, LLC,	)
Defendants.	)

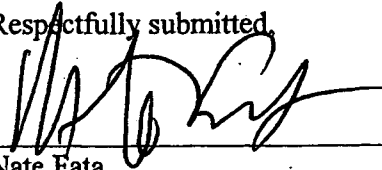
YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order to consolidate both this action with the derivative action styled Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, J. Floyd Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1 Plumbing, LLC, Sage Funding, L.P., and Christopher Pitcock, Case No. Civil Action No. 2014-CP-26-3362. Many of the issues are overlapping and to promote judicial economy, one trial should be heard on these issues as most of the parties are identical in both cases.

Opposing counsel Jarrett S. Calder counsel in 2014-CP-26-3362 for Defendant 911 Plumbing, LLC consents to this request.

The undersigned certifies he has consulted with opposing counsel and cannot resolve the instant motion.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order consolidating both cases 2013-CP-26-2816 and 2014-CP-26-3362 for discovery and trial. All counsel consent to this request.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
February 10, 2015

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)**

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-26-08367

(formerly 2013-CP-26-02816)

Plaintiffs,

VS.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
DISCOVERY**

CASE NO. 2014-CP-26-3362

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,**

Defendants.

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Defendants to respond to Plaintiff's First Interrogatories to All Defendants and Plaintiffs' First Request for Production of Documents To All Defendants.

The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Discovery, state as follows:

1. Plaintiffs' First Set of Interrogatories To All Defendants and Plaintiffs' Request for Production To All Defendants were served on the above named Defendants via personal service in June of 2014. The discovery requests are attached hereto as Exhibit "A."

2. Defendants have not provided responses to the Interrogatories and Request for Production of Documents.

4. Plaintiff's counsel certifies that he attempted to resolve this matter with opposing counsel prior to filing the motion and that any further attempts would be futile.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order requiring Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock to provide full and complete responses to Plaintiff's First Set of Interrogatories and First Request For Production of Documents, award reasonable attorney fees

in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37,
SCRCF.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
May 11, 2015

EXHIBIT

A

000338

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1 Plumbing,)
LLC, and Sage Funding, L.P., and)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-3362

PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO ALL
DEFENDANTS

TO: ALL DEFENDANTS

PLAINTIFF hereby requires the **DEFENDANTS**, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendants be unable, for reasons

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other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.

7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendants, then describe with particularity how the Defendants discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addresses, if any.
5. The present location, name, and present address and position of person or persons having custody.

INTERROGATORIES

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relates to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case and for each such expert identify all documents or emails you or your counsel provided to or received from the expert and provide a summary of all opinions and the basis for all opinions.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

6. For the period August 2010 to present, set forth each and every amount you provided to or received from either 809 Holdings, Secured Asset Factoring Exchange, SAFE or QC Financing and for each such amount state:

- a. the date of the remittance;
- b. the form of the remittance (cash, money order, check, etc); and
- c. the reason for the remittance.

7. For the period August 2010 to present, describe in full detail all compensation arrangements you had with any other defendant herein relating to QC Financing or 809 Holdings

and state your responsibilities and the amount of compensation received and the dates of such receipts.

8. Identify the persons who invested in 809 Holdings or Secured Asset Factoring Exchange, Inc. or SAFE from August 2010 to present and the date and amount of each such investment.

9. For the period August 2010 to present, identify the individual(s) who was responsible for the day to day affairs of 809 Holdings and SAFE and Secured Asset Factoring Exchange.

10. For the period August 2010 to present identify the individuals responsible for the financial affairs of 809 Holdings and SAFE and Secured Asset Factoring Exchange..

11. For each SAFE, Secured Asset Factoring Exchange and 809 Holdings, state the total amount of investor money owed as of April 15, 2014.

12. From August 2010 to present, state whether any 809 Holdings or SAFE or Secured Asset Factoring Exchange investor money was repaid or returned, in whole or in part, to an investor(limited partner or general partner) and provide the date and amount of each such remittance to an investor.

13. Describe by full name and description any other non-publicly traded investment or "factoring" investment product you have promoted, marketed, offered or sold from January 1, 2010 to present.

14. If you contend any individual or person was/is responsible for or caused the failure of 809 Holdings, LP, Secured Asset Factoring Exchange or SAFE to repay investors, please identify such individual or person and set forth all facts that support your contention.

15. For the individual Defendants herein, at any time during the period August 2010 to present, identify all ownership interests in a company (LLC, Inc., L.P., G.P., etc.) with any other Defendant herein.

16. For any time during the period August 2010 to April, 2013, identify any and all bank accounts (by full name, address, bank account number) in which amounts were remitted to

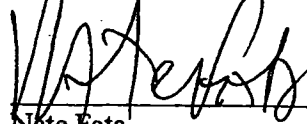
or from 809 Holdings or SAFE or Secured Asset Factoring Exchange.

17. For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in SAFE and/or Secured Asset Factoring Exchange, identify the bank name, address, payee, amount, date of payment and reason for payment.

18. Identify by date, amount and bank identity, all payments made to or for the benefit of Tamrin Baggett in connection with her 809 Holdings investment. In addition set forth the reason for each payment.

19. For any sums paid to an 809 Holdings, SAFE or Secured Asset Factoring Exchange investor or limited partners or partner since 2011, identify the individual who made the decision to pay such person and the basis why such payment was made, and why other investors or partners were not similarly paid.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC
June 4, 2014

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-3362

CASE NO. 2014-CP-26-3362

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YOU WILL PLEASE TAKE NOTICE that the undersigned counsel hereby requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Defendants respond, within thirty (30) days after the service hereof, to the following Requests and that the Defendants produce and permit the Plaintiff's counsel to inspect, copy, or photograph, at the office of Defendants' attorney, each of the following documents or things which may be in the possession, custody, or control of the Defendants or Defendants' attorneys which constitutes or contains evidence relating to the claim or defense of the within cause.

DEFINITIONS

The term "documents" or "things" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda,

pleadings, papers filed with any court, municipality, county or administrative agency or department, notes, diaries, statistics, letters, telegrams, minutes of meetings, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefaxes, invoice work sheets; all drafts, alterations, modifications, changes, and amendments of any of the foregoing graphic or aural records, representations of any kind, including, without limitation, photographs, charts, microfilm, videotape, recordings, and motion pictures; and electronic, mechanical, or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, videos, or other records.

The term "all documents" means every document as defined above known to Defendant, Defendant's agents or counsel, and each document that can be located or discovered by reasonably diligent efforts.

DOCUMENTS

1. Copies of any and all statements given by parties, eyewitnesses or other witnesses to the incidents and matters complained of herein which are in the possession of the Defendants or Defendants' counsel, whether written or recorded or on a tape recorder or otherwise.
2. Any and all work papers, notes, documents and/or reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' work papers, notes, documents, emails sent to or received from experts, and/or reports.
3. Any and all documents identified or described in your Answers to Interrogatories.
4. Any and all documents you intend to introduce at trial.
5. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business might be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

6. Copies of any and all statements previously made by the Defendants concerning the subject matter of this lawsuit, including any written statement, signed or otherwise adopted or approved by the Defendants hereto and any stenographic, mechanical, electrical or other type of recording or any transcription thereof.
7. A copy of each and every correspondence sent to/by or received from any of the parties named in this lawsuit, which is not subject to the attorney-client privilege.
8. A copy of the state and federal tax returns, with all schedules for each year beginning 2010 to present.
9. Any and all financial statements, balance sheets and ledgers relating to 809 Holdings, LP, QC Financing, LLC, SAFE, or Secured Asset Factoring Exchange, Inc. at any time from August 2010 to present.
10. All bank account statements for the individual Defendants and 809 Holdings, LP, SMG Partners, LLC, SMS Services, LP, WCP Limited, LLC, Sage Advisory Group, L.P., Sage Private Equity Group, Digics, LLC, 9-1-1 Plumbing, LLC and Sage Funding, LP for any bank account relating to any monies received from or deposited to or for the benefit of 809 Holdings, LP at any time from August 2010 to present.
11. All computer software (e.g., Peachtree) registers or accounting statements relating to investor monies being invested in SAFE/Secured Asset Factoring Exchange, Inc., and 809 Holdings, LP at any time from August 2010 to present or monies being paid to such investors.
12. A copy of any formal or informal complaints or lawsuits filed against you from 2008 to present relating to an investment or investment advice.
13. Your state and federal tax returns (including K-1) for 2010 to present.
14. Any loan documents relating to 809 Holdings or SAFE or Secure Asset Factoring Exchange at any time since August 2010 at any time.
15. Any assignments between SAFE or Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP.

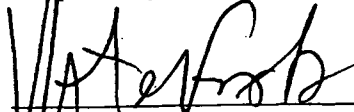
16. From August 2010 to present, any and all emails referencing or relating to Gabriel Barnhill or his investment.

17. A copy of your corporate book and corporate records, organizational papers, bylaws, meeting minutes, resolutions, consents, and operating and partnership agreements.

18. Any and all investigations and documentations from any state office of any state including, but not limited to, any and all security's commissions, attorney generals' office in any way relating to any claim, complaint, investigation, sensor, reprimand, punishment, fine, withdrawal, suspension or revocation of any license or security's filings or security sale or investment sale by you at any time from 2000 to present.

19. A copy of any payment made after 2011 to any person for any reason who is a note purchaser, investor, equity holder, or limited partner in SAFE, 809 Holdings, LP or Secured Asset Factoring Exchange, Inc.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC

June 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-26-8367

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

John M. Leiter, Bar No.

Address:

1203 48th Avenue, N., Suite 109

Myrtle Beach, SC 29577

phone: 843-449-1451 fax: 843-449-4884

e-mail: jleiter@48th.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: Plaintiffs' Notice of Motion and Motion to Compel Discovery

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

May 11, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

- (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, 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: _____

***STATE OF SOUTH CAROLINA**

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)**

CERTIFICATE OF SERVICE

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,**

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May 11, 2015 I did serve a copy of Plaintiffs' Notice of Motion and Motion to Compel Discovery

upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.

Law Offices of John M. Leiter, PA

1203 48th Avenue, North, Ste. 109

Myrtle Beach, SC 29577

Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,

Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,

William C. Piner, WCP Limited, LLC, Alicia A. Piper,

Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP

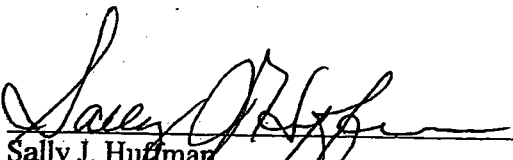
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.

Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

Counsel for 809 Holdings, LP



Sally J. Huffman
Legal Assistant to Nate Pata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-26-3362
(formerly 2013-CP-26-02816)

MOTION TO BE RELIEVED AS COUNSEL
FOR J. FLOYD SWILLEY, J. FLOYD
SWILLEY INVESTMENT ADVISORS,
LAUREL K. SWILLEY, SMG PARTNERS,
LLC, SMS SERVICES, LP, WILLIAM C.
PINER, WCP LIMITED, LLC, ALICIA A.
PINER, 809 HOLDINGS, LP, HEATH
CAUSEY, SAGE FINANCIAL GROUP,
LLC, SAGE PRIVATE EQUITY GROUP,
SECURED ASSET FACTORING
EXCHANGE, INC., DIGICS, INC., SAGE
FUNDING, L.P. AND CHRISTOPHER
PITCOCK

FILED
HORRY COUNTY
2015 OCT 27 AM 10:12
MELANIE HUGGINS-WARD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before this
Honorable Court ten (10) days after the service hereof or as soon thereafter as counsel may
be heard, at the Horry County Courthouse in Conway, South Carolina, for an Order relieving

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John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock, in the above-captioned matter.

This Motion is based on South Carolina Rules of Professional Conduct pursuant to Rule 1.16(b)(5), the Defendants have failed to fulfill their obligation to pay the Law Offices of John M. Leiter, PA for their professional services rendered in this matter, despite having been given reasonable warning of its intent to withdraw unless the obligation is fulfilled; and Rule 1.16(b)(6), the representation will result in an unreasonable financial burden on the lawyer.

Counsel further states that he has given these Defendants reasonable notice of Counsel's intent to withdraw.

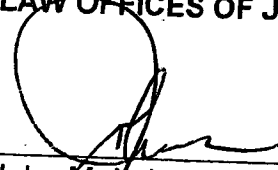
Presently before the Court are several Motions on the October 29, 2015 court roster. Counsel moves for a stay of all proceedings in this matter for thirty (30) days following the Court's order on this motion to allow Defendants to retain new counsel.

Counsel has complied with his duty to consult before filing this motion.

Respectfully submitted by

LAW OFFICES OF JOHN M. LEITER, PA

By:


John M. Leiter, Esquire
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451

Myrtle Beach, South Carolina
October 20, 2015

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, hereby certify that I have served this date the individuals named below in this action with the foregoing Motion to be Relieved as Counsel by causing a copy of the same to be sent via email and first class United States Mail with sufficient postage attached as follows:

J. Floyd Swilley & Laurel K. Swilley
J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577
jfs@sagesc.com
lks@swilleydisability.com

William C. Piner & Alicia Piner
WCP Limited, LLC
606 Calhoun Street
Myrtle Beach, SC
bill.piner@gmail.com

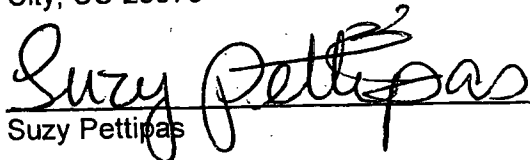
Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
heath@clear-acct.com

Christopher Pitcock
Digics, LLC
24242 Branchwood Court
Lutz, FL 33559
pitcockchris@gmail.com

and via first class U.S. Mail with sufficient postage attached as follows:

Nate Fata, Esquire
PO Box 16620
Surfside Beach, SC 29587

Mark D. Neill, Esquire
Neill Law Firm
671 Jamestowne Drive, Suite 207
Garden City, SC 29576


Suzy Pettipas

October 22, 2015
Myrtle Beach, South Carolina

FILED
HURRY COUNTY
2015 OCT 27 AM 10:12
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT AND FOR
JUDGMENT ON THE PLEADINGS

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for

000355

summary judgment and judgment on the pleadings on all of Defendants' counterclaims. There is no issue of material fact. Defendants have failed to state a claim. Plaintiffs are statutorily shielded from liability for any alleged company debt. Moreover, Defendants have no evidence of Plaintiffs' misappropriating any sums or any damages allegedly caused by Plaintiffs. As more fully set forth in the accompanying Memorandum, Plaintiffs are entitled to judgment on all counterclaims.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC.
December 16, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF THEIR MOTION
FOR JUDGMENT ON THE
PLEADINGS AND/OR SUMMARY
JUDGMENT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

Plaintiffs' submit this Memorandum in Support of Their Motion for Judgment on the
Pleadings and for Summary Judgment.

INTRODUCTION

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. Barnhill was 26-27 years of age at the time. The Swilley and Piner Defendants established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, LLC, a pawn shop entity established by Piner and Swilley. In essence, Swilley and Piner took investor/client retirement monies to fund their own startup businesses. In 2014, Barnhill filed a companion case asserting derivative claims.

PROCEDURAL HISTORY

Defendants have failed to comply with mandatory mediation, multiple Court Orders, and have and continue to obstruct the discovery process. In their attempts to ferret out this complex Ponzi scheme, Plaintiffs served discovery requests upon the Defendants. From the onset, Defendants forced Plaintiffs to file motions to compel discovery.¹

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013; January 8, 2014; January 10, 2014, September 5, 2014 and September 5, 2014; and October 5, 2014.

November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and Judge Culbertson awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014 the Court again entered an Order for Sanctions. In that Order, Judge Hyman found, "Defendants have been sandbagging in their discovery responses.... "The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process".²

The Motion for Sanctions filed May 4, 2015 and the Motion for Sanctions filed June 12, 2015 were for failure to comply with Court ordered mediation and discovery, respectively. The Court entered an Order on September 10, 2015 granting Plaintiffs' relief and awarded attorney fees. This Motion for Summary Judgment follows two years of discovery practice and multiple motions to compel Defendants to disclose their information and any evidence they have which support their claims.

FACTS

In 2011 at the direction of Swilley and Piner, Barnhill's \$115,000, including retirement monies, were invested in the 809 Holdings' Notes and Barnhill became a limited partner. 809 Holdings was a partnership created and owned by the Swilley and Piner Defendants and their companies. Defendants are clever and sophisticated litigants. Laurel Swilley is an attorney. Floyd Swilley is a bookkeeper/financial advisor. William Piner and Heath Causey are businessmen. Swilley has been involved with other investment schemes. Floyd Swilley and Laurel Knuckles Swilley agreed to confess judgment in an Oklahoma federal case in which

² Twigg filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey, Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

\$100,000,000 was allegedly lost by investors. The Court should take judicial notice of Judge Waites' Order in In Re: John F. Swilley, 02-09234-W, Adv. Pro. No. 02-80347-W., United States Bankruptcy Court, (D.S.C. 2003), previously attached as Exhibit B to Plaintiff's Memorandum filed on April 20, 2015.

Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013³:

Investor	Amount	Date
Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
Mark Sarvis	\$40,000.00	8/12/11
Gabriel Barnhill	\$49,000.00	5/26/11
	\$41,000.00	3/28/11
GSB Enterprises	\$25,000.00	4/11/11

Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, were previously filed with the Court.

Defendants obtained more than \$360,000 from investors in less than one year.

Thereafter, Defendants disclosed that only \$42,000 has been repaid to 809 Holdings' investors. In addition Swilley and Piner created another Ponzi vehicle, Secured Asset Factoring Exchange ("SAFE"), in late 2011. Defendants raised \$896,325 in SAFE offerings to other

³ Floyd Swilley's purported loan is not referenced below.

investors and only \$533,659 has been repaid. See Defendants' Answers to Supplemental Interrogatories dated October 30, 2014, previously attached as Exhibit C to Plaintiffs' Memorandum filed on April 20, 2015. Thus, between 809 Holdings and SAFE, Defendants bilked investors out of more than \$650,000.

Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000. In addition, 809 Holdings has transferred assets to SAFE.

On June 26, 2013 Defendants filed their Amended Answer with Counterclaim. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
3. Usurpation of Partnership Opportunity (809 Holdings only);
4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by the Defendants indicated above. Defendants were required to identify alleged misappropriated funds by Barnhill under Court Order filed September 10, 2015. After two years of discovery delays, Defendants were unable to identify any date or amount of a misappropriation by Barnhill. It is undisputed plaintiffs never had access to any bank accounts and that Plaintiffs never received any personal property.

ARGUMENT

Defendants' counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by Plaintiffs to any of the Defendants. Second, Defendants have no evidence of damages caused by Plaintiffs. Plaintiffs were not signatories to any bank account of QC Financing or 809 Holdings. Any alleged financial improprieties would only fall on the account signatories and not on the plaintiffs.

A. No legal duty is owed to any Defendant.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any Defendant. According to Defendants, Quick Cash Pawn was the trade name of QC Financing, LLC, which owned the pawn shop inventory. See Defendants' Answers to Supplemental Interrogatory Number 1, previously filed with the Court. No duty is owed by Barnhill to any Defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC.

Defendants have not alleged or demonstrated the basis for any duty, requiring a finding that Barnhill owed no duty to Floyd Swilley or 809 Holdings, LP. All claims should be dismissed. Similarly any claim that Floyd Swilley loaned money to QC Financing, LLC or the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

B. Defendants have not pled a cause of action.

The Counterclaims for usurpation of corporate opportunity, quantum meruit and breach of loan agreements are barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation also fail as a matter of law. Paragraph 201 alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Crt. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 213, to-wit that 809 Holdings did not get paid by other entities, is insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid. Defendants already sued the person they believe is at fault, David Wilkinson, and received a judgment against him.

C. Defendants have no evidence to support the elements of any of their claims.

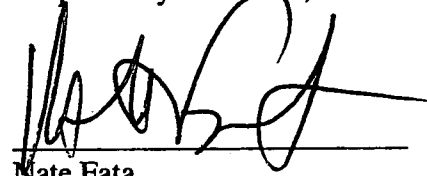
Defendants must come forward with some evidence to support each element of each cause of action. They do not have any evidence to support any cause of action. Furthermore, Defendants have no evidence showing Plaintiffs caused any damages. Plaintiffs invested

\$115,000 and lost approximately \$113,000. Defendants have no claim against Plaintiffs. Defendants' discovery abuse should come to an end with the Court dismissing their Counterclaims.

CONCLUSION

Defendants have no evidence that that any alleged damage was caused by Plaintiffs or that Plaintiffs owed any duty or breached any duty owed to any Defendant. Summary judgment and/or judgment on the pleadings should be granted against Defendants on their counterclaims.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Surfside Beach, South Carolina
December 16, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

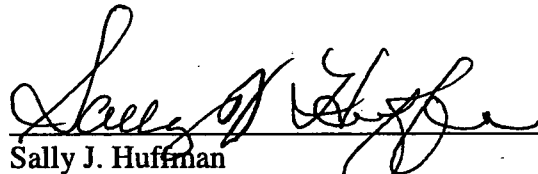
I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on

000365

December 11 2015 I did serve a copy of Plaintiffs' Memorandum in Support of Motion for Judgment on the Pleadings and/or Summary Judgment upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner,
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF HEARING

HORRY COUNTY
FEB -9 AM 9:14
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: ALL DEFENDANTS:

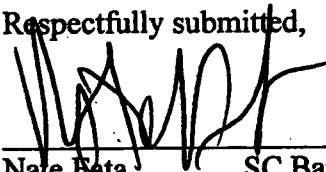
YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled for Tuesday,
February 16, 2016 at 9:30 a.m., on the undersigned's previously filed Motion To Compel and

000367

Motion for Summary Judgment before the Honorable R. Lawton McIntosh. This hearing will be held on the third floor of the Horry County Government and Justice Center, located at 1301 Second Avenue, Conway, South Carolina.

Please be present if so minded.

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
February 3, 2016

000368

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

HORRY COUNTY
2016 FEB -9 AM 9:14
CLERK OF COURT

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LLC, Sage Advisory Group, L.P.,
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SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 3, 2016 I did serve a copy of Plaintiffs' Notice of Hearing upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

000369

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMS Services, LP
629 Hemlock Avenue
Myrtle Beach, SC 29577

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576

QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach, SC 29577

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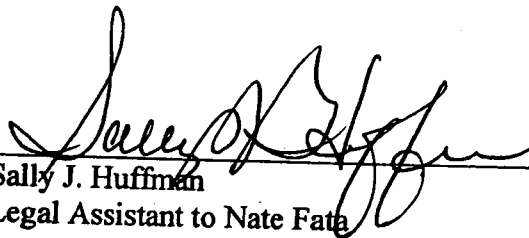
• Sage Funding, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559


Sally J. Huffman
Legal Assistant to Nate Fata

000372

F. MILES ADLER

ATTORNEY AT LAW

April 19, 2016

VIA U.S. Mail

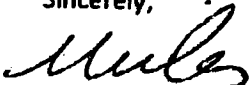
**The Honorable Melanie Huggins
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29526**

**Re: Barnhill et al. v. J. Floyd Swilley et al.
C/A No. 2014-CP-26-08367**

Dear Ms. Huggins:

Enclosed please find one original and a conforming copy of my Notice of Appearance on behalf of the named defendants identified in my notice. I would ask that you please file same, returning the clocked copy to my office in the enclosed SASE.

Sincerely,



F. Miles Adler

Enclosures: as stated

cc: Nate Fata (w/ enc.)

**ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island South Carolina 29585
T 843.314.3204
F 843.314.3205
adlerlaw.partners**

000373

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC,
Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited LLC, 809 Holdings,
LP, QC Financing, LLC, Heath Causey, and Sage
Financial Group, LLC

Defendants.

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Financial Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc., SAFE,
Inc., Digics, LLC, 9-1-1 Plumbing, LLC, and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-26-3362
(formerly 2013-CP-26-02816)

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE OF ADLER LAW FIRM, LLC

Please enter the appearance of Adler Law Firm, LLC as counsel on behalf of the defendants: J. Floyd Swilley, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, Sage Financial Group, LLC, and Sage Private Equity Group, LLC in this action.

000374

Notice of Appearance
Adler Law Firm, LLC
C/A: 14-CP-26-3362

Pawleys Island, SC
April 19, 2016



F. Miles Adler
ADLER LAW FIRM LLC
SC Bar No.: 70238
P.O. Box 4743
Pawleys Island, SC 29585
T: 843-314-3204
F: 843-314-3205
miles@adlerlaw.partners

Notice of Appearance
Adler Law Firm, LLC
C/A: 14-CP-26-3362

CERTIFICATE OF SERVICE

I certify that on April 19, 2016, the foregoing Notice of Appearance of Adler Law Firm, LLC on behalf of Defendants J. Floyd Swilley, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, Sage Financial Group, LLC, and Sage Private Equity Group, LLC was served by first class mail on opposing counsel as follows:

Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, South Carolina 29587
Attorney for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC

A handwritten signature in cursive script, appearing to read "F. Miles Adler", is written over a horizontal line.

F. Miles Adler

000376

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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LLC,

Plaintiffs,

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Investment Advisors, Laurel K. Swilley,
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FEB-9 AM 9:14
CLERK OF COURT

TO: ALL DEFENDANTS:

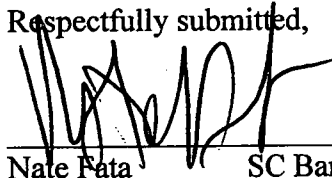
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Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
February 3, 2016

000378

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Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013³:

Investor	Amount	Date
Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
Mark Sarvis	\$40,000.00	8/12/11
Gabriel Barnhill	\$49,000.00	5/26/11
	\$41,000.00	3/28/11
GSB Enterprises	\$25,000.00	4/11/11

Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, were previously filed with the Court.

Defendants obtained more than \$360,000 from investors in less than one year.

Thereafter, Defendants disclosed that only \$42,000 has been repaid to 809 Holdings' investors. In addition Swilley and Piner created another Ponzi vehicle, Secured Asset Factoring Exchange ("SAFE"), in late 2011. Defendants raised \$896,325 in SAFE offerings to other

³ Floyd Swilley's purported loan is not referenced below.

investors and only \$533,659 has been repaid. See Defendants' Answers to Supplemental Interrogatories dated October 30, 2014, previously attached as Exhibit C to Plaintiffs' Memorandum filed on April 20, 2015. Thus, between 809 Holdings and SAFE, Defendants bilked investors out of more than \$650,000.

Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000. In addition, 809 Holdings has transferred assets to SAFE.

On June 26, 2013 Defendants filed their Amended Answer with Counterclaim. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
3. Usurpation of Partnership Opportunity (809 Holdings only);
4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by the Defendants indicated above. Defendants were required to identify alleged misappropriated funds by Barnhill under Court Order filed September 10, 2015. After two years of discovery delays, Defendants were unable to identify any date or amount of a misappropriation by Barnhill. It is undisputed plaintiffs never had access to any bank accounts and that Plaintiffs never received any personal property.

ARGUMENT

000382

Defendants' counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by Plaintiffs to any of the Defendants. Second, Defendants have no evidence of damages caused by Plaintiffs. Plaintiffs were not signatories to any bank account of QC Financing or 809 Holdings. Any alleged financial improprieties would only fall on the account signatories and not on the plaintiffs.

A. No legal duty is owed to any Defendant.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any Defendant. According to Defendants, Quick Cash Pawn was the trade name of QC Financing, LLC, which owned the pawn shop inventory. See Defendants' Answers to Supplemental Interrogatory Number 1, previously filed with the Court. No duty is owed by Barnhill to any Defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC.

Defendants have not alleged or demonstrated the basis for any duty, requiring a finding that Barnhill owed no duty to Floyd Swilley or 809 Holdings, LP. All claims should be dismissed. Similarly any claim that Floyd Swilley loaned money to QC Financing, LLC or the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

B. Defendants have not pled a cause of action.

The Counterclaims for usurpation of corporate opportunity, quantum meruit and breach of loan agreements are barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation also fail as a matter of law. Paragraph 201 alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Crt. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 213, to-wit that 809 Holdings did not get paid by other entities, is insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid. Defendants already sued the person they believe is at fault, David Wilkinson, and received a judgment against him.

C. Defendants have no evidence to support the elements of any of their claims.

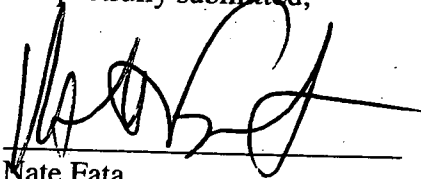
Defendants must come forward with some evidence to support each element of each cause of action. They do not have any evidence to support any cause of action. Furthermore, Defendants have no evidence showing Plaintiffs caused any damages. Plaintiffs invested

\$115,000 and lost approximately \$113,000. Defendants have no claim against Plaintiffs. Defendants' discovery abuse should come to an end with the Court dismissing their Counterclaims.

CONCLUSION

Defendants have no evidence that that any alleged damage was caused by Plaintiffs or that Plaintiffs owed any duty or breached any duty owed to any Defendant. Summary judgment and/or judgment on the pleadings should be granted against Defendants on their counterclaims.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Surfside Beach, South Carolina
December 16, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-26-3362

HORRY COUNTY
2016 FEB -9 AM 9:14
CLERK OF COURT

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 3, 2016 I did serve a copy of Plaintiffs' Notice of Hearing upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

000386

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMS Services, LP
629 Hemlock Avenue
Myrtle Beach, SC 29577

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576

QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach, SC 29577

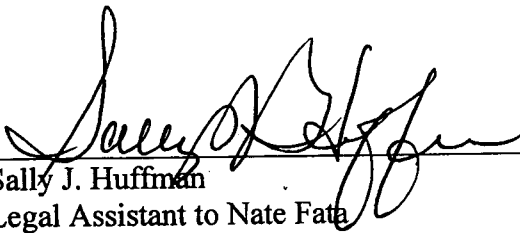
• Sage Funding, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559



Sally J. Huffman
Legal Assistant to Nate Fata

000388

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF HEARING

HORRY COUNTY
2016 APR 24 PM 1:21
MELANIE J. BROWN - WARD
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled for Monday,
April 25, 2016 at 1:00 p.m..

000389

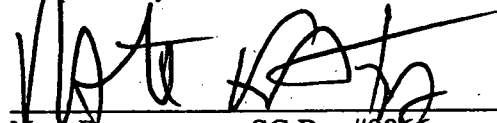
Under the Courts previous Order of February 16, 2016 a hearing will be held on the following:

1. Plaintiffs' Notice of Motion and Motion for Attorney Fees filed on February 23, 2016; and
2. Plaintiffs Notice of Motion and Motion for Entry of Default and Striking the Pleadings of All Company Defendants filed on February 25, 2016.

This hearing will be held on the third floor of the Horry County Government and Justice Center, located at 1301 Second Avenue, Conway, South Carolina before the Honorable Benjamin Culbertson.

Please be present if so minded.

Respectfully submitted,



Nate Fata

SC Bar #9886

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
April 20, 2016

000390

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

HORRY COUNTY
2016 APR 21 PM 1:21
MELANIE HUBBARD
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on April
20, 2016 did serve a copy of Plaintiffs' Notice of Hearing on Defendants and counsel by

000391

mailing a copy of the same postage prepaid to:

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

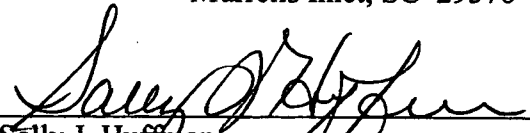
Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576



Sally J. Huffman
Legal Assistant to Nate Fata

000392

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB)
Enterprises, LLC,)

Plaintiffs)

vs.)

809 Holdings, LP, 9-1-1 Plumbing,)

LLC, Heath Causey, Digics, LLC, J.)

Floyd Swilley Investment Advisors,)

J Floyd Swilley SMG Partners LLC,)

Alicia A Piner, William C. Piner,)

Christopher Pitcock, QC Financing,)

LLC, SAFE, Inc., Sage Advisory)

Group, LP, Sage Financial Group,)

LLC, Sage Funding, LP, Sage)

Private Equity Group, Secured)

Asset Factoring Exchange, Inc.,)

SMG Partners, LLC, SMS Services,)

LP, J. Floyd Swilley, Laurel K.)

Swilley, and WCP Limited, LLC,)

Defendants,)

IN THE COURT OF COMMON PLEAS

FIFTEENTH CIRCUIT COURT

CASE NO: 2014-CP-26-3362

(formerly 2013-CP-26-02816)

DEFENDANT, HEATH CAUSEY'S,
NOTICE OF MOTION AND
MOTION TO SET ASIDE
SUMMARY JUDGMENT

HELAHIL, HARRIS-WARD
CLERK OF COURT

2016 APR -6 PM 4:52

HORRY COUNTY

TO: THE DEFENDANTS NAMED ABOVE AND IT'S ATTORNEY ~~REDACTED~~ NATE FATA
~~REDACTED~~, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof,
or as soon thereafter as may be heard, the Defendant, Heath Causey, Pro Se, will move
before this Honorable Court:

For an order setting aside summary judgment that was entered against Defendant
Heath Causey, on February 16, 2016 pursuant to Rule 55(c) and 60(b) of the South
Carolina Code of Civil Procedure.

FACTS

copy

000393

1. The Defendant, Heath Causey was represented by John M. Leiter, Esquire but on or about January 4, 2016 Mr. Leiter went before the Honorable William H. Seals, Jr. for a Motion to be Relieved as Counsel where his Motion was granted.

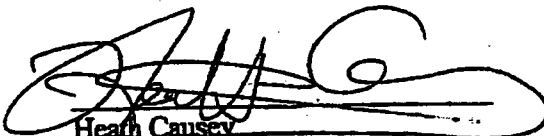
2. On or about January 14, 2016 a Motion Hearing was scheduled for February 16, 2016. Notice of this hearing was sent to Frederick Miles Adler, Esquire, former counsel of the Defendant, Heath Causey. Defendant, Heath Causey was never notified of this hearing.

3. On or about February 9, 2016 the Plaintiff, Gabriel Barnhill, by and through his attorney filed a Notice of Hearing with the Horry County Clerk of Court. Defendant, Heath Causey received said notice the day of the hearing after the hearing had been heard.

4. On or around March 31, 2016, Defendant, Heath Causey received a copy of the Order for the February 16, 2016 hearing where the Honorable R. Lawton McIntosh Ordered that the Answer, Counterclaim and other pleadings of the Defendant, Heath Causey, be stricken. It was also Ordered that all Counterclaims be dismissed with prejudice; the Affidavit of William Piner be stricken.

WHEREFORE, PREMISES CONSIDERED, Defendant, Heath Causey, prays that upon hearing of this matter, that this Court will issue an order setting aside summary judgment under Rule 55(c) and 60(b) of the South Carolina Code of Civil Procedure.

April 6, 2016
Myrtle Beach, South Carolina


Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
Phone: (843) 424-9258
Email: heath.causey@mac.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC

Plaintiff,

vs.

809 Holdings, LP, 9-1-1 Plumbing, LLC,
Heath Causey, Digics, LLC, J. Floyd Swilley
Investment Advisors, J. Floyd Swilley SMG
Partners LLC, Alicia A Piner, William C.
Piner, Christopher Pitcock, QC
Financing, LLC, SAFE, Inc., Sage Advisory,
Group, LP, Sage Financial Group, LLC, Sage
Funding, LP, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc., SMG
Partners, LLC, SMS Services, LP, J. Floyd
Swilley, Laurel K. Swilley, and WCP
Limited, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-26-08367

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

HORRY COUNTY
2016 APR -6 PM 4:52
HEATH CAUSEY
CLERK OF COURT

Plaintiff's Attorney:

Nate Fata, Bar No. 9866

Address:

P.O. Box 16620, Surfside Beach, SC 29587

Phone: 843-238-2676 Fax 843-238-0240

E-mail: nfata@fatalaw.com Other:

Defendant's Attorney:

Heath Causey, Bar No. Pro Se

Address:

1035 Pinwheel Loop, Myrtle Beach, SC 29577

Phone: 843-424-9258 Fax

E-mail: heath.causey@mac.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 Set Aside

Estimated Time Needed: 30 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

4/6/16

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

000395

COPY

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)

000396

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

NOTICE OF BANKRUPTCY FILINGS

CASE NO. 2014-CP-26-3362

FILED
HORRY COUNTY
2016 APR 25 PM 12:45
MELANIE HUGGINS-WARD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the following Defendants have filed a
Chapter 7 or 13 Bankruptcy:

000397

SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMS Services, LP
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach, SC 29577

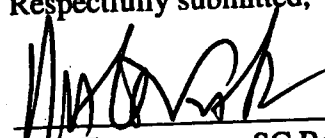
Sage Funding, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

Alicia Piner
606 Calhoun Street
Myrtle Beach, SC 29577

Secured Asset Factoring Exchange, Inc.
d/b/a SAFE, Inc.
606 Calhoun Road
Myrtle Beach, SC 29577

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
April 7, 2016

000398

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

CLERK OF COURT

2016 MAY 16 PM 2:08

HORRY COUNTY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

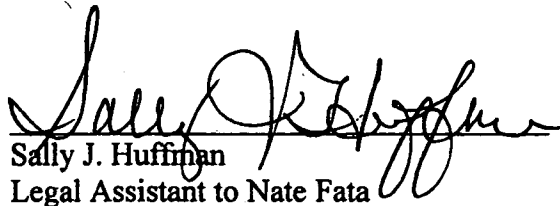
I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May
13, 2016 did serve a copy of the Notice of Bankruptcy Filings via U.S. Mail as follows:

000399

Stefan Fiedler, Esq.
Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
Pro Se

F. Miles Adler, Esq.
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
*Counsel for J. Floyd Swilley, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
Sage Financial Group, LLC and Sage Private Equity Group, LLC*


Sally J. Huffman
Legal Assistant to Nate Fata

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

AFFIDAVIT OF SALLY J. HUFFMAN

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

FILED
CLERK OF COURT
2016 APR 13 AM 9:11
JANIE HUGGINS-WALKER

Sally J. Huffman, being duly sworn, deposes and says:

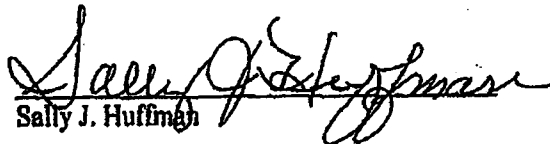
1. I am over the age of eighteen years and am competent to make this Affidavit.

Copy

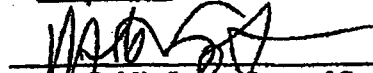
000401

2. I am the legal assistant to Nate Fata, P.A.
3. That I served via U.S. Mail on February 3, 2016 the Notice of Hearing upon the Pro Se Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, Sage Financial Group, LLC, Sage Advisory Group L.P., Sage Private Equity Group, Sage Funding, L.P. at their last known address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577.
4. That on February 18, 2016 I served via U.S. Mail Plaintiffs' Affidavit for Attorney Fees and Motion for Attorney Fees above to the Pro Se Defendants at the above address.
5. That on February 24, 2016 a copy of the proposed Order sent to The Honorable R. Lawson McIntosh was mailed to the above Pro Se Defendants at the above address.
6. That on February 24, 2016 I mailed to Pro Se Defendants a copy of the Notice of Motion and Motion for entry of Default and Striking the Pleadings of All company Defendants to the above Pro Se Defendants at the above address.
7. That on March 29, 2016, I mailed to Pro Se Defendants a copy of the Order entered on March 21, 2016 to the above Pro Se Defendants at the above address.
8. That no mail sent by me to the 629 Hemlock Avenue, Myrtle Beach, South Carolina for the above mentioned Pro Se Defendants has been returned by the U.S. Post Office as being undeliverable.
9. Based on the fact the U.S. Post Office has delivered multiple Notices to the 629 Hemlock Avenue, Myrtle Beach address and the Swilleys' confirmation that they reside at such address, I continue to mail notices and pleadings to that address.

FURTHER AFFIANT SAYETH NAUGHT.


Sally J. Huffman

SWORN to before me this 13 day
of April, 2016.


Notary Public for the State of South Carolina
My Commission Expires: 12/16/2020

000402

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May
13th, 2016 did serve a copy of the Affidavit of Sally J. Huffman via U.S. Mail as follows:

000403

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SANCTIONS**

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, , Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel John Leiter, Esq.

000404

809 Holdings, LP and its Counsel Mark D. Neill, Esq.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter for an Order for sanctions due to Defendants failure to provide responses to discovery items which were addressed at the April 20, 2015 hearing and subject to the May 22, 2015 Order.

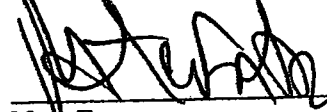
A hearing was held on April 20, 2015 with regard to, inter alia, Plaintiffs' Motion to Compel Discovery filed on September 5, 2014. Defendants were to provide complete responses by May 20, 2015. No responses were provided. By letter dated May 28, 2015, Plaintiff requested Defendants to provide responses under the Court's Order. To date Defendants have not provided responses to the outstanding discovery items in violation of the Court's Order. Due to Defendants' continued stonewalling, the Court should impose sanctions, award attorney fees and costs.

Plaintiff's counsel certifies that he attempted to resolve this matter with opposing counsel prior to filing the motion and that any further attempts would be futile.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter the appropriate Sanctions Order against Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P., Christopher Pitcock and 809 Holdings, LP, in connection with their failure to provide full and

complete discovery responses, award reasonable attorney fees in connection with this Motion and hearing, and award all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
June 8, 2015

000406

***STATE OF SOUTH CAROLINA**

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)**

CERTIFICATE OF SERVICE

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,**

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on June 9, 2015 I did serve a copy of "Plaintiffs' Notice of Motion and Motion for Sanctions" upon

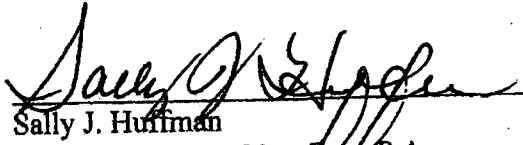
000407

Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner,
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

000408

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-26-08367

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

John M. Leiter, Bar No.

Address:

1203 48th Avenue, N., Suite 109

Myrtle Beach, SC 29577

phone: 843-449-1451 fax: 843-449-4884

e-mail: jleiter@48th.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: Plaintiffs' Notice of Motion and Motion for 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

June 8, 2015

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

- ☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, 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:** _____

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2015 DEC 15 AM 9:08
HELAHIE HARRIS
CLERK OF COURT

PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
DEPOSITIONS OF DEFENDANTS

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, , Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel John Leiter, Esq.

copy

000410

809 Holdings, LP and its Counsel Mark D. Neill, Esq.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter for an Order to compel Depositions of Defendants.

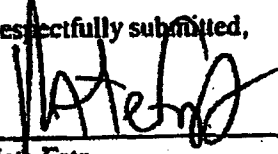
The following Notices of Deposition were served upon Defendants:

1. Plaintiffs' Notice of Deposition of WCP 30(b)(6) on November 16, 2015;
2. Plaintiffs' Amended Notice of Deposition of Heath Causey on November 23, 2015;
3. Plaintiffs' Amended Notice of Deposition of Laurel Swilley on November 23, 2015;
4. Plaintiffs' Amended Notice of Deposition of Floyd Swilley on November 23, 2015; and
5. Plaintiffs' Amended Notice of Deposition of 809 Holdings 30(b)(6) on November 23, 2015.

Defendants did not appear for deposition. Multiple discovery sanction orders have been entered in this case. Defendants are further delaying discovery. Further consultation would serve no useful purpose.

This Court should strike Defendants' Answer and Counterclaim, award attorney fees and costs and award all other appropriate relief.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
December 14, 2015

000412

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-26-3362

HORRY COUNTY
2016 DEC 15 AM 9:00
MELANIE HUFFMAN
CLERK OF COURT

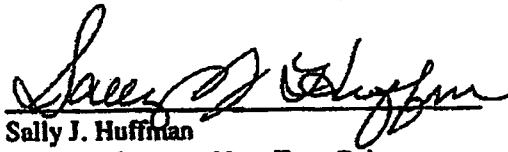
I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on

000413

December 15th, 2015 I did serve a copy of Plaintiffs' Notice of Motion and Motion to Compel Depositions of Defendants upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner,
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)

Defendants.)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2016 APR -1 PM 4:10
MELANIE J. BARNHILL
CLERK OF COURT

NOTICE OF MOTION AND MOTION
TO SET ASIDE ORDER OF MARCH 21, 2016

CASE NO. 2014-CP-3362

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR COUNSEL OF RECORD

Comes now the undersigned Laurel Swilley, pro se (the "Movant"), and hereby moves
this Honorable Court to set aside the Order entered on March 21, 2016 (the "Order"), and in
support thereof states as follows:

000415

copy

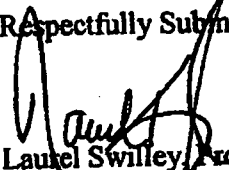
1. At the time and date of the purported notice and of hearing this Movant was under the veil of protection of Order of the Court signed on the 25th day of January 2016.
2. The Movant did not receive a copy of the motion or timely notice of the hearing that resulted in the Order.
3. The Movant did not receive a copy of the March 21, 2016 Order except from attorney Nate Fata's paralegal and the certificate of service is dated March 29, 2016. The mailing was received March 31, 2016.
4. The Movant contacted Horry County Clerk of Court's office and was advised that no mailings of any orders or notices have been sent to any of the pro se defendants including the Movant. The Movant advised the Clerk of Court that Movant was pro se with multiple other former clients of Attorney Leitner.

- a. The clerk advised that there were only two attorneys (Neil and Fata) who were to receive any notices and that nothing had been sent to any of the pro se defendants. Pursuant to SCR 60 the Clerk of the Court erred by failing to properly notice the Movant.

5. The Order is based upon errors of facts.
6. It is submitted, the Plaintiff should not be permitted to prevail within the constraints of this Order in that same would subject the Movant to undue hardship and irreparable harm while bestowing unjust enrichment upon the Plaintiffs. Due to the timing of receipt of this Order Movant may follow with amendment or memorandum in more detail.

Wherefore it is prayed the Order of March 21, 2016 be set aside and held for naught and for any and all proper relief to which the undersigned movant may appear to be entitled.

Respectfully Submitted,


Laurel Swilley, Pro se
629 Hemlock Avenue
Conway, SC 29577
PH: 843-438-8413
Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)

Defendants.)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, LP.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2016 APR -1 PM 4:10
MEL ANNE...
CLERK OF COURT

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-3362

I, Laurel K. Swilley, do hereby certify that I on April, 1, 2016 did serve a
copy of Notice: Motion upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as
follows:

J. Floyd Swilley
629 Hemlock Avenue

000417

Myrtle Beach, SC 29577

**J. Floyd Swilley' Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMS Services. LP
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**WCP Limited, LLC c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577**

**809 Holdings, LP
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576**

**QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach. SC 29577**

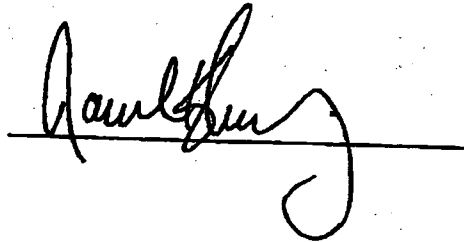
**Sage Funding. L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577**

Digics. LLC
c/o Chris Pitcock Registered Agent
472 Mooreland Drive
Myrtle Beach. SC 29588

Digics. LLC
c/o Christopher Pitcock 24242 Branchwood Court
Lutz. FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559



STATE OF SOUTH CAROLINA

COUNTY OF

Horry

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2014 -CP- 26-8367

Gabriel Barnhill and GSB Ent, Inc.
Plaintiff,

vs.

J. Floyd Sulley, Et. Al.
Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

2016 APR -1 PM 4:18
MELANIE
CLERK OF COURT
HORRY COUNTY

Plaintiff's Attorney: <u>Nate Fata, Esq.</u> , Bar No. <u>09866</u> Address: <u>P.O. Box 16629, Surfside Beach, SC 29587</u> Phone: <u>843-238-2676</u> Fax <u>843-238-0240</u> E-mail: <u>nfata@fata6.com</u> Other: _____		Defendant's Attorney: _____, 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: <u>Defendant's Motion to Set Aside Order of March 21, 2016</u> Estimated Time Needed: <u>15 minutes</u> 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. <u>David S. Shuler, Clerk K. Sulley Apr. 1, 2016</u> , 20____ Signature of Attorney for ☐ Plaintiff / ☐ Defendant <u>for</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ 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: _____, 20____	
CLERK'S VERIFICATION Collected by: <u>Jarb</u> Date Filed: <u>4-1</u> , 20 <u>16</u> ☐ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

copy

000420

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

April 1, 2016

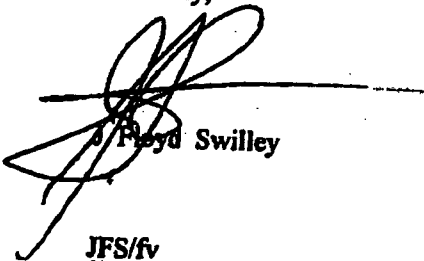
Via Hand Delivery
Horry County Clerk of Court
P. O. Box 677
Conway, SC 29526

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et.al.
Civil Action No. 2014-CP- 26-08367

Dear Ms. Huggins:

Enclosed herein is an original and copy of the Motion to Set Aside March 21, 2016 AND Order Information Form. Also enclosed is a check in the amount of \$25.00 to cover the filing fee. Thanking you in advance for your assistance regarding this matter.

Sincerely,



JFS/fv
Enclosures

Copy to :
Nate Fata, esq.
Mark Neill, esq
Laurel K. Swilley
Heath W. Causey
Chris Pitcock
Other Defendants

000421

STATE OF SOUTH CAROLINA

COUNTY OF

HorryIN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: _____-CP-_____

Liabriel Bainhill GSB Ent. et al

Plaintiff,

vs.

J. Floyd Sullley, Et. Al

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Note Faint</u> , Bar No. <u>09866</u> Address: <u>P.O. Box 16620, Surfside Beach, SC 29581</u> Phone: <u>843-238-2676</u> Fax <u>843-238-0240</u> E-mail: <u>note.faint@att.net</u> Other:		Defendant's Attorney: Address: Phone: _____ Fax _____ E-mail: _____ Other:																	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ 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: <u>Defendant motion to set aside order of March 24, 2016</u> 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. <u>Floyd Sullley</u> <u>April 1</u> , 2016 Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted																			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) <table border="0"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other:</td> </tr> </table>				☐ 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 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:	
☐ 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 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: _____, 20																	
CLERK'S VERIFICATION Collected by: <u>Jah</u> Date Filed: <u>4-1-16</u> , 20																			
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																			

SCCA 233 (11/2003)

000422

copy

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)

Defendants.)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, LP.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

NOTICE OF MOTION AND MOTION
TO SET ASIDE ORDER OF MARCH 21, 2016

CASE NO. 2014-CP-3362

HORRY COUNTY
2016 APR -1 PM 4:12
MELANIE J. BUSH
CLERK OF COURT

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR COUNSEL OF RECORD

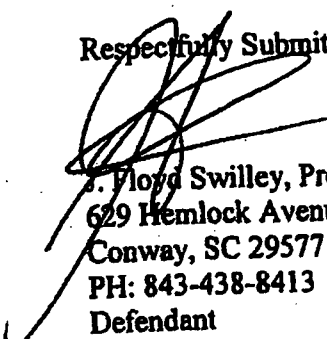
Comes now the undersigned J. Floyd Swilley, pro se (the "Movant"), and hereby moves this Honorable Court to set aside the Order entered on March 21, 2016 (the "Order"), and in support thereof states as follows:

copy

000423

1. At the time and date of the purported notice and of hearing this Movant was under the veil of protection of Order of the Court signed on the 25th day of January 2016.
 2. The Movant did not receive a copy of the motion or timely notice of the hearing that resulted in the Order.
 3. The Movant did not receive a copy of the March 21, 2016 Order except from attorney Nate Fata's paralegal and the certificate of service is dated March 29, 2016. The mailing was received March 31, 2016.
 4. The Movant contacted Horry County Clerk of Court's office and was advised that no mailings of any orders or notices have been sent to any of the pro se defendants including the Movant. The Movant advised the Clerk of Court that Movant was pro se with multiple other former clients of Attorney Leitner.
 - a. The clerk advised that there were only two attorneys (Neil and Fata) who were to receive any notices and that nothing had been sent to any of the pro se defendants. Pursuant to SCR 60 the Clerk of the Court erred by failing to properly notice the Movant.
 5. The Order is based upon errors of facts.
 6. It is submitted, the Plaintiff should not be permitted to prevail within the constraints of this Order in that same would subject the Movant to undue hardship and irreparable harm while bestowing unjust enrichment upon the Plaintiffs. Due to the timing of receipt of this Order Movant may follow with amendment or memorandum in more detail.
- Wherefore it is prayed the Order of March 21, 2016 be set aside and held for naught and for any and all proper relief to which the undersigned movant may appear to be entitled.

Respectfully Submitted,


J. Floyd Swilley, Pro se
629 Hemlock Avenue
Conway, SC 29577
PH: 843-438-8413
Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)

Defendants.)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, LP.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2016 APR -1 PM 4:13
MELANIE HUGHES
CLERK OF COURT

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-3362

I, J. Floyd Swilley, do hereby certify that I on April, 1, 2016 did serve a copy of Notice of Motion and Motion To Set Aside Order of March 21, 2016 upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

Laurel K. Swilley
629 Hemlock Avenue

000425

Myrtle Beach, SC 29577

**J. Floyd Swilley' Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMS Services. LP
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**WCP Limited, LLC c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577**

**809 Holdings, LP
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576**

**QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Sage Funding. L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

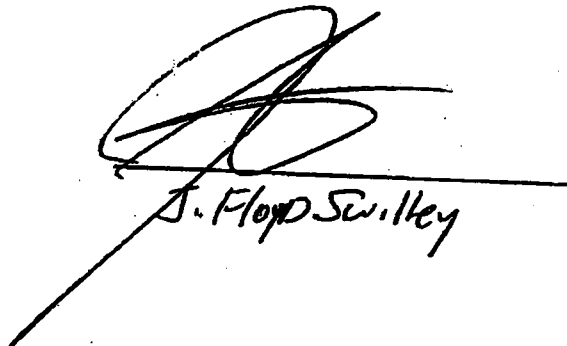
**Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577**

000426

Digics. LLC
c/o Chris Pitcock Registered Agent
472 Mooreland Drive
Myrtle Beach. SC 29588

Digics. LLC
c/o Christopher Pitcock 24242 Branchwood Court
Lutz. FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559



J. Floyd Swilley

000428

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2014-CP-26-3362

GABRIEL BARNHILL AND GSB
ENTERPRISES, LLC.

Plaintiffs,

vs.

J. FLOYD SWILLEY, J. FLOYD
SWILLEY INVESTMENT ADVISORS,
LAUREL K. SWILLEY, SMG
PARTNERS, LLC, SMS SERVICES,
LP, WILLIAM C. PINER, WCP
LIMITED, LLC, 809 HOLDINGS,
LP, QC FINANCING, LLC, HEATH
CAUSEY AND SAGE FINANCIAL
GROUP, LLC.

Defendants.

Transcript of Record

June 20, 2016

GABRIEL BARNHILL AND GSB
ENTERPRISES, LLC.

Plaintiffs,

vs.

J. FLOYD SWILLEY, J. FLOYD
SWILLEY SMG PARTNERS, LLC, SMS
SERVICES, LP, WILLIAM C. PINER
WCP LIMITED, LLC, ALICIA A.
PINER, 809, HOLDINGS, LP,
HEATH CAUSEY, AND SAGE
FINANCIAL GROUP, LLC, SAGE
PRIVATE EQUITY GROUP, SECURED
ASSET FACTORING EXCHANGE, INC.)
SAFE, INC., DIGICS, LLC, 9-1-1)
PLUMBING, LLC, AND SAGE
FUNDING, L.P., AND CHRISTOPHER
PITCOCK,

Defendants.

000429

B E F O R E:

Honorable William H. Seals, Jr.
Horry County Courthouse
Conway, South Carolina

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

Natale Fata, Esquire
Attorney for Plaintiffs

John M. Leiter, Esquire
Attorney for Defendants

Kay H. Richardson
Circuit Court Reporter

I N D E X

January 4, 2016

Pg.

Motions	4
Certificate of Court Reporter	6

E X H I B I T S

No.

ID

EV

1 (JANURAY 4, 2016)

2 THE COURT: Gabriel Barnhill versus Floyd Swilley.

3 Yes, sir?

4 MR. LEITER: We -- there are two motions on the roster.
5 One is a motion for reconsideration of the previous sanctions
6 ordered that you issued. And Mr. Fata reminds me that you
7 have denied that by an email to him, so that has been
8 resolved.

9 The second is my motion to be relieved as counsel, Your
10 Honor, for the usual reasons none payment of the fees. We
11 have -- we filed it and we've served the -- just to put on the
12 record who I represent, since it's a long list, I represent
13 the Defendants other than the 809 Holdings, LLC, and Mr.
14 Feidler is here who represents them. And, I also do not
15 represent Q.C. Financing, LLC that's listed as a Defendant.
16 But the other Defendants, I do represent and I am requesting
17 that I be relieved as counsel. I ask that they be given
18 thirty days in which to obtain new counsel.

19 THE COURT: All right.

20 MR. LEITER: I believe that Mr. Fata, representing the
21 Plaintiff, does not oppose that.

22 THE COURT: Is that correct?

23 MR. FATA: Thank you, Your Honor. Nate Fata on behalf of
24 the Plaintiffs. I don't have any objection to that; that's
25 fine. I would just ask that maybe on connection with possibly

1 counsel getting in or us moving forward with the Defendants
2 pro se, that we have maybe a trial not before the date of May
3 1st. Obviously, there's gonna be a lag now until February,
4 some time before I can do anything and I have to file motions
5 before the Court, I'll need to have time to get up to speed.

6 THE COURT: Any objections from you?

7 MR. FEIDLER: No, Your Honor, no objections.

8 THE COURT: All right. Why don't you go ahead and
9 prepare me an order, give them thirty days to find new counsel
10 and a trial will not be had before May 1st, 2016.

11 MR. FATA: Thank you, Your Honor.

12 MR. LEITER: Thank you, Your Honor.

13 THE COURT: Thank you. Y'all have a good day.

14 (ADJOURNED - 10:03 A.M.)
15
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Gabriel Barnhill, et al. versus J. Floyd Swilley, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 4, 2016.

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

Kay H. Richardson
Official Court Reporter

August 19, 2016.

000434

000435

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2014-CP-26-08367

3

4 Gabriel Barnhill and GSB)
5 Enterprises, LLC,) Transcript of Record

6

vs.

7 J. Floyd Swilley)

8

9

February 16, 2016
Conway, South Carolina

10

11

BEFORE:

12

Honorable R. Lawton McIntosh, Judge.

13

14 APPEARANCES:

15

Natale Fata, Esq.
Attorney for the Plaintiff

16

17

Stefan B. Feidler, Esq.
Attorney for the Defendant
809 Holdings

18

19

20

21

Teresa J. F. Bautz, RPR
Official Court Reporter

22

23

24

25

E X H I B I T S

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NO.

DESCRIPTION

ID

EV

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No exhibits submitted.

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1 (The hearing commenced at approximately
2 10:07 a.m.)

3 THE COURT: This is Barnhill?

4 MR. FATA: Yes, Your Honor.

5 MR. FEIDLER: Yes, Your Honor.

6 THE COURT: This appears to be a motion to compel;
7 is that correct?

8 MR. FATA: Your Honor, yes, sir. Nate Fata on
9 behalf of the Plaintiffs, the Barnhill Plaintiffs.
10 There are actually two motions. One is a motion to
11 compel, slash, sanctions, and the second one is a
12 motion for summary judgment, judgment on the pleadings
13 for the counterclaims asserted by the Defendants in the
14 litigation.

15 THE COURT: Okay. Let's go over the motion to
16 compel first. You have the discovery that's in
17 dispute?

18 MR. FATA: Your Honor, I think with the motion we
19 had filed the discovery, notices of deposition, I think
20 I have an extra set here. If you want me to hand it
21 up, I would be more than happy to do so.

22 THE COURT: I have it.

23 MR. FATA: Okay.

24 THE COURT: Give me one second, let me look over
25 it, please.

1 MR. FATA: Sure.

2 THE COURT: So is WCP a party, Causey, Swilley,
3 Swilley and 809 Holdings, all of those are Defendants
4 in this case?

5 MR. FEIDLER: Yes, Your Honor. But I only
6 represent 809 Holdings, LP. In fact, Mr. John Leiter,
7 he's an attorney, he was representing the other
8 Defendants. And admin Judge Seals signed an order
9 relieving him on the 14th of January, giving them 13
10 days to find new counsel. So I'm only here on 809
11 Holdings, LP, Your Honor. As you can see, none of the
12 other Defendants are here today.

13 THE COURT: Are you here, sir, on the case of
14 Barnhill versus Swilley?

15 ATTORNEY: No, sir.

16 THE COURT: Okay.

17 ATTORNEY: Thank you.

18 THE COURT: Yes, sir.

19 MR. FATA: Your Honor?

20 THE COURT: Let's go to 809 first. And then as to
21 the other ones, I don't know what in the world -- why
22 you would not place somebody up to be a 30(b)(6)
23 witness for your corporation.

24 MR. FEIDLER: Well, Your Honor --

25 MR. FATA: I might be able to help --

1 THE COURT: Okay.

2 MR. FATA: -- just to catch you up with the
3 background.

4 THE COURT: Okay, sure.

5 MR. FATA: Because this case is odd for me. After
6 20 years of practicing I've had a case where I've had
7 to come repeatedly to the Court for help during
8 discovery. There are three sanctions orders that have
9 already been entered by Judge Culbertson, Judge Hyman
10 and Judge Seals in September of 2015. It was Judge
11 Seals' order. Judge Culbertson entered an order in
12 January 2014. As you can see from the docket number,
13 the case is kind of old.

14 So for two and a half years or so I've been trying
15 to move the case along, get discovery. This case
16 arises out of my 26-year-old client at the time using a
17 bookkeeper, Floyd Swilley, who said I've got a great
18 investment for you, let's take your retirement money
19 and put it in this investment, it's a pawn shop, new
20 business start-up. I call it the pawn shop Ponzi
21 scheme.

22 There are about \$400,000 of other investors'
23 money, retirees, 70 years old, all put in Mr. Swilley
24 and Mr. Piner's pawn shop. They wanted to start a
25 bunch of pawn shops on the beach. And they were using

000440

1 all of the retiree monies or retirement monies from
2 different people that they knew to start and basically
3 fund their operations.

4 That all went south. 809 Holdings was the first
5 vehicle, if you will, the investment vehicle. Mr.
6 Barnhill put in 115,000, and I think he got one check
7 back for 2,000, nothing else. Mr. Swilley and
8 Mr. Piner then started another entity call SAF, Secured
9 Asset Factory, raised about eight or 900,000. About
10 another \$400,000 was lost.

11 So in total there's 700,000 or so dollars that
12 have been lost by investors mostly in the Myrtle Beach
13 area, a lot of it retiree money. We started down this
14 case in 2013, and then in 2014 in a derivative action,
15 Miles Adler was the first lawyer for all of the
16 Defendants. He then asked to get out of the case.

17 John Leiter stepped in, was counsel for about 15
18 months. Same problem with discovery, had a hard time
19 getting information, had to come here to the Court over
20 and over again. He then wasn't being paid, the
21 Defendants weren't communicating with him obviously.
22 They wouldn't show up for depositions, they wouldn't
23 provide dates for depositions, they wouldn't do
24 anything.

25 So I filed a motion to compel in December.

1 Mr. Leiter's motion to be relieved as counsel --

2 THE COURT: What was your motion to compel, what
3 were you seeking?

4 MR. FATA: My motion to compel that was filed in
5 December sought to strike the answer and counterclaim
6 of these Defendants.

7 THE COURT: Were you seeking the deposition of
8 these individuals or the 30(b)(6) depositions at that
9 point?

10 MR. FATA: At the time I sent the notices, yes,
11 sir, I was.

12 THE COURT: No, no, no, no. What I'm trying to
13 get in my mind, I'm sorry I'm not being very clear, you
14 have prior orders from three Circuit Court judges
15 granting discovery and issuing sanctions; correct?

16 MR. FATA: Yes, sir.

17 THE COURT: Were any of those orders to take the
18 depositions that you're requesting today?

19 MR. FATA: There was an order -- yes -- there was
20 an order, a consent order actually entered in May 2015
21 that said the parties, because I had moved to compel
22 depositions and discovery then, the parties agreed, Mr.
23 Leiter and I agreed that we would cooperate and get the
24 depositions done. And that's in that order, that
25 May 2015 order.

000442

1 THE COURT: The exact same individuals you're
2 seeking in this case?

3 MR. FATA: Yes, sir, Your Honor. I mean,
4 Mr. Causey, Mr. Piner. And Mr. Piner's since filed
5 bankruptcy so I can't get his deposition. I can as a
6 witness but not as a party, he's not a party. But
7 Mr. Swilley, yes, sir, okay.

8 And I don't know about WCP, I might have asked for
9 that deposition before, but certainly on 809 Holdings
10 you can see it's an amended notice. So I've been
11 trying to get -- these are the major players, the
12 principals, involved in the organizations that were
13 doing all the money getting, spending. And so that's
14 who the primary suit's against.

15 So yes, Your Honor, we had already addressed that
16 issue with the Court. The judge asked us to figure it
17 out. We tried to figure it out, I thought we had a
18 plan, it didn't work. We've got a trial not before
19 date of May 1 now. So now I am here two and a half
20 years after beginning the suit with a counterclaim I
21 know nothing about with no information, I have no
22 depositions yet.

23 The case has already been postponed by Judge
24 Seals. He understood that we needed some more time in
25 January when Mr. Leiter was getting out. He said,

1 okay, I'll give the Defendants 30 days to get new
2 counsel. And after that, you know, we need to take
3 off. So I haven't been able to take off.

4 So what I'm asking the Court is to strike the
5 answer and counterclaims at least of those Defendants
6 who are not here today. That was in the motion. I
7 sent each of those pro se defendants separate notice of
8 hearing that's been filed with the Clerk of the Courts.
9 I took care of that.

10 In addition, I'm sure Mr. Leiter notified them of
11 the upcoming hearing. But we would like the Court to
12 just address this issue because -- and I have an
13 affidavit for attorney's fees -- because I haven't
14 gotten anywhere. And I don't have any more information
15 now than when I first got the counterclaim back in like
16 2013.

17 And I've been here, this is the fourth or fifth
18 time, discovery, I would call discovery abuse. And
19 I've never had a case where I've had to ask the judge
20 to get involved three times and been given sanctions.
21 In fact, Judge Hyman said, and these are his words, you
22 know, you're sandbagging Mr. Fata. And that's in his
23 order, that wasn't my language, but he said that. And
24 I haven't had the judge say that to another litigant
25 while I've been practicing in Horry County for 21

1 years, sir.

2 So what I'm asking for is if I'm not going to
3 strike the answer and counterclaims, I would like to do
4 that and get an order for attorney's fees. If the
5 Court doesn't want to grant that, then my second
6 position would be make the Defendant show up at my
7 office when I send out the notice, these pro se
8 Defendants, because they're not here. And if they
9 don't show up, then their answer and counterclaim is
10 stricken, so I can just move forward and prepare for
11 trial.

12 THE COURT: That's Causey and the two Swilleys?

13 MR. FATA: Causey and the two Swilleys, yes, sir.
14 And then 809 Holdings I --

15 THE COURT: Yeah, we going to talk about 809 in
16 just one second. I'm inclined to grant your motion to
17 strike the pleadings and for fees.

18 MR. FATA: Yeah.

19 THE COURT: If you have prior orders of this Court
20 saying Heath Causey, Will Swilley -- am I pronouncing
21 that correctly?

22 MR. FATA: Swilley.

23 THE COURT: Floyd Swilley.

24 MR. FATA: Floyd.

25 THE COURT: You are to appear for a deposition or

1 you'll face sanctions, and they still haven't done
2 it --

3 MR. FATA: Well, the orders in the past were on
4 discovery, interrogatories, requests for production of
5 documents, not giving me any information. So I --

6 THE COURT: Well, that's what I was asking you
7 earlier, you know, specifically what were the prior
8 discovery orders concerning?

9 MR. FATA: Requests for production of documents,
10 interrogatory responses. There is a May 2015 order
11 that specifically addressed the depositions, because I
12 had filed motions to compel.

13 THE COURT: And that May order, that's the consent
14 order you entered into with the driver?

15 MR. FATA: Yes, it is, Your Honor. Yes.

16 THE COURT: Does it provide any alternatives in
17 the event they don't cooperate?

18 MR. FATA: No, it does not, Your Honor. I don't
19 believe it does. I believe it's Plaintiff's motion to
20 compel depositions and Defendant's motion to quash
21 deposition notices have been resolved. The parties
22 shall cooperate on the setting of the depositions.

23 THE COURT: And that's dated May of last year?

24 MR. FATA: May 22, 2015 is the filed date.

25 THE COURT: All right. I'm going to grant your

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1 motion to strike the pleadings as to Causey and the
2 Swilleys.

3 MR. FATA: Yes, sir.

4 THE COURT: If they're not going to participate,
5 they obviously don't have or retained other counsel or
6 don't seem to want to participate in this action. I
7 think it's appropriate. You will need to prepare an
8 affidavit of attorney's fees as to those Defendants.
9 Have you noticed them on that affidavit yet?

10 MR. FATA: No, Your Honor.

11 THE COURT: Under the rules, I think you have to
12 give a ten-day notice.

13 MR. FATA: Okay.

14 THE COURT: Ten days. You can go ahead and give
15 it to me. Have you filed that?

16 MR. FATA: Yes, sir, at this point.

17 THE COURT: Yeah. Now, as to 809?

18 MR. FEIDLER: Yes, Your Honor.

19 THE COURT: Let me ask you, going back to May, was
20 809 addressed in that order as well?

21 MR. FATA: Your Honor, I believe it was because,
22 like I said, this notice in December was -- or November
23 that I said was an amended notice, and I believe this
24 809 notice has been kicking around, I just amend it
25 from time to time to try to get another date that might

1 work, it never worked. But I can't definitively answer
2 that question without looking through the whole file,
3 and I don't have the whole file here because it's
4 voluminous.

5 THE COURT: You're shaking your head that yes, 809
6 was in that consent order; is that correct?

7 MR. FEIDLER: I hope I was not, Your Honor. I
8 might have just been --

9 THE COURT: Well, let me ask you.

10 MR. FEIDLER: Yes, Your Honor.

11 THE COURT: Give me one good reason, one, why 809
12 hasn't participated in discovery like they're supposed
13 to in any case, one.

14 MR. FEIDLER: Well, Your Honor, I'm kind of new to
15 this. I did go over the file.

16 THE COURT: I understand that. I figured that you
17 must be.

18 MR. FEIDLER: This is just a complicated case.
19 There's a companion case that --

20 THE COURT: I understand it's complicated.

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: It's probably complex. But it's not
23 complicated to say this is the person who is going to
24 speak for this corporation, and they appear for a
25 deposition. That's not complicated.

1 MR. FEIDLER: Yes, Your Honor.

2 THE COURT: That's very straightforward.

3 MR. FEIDLER: Yes, Your Honor.

4 THE COURT: So at this juncture, how long you been
5 in this case?

6 MR. FEIDLER: I've been with the firm since
7 August 17th. And I believe this is one of the first
8 files I dealt with off and on until this date.
9 Mr. Neill obviously has been here before that on the
10 companion case.

11 THE COURT: So going back --

12 MR. FEIDLER: Yes, Your Honor.

13 THE COURT: -- tell me why. I mean, even once you
14 received the motion to compel at this juncture, what
15 have you done to say, hey, hang on, let me get my folks
16 to name and let's get them participating instead of
17 waiting until today and I guess saying mea culpa, I'm
18 not sure.

19 MR. FEIDLER: Your Honor, I don't know how to
20 phrase it, but I guess my ability to argue for my
21 clients is as good as whether they cooperate with me,
22 Your Honor.

23 THE COURT: Well, and I know that you're limited
24 to what you can or cannot say. Have you attempted to
25 have them name and designate somebody as a spokesperson

1 for the corporation?

2 MR. FEIDLER: I know the two members of the
3 corporation, I cannot clearly --

4 THE COURT: The question is you or your firm --
5 let me clarify that. Has any legal representative of
6 the corporation sought to have whoever name the
7 spokesperson for the corporation?

8 MR. FEIDLER: Your Honor, I cannot tell you yes or
9 no, I do not know that answer. I know that Mr. Swilley
10 and Mr. Piner are representatives of that corporation.
11 And they are the gentlemen that we have been in touch
12 with per 809. They were notified of this hearing, they
13 knew everything that's going on, and we are just --
14 we're trying to move -- 809 at this point is trying to
15 claim bankruptcy. Of course we've said that months ago
16 and that's just something we're waiting on them to do
17 is to get them out of here.

18 It's my understanding as to just 809 and the
19 depositions that they did not attend, that there was a
20 supposed gentleman's agreement between Mr. Fata and
21 Mr. Neill over the phone. Maybe that should have been
22 followed up by an e-mail or a letter that they would
23 continue those depositions until a later date.

24 THE COURT: Is that true?

25 MR. FATA: No, Your Honor. What the conversation

1 was, I need some dates, how about this date, that
2 doesn't work, give me some dates. And then I don't
3 hear anything. Mr. Neill is trying to work with
4 Mr. Piner and Mr. Swilley.

5 Mrs. Swilley is a lawyer, Your Honor. So she
6 practices disability law in Conway. So this is not
7 foreign to them. They've been in other, I call them
8 Ponzi scheme lawsuits before in federal court in
9 Oklahoma. There's a US Bankruptcy Court judge ruling
10 on Mrs. Swilley trying to discharge a confession in
11 judgment from the Oklahoma case.

12 And the judge, Judge Wade, said, you can't do
13 that, you agreed in front of that federal judge.
14 You're not going to try to discharge the securities
15 fraud related debt six months after you were in federal
16 court saying, okay, I'm not going to discharge the
17 debt.

18 So what I'm trying to tell the Court is there's a
19 history with the Swilleys for sure, it's in this brief
20 that was filed on April 22nd. I have an extra copy if
21 Your Honor would like to read it with the Swilleys.
22 Mr. Piner is kind of -- he went into bankruptcy, so
23 he's not going to talk to his counsel, this is not on
24 the front burner.

25 But there has been wave after wave after delay.

1 The Swilleys are very used to doing this, they've done
2 it before. And I'm at the ouch point where I've got
3 two months left to get ready for a trial and I've got,
4 you know --

5 THE COURT: Nothing.

6 MR. FATA: -- nothing. And I've been trying to
7 get something. And so there wasn't a gentleman's
8 agreement, it's -- there's radial silence, like what's
9 going on. I've been hearing 809 is filing bankruptcy
10 for three months. Well, that's another delay tactic.

11 So, you know, at this point if they have money to
12 pay the lawyer, then I guess we got to go to trial. If
13 they're going to file bankruptcy, great, then I don't
14 have to come bother the Court, get you to waste your
15 time. I apologize for that, but I don't have any other
16 choice. Judge Seals --

17 THE COURT: This is what I get paid for.

18 MR. FATA: I understand, Your Honor, but --

19 THE COURT: It's not a waste of your time.

20 MR. FATA: -- it's very frustrating.

21 THE COURT: Sure.

22 MR. FATA: Two and a half years. My client's out
23 \$113,000 he said he made. I'm getting sued for what.
24 I put 115 in, I got a \$2,000 check and I'm getting
25 sued. And I'm paying you, and I don't even know what I

1 did. I didn't have access to the checkbook, I didn't
2 receive anything other than a \$2,000 check they sent to
3 me.

4 So, you know, and the case is complicated, but my
5 client didn't have access to any of the money. And
6 he's getting sued and I don't know no, so we can't move
7 forward, so --

8 THE COURT: Let me ask you, the representative of
9 the 809 --

10 MR. FEIDLER: Yes, sir.

11 THE COURT: -- is Mr. Swilley?

12 MR. FEIDLER: Yes, sir.

13 THE COURT: And what I think I'm hearing you say
14 is we've tried to get him to give us some names and
15 whatever, and we're just not getting anything back from
16 him; is that a fair statement?

17 MR. FEIDLER: Your Honor, we've asked him to give
18 us some dates on depositions. We signed a scheduling
19 order that gives us, I believe it's either March 2nd or
20 3rd to get those depositions done.

21 THE COURT: Right.

22 MR. FEIDLER: And, Your Honor, we've tried, we've
23 attempted, and it's just a --

24 THE COURT: I'm going to strike 809's pleadings as
25 well.

1 MR. FEIDLER: Yes, Your Honor.

2 THE COURT: I'm going to do the same as to
3 attorney fees, and you just need to send a copy over to
4 counsel. I want you to make sure that your order
5 provides -- from what I'm hearing, the attorney's for
6 809 have attempted to cooperate.

7 MR. FATA: Will do, Your Honor.

8 THE COURT: Also, I want to hear you on the
9 judgment for the pleadings because I might want to make
10 an alternative finding in this case as well. So go
11 ahead and ask or argue your motion for judgement on the
12 pleadings.

13 MR. FATA: Thank you. Will do, sir. Your Honor,
14 in the motion for judgment on the pleadings there are,
15 in essence, and I have a memorandum that was filed
16 December 21 with the Court.

17 THE COURT: I saw that in there. I have not read
18 it so...

19 MR. FATA: There are several causes of action in
20 the counterclaim. The first lawyer for the Defendants
21 raised frivolous proceeding act, quantum meruit,
22 usurpation of partnership opportunity, negligent
23 misrepresentation, breach of fiduciary duty and breach
24 of loan agreement.

25 THE COURT: Go over those again.

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1 MR. FATA: Sorry, Your Honor, I was a little fast.

2 THE COURT: Frivolous lawsuit?

3 MR. FATA: For all Defendants. And then quantum
4 meruit for 809 Holdings, usurpation of partnership
5 opportunity for 809 Holdings, negligent
6 misrepresentation as to 809 Holdings, breach of
7 fiduciary duty as to 809 Holdings, and breach of loan
8 agreements by Floyd Swilley.

9 THE COURT: Okay, sir. Well, the frivolous claim
10 is something that's just not right. I mean --

11 MR. FATA: Correct.

12 THE COURT: -- and it seems to me the cases say
13 you bring that up at the end of the day. I'll grant
14 your motion as to that. Go ahead and tell me about
15 quantum meruit.

16 MR. FATA: Quantum meruit, Your Honor, as to 809
17 Holdings, any claim 809 Holdings has as to Gabriel
18 Barnhill would be as to his status as a limited partner
19 in that investment, because that's what he was given, a
20 limited partnership interest.

21 Mr. Swilley and Mr. Piner, through their entities,
22 retained a general partnership interest, okay. So
23 under the limited partnership statute that I've cited
24 in the brief, limited partners aren't liable for
25 anything else other than whatever they contribute; in

1 other words, you can't sue a limited partner as if he
2 was a general partner. He's not obligated for any
3 partnership debt unless he signs off on a guarantee or
4 some type of written acknowledgement that, yes, I'm
5 going to be liable.

6 Similar to a member in an LLC, the statute's very
7 clear, members in LLC's, unless they --

8 THE COURT: Well, let me ask you this. Under the
9 Limited Partnership Act, doesn't that just cap your
10 liability but it doesn't cap your method of getting to
11 it?

12 MR. FATA: I think it's -- I don't think the
13 Limited Liability Act allows the partnership to sue you
14 for quantum meruit, to sue the limited partner. Maybe
15 you lose your membership interest or your limited
16 partnership --

17 THE COURT: But if they sued you for -- and I'm
18 asking, I'm going to read your brief -- if they sued
19 you for quantum meruit, equitable claim, and they seek
20 damages up to the amount of your investment in the
21 limited partnership based on that cause of action, you
22 say that's inappropriate?

23 MR. FATA: I say that's inappropriate. I don't
24 see how they get --

25 THE COURT: You have no equitable claim back

1 against the limited partners is what you're saying?

2 MR. FATA: No. You've got their -- the money is
3 there, that's the -- the limited partner doesn't get
4 paid back on his investment, that's what's lost. But
5 in this case 809 Holdings hasn't stated a claim or come
6 forth with any evidence as to what kind of quantum
7 meruit it deserves.

8 THE COURT: Well, judgement pleadings are just
9 that.

10 MR. FATA: Yes.

11 THE COURT: I mean, I'm looking at the pleadings
12 themselves for the facts; right?

13 MR. FATA: Yes, sir. And it's also -- it's a
14 summary judgment motion as well.

15 THE COURT: Oh, it is?

16 MR. FATA: It's judgment on the pleadings and
17 summary judgment, because we're this far into the
18 two-and-a-half-year litigation. I don't have any
19 facts, there are no facts to support any of these
20 claims. And even if there were, statutorily under the
21 Limited Partnership Act, I think my client's shielded
22 from liability unless you signed off on something
23 saying I'm going to be liable as a partner for these
24 type of quasi partnership allegations, which they're
25 not. He's a limited partner.

1 So it's two motions in one, judgment on the
2 pleadings and/or summary judgement because there are
3 some issues of fact this late in the day.

4 THE COURT: I'm sorry, I didn't know, sir.

5 MR. FATA: Well, I didn't explain it well, Your
6 Honor. So the same would be true for any type of
7 claims with QC Financing, LLC. In the summer of 2011,
8 Mr. Swilley was getting investigated by the Attorney
9 General's office for a lot of this, and he had to get
10 out of the that limited liability company.

11 He gave his -- he gave like an interest, like a
12 25 percent membership interest to Barnhill. And QC
13 Financing, LLC is the entity that had the pawn shop,
14 that ran the pawn shop and that borrowed the money from
15 809 Holdings.

16 THE COURT: So your motions are directed to all of
17 the named original Defendants and I'm looking at not
18 the third party Defendants.

19 MR. FATA: That's correct, Your Honor. Only the
20 original Defendants filed counterclaims. And after the
21 counterclaims were filed, Mr. Leiter stipulated on
22 behalf of all of the Defendants that it was just 809
23 Holdings that was asserting the claims. It's not clear
24 from its counterclaim that it was the only one
25 asserting a counterclaim, with the exception of Floyd

1 Swilley's counterclaim for breach of loan agreement.

2 THE COURT: Got you. Okay.

3 MR. FATA: So there is no duty owed as a member of
4 the limited liability company, QC Financing, that Mr.
5 Barnhill could allegedly have, or as a limited partner
6 of 809 Holdings he doesn't owe any duty. And even if
7 he did, there are no facts to support any of these
8 causes of action. There is no evidence. There is an
9 affidavit that was filed, I think, by Mr. Piner last
10 Friday I got it, Thursday or Friday.

11 THE COURT: And he's the gentleman that filed
12 bankruptcy?

13 MR. FATA: Yes, sir.

14 THE COURT: Got it.

15 MR. FATA: So I had filed the motion to strike
16 that affidavit because it doesn't comply with Rule 56.
17 The last two out of his six paragraphs talk about on
18 information and belief. That doesn't comply with Rule
19 56. I can hand up my motion that's already been filed
20 in, Your Honor.

21 And the other two or three paragraphs in his
22 affidavit, it's really only one page and -- I'm sorry.
23 Paragraphs two, three and the first four and the second
24 four just allege some conclusory statements stating
25 without any basis that Mr. Barnhill was involved in the

1 day-to-day operations of the pawn shop. He was not, he
2 has a full-time job. He's always had a full-time job.
3 He was just an investor, and he got stuck with the
4 wrong crowd, and this is where he is three years later.

5 THE COURT: And Mr. Piner is one that you've also
6 sought to have his deposition taken?

7 MR. FATA: Yes.

8 THE COURT: But he doesn't participate in it?

9 MR. FATA: Correct.

10 THE COURT: He gives an affidavit?

11 MR. FATA: That's right, that's right, Your Honor.

12 So as to the negligent -- I'm trying to move forward --
13 the negligent misrepresentation claim fails under the
14 pleading because it talks about a misrepresentation or
15 alleges a misrepresentation of what would happen in the
16 future. You have to misrepresent something, a current
17 fact that you know to be untrue today, not what you are
18 going to do in the future. It's kind of like a broken
19 promise is not enough to bring a fraud claim. So we
20 have a case cite of Allegro v. Scully, 762 S.E.2d 54, a
21 2014 case that supports that to strike that.

22 The breach of fiduciary duty claim, again, my
23 client's a limited partner. If anyone has a fiduciary
24 duty, it would be Piner and Swilley who are the general
25 partners. They set up QC Financing, they were the

1 original partners involved in that, And they sued their
2 former partner, Dave Wilkinson, who apparently took off
3 with some stuff, they sued him.

4 And so if there is any breach of fiduciary duty
5 claim, it would be as to those general partners, not a
6 limited partner or a member in an LLC that had no
7 signatory right to any checkbook, never got any money.
8 We asked in discovery, the judge did order this, Your
9 Honor, if you're going to allege misappropriation of
10 funds, you got to identify the funds.

11 So the response I get is, well, we don't really
12 know any specific dates, we just want you liable for
13 all the damages from our suit that we had against Dave
14 Wilkinson, a former partner. And that's simply not
15 compliant with discovery. So there is no evidence to
16 meet any of the elements for any of these claims.
17 That's why in the second suit they were never raised.
18 I think the second lawyer realized they weren't going
19 to go anywhere, they were a waste of time.

20 But at this point two years into the litigation,
21 we're asking for the Court to either by summary
22 judgment or a judgment on the pleadings or under the
23 motion for sanctions, depositions, just to strike them
24 or get rid of them so we don't have to deal with them,
25 Your Honor.

1 THE COURT: All right, sir.

2 MR. FEIDLER: Yes, Your Honor. It is our
3 understanding that Mr. Barnhill was in fact in that
4 pawn shop with Mr. Wilkinson, who he did find a
5 judgment against for \$785,000.

6 THE COURT: Say that again, please.

7 MR. FEIDLER: Mr. Wilkinson in the companion case
8 before this case, it is our impression that Mr.
9 Wilkinson and Mr. Barnhill were in that pawn shop
10 dealing with the assets --

11 THE COURT: Well, what do you base that impression
12 upon?

13 MR. FEIDLER: Well, Your Honor, we have an e-mail
14 where Mr. Wilkinson e-mails my clients and says, as far
15 as I'm concerned, Mr. Barnhill and I are partners in
16 this pawn shop. From what I've heard, they were in
17 this pawn shop, they were accepting assets.

18 The reason we can't pin this down with evidence is
19 because we don't know what was in that pawn shop.
20 Mr. Wilkinson in the companion case, and we have
21 pictures of this and I have affidavits, he actually
22 backed up a horse trailer and packed everything into
23 that horse trailer from the pawn shop and left for
24 Tennessee.

25 THE COURT: Who did?

1 MR. FEIDLER: Mr. Wilkinson, in a companion case.
2 It is our --

3 THE COURT: Did Barnhill and Wilkinson file K-1's
4 on the pawn shop?

5 MR. FEIDLER: I'm sorry, Your Honor, I honestly do
6 not --

7 THE COURT: That's a partnership return. Did they
8 ever file partnership returns or anything of that
9 nature indicating there was existence of a partnership?

10 MR. FEIDLER: Your Honor, I don't believe so.

11 MR. FATA: Your Honor, because Mr. Swilley handled
12 all the bookkeeping for QC Financing, the pawn shop, I
13 think the answer is no.

14 THE COURT: And how long was this pawn shop in
15 existence?

16 MR. FATA: Approximately end of 2010, early 2011,
17 till about August, I think, 2012. So 18, 20 months.

18 THE COURT: Okay. All right, go ahead. I don't
19 mean to interrupt you.

20 MR. FEIDLER: No, Your Honor, you're fine. I
21 think Mr. Fata's stuck on the limited partnership and
22 find a fiduciary duty there. I think this goes beyond
23 that. I know the Court may be able to find that there
24 was a legal duty, whether that's based on statute, the
25 limited partnership --

1 THE COURT: What statute?

2 MR. FEIDLER: Statute, yes, Your Honor, I'm sorry,
3 mispronounced that. Based on a relationship or
4 property interest or some special circumstances. And
5 we are under the impression --

6 THE COURT: Well, let me -- I'm going to give you
7 an opportunity.

8 MR. FEIDLER: Yes, Your Honor.

9 THE COURT: I want you to educate me. Give me
10 specifically factually the special circumstances that
11 have been proven to exist based on the discovery that's
12 taken place at this juncture.

13 MR. FEIDLER: To this juncture, none, Your Honor.
14 We were waiting to take Mr. Barnhill's deposition to
15 find that evidence, to find those facts, to find out if
16 he was in fact in that pawn shop dealing with the
17 day-to-day transactions, dealing with the assets.

18 They're taking in assets in this pawn shop, and
19 there's no bookkeeping of this, and also they're gone.
20 And that's where -- this is where the gap -- this is
21 where the gap is. This is what we're going to probably
22 be leaning on is whether or not we can prove how much
23 assets were in there, how much assets were taken out,
24 whether Mr. Wilkinson and Mr. Barnhill were together,
25 whether that's a limited partner or whether they are

1 just conducting business on a day-to-day basis. That's
2 where everything's kind of relying on.

3 And we've asked Mr. Fata, of course he's asked us
4 for -- to schedule these depositions, we asked him, we
5 would like to schedule Mr. Barnhill's deposition, we're
6 waiting on that. And as soon as we can depose
7 Mr. Barnhill, I believe that will open up a little bit
8 more for us to pin down exactly what was in that pawn
9 shop and what he had to do with that.

10 THE COURT: Has Mr. Fata not allowed you to take
11 Mr. Barnhill's deposition?

12 MR. FEIDLER: Your Honor, with all due respect to
13 Mr. Fata, I believe you asked him Thursday or Friday
14 for those dates.

15 THE COURT: So essentially what I'm hearing is
16 that the Defendants won't cooperate in any form or
17 fashion, although they've been ordered to. And at this
18 juncture because they haven't cooperated, we're
19 entitled not to have summary judgment issued against
20 us; is that a fair statement in some sense of the word?

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: You're being the sacrificial lamb here
23 today; aren't you?

24 MR. FEIDLER: I am, Your Honor.

25 THE COURT: All right, go ahead. I told you I

1 would let you argue, go ahead.

2 MR. FEIDLER: Your Honor, I really don't have
3 anything else to say other than we're just waiting to
4 take depositions.

5 THE COURT: I got you, okay.

6 MR. FEIDLER: We're just waiting to proceed on
7 this.

8 THE COURT: Mr. Fata, I'm going to read your
9 memorandum before I issue my order on that.

10 MR. FATA: Yes, sir.

11 THE COURT: My prior order striking the pleadings
12 on the Defendants that you asked for is granted. You
13 need to provide them and 809 your affidavit of
14 attorney's fees.

15 MR. FATA: Yes, sir.

16 THE COURT: Give them ten days to object. Now, as
17 far as the attorney's fees goes, if there is an
18 objection raised by your client, 809 or the other pro
19 se individual Defendants --

20 MR. FEIDLER: Yes, Your Honor.

21 THE COURT: -- it would seem to me more expedient
22 for you guys to consent at this juncture for another
23 circuit court judge to be able to hear it. Because I'm
24 from Anderson, and I can see the logistics of that
25 being a problem.

1 MR. FEIDLER: Yes, Your Honor.

2 MR. FATA: Your Honor, I consent to that. And by
3 the way, the affidavit of attorney's fees that I
4 submitted is about \$1,050, so it's not big.

5 THE COURT: It's not big.

6 MR. FATA: Yes, just for the Court's --

7 THE COURT: Do you have a problem consenting to
8 that?

9 MR. FEIDLER: No, Your Honor, not at all.

10 THE COURT: Just the fact just the amount of it.
11 In other words, attorney's fees is going to be
12 awarded -- are going to be awarded, excuse me. Just
13 the amount may be determined by another circuit court
14 judge just for logistical.

15 MR. FEIDLER: Absolutely.

16 THE COURT: Is that okay with you?

17 MR. FEIDLER: Yes, Your Honor.

18 THE COURT: Okay, all right. Anything further?

19 MR. FATA: No, Your Honor. Would you like the
20 proposed order in seven days or?

21 THE COURT: Just, yeah, if you would. Does that
22 give you enough time? Make sure you give me a copy of
23 the proposed order.

24 MR. FATA: Yes, sir.

25 THE COURT: Wait until I issue my order on the

1 summary judgment. I'm inclined to grant it, I'll tell
2 you, I'm sure you can tell.

3 MR. FATA: Yes, Your Honor.

4 THE COURT: But I want to read first to make sure
5 I'm not just missing the mark totally; okay?

6 MR. FEIDLER: Thank you, Your Honor.

7 MR. FATA: Thank you, Your Honor.

8 THE COURT: Thank you, guys. I appreciate it.

9 (The hearing concluded at approximately
10 10:41 a.m.)

11 (End of Transcript of Record.)

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3 CERTIFICATE OF REPORTER4 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF HORRY)7 I, TERESA J.F. BAUTZ, Official Court
8 Reporter for the Fifteenth Judicial Circuit of the
9 State of South Carolina, do hereby certify that the
10 foregoing is a true, accurate and complete Transcript
11 of Record of the proceedings had and evidence
12 introduced in the trial of the captioned case, relative
13 to appeal, in the Court of Common Pleas for Horry
14 County, South Carolina, on the 19th day of April, 2016.15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.
17
18
1920 S/Teresa J. F. Bautz
21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2013-CP-26-2816

Gabriel Barnhill, et al.,)

Plaintiffs,)

Transcript of Record

vs.)

Hearing

J. Floyd Swilley, et al.,)

January 13, 2014

Defendants.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Natale Fata, Esquire
Attorney for Plaintiffs

John M. Leiter, Esquire
Attorney for Defendants,
J. Floyd Swilley,

J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners LLC,
SMS Services LP, William C. Piner, WCP Limited LLC,
809 Holdings LP, Heath Causey,
and Sage Financial Group LLC

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, January 13, 2014.)

2 THE COURT: Okay. The next one is 2013-CP-26-2816,
3 Gabriel Barnhill and GSB Enterprises LLC versus J. Floyd
4 Swilley, J. Floyd Swilley Investment Advisors, Laurel K.
5 Swilley, SMG Partners LLC, SMS Services LP, William C. Piner,
6 WCP Limited LLC, 809 Holdings LP, QC Financing LLC, Heath
7 Causey and Sage Financial Group LLC. According to my roster
8 the matter is before the Court on a motion for sanctions.
9 Please give the court reporter your names and who you
10 represent.

11 MR. FATA: Your Honor, Nate Fata on behalf of the
12 Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC.

13 THE COURT: All right.

14 MR. LEITER: Your Honor, John Leiter on behalf of all of
15 the Defendants except for QC Financing, LLC. So I represent
16 J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel
17 K. Swilley, SMG Partners LLC, SMS Services LP, William C.
18 Piner and WCP Limited LLC, 809 Holdings LP, Heath Causey and
19 Sage Financial Group LLC.

20 THE COURT: All right. All right. Mr. Fata, this is
21 your motion?

22 MR. FATA: Yes, Your Honor.

23 THE COURT: All right. Let me hear from you.

24 MR. FATA: Your Honor, this is a motion for sanctions for
25 failure to comply with discovery. We had filed the motion on

1 November 4th, 2013. That motion relates to a consent order on
2 discovery that was entered on September 20th, 2013. This
3 action arises out of a Ponzi scheme that the Defendants came
4 up with and solicited various investors, including my client.
5 Mr. Swilley was my client's accountant and came up with this
6 idea that he was going to make lots of money in the factoring
7 business and that he and his partners could set up a factoring
8 company, which would loan money to companies who would then
9 pay higher rates of interest on those loan monies and all
10 those loans would be secured by assets. It turned out to be a
11 pawn shop. About \$400,000 was raised by Mr. Swilley and Mr.
12 Piner and their related colleagues. In this action there's a
13 pending action, a parallel action against Mr. Swilley for
14 another \$200,000 in another investment company about the same
15 time.

16 We served discovery with the complaint in April. Mr.
17 Adler, prior counsel, was engaged by the Defendants. We
18 didn't hear anything from him. We didn't get any response to
19 discovery requests. We filed a motion in July of 2013 for the
20 discovery motion, gets heard or set for a hearing. In
21 September 2013, a day before the hearing, Mr. Adler calls me.
22 He says, "I'll give you, you know, what you need." I said,
23 "Here's a consent order." I think he gets 30 days for
24 complete answers, you know, the standard consent order to
25 resolve the discovery motion. We get that in place. He sends

1 in October, I think October 15th, 2013, he sends the discovery
2 and he's got objections to the interrogatories, and he's
3 partially answered some of the interrogatories, and these were
4 fairly detailed interrogatories. I call him up, and I said,
5 "You know, we would have gone through all these objections at
6 the first hearing and I've already been waiting five months
7 and now I've got this." I said, "I'm going to write you a
8 letter, but I need to get these, I need to get this
9 information." So I spend a good bit of time writing a four-
10 page letter, outlining, it's part of my motion, saying, "These
11 are all the deficiencies. You know, the time to object to
12 interrogatories is long gone. You already filed a consent
13 order. You signed it. The Judge entered it," and I don't, I
14 don't hear anything.

15 So a couple of weeks goes by. I file this motion for
16 sanctions asking for the relief that's under the law that I'm
17 entitled to ask for, and I guess I would hand up to the Court
18 two cases. One is the Ball case versus Canadian Express
19 which has a little section just that under motion to compel,
20 as the Court might know, under Rule 37(A) the prevailing party
21 can get attorney's fees, and I'm going to submit an affidavit
22 for attorney's fees, and also the OZO decision, which stands
23 for the proposition that in certain circumstances, if the
24 matter's bad enough, the Court can strike the answer or strike
25 the pleading of the non-compliant party for the discovery. So

1 I --

2 THE COURT: Is that what you're asking for? What are you
3 asking for?

4 MR. FATA: I've asked for both in my, in, in my pleading,
5 and I'll hand up my affidavit for attorney's fees.

6 THE COURT: All right.

7 MR. FATA: And in my affidavit, Your Honor, I, I'm sure I
8 have more than five hours, but I've asked for five hours of
9 time at my hourly rate.

10 THE COURT: Okay. Now, have they provided any discovery
11 since you've filed this motion?

12 MR. FATA: So, so Friday afternoon Mr. Leiter calls me,
13 and I've known Mr. Leiter for many years, and he says, "I've
14 just been engaged or retained by the Defendants, and I'll be
15 filing a notice of appearance, and I'm trying to get through
16 this discovery issue," and I said, "Well, it's Friday
17 afternoon. I got to go to the hearing. There's nothing I can
18 do at this point, and I've wasted a lot of time already. You
19 know, this is a long time coming." Mr. Adler was relieved
20 under the Court's order in December from being counsel because
21 he had a conflict or he couldn't resolve a conflict among the
22 parties, but in that order relieving him as counsel. The
23 Judge, I think it was Judge Hyman, ordered that the Defendants
24 had the obligation to comply with discovery. Of course, this

25 was ongoing.

1 THE COURT: Right.

2 MR. FATA: So but this morning I did get supplemental
3 responses with more information than I had had previously from
4 Mr. Leiter, and I think Mr. Leiter informed me that he has
5 some additional records, which I believe are --

6 MR. LEITER: They're here.

7 MR. FATA: -- voluminous. I don't know how many banker
8 boxes, that I didn't have up until this morning, and I haven't
9 received them yet, but I did get responses. I have not had an
10 opportunity to go through them to see what's still at issue.
11 I don't want to bore the Court with line by line going
12 through. At this point I don't think that's fair for me or
13 for the Court, but that's the status. So what we're asking
14 for is to strike the answer, and we understand that's a
15 drastic remedy, and, you know, it's in the Court's discretion,
16 and -- but there's some discussion about that in the QZO case,
17 that it is a drastic remedy. We understand that, but if
18 nothing else, for the attorney's fees for having to come here
19 to force an order that's already been mentioned in another
20 order, then to come to the Court, we believe the attorney's
21 fee request of \$1,500 plus the \$25 filing fee is fair and
22 reasonable. It's obviously not Mr. Leiter's fault, and we're
23 not saying that. It's, you know, the Defendant's had plenty
24 of time to get this stuff to me in December and early January
25 if they had wanted to, Your Honor.

1 THE COURT: All right. Mr. Leiter?

2 MR. LEITER: Thank you, Your Honor. First, Mr. Fata's a
3 good trial lawyer. So let me start with his, his description
4 of the case as a Ponzi scheme. This is not -- he alleges
5 something that he would like to say is a Ponzi scheme. It's
6 not a Ponzi scheme. His clients were fully aware of what they
7 were getting into. They've lost money. They claim they've
8 lost money in it. We claim it's because of their own
9 wrongdoing in it, but they just want money out of this because
10 they didn't get what they wanted, and so that's what the case
11 is about, that's what we're going to prove.

12 In terms of the discovery, I need to, again, not correct
13 the record because Mr. Fata was accurate in what he said, but
14 expound on the record. My client, you know, how Mr. Adler
15 handled it I can't tell you, but the consent order enlarging
16 the discovery time was filed, was signed. So that is in
17 place. On the date required that the discovery be served, it
18 was served. My clients did file answers to the
19 interrogatories, did give, produce documents, and in fact,
20 produced over a thousand pages of documents.

21 THE COURT: When was this?

22 MR. LEITER: On October 15th.

23 THE COURT: Okay.

24 MR. LEITER: The day that it was due.

25 THE COURT: All right.

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1 MR. LEITER: So I will say that my clients did not maybe
2 answer every question perfectly, but by no means did they
3 engage in bad faith or gross indifference or willfulness in
4 this, and to make matters worse, and just I say worse, I think
5 what sheds light on what is happening here, the discovery was
6 served on October 15th, the due date according to the consent
7 order. During this time, Mr. Adler's in the process of
8 withdrawing as counsel. So Mr. Fata's letter went out, I
9 believe it's dated October 21st, 2013. Mr. Adler filed his
10 motion to be withdrawn or his motion to withdraw as counsel on
11 October 28th. So at this time that this -- that more discovery
12 is being requested, Mr. Adler is withdrawing as counsel. A
13 hearing was held and the order granting Mr. Adler's motion to
14 withdraw was December 11th, 2013. Now, two days after, I
15 believe, well a few days after the motion for sanctions was
16 filed, the Court sent out its notice, notice of motions, that
17 this matter was on the motions roster. When it came time to
18 hear the motion to withdraw, apparently Mr. Adler was not
19 aware of that or did not inform the Court because when the --
20 I believe Judge Hyman signed the order allowing the
21 withdrawal, in it it states that there are no pending motions.
22 In fact, this motion was pending. Normally, I mean, I would
23 say the general practice is is that a clients whose attorneys
24 withdraw are allowed a certain amount of time to find new
25 counsel, usually let's say 30 days. That was not provided in

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1 this case. The clients did just recently retain me. We've
2 been working on -- I've been working on catching myself up to
3 speed with the case. It is a document-intensive case. When I
4 was then familiar with the facts, I did call Mr. Fata and say,
5 "You know, I, I see that we were not perfect in this, but I
6 don't see how this really rises to the level of sanctions, and
7 if you just give me time, we can work through this," and I
8 can't blame Mr. Fata, but the motion was on the roster and he
9 said, "No, I want to bring it to court."

10 Going to the October 21st letter, just to give you a
11 flavor, I agree with Mr. Fata that we don't want to go through
12 this line by line, but I am doing this to help address the
13 issue of why sanctions are not called for in this case.
14 Number one, Mr. Fata says in interrogatory number one, which
15 is the standard one saying, "Let us know who the witnesses
16 are," Mr. Fata notes that addresses have not been provided.
17 Some had been, but not all addresses had been provided. So
18 clearly, yes, technically, we have a duty to give addresses,
19 but we've provided the names of witnesses, and that's what's
20 important. When it came time to say what the witnesses were
21 going to testify to, apparently Mr. Adler would describe their
22 testimony as being quote, "Actions of Plaintiffs relevant to
23 QC Pawn", end quote, or quote "Inventory issues relative to QC
24 Pawn", end quote. Mr. Fata wasn't satisfied with those, and
25 again, I'm not blaming him. I might not be either, but the

1 point is is that when you're giving answers to what the people
2 are going to talk about, the witnesses, my experience is that
3 no matter who you are, no matter what you try to do, they
4 always come in broadly and very generalized. It's just the
5 practice, and so I believe they attempted in good faith to put
6 Mr. Fata on notice of what they were going to testify to.

7 In my answers, my amended answers, we did expound on
8 that, but we didn't change anything. I mean, I really do
9 think that he was given that kind of notice. Now, there are a
10 couple of things that we did not provide, for instance, tax
11 returns. When I talked to Mr. Fata on Friday, I said, "Would
12 you consent to these being put under a protective order, a
13 confidentiality order," and he said yes, and so, we have, we
14 have those returns now to provide to him.

15 There was an issue of, of an investigation done by the
16 Attorney General's Office, and he asked for those documents.
17 My client did not provide those, but Mr. Fata, I believe,
18 subpoenaed those documents. I have a, I mean, they didn't --

19 MR. FATA: Your Honor, those documents, the Attorney
20 General's Office would not release documents that were
21 submitted by his client. His client objected under attorney-
22 client privilege to producing documents given to the State.

23 MR. LEITER: I haven't --

24 MR. FATA: And that's -- that was a problem I had.

25 THE COURT: I got you --

1 MR. LEITER: I was just going to say that, you know, he
2 had the subpoena power, he pursued it, but we have those
3 documents to give. So I think there might be one or two minor
4 things, some documentation on liens that I still don't have,
5 but in the great scheme of things, that's minor, but if you
6 went through the answers or the responses provided to my -- by
7 my clients, they attempted in good faith to answer these, and
8 they did answer I'm going to say 90 percent of it.

9 THE COURT: Well, have you, in your responses that you've
10 provided, have you raised any objections based upon privilege
11 or anything of that nature?

12 MR. LEITER: No, Your Honor.

13 THE COURT: Okay. All right. Anything in reply?

14 MR. FATA: No. Other than I believe there's a bunch of
15 other documents that I haven't been given.

16 MR. LEITER: We have them.

17 MR. FATA: So just put that on the record, Your Honor. I
18 believe it's voluminous because there's three banker boxes
19 here.

20 MR. LEITER: Well, let me just explain the three. One
21 are I brought the documents that had already been provided and
22 that fills up one banker box. Then one of the banker boxes is
23 what I'm about to give you, but it's my set. So this includes
24 the Attorney General investigation, the tax returns.

25 MR. FATA: Okay.

1 MR. LEITER: And they're marked, Mr. Floyd's response to
2 the Attorney General's request, tax returns. So these are the
3 few document -- when I say few, I mean, they don't take up a
4 complete banker's box, but these are the documents that were
5 objected to originally, and we're not -- no longer objecting
6 to them.

7 THE COURT: All right. All right. I'm going to
8 partially grant the motion for sanctions in that they have
9 provided some discovery. I'm not going to strike their
10 responsive pleadings; however, after you have an opportunity
11 to go through these, if it's still deficient, you can file
12 your motion at that time. I am going to award attorney's fees
13 and costs of 1525. Defendants are to pay that within ten days
14 of today. Anything -- I can just do a form 4 that says it's
15 partially granted, they pay 1525 within ten days, that there
16 was voluminous materials provided, the Plaintiffs have -- had
17 not had opportunity to go through it. Once they complete
18 going through that discovery, if it still proves that it is
19 deficient in any way, then you can contact him for it or file
20 your motion for additional sanctions or whatever the case may
21 be.

22 MR. FATA: Thank you, Your Honor.

23 THE COURT: And we'll deal with it then. Okay?

24 MR. LEITER: Just so we're clear, Your Honor, on that,

25 the consultation rules are still in place. -- Mr. -- if Mr. Fata --

1 feels that something's incomplete, he would first contact me,
2 let me know what he thinks it is?

3 THE COURT: That would be my understanding. This isn't
4 on a trial roster or anything; is it?

5 MR. FATA: No, no, no.

6 THE COURT: Yeah. The one thing I wanted to make sure is
7 that given the prior discovery order, I think that the time
8 for raising any objections has passed. So I don't think that
9 your clients can oppose any discovery request at this late
10 date based upon privilege or whatever, that they're going to
11 have to produce it, give him the opportunity to go through and
12 see if they have, but yeah, he'll still need, if it's
13 deficient, he'll need to call you and say, "I need to get
14 this." However, this shouldn't be the case, but if he went
15 through something and the Defendants object to this
16 interrogatory based upon the fact that it violates the
17 attorney-client privilege, well, then he's not going to need
18 to contact them. He, he can go ahead and file his motion for
19 sanctions then. All right?

20 MR. LEITER: Thank you, Your Honor.

21 MR. FATA: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Adjourned.)

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Gabriel Barnhill, et al. v. J. Floyd Swilley, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 13, 2014.

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

Grace L. Hurley, CVR-CM-M
Official Reporter

December 9, 2014.

000484

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2013-CP-26-02816
3 -----

4 September 30, 2014

5 **BEFORE:** The Honorable Larry Hyman
6 -----

7 GABRIEL BARNHILL, et al.,

8 Plaintiffs,

9 vs.

10 J. FLOYD SWILLEY, et al.,

11 Defendants.
12 -----

13 **APPEARANCES:**

14
15 Natale Fata, Esq.
16 Attorney for the Plaintiffs.

17 John M. Leiter, Esq.
18 Attorneys for the Defendant.

19 Official Court Reporter
20 Natalie Dahl, RPR
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Court's Exhibit

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1 PROCEEDINGS

2 THE COURT: Barnhill versus J. Floyd Swilley, et
3 al. Mr. Fata, you are moving for sanctions against
4 Mr. Leiter?

5 MR. FATA: Your Honor, it has happened very
6 rarely, but it's happened twice in this one case, and
7 it is not his fault.

8 THE COURT: Let me hear it.

9 MR. FATA: If I could hand up a memo and my
10 affidavit for attorney's fees now?

11 THE COURT: There is a motion for judgment on
12 pleadings; that is withdrawn?

13 MR. FATA: Yes, Your Honor. You had a long week,
14 Your Honor. I've handed up my memorandum in support
15 of the Barnhill Plaintiff's Motions for Sanctions and
16 Affidavit of Attorney's Fees. I would like to give
17 the Court a little background and then talk about this
18 particular motion and why it is appropriate.

19 Unfortunately, in this case this is a Ponzi
20 scheme case where Mr. Barnhill, along with seven other
21 investors, invested at Mr. Swilley and Mr. Piner's
22 urging or request for solicitation into a factoring
23 investment in 2011.

24 THE COURT: A what?

25 MR. FATA: They call it factoring. You give

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1 \$115,000, like my client, and then you are going to
2 get a note that pays you back 1 percent per month on
3 your original investment the first six months,
4 6 percent, and then a percent-and-a-half for the next
5 six months, so it is a 15 percent return. During the
6 terrible interest rates we have had, a lot of people
7 bit on that, and my client was one of them. So he
8 jumped in, along with six, seven investors, to the
9 tune of \$360,000. Most of the investors were the
10 accounting clients of Mr. Swilley, who has an
11 accounting practice. Mr. Swilley is married to Laurel
12 Swilley, who has a Social Security Disability practice
13 in Conway. Mr. Piner is --

14 THE COURT: She's an attorney?

15 MR. FATA: She is, but I don't know if she's
16 South Carolina licensed. She might be listed in
17 another state, but her practice is federal disability
18 Social Security claims, I believe, Your Honor. In any
19 event --

20 THE COURT: What happened to the days where you
21 would get a pot holder, you know? That is before your
22 time, but like the chain letter. I bet Mr. Battle was
23 not even that old. No, we never did that.

24 MR. FATA: Yeah, like send \$50. In any event, my
25 client became an investor under the notes, and an

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1 equity -- he became a limited partner in 809 Holdings,
2 that is where all the investor money was funneled to.
3 809 Holdings was going to loan money that was to be
4 collateralized to a pawn shop that Mr. Swilley and
5 Mr. Piner were starting with a third gentleman. All
6 the collateral from the pawn shop was supposed to
7 secure the notes, but we don't have any lien
8 documents, and the pawn shop went out of business.
9 There was no collateral. There was a suit against QC
10 Financing, which is the pawn shop, and there was a
11 default judgment.

12 My client, somewhere in the relationship, knew
13 things was going downhill in August of 2011 and tried
14 to get involved with the pawn shop to see what he
15 could do.

16 THE COURT: Let me get this straight. A Ponzi
17 scheme constructed to finance a pawn shop?

18 MR. FATA: Yes.

19 THE COURT: And your clients bit that?

20 MR. FATA: Yes. Yes. And Mr. Swilley was going
21 to open a bunch of pawn shops and use his clients from
22 the accounting practice to fund that, because he
23 couldn't get a loan otherwise, I don't think. Be that
24 as it may, this lawsuit -- because only \$2,000 was
25 repaid to Mr. Barnhill out of the \$115,000 -- this

1 lawsuit was filed in April of 2013. That is
2 important, because we have a scheduling order that
3 says trial not before October 27th or 29th, 2014,
4 which is less than a month.

5 In April of 2013, I served discovery with summons
6 and complaint, and I didn't get any answers. So then
7 I went and got a consent order from the then opposing
8 counsel, Mr. Adler, saying he would provide full and
9 complete answers. I didn't get any responses, so I
10 filed a motion. On that September 2013 order, I filed
11 a motion to get discovery responses for everything
12 that I was asking for, and that was heard by Judge
13 Culbertson in January of this year, 2014. Judge
14 Culbertson partially granted the motion for sanctions
15 and ordered fees. I'll be honest, I've been
16 practicing for 21 years and only asked for discovery
17 sanctions twice, and it has been in this case.

18 THE COURT: How much did Judge Culbertson give
19 you?

20 MR. FATA: In fees?

21 THE COURT: Yeah.

22 MR. FATA: 1500 and the filing fee. So I'm
23 trying to prepare for trial. What I found is -- from
24 the records that I've been given, because we had to go
25 through all the bank statements because a lot of

1 information was not provided -- a lot of money is
2 going out to the defendants to their companies or to
3 themselves. That was not disclosed to us. So while
4 the investors lose over \$300,000, the defendants have
5 made money on this whole project and moved onto, yet,
6 another investment scheme called "Safe." Safe is the
7 subject of Mr. Hills, who represents a plaintiff
8 investor, who Mr. Twig lost money in that Safe
9 investment and in 809 Holdings.

10 So I'm trying -- we're here because I'm trying to
11 get financial information on some very basic issues.
12 First, what payments did you make to investors in
13 2012, persons you've identified as investors. Under
14 Request to Admit, that request was denied, None. I
15 have a check that is in here, in the filings, Your
16 Honor, and it is a check to Mr. Twig for \$25,000 sent
17 to him with Mr. Adler's cover letter, Exhibit H, that
18 says, These funds represent liquidation value of Mr.
19 Twig's 25 shares of 809 Holdings, LLC. Mr. Twig was
20 disclosed as an investor in 809 Holdings --

21 THE COURT: Are you telling me Mr. Twig invested
22 in 809 Holdings and in Safe?

23 MR. FATA: Yes. Defendants are very good
24 salespeople, Your Honor. Be that as it may, it is
25 clear that a payment was made. I don't know why the

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1 defendants choose to deny this request to admission.
2 I then took the deposition of Ms. Cauffman (phonetic),
3 who gave \$48- or \$49,000. She is retirement age. She
4 is still working. She gives this to Mr. Swilley, and
5 she says, From time to time he would pay me and give
6 me part of my money back. I said, How much has he
7 given you, and she said, Before this deposition, I
8 told him I needed a thousand dollars, so he gave me a
9 thousand dollars, but he's given me other money. My
10 deposition of Ms. Cauffman was in May, the first one.
11 We had to continue it. The first one was in May of
12 2014. I have asked counsel, Mr. Leiter, to provide
13 copies of those checks. I did not get a response. I
14 indicated to Mr. Leiter that I thought his answers or
15 his client's answers were not accurate, and I never
16 got a response. Ms. Cauffman comes back in June, and I
17 said, How much have you gotten, and she said, About
18 \$10,000, but I just asked Mr. Swilley before this last
19 deposition for \$13- or \$14,000 because I want to pay
20 off my car, and he said, okay, I just need til the end
21 of July.

22 So, Your Honor, in this Ponzi scheme it is
23 tracking money that is important. My client is left
24 with \$2,000 on a \$115,000 investment, and other people
25 are getting paid, and the defendants are getting paid.

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1 I've asked in interrogatories from April of 2013 for
2 payments made to defendants, and there have been
3 three, four, five, six payments never disclosed to the
4 defendants themselves. I can show you where they are
5 outlined with the checks.

6 So having learned of that, after I go through all
7 the bank statements and spend tens of hours, and after
8 Judge Culbertson ruled on this in January, and after I
9 had a September consent order that I would get full
10 and fair disclosure of all of these answers, I still
11 don't have them today. I can't prepare for trial for
12 the end of this year if I don't have that basic
13 information.

14 It is not complicated, and the defendants are not
15 strangers to litigation, Your Honor. They have been
16 involved in other lawsuits. Mr. Swilley was involved
17 in an Oklahoma lawsuit ten years ago, and he told the
18 Court -- because he was in an investment scheme that
19 lost a hundred million dollars -- that he would
20 confess judgment for \$300,000 and not try to discharge
21 it in bankruptcy. He went through a long litany of
22 everything that it was so under the bankruptcy code he
23 would not discharge it. Two months later he is in
24 front of the bankruptcy judge in South Carolina and
25 he's trying to discharge it. Judge Waites issues a

1 20-page order saying you are not going to discharge
2 this debt because you pled guilty -- or you agreed
3 under the confession of judgment in federal court that
4 you would not file dischargeable liability, and now
5 you are trying to do it on an invoked judicial
6 estoppel, you are not doing that here. You are giving
7 it up.

8 Your Honor, Mr. Leiter took over this case in
9 January. I understand, you know, he's trying to do
10 what he can do, but I don't have answers to discovery
11 that have been subject to orders with the court. It
12 is pretty simple stuff. They know how much money they
13 have gotten paid, and they can produce the records
14 because the witness says, Yeah, I got a check from
15 Mr. Swilley. I mean, I don't know why I can't get
16 that check. I want to see where the money is coming
17 from, because I have to track it down. There is a lot
18 of cash that went through the pawn shop.

19 THE COURT: Mr. Leiter, what is the problem?

20 MR. LEITER: Thank you, Your Honor. My old
21 mentor used to say, If we had eggs, we would have eggs
22 and bacon, if we had bacon. Mr. Fata is trying to do
23 that. He wants the Court to believe that this is a
24 Ponzi scheme. It is not proven; in fact, it is not
25 true.

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1 So going to the motion for sanctions, it is true
2 that I got in late, and it is true that Mr. Fata filed
3 a motion for sanctions. Most of the things had been
4 provided before my time to Mr. Fata, but some things
5 after this consent order had been entered into were
6 not readily turned over, these included confidential
7 matters likes tax returns and an Attorney General's
8 investigation, by the way, of these operations --

9 THE COURT: Tax returns are just normally
10 produced in almost every case. I mean, when do you
11 not have a tax return available?

12 MR. LEITER: So we did produce it, Your Honor.
13 I'm suggesting that at the time I got in, a multitude
14 of documents have been turned over, but I'm explaining
15 some of them that was not turned over, including tax
16 returns.

17 THE COURT: This is what gives me concern.
18 Mr. Fata says that there was an obvious attempt to
19 provide information, but he has uncovered, through his
20 investigation, evidence of many payments having been
21 made to the defendants and other investors that were
22 not reported when he was given information concerning
23 what payouts had been made, and he's been able to find
24 that through depositions and other ways. Why wasn't
25 that stuff turned over?

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1 MR. LEITER: If I can dissect that, Your Honor?
2 The deposition he's talking about is an investor,
3 Joyce Cauffman, who uses Mr. Swilley as a tax preparer.
4 Mr. Swilley is an enrolled tax agent. He's allowed to
5 do that. He's doing nothing wrong, but he's doing her
6 taxes as well. She asked, in essence, for a tax loan,
7 that is what she testified to, that is what she
8 received. So --

9 THE COURT: Is that what she said she got,
10 Mr. Fata?

11 MR. LEITER: I have parts of the deposition.

12 MR. FATA: I asked her how much money does she
13 think she got out of the investment account, and she
14 said about \$10,000, multiple payments. She doesn't
15 know where the money is coming from. She's a little
16 fuzzy, so I need to see the check to see where the
17 money is coming from. She's been paid, and she thinks
18 she's been paid from that account, but she doesn't
19 know.

20 THE COURT: Mr. Leiter is telling me, if I
21 understand you correctly, Mr. Leiter, we have
22 responded to the discovery.

23 MR. LEITER: We have, Your Honor, on that. Now,
24 can I dissect it a little deeper? The answer to your
25 question is, yes, but to go into it a little more

1 deeply, Mr. Fata's motion for sanctions includes
2 Ms. Caufman, that we're talking about now. I was
3 handed today the check from Mr. Twig about 809. I
4 don't know anything about that, so I would object to
5 being handed that today.

6 MR. FATA: That was discovery once.

7 MR. LEITER: It was not part of your motion, Mr.
8 Fata. The motion is quite clear that this deals with
9 Ms. Caufman, and that is what I'm here to respond to.
10 Mr. Fata referenced another company called "Safe,"
11 which is another investment vehicle, not identical to,
12 but similar to 809. Again, it is our position that
13 although these are not your normal Exxon investment
14 kind of investment strategies, they are perfectly
15 legal.

16 Sage is not a party. No matter what Mr. Fata
17 says, Sage is not a party to this litigation. Her
18 response about where the money was coming from, she
19 was unclear, and I'm here to tell you my client is
20 telling me that she was reimbursed by Safe, not 809
21 Holdings. So that is why our response is accurate as
22 to Ms. Caufman.

23 Just to drive that point home a little bit more,
24 and I have a copy of the check that Mr. Swilley has as
25 an enrolled agent provided to her for a thousand

1 dollars, I'm willing to make that an exhibit.

2 MR. FATA: Your Honor, there are other checks,
3 too. I don't understand why they get to pick and
4 choose when there is testimony that Ms. Kaufman said,
5 I got about \$10,000. The problem with what we're
6 hearing is that Swilley and Piner are going to route
7 everything through different accounts, so I have no
8 way of knowing. They are not going to give the Court
9 the information -- if they want to say later at trial
10 it is not relevant, and I understand that, but there
11 is payments to Sage Financial, which is a party, which
12 never has been disclosed.

13 THE COURT: This is the problem, Mr. Fata. You
14 are asking for information that you think exists, but
15 we don't know it does. All I can do is say you have
16 to give it up if you have it. I mean, that is about
17 as far as the Court can go, other than saying you have
18 to give it up. If you determined later that they
19 didn't give it up, that is a different ball game, but.

20 MR. FATA: They didn't give up Sage Financial.
21 It is in the memo and part of the evidence. I have
22 copies of the checks. They never disclosed Sage,
23 which is owned by them, and so --

24 THE COURT: Out of 809?

25 MR. FATA: QC Financing. The interrogatory was,

1 Any payment from QC Financing or 809, tell me what
2 money you have. Sage Financial is a party, and
3 \$17,000, three separate checks.

4 THE COURT: How about that, Mr. Leiter?

5 MR. LEITER: So that sounds --

6 MR. CAUSEY: It is a technicality, Your Honor.

7 THE COURT: Let your attorney talk.

8 MR. LEITER: This is Heath Causey. He is the
9 bookkeeper for the operations, and also he is a named
10 defendant, so I brought him for the purpose of having
11 him explain it if the Court feels it prudent to do so.

12 We dealt with Ms. Cauffman, and now there is a
13 total of maybe six checks at issue. I started by
14 saying that Mr. Fata has about two banker boxes full
15 of documents. We went through the sanction process.
16 I know how important it is to get the appropriate
17 documents, responsive documents, to Mr. Fata. There
18 has been nothing done in any way to prevent Mr. Fata
19 from getting this, but we're talking about
20 documents -- I know that under my tutelage we produced
21 over a thousand documents. I think it is closer to
22 2,000. It is conceivable that out of all of those
23 documents that we did not give over every piece of
24 paper, but I don't think we're held to a standard of
25 absolute perfection. The checks that Mr. Fata is

1 referring to, that we did not give, are not our
2 checks, meaning these were checks written by one of
3 the defendants, QC Financing, that is in default. I
4 don't represent them. They are a party, but not here.

5 THE COURT: Who owned QC Financing?

6 MR. LEITER: That is a more interesting question,
7 Your Honor. We're saying that Mr. Fata's client owned
8 QC Financing.

9 THE COURT: Who controlled it, Mr. Leiter?

10 MR. FATA: Mr. Swilley and Mr. Piner, along with
11 Mr. Wilkinson, set up QC Financing in 2010. Swilley
12 and Piner, along with Mr. Wilkinson, controlled it
13 until August of 2011, and then Swilley and Piner got
14 out, and my client became a 25 percent owner of QC
15 Financing, because things were not going well. They
16 said, Here, you take it.

17 The checks at issue are directly responsive to an
18 interrogatory that Judge Culbertson said you have to
19 comply with, and the interrogatory reads, What
20 payments did you get from either QC Financing or 809
21 Holdings. And so it is --

22 THE COURT: Who was that directed to?

23 MR. FATA: The defendants. Sage Financial is a
24 defendant, and so is Piner and Swilley. They also own
25 Sage Financial. Mr. Causey knows that there were

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1 other payments made to other investors.

2 THE COURT: Which one of these defendants -- oh,
3 I see.

4 MR. FATA: So this is very clear. I'm being
5 forced to read through thousands of bank records to
6 find what they haven't told me or the Court when I
7 have two court orders in place.

8 THE COURT: Okay. What defendant has not
9 complied with the order to produce? Is it Sage
10 Financial?

11 MR. FATA: And Bill Piner and, Your Honor, 809
12 Holdings, because 809 Holdings knew of a payment that
13 went to Mr. Twig to repay Mr. Twig his \$25,000. That
14 was a payment to an investor in 809 Holdings per the
15 language used in 809 Holdings' lawyer's letter. I've
16 included just some of the highlighted payments here,
17 Your Honor. There are others, but these are -- there
18 are also, I've been told, payments to Ms. Baggett, who
19 is another investor, but those have not been disclosed
20 either. A lot of people are getting paid, except my
21 client. The general partners, Swilley and Piner, are
22 responsible for that, so that is why I'm trying to
23 fair it out.

24 THE COURT: Who owes your client money?

25 MR. FATA: 809 Holdings issued the notes, and on

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1 their books is my client, on 809 Holdings' books,
2 financial statements, it is the note holder and it's
3 guaranteed under the partnership agreement by Piner
4 and Swilley, because they are general partners, and
5 they are responsible for payment of all partnership
6 debt, it says that in the partnership agreement.

7 So there are three people among the group that
8 are directly responsible, and the others helped out in
9 this scheme. I'm trying to get information for trial.
10 I asked for information, gone to court twice. Mr.
11 Leiter is not responsible. He's only going to get the
12 information his clients give him, but the Request to
13 Admit that an investor received a payment in 2012 or
14 thereafter for the investment --

15 THE COURT: I mean, how difficult could that be?
16 Have they provided you with any records of payment of
17 investors?

18 MR. FATA: No. No information. Not in 2012.
19 They denied the Request to Admit, and that is false.
20 I have proven that an investor has gotten a payment
21 with a check.

22 THE COURT: What precisely have you not received?

23 MR. FATA: I've not received the payments -- copy
24 of any payments made to any other investors. I think
25 payments have been made to Ms. Baggett.

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1 THE COURT: For?

2 MR. FATA: Her investment.

3 THE COURT: For 2012?

4 MR. FATA: 2012, yes.

5 THE COURT: 2012?

6 MR. FATA: Yes.

7 THE COURT: Payments by which defendant?

8 MR. FATA: Any, in connection with the
9 investment. Because what is happening is a payment
10 will be made from someone, maybe through another
11 account, Your Honor --

12 THE COURT: Let me tell you where I see a
13 problem. There are a lot of individuals, a lot of
14 LLCs, corporate -- well, they are all LLCs. You are
15 saying from any defendant to any person by reason of
16 an investment?

17 MR. FATA: Any payments made to an investor.

18 THE COURT: Investor in what?

19 MR. FATA: 809 Holdings. There is seven, and
20 they have been disclosed by the defendants.

21 THE COURT: All right. And you identified those
22 seven?

23 MR. FATA: Yes.

24 THE COURT: And you've identified the seven?

25 MR. FATA: Yes. They have.

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1 THE COURT: Any check written to these seven
2 investors?

3 MR. FATA: Yes.

4 THE COURT: So we're pigeonholing it. Okay. We
5 have that.

6 MR. FATA: Yes. Right.

7 THE COURT: In 2012.

8 MR. FATA: Or thereafter. Because my clients
9 didn't get any money in 2012, but others did.

10 THE COURT: You want any check from any defendant
11 to any of these seven people 2012 forward?

12 MR. FATA: Yes. And I would say, Your Honor, to
13 the extent that these defendants used other accounts
14 that might be named in a trade name, that that, too --
15 if any defendant knows of a payment to an investor in
16 connection with the 809 Holdings investment, that
17 should be disclosed.

18 THE COURT: I understand.

19 MR. FATA: I don't want them to say, This is a
20 separate company.

21 THE COURT: So we're only dealing with seven
22 investors?

23 MR. FATA: Yes.

24 THE COURT: How can we not keep up with seven
25 investors? There is only seven.

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1 MR. LEITER: We will respond to that, and I
2 believe we have. If we made a mistake in responding,
3 I will be the first to correct it.

4 THE COURT: It is not that. My understanding is
5 that you responded by saying no checks had been paid,
6 and Mr. Fata has come up with -- how many?

7 MR. FATA: Your Honor, we have a check for
8 Mr. Twig for 809 investments written in March of 2012
9 with a cover letter from their former counsel, Miles
10 Adler, that is one. We have testimony from
11 Ms. Cauffman that says I've been getting payments from
12 my investment account. How much? She didn't know. I
13 asked Mr. Leiter on several occasions, Can you get me
14 a copy of the checks so we don't have to do this, but
15 I get nothing. I think at least Tamara Baggett has
16 been paid money. Mr. Causey knows, I'm sure, and he
17 could swear to Your Honor, but I've been informed that
18 she has. So I want those payments and any other of
19 the four remaining investors. It is not hard, Your
20 Honor. That is why it is so frustrating after two
21 orders and a month before trial.

22 THE COURT: This is what I'm going to do. I
23 think, Mr. Leiter, your client is sandbagging. I'm
24 going to grant \$2,700 in costs against the defendants.
25 I don't know if you'll collect that, but I'll also

1 order directly that they provide copies of any
2 transfers of funds to any of the seven investors. I
3 want you to list them in an order from either 809
4 Holdings, 809 Holdings, any of the other defendants or
5 from any person or entity acting on behalf of 809
6 Holdings. I want them to understand, Mr. Leiter, that
7 this is an order, and failure to comply, if they
8 conceal any payments, I will consider it as an act of
9 direct contempt, okay.

10 MR. LEITER: I have learned over the years that
11 when the judge has spoken to sit on my hands, but may
12 I be heard on this?

13 THE COURT: Certainly.

14 MR. LEITER: So, you know, I have been working
15 with my clients on this, but I don't control their
16 documents, so I can't address that. I can address a
17 very important issue that I believe the Judge has
18 heard, and I believe an absolute need to correct it.
19 Mr. Fata, when he presents or made his initial
20 presentations seemed to be clear about these
21 companies, 809 and another investment vehicle --

22 THE COURT: I don't think he's clear. I think
23 that is what he wants to become, clear.

24 MR. LEITER: And I don't mind that, Your Honor.
25 I don't mind that. With well-constructed requests to

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1 us, we can be clearer. For instance, he brought up
2 two things, and I have to join them together. He
3 brought up Ms. Baggett and he heard that Ms. Baggett
4 has been paid back out of 809.

5 THE COURT: All you have to do is deny that.

6 MR. LEITER: That is what we've done, and that is
7 -- however, His Honor picked up on that and said we've
8 been sandbagging. The explanation for that is that
9 Ms. Baggett has been paid out of Safe, an entity that
10 is not a party to this. I have not been responding on
11 behalf of Safe.

12 THE COURT: I understand.

13 MR. LEITER: I have no requirement.

14 THE COURT: How about the other lady who
15 testified that she's been paid out of her investment
16 account? How about Mr. Twig, \$25,000 out of 809 and
17 no response concerning that? It all gives me great
18 concern.

19 MR. LEITER: Let me address each one of those,
20 Your Honor. The reason I'm addressing it is I believe
21 a \$2,700 sanction is too heavy for what we're dealing
22 with right now. I mean, we're not being --

23 THE COURT: I'll give them 30 days to pay it.

24 MR. LEITER: It wasn't the timing, it was the
25 amount. For instance, he did not include Mr. Twig in

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1 his motions for sanctions. He included Ms. Caufman.
2 I brought in the check for a thousand dollars showing
3 that that did not come from any of the entities that
4 are defendants in this action, but, yet, we are being
5 punished as if we held back something. We have not.

6 THE COURT: That \$25,000 check seems to be fairly
7 clear.

8 MR. LEITER: Which one?

9 THE COURT: The \$25,000, Mr. Twig.

10 MR. LEITER: If I could address that?

11 THE COURT: Go ahead.

12 MR. LEITER: That is a reason why I feel
13 ambushed, because he said it was produced before, but
14 it was not part of his motion. I had no opportunity
15 to respond to His Honor in a meaningful way on that,
16 but I believe that it will show -- even though the
17 letter from Miles Adler says 809 Holdings, it appears
18 to say that, but I believe this was a payment from
19 Safe and not 809 Holdings. I need time to check into
20 that, but that is what my client is telling me. So
21 it's not -- if what I say is true, if what I say is
22 accurate, it is unfair to say that we've been
23 sandbagging when we haven't, and we're hit with a
24 \$2,700 on top of it.

25 THE COURT: All right. Thank you. Mr. Fata will

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1 do the order in ten days.

2 (Court's Exhibit 1 marked.)

3 (Whereupon, the proceedings concluded.)

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CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings had and evidence
introduced in the captioned case in the Court of
Common Pleas for Horry County, South Carolina, on the
30th day of September, 2014.

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

October 26, 2014.


Natalie Dahl, RPR

Court Reporter

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F. MILES ADLER

ATTORNEY AT LAW

May 3, 2016

**VIA EMAIL LMCINTOSH@SCCOURTS.ORG
AND U.S. MAIL**

The Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622

Re: Gabriel Barnhill et al. v. J. Floyd Swilley et al.
C/A No.: 2014-CP-26-3362

Dear Judge McIntosh:

I represent defendants J. Floyd Swilley and Laurel K. Swilley (the "Swilleys") in the matter referenced above and am writing to call attention to certain filings in the record that (based on my review of the transcript of hearing) were not brought your attention at the February 16, 2016 hearing.

Enclosed please find a copy of the letter prepared by Attorney Nate Fata and addressed to Judge Seals wherein Mr. Fata advised the Court that no depositions would take place until the Swilleys' former attorney John Leiter had his motion to be relieved heard by the Court. The letter did not mention that the burden to schedule future depositions was on the Swilleys. Shortly after writing the letter, Mr. Fata then filed a Motion to Compel Depositions and a Motion for Judgment on the Pleadings and/or Summary Judgment. In addition to the letter from Mr. Fata please also find a filed copy of Mr. Leiter's Motion to Withdraw and the Order Relieving Mr. Leiter which was filed January 25, 2016. Please note that Mr. Fata did not subsequently notice depositions after Mr. Leiter was relieved, instead Mr. Fata sought an order on his Motion to Compel Depositions and his Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' Counterclaims, which were both heard and ruled upon on February 16, 2016.

With respect to Mr. Leiter's withdrawal, the Order Relieving Attorney Leiter (the "Order") stated the proceedings in this case would be held in abeyance for thirty (30) days from the date of the Order relieving him as counsel. Pursuant to South Carolina Rule of Civil Procedure 58(a) the Order became effective when entered which, according to the Horry County Clerk of Court's records, was January 25, 2016. The Order granted the Swilleys and the other defendants a thirty day reprieve from the proceedings from the date the Order was entered. Thirty days from January 25, 2016 was February 24, 2016. As the hearing currently at issue was held on February 16, 2016, it is my clients' position that the hearing on Plaintiff's Motion to Compel Depositions and Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' Counterclaims was held during the period the case was ordered to be held in abeyance.

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p. 2
Letter to Judge McIntosh
May 3, 2016
2014-CP-26-3362

The fact that the February 16, 2016 hearing was held while the proceedings were subject to the thirty day abeyance period forms the basis for the Swilleys' pending Motions to Set Aside Order.

We would ask that the Court grant us a hearing on these motions to afford the Swilleys the opportunity to present the full record to the Court and make arguments thereon.

Respectfully submitted,


F. Miles Adler

cc: Nate Fata
Mark D. Neill
J. Floyd Swilley (via email)
Laurel K. Swilley (via email)
Heath Causey

Enc.: as stated

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NATE FATA, P.A.
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THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
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www.fatalaw.com

VIA EMAIL

December 3, 2015

The Honorable William Henry Seals, Jr.
Chief Administrative Judge
103 N. Main Street
Marion, SC 29571
Attn.: Paul Lawson

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2014-CP-26-8367

Dear Judge Seals:

As you might recall I represent the Plaintiffs in this investor/Ponzi scheme pawn shop case against the Defendants who are represented by John Leiter and Mark Neill. Mr. Leiter filed a Motion to be Relieved as Counsel on October 22, 2015 and I am concerned that this case will be placed on the trial roster in the next month or two. For that reason, I would like to see if the Court has any time to schedule a short status conference to enter a scheduling order that would have a trial not before April 2016 date so that Mr. Leiter's Motion to be Relieved as Counsel could be heard in due course and/or have a hearing on Mr. Leiter's Motion. From my conversation with Mr. Leiter, no depositions will take place until Mr. Leiter's motion is heard. Because I need to take a half dozen or more depositions, the Motion to be Relieved has presented a challenge with scheduling and getting things done in preparation for trial.

We appreciate the Court's consideration and look forward to hearing from you.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata
NF/sh

cc: John M. Leiter, Esq.
Mark D. Neill, Esq.

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2015 DEC 15 AM 9:08
HELAHIE H. HARRIS, CLERK OF COURT

PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
DEPOSITIONS OF DEFENDANTS

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, , Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel John Leiter, Esq.

copy

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809 Holdings, LP and its Counsel Mark D. Neff, Esq.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter for an Order to compel Depositions of Defendants.

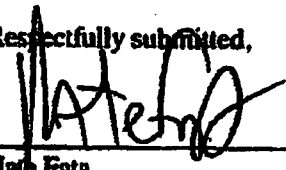
The following Notices of Deposition were served upon Defendants:

- 1. Plaintiffs' Notice of Deposition of WCP 30(b)(6) on November 16, 2015;**
- 2. Plaintiffs' Amended Notice of Deposition of Heath Causey on November 23, 2015;**
- 3. Plaintiffs' Amended Notice of Deposition of Laurel Swilley on November 23, 2015;**
- 4. Plaintiffs' Amended Notice of Deposition of Floyd Swilley on November 23, 2015; and**
- 5. Plaintiffs' Amended Notice of Deposition of 809 Holdings 30(b)(6) on November 23, 2015.**

Defendants did not appear for deposition. Multiple discovery sanction orders have been entered in this case. Defendants are further delaying discovery. Further consultation would serve no useful purpose.

This Court should strike Defendants' Answer and Counterclaim, award attorney fees and costs and award all other appropriate relief.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
December 14, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

**Gabriel Barnhill and
GSB Enterprises, LLC**

Plaintiff,

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC**

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE 15TH JUDICIAL CIRCUIT
)

) Civil Action No. 2014-CP-26-3362
) (formerly 2013-CP-26-02816)
)

) MOTION TO BE RELIEVED AS COUNSEL
) FOR J. FLOYD SWILLEY, J. FLOYD
) SWILLEY INVESTMENT ADVISORS,
) LAUREL K. SWILLEY, SMG PARTNERS,
) LLC, SMS SERVICES, LP, WILLIAM C.
) PINER, WCP LIMITED, LLC, ALICIA A.
) PINER, 809 HOLDINGS, LP, HEATH
) CAUSEY, SAGE FINANCIAL GROUP,
) LLC, SAGE PRIVATE EQUITY GROUP,
) SECURED ASSET FACTORING
) EXCHANGE, INC., DIGICS, INC., SAGE
) FUNDING, L.P. AND CHRISTOPHER
) PITCOCK

**Gabriel Barnhill and GSB Enterprises,
LLC**

Plaintiffs,

v.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,**

Defendants.

FILED
HORRY COUNTY
2015 OCT 27 AM 10:12
CLERK OF COURT
CLANIE HUGGINS-WARD

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before this
Honorable Court ten (10) days after the service hereof or as soon thereafter as counsel may
be heard, at the Horry County Courthouse in Conway, South Carolina, for an Order relieving

000517

John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock, in the above-captioned matter.

This Motion is based on South Carolina Rules of Professional Conduct pursuant to Rule 1.16(b)(5), the Defendants have failed to fulfill their obligation to pay the Law Offices of John M. Leiter, PA for their professional services rendered in this matter, despite having been given reasonable warning of its intent to withdraw unless the obligation is fulfilled; and Rule 1.16(b)(6), the representation will result in an unreasonable financial burden on the lawyer.

Counsel further states that he has given these Defendants reasonable notice of Counsel's intent to withdraw.

Presently before the Court are several Motions on the October 29, 2015 court roster. Counsel moves for a stay of all proceedings in this matter for thirty (30) days following the Court's order on this motion to allow Defendants to retain new counsel.

Counsel has complied with his duty to consult before filing this motion.

Respectfully submitted by

LAW OFFICES OF JOHN M. LEITER, PA

By: 

John M. Leiter, Esquire
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451

Myrtle Beach, South Carolina
October 20, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE 15TH JUDICIAL CIRCUIT
)

) Civil Action No. 2014-CP-26-3362
) (formerly 2013-CP-26-02816)
)
)
)

) ORDER RELIEVING JOHN M. LEITER
) AND THE LAW OFFICES OF JOHN M.
) LEITER, PA AS COUNSEL FOR J. FLOYD
) SWILLEY, J. FLOYD SWILLEY
) INVESTMENT ADVISORS, LAUREL K.
) SWILLEY, SMG PARTNERS, LLC, SMS
) SERVICES, LP, WILLIAM C. PINER, WCP
) LIMITED, LLC, ALICIA A. PINER, HEATH
) CAUSEY, SAGE FUNDING, L.P., SAGE
) FINANCIAL GROUP, LLC, SAGE
) PRIVATE EQUITY GROUP, SECURED
) ASSET FACTORING EXCHANGE, INC.,
) DIGICS, LLC AND CHRISTOPHER
) PITCOCK

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

THIS CAUSE came before me for a hearing on the 4th day of January, 2016, upon the Motion of John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA to be relieved as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

000519

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Sage Funding, L.P., Digics, LLC and Christopher Pitcock.

Defendants were duly notified of the date, time and location of the hearing. None of the Defendants appeared at the hearing. Nate Fata, Esq. appeared on behalf of the Plaintiffs and Stefan Feidler, Esq. appeared on behalf of Defendant 809 Holdings, LP.

Mr. Leiter stated that the reason for the Motion to Withdraw was nonpayment of fees, including these Defendants' failure and refusal to honor their fee agreement with him, and their failure to honor the payment plan established by the parties.

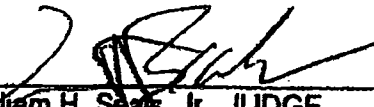
The Defendants shall obtain new legal counsel to represent them in this matter within thirty (30) days from the date of this Order. The proceedings in this case will be held in abeyance for thirty (30) days from the date of this Order. The Defendants must notify the Court within thirty (30) days of their new attorney. Based on the foregoing and without objection of counsel for any of the other parties, it is hereby

ORDERED that John M. Leiter and the Law Offices of John M. Leiter, PA shall be and the same are hereby relieved as counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock as of the date of the entry of this Order; and, it is

FURTHER ORDERED that these Defendants shall retain substitute counsel who shall enter an appearance with the Court within thirty (30) days from the date of this Order; and it is

FURTHER ORDERED that the Clerk of Court shall note that this matter shall not be called for trial before May 1, 2016.

AND IT IS SO ORDERED.



William H. Seals, Jr., JUDGE
Fifteenth Judicial Circuit

1/14, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-26-3362
(formerly 2013-CP-26-02818)

ORDER RELIEVING JOHN M. LEITER
AND THE LAW OFFICES OF JOHN M.
LEITER, PA AS COUNSEL FOR J. FLOYD
SWILLEY, J. FLOYD SWILLEY
INVESTMENT ADVISORS, LAUREL K.
SWILLEY, SMG PARTNERS, LLC, SMS
SERVICES, LP, WILLIAM C. PINER, WCP
LIMITED, LLC, ALICIA A. PINER, HEATH
CAUSEY, SAGE FUNDING, L.P., SAGE
FINANCIAL GROUP, LLC, SAGE
PRIVATE EQUITY GROUP, SECURED
ASSET FACTORING EXCHANGE, INC.,
DIGICS, LLC AND CHRISTOPHER
PITCOCK

Copy

FILED
HARRY COUNTY
2016 JAN 25 PM 2:39
CLERK OF COURT
CLARE HUGGINS-WARD

THIS CAUSE came before me for a hearing on the 4th day of January, 2016, upon the
Motion of John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA to be relieved as
counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

000522

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Sage Funding, L.P., Digics, LLC and Christopher Pitcock.

Defendants were duly notified of the date, time and location of the hearing. None of the Defendants appeared at the hearing. Nate Fata, Esq. appeared on behalf of the Plaintiffs and Stefan Feldler, Esq. appeared on behalf of Defendant 809 Holdings, LP.

Mr. Leiter stated that the reason for the Motion to Withdraw was nonpayment of fees, including these Defendants' failure and refusal to honor their fee agreement with him, and their failure to honor the payment plan established by the parties.

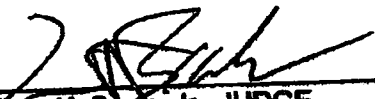
The Defendants shall obtain new legal counsel to represent them in this matter within thirty (30) days from the date of this Order. The proceedings in this case will be held in abeyance for thirty (30) days from the date of this Order. The Defendants must notify the Court within thirty (30) days of their new attorney. Based on the foregoing and without objection of counsel for any of the other parties, it is hereby

ORDERED that John M. Leiter and the Law Offices of John M. Leiter, PA shall be and the same are hereby relieved as counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock as of the date of the entry of this Order; and, it is

FURTHER ORDERED that these Defendants shall retain substitute counsel who shall enter an appearance with the Court within thirty (30) days from the date of this Order; and it is

FURTHER ORDERED that the Clerk of Court shall note that this matter shall not be called for trial before May 1, 2016.

AND IT IS SO ORDERED.



William H. Seale, Jr., JUDGE
Fifteenth Judicial Circuit

1/14, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

AFFIDAVIT OF SALLY J. HUFFMAN

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

Sally J. Huffman, being duly sworn, deposes and says:

1. I am over the age of eighteen years and am competent to make this Affidavit.

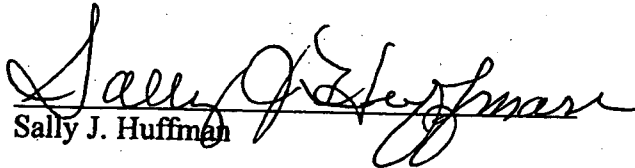
FILED
HORRY COUNTY
2016 APR 13 AM 9:11
MELANIE HUGGINS-WARD
CLERK OF COURT

000525

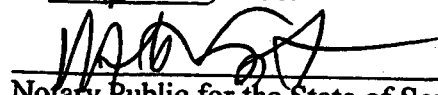
000526

2. I am the legal assistant to Nate Fata, P.A.
3. That I served via U.S. Mail on February 3, 2016 the Notice of Hearing upon the Pro Se Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, Sage Financial Group, LLC, Sage Advisory Group L.P., Sage Private Equity Group, Sage Funding, L.P. at their last known address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577.
4. That on February 18, 2016 I served via U.S. Mail Plaintiffs' Affidavit for Attorney Fees and Motion for Attorney Fees above to the Pro Se Defendants at the above address.
5. That on February 24, 2016 a copy of the proposed Order sent to The Honorable R. Lawson McIntosh was mailed to the above Pro Se Defendants at the above address.
6. That on February 24, 2016 I mailed to Pro Se Defendants a copy of the Notice of Motion and Motion for entry of Default and Striking the Pleadings of All company Defendants to the above Pro Se Defendants at the above address.
7. That on March 29, 2016, I mailed to Pro Se Defendants a copy of the Order entered on March 21, 2016 to the above Pro Se Defendants at the above address.
8. That no mail sent by me to the 629 Hemlock Avenue, Myrtle Beach, South Carolina for the above mentioned Pro Se Defendants has been returned by the U.S. Post Office as being undeliverable.
9. Based on the fact the U.S. Post Office has delivered multiple Notices to the 629 Hemlock Avenue, Myrtle Beach address and the Swilleys' confirmation that they reside at such address, I continue to mail notices and pleadings to that address.

FURTHER AFFIANT SAYETH NAUGHT.


Sally J. Huffman

SWORN to before me this 13 day
of April, 2016.


Notary Public for the State of South Carolina
My Commission Expires: 12/16/2020

000527

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

FILED
HORRY COUNTY
2016 APR 25 PM 12:46
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on April 20, 2016 did serve a copy of Plaintiffs' Notice of Hearing on Defendants and counsel via email

000528

as follows:

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577
jfs@sagesc.com

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577
jfs@sagesc.com

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577
jfs@sagesc.com

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577
bill.piner@gmail.com

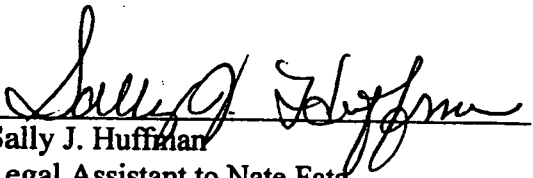
Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
heath@clear-acct.com

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577
jfs@sagesc.com

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588
pitcockchris@gmail.com

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559
pitcockchris@gmail.com

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com


Sally J. Huffman
Legal Assistant to Nate Fata

000530

NEILL LAW FIRM

MARK D. NEILL
MNEILL@NEILLLAWFIRM.COM

671 JAMESTOWNE DRIVE, SUITE 207
POST OFFICE BOX 2810
MURRELLS INLET, SC 29576
PHONE: (843) 651-8580 FACSIMILE: (843) 651-8586
WWW.NEILLLAWFIRM.COM

MARY ANNA NEILL
MANEILL@NEILLLAWFIRM.COM

May 19, 2016

Sent Via Email: lmcintoshj@sccourts.org
and Regular Mail

The Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley
Case No(s): 2014-CP-26-3362

Dear Judge McIntosh:

I represent Defendant 809 Holdings, LP. I object to the proposed final order drafted by Plaintiff's attorney. The proposed order relies in part on mis-statements that were unfortunately made by my former associate, Mr. Fiedler, who is no longer with my firm. In hindsight, I certainly regret not being at the February 16th hearing, but I thought Mr. Fiedler was well prepared. Mr. Fiedler spent close to forty hours working on the file prior to the February 16th hearing and he also attended the January 4, 2016 hearing in this matter. I never imagined it possible for him to make mis-statements, or fail to make clarifying statements, to the Court which had the effect of impugning our client.

I want to make clear that 809 Holdings, LP never failed to attend a deposition. To my knowledge, the Plaintiff only scheduled and noticed the deposition of my client one time, to take place on December 9, 2015. See attached correspondence from Mr. Fata dated November 23, 2015. That deposition was canceled in advance by agreement of Plaintiff's attorney as a result of attorney John Leiter's motion to be relieved. The parties agreed that depositions would be rescheduled after the motion to be relieved was heard on January 4, 2016. Attached hereto is a letter from Mr. Fata dated December 3, 2015 to Judge Seals in which he states "[f]rom my conversation with Mr. Leiter, no depositions will take place until Mr. Leiter's motion is heard." Mr. Fata never re-noticed the depositions, as it was my belief that he was waiting to see if the Pro Se Defendants would obtain new counsel as provided in the order relieving Mr. Leiter filed January 25, 2016.

Prior to the February 16th hearing, Mr. Fiedler and Mr. Fata communicated about when to schedule the depositions of Plaintiff and 809 Holdings, LP. See attached emails. At the February 16th hearing, Plaintiff did not present any evidence showing 809 Holdings, LP failed to show up for its deposition – that is because the deposition previously scheduled for December 9th had been canceled by consent and no subsequent deposition was ever noticed. Had Plaintiff's attorney re-noticed a deposition for 809 Holdings, LP, representatives of the company would

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have attended because they adamantly deny the claims asserted by the Plaintiff. I respectfully request in lieu of striking 809 Holdings, LP's pleading, that the deposition of 809 Holding, LP be ordered to occur no later than May 31, 2016. If 809 Holdings, LP fails to appear, it would be sanctioned by having its pleading stricken.

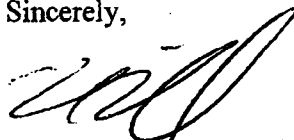
Finally, during the February 16th hearing, I believe the Court was given the wrong impression that 809 Holdings, LP had not cooperated in the discovery process. 809 Holdings, LP has produced hundreds of pages of documents and answered numerous Requests to Admit, Requests to Produce, and Interrogatories. As recently as January 8, 2016, 809 Holdings, LP provided discovery responses. I am not aware of any unanswered discovery requests, nor have I received any notice from Plaintiff's attorney indicating 809 Holdings, LP failed to respond to a discovery request. During the hearing, Plaintiff did not provide any evidence showing 809 Holdings, LP failed to cooperate.

I respectfully once again request a hearing on Defendant 809 Holdings, LP's Motion to Reconsider. I believe striking the Defendant's pleading is not supported by the record. Plaintiff did not submit any evidence showing 809 Holdings, LP failed to attend a deposition or failed to cooperate in the discovery process. In the alternative, I request the Court's order provide the deposition of 809 Holdings, LP be scheduled to occur no later than May 31, 2016 and its pleading will be stricken if it's representative fails to appear.

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

With kindest regards, I am

Sincerely,



Mark D. Neill

MDN/lah

Cc: Nate Fata, Esq.

Miles Adler

Pro Se Defendants

000532

NATE FATA, P.A.
ATTORNEY AT LAW
P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA U.S. MAIL

November 23, 2015

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2014-CP-26-8367

Dear John and Mark:

Please see enclosed a copy of the following:

1. Plaintiffs' Amended Notice of 30(b)(6) Deposition of 809 Holdings, LP for Wednesday, December 9, 2015 beginning at 10:00 a.m.;
2. Plaintiffs' Amended Notice Deposition of Laurel Swilley for Thursday, December 10, 2015 beginning at 10:00 a.m.; and
3. Plaintiffs' Amended Notice Deposition of Floyd Swilley for Thursday, December 10, beginning at 1:00 p.m.;
4. Plaintiffs' Amended Notice Deposition of Heath Causey for Wednesday, December 16, 2015 beginning at 10:00 a.m.

Also enclosed is the Certificate of Service verifying service of the same upon you.

000533

John M. Leiter, Esq.
Mark D. Neill, Esq.
November 23, 2015
Page 2

With best regards, I remain

Very truly yours,
NATE FATA, P.A.

A handwritten signature in black ink, appearing to read 'Nate Fata', with a stylized flourish extending from the end.

Nate Fata

NF/sh

Enclosures

000534

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-26-08367

(formerly 2013-CP-26-02816)

PLAINTIFFS AMENDED NOTICE OF
30(b)(6) DEPOSITION OF
809 HOLDINGS, LP

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

TO THE DEFENDANTS AND ITS COUNSEL:

YOU WILL PLEASE TAKE NOTICE that the attorney for the above-named Plaintiffs
shall take the deposition of those persons designated by the Defendant 809 Holdings, LP ("809

000535

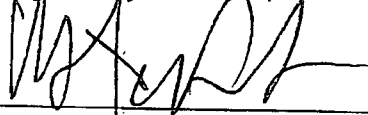
Holdings”) under Rule 30(b)(6), South Carolina Rules of Civil Procedure, for the purpose of being examined on the following matters:

1. Payments and/or transfers from 809 Holdings to QC Financing, LLC at any time;
2. Payments and/or transfers from QC Financing, LLC to 809 Holdings at any time.
3. Any and all financial statements of QC Financing or 809 Holdings;
4. Any and all financing arrangements with QC Financing, including any obligations of QC Financing to 809 Holdings;
5. The business records, financial records and corporate records of 809 Holdings;
6. The ownership of 809 Holdings from inception to present, all changes thereto and the dates;
7. Any and all persons acting on behalf of 809 Holdings from inception to present;
8. Any and all bank accounts in the name of 809 Holdings from inception to present;
9. Any and all payments made to any investors of 809 Holdings at any time from 2011 to present and the basis therefore;
10. Any and all payments made to any Defendants at any time from 809 Holdings and the basis therefor;
11. Any and all transfers of assets from 809 Holdings to any person from August 2011 to present;
12. The factual basis for any and all counterclaims and defenses asserted in this action; and
13. The description and value of each item of collateral securing any 809 Holdings loan in June 1, July 1, August 1, and September 1, 2011.

The corporate representative(s) for the purpose of this 30(b)(6) Notice of Deposition shall appear at **10:00 a.m. on Wednesday, December 9, 2015** at the **Law Offices of Nate Fata, P.A., 1500 U.S. Highway 17 North, The Courtyard, Suite 215, Surfside Beach, South Carolina 29587** and such deposition will continue from day to day until completed. It is fully expected that more than one corporate representative may be necessary to respond to all of these areas and that said deposition may have to be continued from time to time as may be mutually agreeable with counsel.

Court Reporter: Starkey Court Reporting.

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for the Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Tel.: (843) 238-2676

Fax: (843) 238-0240

Surfside Beach, South Carolina
November 23, 2015

000537

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
FACSIMILE (843) 238-0240
www.fatalaw.com

VIA EMAIL

December 3, 2015

The Honorable William Henry Seals, Jr.
Chief Administrative Judge
103 N. Main Street
Marion, SC 29571
Attn.: Paul Lawson

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2014-CP-26-8367

Dear Judge Seals:

As you might recall I represent the Plaintiffs in this investor/Ponzi scheme pawn shop case against the Defendants who are represented by John Leiter and Mark Neill. Mr. Leiter filed a Motion to be Relieved as Counsel on October 22, 2015 and I am concerned that this case will be placed on the trial roster in the next month or two. For that reason, I would like to see if the Court has any time to schedule a short status conference to enter a scheduling order that would have a trial not before April 2016 date so that Mr. Leiter's Motion to be Relieved as Counsel could be heard in due course and/or have a hearing on Mr. Leiter's Motion. From my conversation with Mr. Leiter, no depositions will take place until Mr. Leiter's motion is heard. Because I need to take a half dozen or more depositions, the Motion to be Relieved has presented a challenge with scheduling and getting things done in preparation for trial.

We appreciate the Court's consideration and look forward to hearing from you.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata
NF/sh

cc: John M. Leiter, Esq.
Mark D. Neill, Esq.

000538

Lisa Hnizdil

From: Stefan Feidler [sfeidler@neilllawfirm.com]
Sent: Thursday, February 11, 2016 8:54 AM
To: 'Nate Fata'
Cc: 'Lisa Hnizdil'
Subject: RE: Barnhill v. 809 et al - Motion to Compel and MSJ

Nate,

Could you please provide the same for Mr. Barnhill and GSG Enterprises? I am waiting to hear back from 809, but will get back to you as soon as I do.

Best,

Stefan

From: Nate Fata [mailto:nfata@fatalaw.com]
Sent: Tuesday, February 09, 2016 2:14 PM
To: 'Stefan Feidler'
Subject: FW: Barnhill v. 809 et al - Motion to Compel and MSJ

Stefan,

Please send some 809 dep dates to me in which your client is available.

Thanks,

Nate

Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, SC 29587
(843) 238-2676

AV Preeminent, Martindale-Hubbell

CONFIDENTIALITY NOTICE: This e-mail and the transmitted documents contain private, privileged and confidential information belonging to the sender. The information herein is solely for the use of the addressee. If your receipt of this transmission has occurred as the result of an error, please immediately notify us so we can arrange for the return of the documents. In such circumstances, you are advised that you may not disclose, copy, distribute or take any other action in reliance on the information transmitted.

From: Stefan Feidler [mailto:sfeidler@neilllawfirm.com]
Sent: Monday, February 08, 2016 2:42 PM
To: 'Nate Fata'
Cc: shuffman@fatalaw.com
Subject: Re: Barnhill v. 809 et al - Motion to Compel and MSJ

Nate,

000539

Lisa Hnizdil

From: Stefan Feidler [sfeidler@neilllawfirm.com]
Sent: Tuesday, February 09, 2016 2:15 PM
To: 'Lisa Hnizdil'
Cc: 'Mark Neill'
Subject: FW: Barnhill v. 809 et al - Motion to Compel and MSJ

Lisa,

Please see below.

From: Nate Fata [mailto:nfata@fatalaw.com]
Sent: Tuesday, February 09, 2016 2:14 PM
To: 'Stefan Feidler'
Subject: FW: Barnhill v. 809 et al - Motion to Compel and MSJ

Stefan,

Please send some 809 dep dates to me in which your client is available.

Thanks,

Nate

Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, SC 29587
(843) 238-2676

AV Preeminent, Martindale-Hubbell

CONFIDENTIALITY NOTICE: This e-mail and the transmitted documents contain private, privileged and confidential information belonging to the sender. The information herein is solely for the use of the addressee. If your receipt of this transmission has occurred as the result of an error, please immediately notify us so we can arrange for the return of the documents. In such circumstances, you are advised that you may not disclose, copy, distribute or take any other action in reliance on the information transmitted.

From: Stefan Feidler [mailto:sfeidler@neilllawfirm.com]
Sent: Monday, February 08, 2016 2:42 PM
To: 'Nate Fata'
Cc: shuffman@fatalaw.com
Subject: Re: Barnhill v. 809 et al - Motion to Compel and MSJ

Nate,

I know we have a motion to compel and MSJ set for next week. As to the motion to compel, Mark mentioned you both verbally agreed to cancel the previously set depositions. However, if you would like to re-schedule those depositions, we

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are more than happy to accommodate you and your client's request. Please let me know you and your clients availability and I have Lisa contact our clients to re-schedule those depositions.

Sincerely,

Stefan



STEFAN B. FEIDLER

Attorney at Law

Neill Law Firm, PA

Post Office Box 2810

Murrells Inlet, SC 29576

Phone: 843.651.8580

Fax: 843.651.8586

sfeidler@NeillLawFirm.com

www.NeillLawFirm.com

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NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

U.S. Mail

May 13, 2016

The Honorable Melanie Huggins
Horry County Clerk of Court
Post Office Box 677
Conway, South Carolina 29526

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2014-CP-26-08367

Dear Ms. Huggins:

Enclosed for filing is an original and one copy of the following:

1. "Certificate of Service" verifying service of the Affidavit of Sally J. Huffman upon Counsel and Pro Se Defendant; and
2. "Certificate of Service" verifying service of the Notice of Bankruptcy Filings upon Counsel and Pro Se Defendant.

Please clock the enclosed, file the originals and return the clocked copies to me in the envelope enclosed for your convenience.

Thank you for your assistance in this matter.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


NF/sh
Enclosures

cc: Heath Causey, Pro Se
809 Holdings, LP / Mark Neill, Esq.
J. Miles Adler, Esq.

000543

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May
13th 2016 did serve a copy of the Affidavit of Sally J. Huffman via U.S. Mail as follows:

000544

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

AFFIDAVIT OF SALLY J. HUFFMAN

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Allich A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digies, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

FILED
CLERK OF COURT
2016 APR 13 AM 9:11
CLERK OF COURT

Sally J. Huffman, being duly sworn, deposes and says:

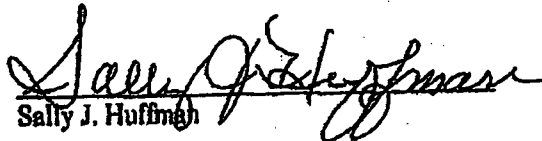
1. I am over the age of eighteen years and am competent to make this Affidavit.

Copy

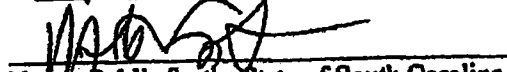
000545

2. I am the legal assistant to Nate Fata, P.A.
3. That I served via U.S. Mail on February 3, 2016 the Notice of Hearing upon the Pro Se Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, Sage Financial Group, LLC, Sage Advisory Group L.P., Sage Private Equity Group, Sage Funding, L.P. at their last known address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577.
4. That on February 18, 2016 I served via U.S. Mail Plaintiffs' Affidavit for Attorney Fees and Motion for Attorney Fees above to the Pro Se Defendants at the above address.
5. That on February 24, 2016 a copy of the proposed Order sent to The Honorable R. Lawson McIntosh was mailed to the above Pro Se Defendants at the above address.
6. That on February 24, 2016 I mailed to Pro Se Defendants a copy of the Notice of Motion and Motion for entry of Default and Striking the Pleadings of All company Defendants to the above Pro Se Defendants at the above address.
7. That on March 29, 2016, I mailed to Pro Se Defendants a copy of the Order entered on March 21, 2016 to the above Pro Se Defendants at the above address.
8. That no mail sent by me to the 629 Hemlock Avenue, Myrtle Beach, South Carolina for the above mentioned Pro Se Defendants has been returned by the U.S. Post Office as being undeliverable.
9. Based on the fact the U.S. Post Office has delivered multiple Notices to the 629 Hemlock Avenue, Myrtle Beach address and the Swilleys' confirmation that they reside at such address, I continue to mail notices and pleadings to that address.

FURTHER AFFIANT SAYETH NAUGHT.


Sally J. Huffman

SWORN to before me this 13 day
of April, 2016.


Notary Public for the State of South Carolina
My Commission Expires: 12/16/2020

000546

LAW OFFICES OF
JOHN M. LEITER, PA
ATTORNEY AND COUNSELOR AT LAW

1203 48TH AVE. N. SUITE 109
MYRTLE BEACH, SC 29577

TELEPHONE (843) 449-1451
FACSIMILE (843) 449-4884
E-MAIL jleiter@48th.com

January 5, 2016

The Honorable William H. Seals, Jr.
Chief Administrative Judge
103 N. Main Street
Marion, South Carolina 29571

Re: *Gabriel Barnhill and GSB Enterprises, LLC v. J. Floyd Swilley, et al.*
C/A No.: 2014-CP-26-08367

Dear Judge Seals:

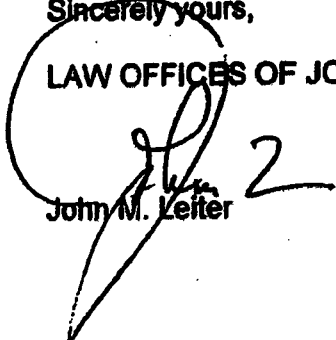
As you instructed at the motion hearing on January 4, 2016 in Conway, I have prepared and am enclosing a proposed Order Granting Leave to Withdraw as counsel for the various defendants named therein in the above case. If the proposed Order meets with your approval, kindly sign it and return it to me in the enclosed, self-addressed, stamped envelope and I will file it with the Clerk.

Thank you for your attention to this matter.

With kind regards,

Sincerely yours,

LAW OFFICES OF JOHN M. LEITER, PA


John M. Leiter

JML/smp
encl.

cc: Mark Neill, Esq.
Nate Fata, Esq.
J. Floyd Swilley
Laurel K. Swilley
William C. Piner
Alicia Piner
Heath Causey
Christopher Pitcock

000547

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-26-3362
(formerly 2013-CP-26-02816)

ORDER RELIEVING JOHN M. LEITER
AND THE LAW OFFICES OF JOHN M.
LEITER, PA AS COUNSEL FOR J. FLOYD
SWILLEY, J. FLOYD SWILLEY
INVESTMENT ADVISORS, LAUREL K.
SWILLEY, SMG PARTNERS, LLC, SMS
SERVICES, LP, WILLIAM C. PINER, WCP
LIMITED, LLC, ALICIA A. PINER, HEATH
CAUSEY, SAGE FUNDING, L.P., SAGE
FINANCIAL GROUP, LLC, SAGE
PRIVATE EQUITY GROUP, SECURED
ASSET FACTORING EXCHANGE, INC.,
DIGICS, LLC AND CHRISTOPHER
PITCOCK

THIS CAUSE came before me for a hearing on the 4th day of January, 2016, upon the
Motion of John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA to be relieved as
counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

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Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Sage Funding, L.P., Digics, LLC and Christopher Pitcock.

Defendants were duly notified of the date, time and location of the hearing. None of the Defendants appeared at the hearing. Nate Fata, Esq. appeared on behalf of the Plaintiffs and Stefan Feidler, Esq. appeared on behalf of Defendant 809 Holdings, LP.

Mr. Leiter stated that the reason for the Motion to Withdraw was nonpayment of fees, including these Defendants' failure and refusal to honor their fee agreement with him, and their failure to honor the payment plan established by the parties.

The Defendants shall obtain new legal counsel to represent them in this matter within thirty (30) days from the date of this Order. The proceedings in this case will be held in abeyance for thirty (30) days from the date of this Order. The Defendants must notify the Court within thirty (30) days of their new attorney. Based on the foregoing and without objection of counsel for any of the other parties, it is hereby

ORDERED that John M. Leiter and the Law Offices of John M. Leiter, PA shall be and the same are hereby relieved as counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock as of the date of the entry of this Order; and, it is

FURTHER ORDERED that these Defendants shall retain substitute counsel who shall enter an appearance with the Court within thirty (30) days from the date of this Order; and it is

FURTHER ORDERED that the Clerk of Court shall note that this matter shall not be called for trial before May 1, 2016.

AND IT IS SO ORDERED.

William H. Seals, Jr., JUDGE
Fifteenth Judicial Circuit

 , 2016
Conway, South Carolina

000550

LAW OFFICES OF
JOHN M. LEITER, PA
ATTORNEY AND COUNSELOR AT LAW

1203 48TH AVE. N. SUITE 109
MYRTLE BEACH, SC 29577

TELEPHONE (843) 449-1451
FACSIMILE (843) 449-4884
E-MAIL jleiter@48th.com

January 21, 2016

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P. O. Box 677
Conway, South Carolina 29528

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No.: 14-CP-26-3362

Dear Ms. Ward:

I am enclosing the original and one copy of an Order Relieving John M. Leiter and the Law Offices of John M. Leiter, PA as counsel for various defendants as identified in the Order. I would appreciate your filing the original and returning a clocked copy of the Order to me in the enclosed, self-addressed stamped envelope.

Thank you for your attention to this matter.

With best regards,

Sincerely yours,

LAW OFFICES OF JOHN M. LEITER, PA


Suzy Pettipas
Paralegal

/smp
Encl.

cc: J. Floyd Swilley & Laurel K. Swilley
J. Floyd Swilley Investment Advisors
SMG Partners, LLC
SMS Services, LP
William C. Piner & Alicia Piner
WCP Limited, LLC
Heath Causey
Sage Financial Group, LLC
Sage Private Equity Group
Secured Asset Factoring Exchange, Inc.
Sage Funding, L.P.
Christopher Pitcock
Digics, Inc.
Nate Fata, Esq.
Mark Neill, Esq.

000551

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-26-3362
(formerly 2013-CP-26-02816)

ORDER RELIEVING JOHN M. LEITER
AND THE LAW OFFICES OF JOHN M.
LEITER, PA AS COUNSEL FOR J. FLOYD
SWILLEY, J. FLOYD SWILLEY
INVESTMENT ADVISORS, LAUREL K.
SWILLEY, SMG PARTNERS, LLC, SMS
SERVICES, LP, WILLIAM C. PINER, WCP
LIMITED, LLC, ALICIA A. PINER, HEATH
CAUSEY, SAGE FUNDING, L.P., SAGE
FINANCIAL GROUP, LLC, SAGE
PRIVATE EQUITY GROUP, SECURED
ASSET FACTORING EXCHANGE, INC.,
DIGICS, LLC AND CHRISTOPHER
PITCOCK

THIS CAUSE came before me for a hearing on the 4th day of January, 2016, upon the
Motion of John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA to be relieved as
counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

000552

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Sage Funding, L.P., Digics, LLC and Christopher Pitcock.

Defendants were duly notified of the date, time and location of the hearing. None of the Defendants appeared at the hearing. Nate Fata, Esq. appeared on behalf of the Plaintiffs and Stefan Feldler, Esq. appeared on behalf of Defendant 809 Holdings, LP.

Mr. Leiter stated that the reason for the Motion to Withdraw was nonpayment of fees, including these Defendants' failure and refusal to honor their fee agreement with him, and their failure to honor the payment plan established by the parties.

The Defendants shall obtain new legal counsel to represent them in this matter within thirty (30) days from the date of this Order. The proceedings in this case will be held in abeyance for thirty (30) days from the date of this Order. The Defendants must notify the Court within thirty (30) days of their new attorney. Based on the foregoing and without objection of counsel for any of the other parties, it is hereby

ORDERED that John M. Leiter and the Law Offices of John M. Leiter, PA shall be and the same are hereby relieved as counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock as of the date of the entry of this Order; and, it is

FURTHER ORDERED that these Defendants shall retain substitute counsel who shall enter an appearance with the Court within thirty (30) days from the date of this Order; and it is

000553

FURTHER ORDERED that the Clerk of Court shall note that this matter shall not be called for trial before May 1, 2016.

AND IT IS SO ORDERED.

William H. Seals, Jr., JUDGE
Fifteenth Judicial Circuit

_____, 2016
Conway, South Carolina

000554

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at 0 o'clock & 00 min AM
APR 17 2003

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (1)

IN RE:

John F. Swilley, a/k/a
Floyd Swilley,

Debtor.

Shadow Factory Films Ltd., Co.,
an Oklahoma Limited Liability Company,

Plaintiff,

v.

John F. Swilley, a/k/a
Floyd Swilley

Defendant.

C/A No. 02-09234-W

Adv. Pro. No. 02-80347-W

ENTERED
APR 17 2003
R. S. S.

ORDER

Chapter 7

THIS MATTER comes before the Court upon the Motion for Summary Judgment (the "Motion") filed by Shadow Factory Films Ltd., Co. ("Plaintiff"). Plaintiff urges the Court to apply the principles of res judicata, collateral estoppel, or judicial estoppel to bar John F. Swilley ("Debtor" or "Defendant") from asserting that the debt arising from prior litigation with Plaintiff is dischargeable. With Defendant thus estopped, Plaintiff asks the Court to grant its Motion pursuant to Federal Rule of Bankruptcy Procedure 7056 and declare that the debt at issue is excepted from discharge pursuant to 11 U.S.C. §523(a)(2) and §523(a)(4).¹ In response, Defendant argues that res judicata does not apply in this case because the judgment resolved a tort action and not the issue of dischargeability. Defendant also argues that collateral estoppel cannot be applied because the prior

¹ Further references to the Bankruptcy Code shall be by section number only.

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judgment does not contain an actual finding of fraud and because there is no unity of parties. Finally, Defendant argues that the District Court for the Western District of Oklahoma lacked jurisdiction to consider the dischargeability of the debt because only bankruptcy courts can decide this issue. After considering the pleadings filed in the adversary proceeding, the attached materials from the prior litigation presented in support of the Motion, and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. On December 29, 2000, Plaintiff filed a Complaint against Defendant, Protocol Asset Management Trust, Laurel Knuckles ("Ms. Knuckles"), Antony Abirached, A. Abira Financial Associated Ltd., and Loli Trade & Finance Establishment, Ltd in the United States District Court for the Western District of Oklahoma (the "Oklahoma litigation"). Generally, the Oklahoma litigation arose from a dispute concerning a venture capital agreement whereby the above-listed defendants agreed to lend or participated in an agreement to lend Plaintiff \$125,000,000 over a ten year period.
2. On March 7, 2002, Defendant, in both an individual capacity and as Trustee for Protocol Asset Management Trust, and Ms. Knuckles executed a Settlement Agreement (the "Settlement Agreement") with Plaintiff to resolve the Oklahoma litigation. In the Settlement Agreement, the parties stipulate to three initial points. First, they agree that Plaintiff's causes of action include a

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

claim for money acquired by false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement, and larceny. Next, the parties stipulate that they seek to settle all claims asserted or that could have been asserted in the Oklahoma litigation. Finally, the defendants stipulate "that one or more of Plaintiff's claims are of such character and nature that they cannot be discharged in bankruptcy."

3. Based upon these initial stipulations in the Settlement Agreement, the parties then agree to have a judgment entered against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, in the amount of \$300,000 on Plaintiff's claims that are not dischargeable in bankruptcy. The Settlement Agreement provides that the journal entry of the judgment shall reflect that the pleadings in the Oklahoma litigation are deemed to have been amended to assert claims of such character and nature that they cannot be discharged in bankruptcy. The Settlement Agreement then provides that the journal entry of judgment shall "recite agreement and stipulation of the Parties and a factual finding by the Court that, *inter alia*, the judgment is entered on one or more of those claims that are of such character and nature that they cannot be discharged in bankruptcy and that as a result thereof the judgment is not dischargeable in bankruptcy."

4. On March 8, 2002, Plaintiff, Defendant, and Ms. Knuckles participated in a settlement conference before the Honorable Magistrate Gary Purcell of the United States District Court for the Western District of Oklahoma. Judge Purcell thoroughly reviewed the terms of settlement and announced his understanding of the parties' settlement on the record. Specifically, Judge Purcell stated that the parties agree to have findings and a judgment entered against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, on Plaintiff's claims that are not dischargeable in bankruptcy in the amount of \$300,000. Judge Purcell also indicated that the

parties agree that any pleadings should be amended to assert claims that cannot be discharged in bankruptcy, and he found that it was clear that the agreement anticipates that no part of the judgment is capable of being discharged in bankruptcy.

5. During the settlement conference, Judge Purcell asked Defendant and his counsel if they understood and agreed to the terms of the Settlement Agreement. Both Defendant and his counsel responded affirmatively. Defendant also indicated that he was not threatened or forced to enter into the Settlement Agreement.

6. On March 11, 2002, the Honorable Stephen P. Friot, United States District Judge for the Western District of Oklahoma, entered the Journal Entry of Judgment (the "Oklahoma Judgment") resolving the Oklahoma litigation. The court recognized that Defendant, Ms. Knuckles, and Protocol Asset Management Trust stipulated to certain facts, and, based upon these facts, the court found that the claims Plaintiff asserted against them were of such character and nature that they cannot be discharged in bankruptcy. The court further found that, to the extent the pleadings were ambiguous, the court deemed them amended to assert claims of such nature and character that they cannot be discharged in bankruptcy. The court then entered the Oklahoma Judgment against Defendant and Ms. Knuckles on one or more of the nondischargeable claims and accordingly held that the Oklahoma Judgment was excepted from discharge. The Court entered a judgment against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, in the amount of \$300,000. Attorneys for Plaintiff and Defendant, Ms. Knuckles, and Protocol Asset Management Trust provided consensual signatures indicating that they agreed to and approved of the Oklahoma Judgment.

7. The Oklahoma Judgment is final, and there was no appeal of it.

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8. On August 5, 2002, Defendant filed his Voluntary Petition seeking Chapter 7 relief.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

Rule 56(e) of the Federal Rules of Civil Procedure, applicable to adversary proceedings under the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 7056, provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56. Summary judgment is appropriate "if the evidence is such that a reasonable jury could not return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether summary judgment is appropriate, the court must view all evidence in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The moving party has the initial burden to show that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Celotex Corp v. Catrett, 477 U.S. 317, 332 (1986). Once this initial showing is made, the burden of production shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324; see also Fed. R. Civ. P. 5(e). In meeting this burden, the nonmoving party "must do more than simply show that there is some metaphysical

doubt as to the material facts and must demonstrate there is a genuine issue for trial." Matsushita, 475 U.S. at 586-87; see also Campbell v. Deans (In re J.R. Deans Co.), 249 B.R. 121, 128 (Bankr. D. S.C. 2000) (quoting Dunes Hotel Assoc. v. Hyatt Corp. (In re Dunes Hotel Assoc.), 194 B.R. 967, 976 (Bankr. D. S.C. 1995)) ("[T]he party opposing summary judgment may not merely rely on his pleadings but must set forth specific facts which controvert the moving party's facts and which show the existence of a genuine issue for trial."). The Court should grant summary judgment "against a party who fails to make a showing sufficient to establish the evidence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Dunes Hotel Assoc., 194 B.R. at 976 (citing Celotex, 477 U.S. at 322).

B. Application of the Summary Judgment Standard to the Motion

Res judicata

Res judicata is a broad principle that prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding. See Brown v. Felson, 442 U.S. 127, 131 (1979); In re The Roof Doctor, C/A No. 97-01648-W, slip op. at 3 (Bankr. D. S.C. Aug. 26, 1998) (citing In re Varat Enterprises, Inc., 81 F.3d 1310 (4th Cir. 1996)). The elements of res judicata are the following: (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits. See Grausz v. Englander, 321 F.3d 467, 472 (4th Cir. 2003); Keith v. Aldridge, 900 F.2d 736, 739 (4th Cir. 1990). "On the merits" is a term of art and does not necessarily mean that the issues were actually litigated and is substantially different and broader than the "actually litigated" element of collateral estoppel.

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See Fed. Ins. Co. v. Gilson (In re Gilson), 250 B.R. 226, 236 (Bankr. E.D. Va. 2000). To determine whether the claim was previously available to a party in the earlier suit, the Fourth Circuit has adopted a transactional approach whereby it considers whether the roots of both actions arise from the same series of operative facts. See Grausz, 321 F.3d at 473; Keith, 900 F.2d at 739.³

In dischargeability proceedings, however, the use of res judicata is limited. In Felson, the Supreme Court held that bankruptcy courts are not confined to reviewing the judgment and record of a prior state court proceeding when considering the dischargeability of debt. See 442 U.S. at 139. The Court supported this conclusion by reasoning that allowing state courts to determine the dischargeability of a debt undercuts statutory policy that favors resolving dischargeability issues in bankruptcy courts. See id. at 136. Moreover, the Court questioned the merit of requiring parties to address dischargeability issues in state court and preserve them for subsequent determination by a bankruptcy court when the issues are not yet ripe because no bankruptcy case has been filed. See id. at 137; see also Tatge v. Tatge (In re Tatge), 212 B.R. 604, 608-09 (B.A.P. 8th Cir. 1997) (declining to apply res judicata to a prepetition state court judgment incorporating the parties' settlement agreement that classified debts as dischargeable and reasoning that, at the time of the decree, no bankruptcy petition had been filed and no cause of action under §523 existed). Accordingly, the Court held that bankruptcy courts could consider all the evidence, including a plaintiff's failure to pursue allegations of fraud and deceit during the prior state court proceeding, and look beyond the judgment and record of the prepetition state court proceeding to determine

³ The Court notes that, in Keith, the Fourth Circuit found that consent judgments can have preclusive effect if the parties intended to foreclose litigation of a claim through a settlement agreement. See 900 F.2d at 741; see also Nash County Bd. of Educ. v. Biltmore Co., 640 F.2d 484, 487 (4th Cir. 1981).

whether a debt is excepted from discharge. See Felson, 442 U.S. at 139.

Felson effectively prohibits the blanket application of res judicata to prepetition state court determinations regarding the dischargeability of debts, and this principle has seemingly been applied to prepetition federal cases as well. See Gilson, 250 B.R. at 238. For example, in Strube Celery & Vegetable Co., Inc. v. Zoia (In re Zoia), 201 B.R. 501, 511 (Bankr. N.D. Ill. 1996), the bankruptcy court found that a federal district court's classification of a debt owed as nondischargeable was not res judicata as to the dischargeability of the debt. In Zoia, the court reasoned that the district court lacked jurisdiction to reach this conclusion because, when it found that the debt was nondischargeable, no bankruptcy case had been filed. See also Coopers & Lybrand, Ltd. v. Gibbs (In re Gibbs), 107 B.R. 492, 497 (Bankr. D. N.J. 1989) (finding that a federal district court lacked subject matter jurisdiction to define a debt owed under a judgment as nondischargeable where no bankruptcy case had been filed). Moreover, the bankruptcy court found that the issue of dischargeability had not been litigated in the prior proceeding but was simply included in the language of the order. Cf. Salter v. Salter (In re Salter), 217 B.R. 166, 170 (E.D. Pa. 1998) (holding that a stipulation approved by a bankruptcy court that classified debts as excepted from discharge barred a redetermination of the issue of dischargeability in a subsequent bankruptcy case); Policemen's & Firefighters' Rel. Fund of Covington v. Tranter (In re Tranter), 245 B.R. 419, 420 (Bankr. S.D. Fla. 2000) (finding that a prior determination by a bankruptcy court that a debt was excepted from discharge was binding in another proceeding to except the same debt from debtor's discharge in debtor's subsequent bankruptcy case).

Based upon Felson's principles limiting the blanket application of res judicata to prepetition cases addressing the issue of dischargeability and because of other provisions of this Order, the Court

denies this aspect of Plaintiff's Motion. This Court is given the opportunity to look beyond the Oklahoma Judgment and the record of the Oklahoma litigation to decide whether Defendant's actions render his obligation excepted from discharge pursuant to §§523(a)(2) and (a)(4).

Collateral Estoppel

While the application of res judicata has been limited in dischargeability proceedings, the narrower concept of collateral estoppel can be applied more easily. See Grogan v. Garner, 498 U.S. 279, 285 n. 11 (1991); Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 19 (4th Cir. 1997). Collateral estoppel precludes relitigation of an issue decided previously in judicial or administrative proceedings provided the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in an earlier proceeding. See Hagan v. McNallen (In re McNallen), 62 F.3d 619, 624 (4th Cir. 1995). When applying the principle of collateral estoppel, the Court typically looks to the forum state's law of collateral estoppel; however, this case deals with a prior judgment from a federal court. See McNallen, 62 F.3d at 624. In this situation, the Court must consider the principles of federal collateral estoppel. See Nestorio v. Associates Commercial Corp., 250 B.R. 50, 55 (D. Md. 2000); Shearer v. Dunkley (In re Dunkley), 221 B.R. 207, 212 (Bankr. N.D. Ill. 1998); Federal Trade Comm'n v. Harrell (In re Harrell), C/A No. 98-06980-W, Adv. Pro. No. 98-80266-W, slip op. at 8 (Bankr. D. S.C. Apr. 22, 1999). For federal collateral estoppel to apply, the proponent must establish the following elements: (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum. See

Sec. & Exch. Comm'n v. Zandford, 238 F.3d 559, 562 (4th Cir. 2001), rev'd on other grounds by 535 U.S. 813 (2002); Sedlack v. Braswell Services Group, Inc., 134 F.3d 219, 224 (4th Cir. 1998).

The undisputed material facts indicate that some of these elements are satisfied. First, there is no dispute as to the identity of issues. In the Oklahoma Judgment, the court considered allegations of acquiring money by false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement, and larceny, the presumptive grounds for a debt to be declared nondischargeable pursuant to §523(a)(2) and §523(a)(4), and the court found that the amount of the judgment was not dischargeable in bankruptcy. Likewise, the issue in this proceeding is whether the debt is excepted from discharge pursuant to §523(a)(2) and §523(a)(4). Second, the undisputed material facts also demonstrate that the Oklahoma Judgment is final and was not appealed. Third, the record of the Oklahoma litigation reflects that Defendant was represented by counsel and that he participated in a sophisticated legal setting in two levels of the Federal District Court for the Western District of Oklahoma. Moreover, the transcript of the Settlement Conference reflects that Judge Purcell meticulously reviewed and announced the terms of the Settlement Agreement and asked Defendant if he understood and agreed to the terms. Defendant clearly agreed to the terms and had a full and fair opportunity to defend against Plaintiff's causes of action.

There is a question whether the Oklahoma Judgment satisfies the actually determined element.⁴ The Oklahoma Judgment is a consent order that settles the Oklahoma litigation. Ordinarily, when a case is settled rather than litigated to a judgment, the settlement does not give rise to collateral estoppel unless it is clear that the parties intended the settlement to have such an effect.

⁴ Several cases refer to this element as "actually litigated." The Court will use actually litigated and actually determined synonymously.

See Arizona v. California, 530 U.S. 392, 414 (2000) ("[S]ettlements ordinarily occasion no issue preclusion (sometimes called collateral estoppel), unless it is clear . . . that the parties intended their agreement to have such an effect."); Halpern v. First Georgia Bank, 810 F.2d 1061, 1064 (11th Cir. 1987) ("[T]he central inquiry in determining the preclusive effect of a consent judgment is the intention of the parties as manifested in the judgment or other evidence."). Generally, courts have examined the parties' intent in two ways. One approach focuses on whether the settlement or consent judgment includes sufficient facts to support a finding that a debt is excepted from discharge. See, e.g. Levinson v. United States, 969 F.2d 260, 264 (7th Cir. 1992) (declining to apply collateral estoppel where the consent judgment did not include sufficient facts to support a finding that the debtor's fraud rendered the debt excepted from discharge); Halpern, 810 F.2d at 1064-65 (finding that the parties intended a prior state court consent order to operate as a final adjudication where the order included detailed factual findings sufficient to satisfy §523(a)(2)(A) as well as specific language providing that liability under the judgment will be excepted from discharge in any bankruptcy case); Giaino v. Detrano (In re Detrano), 266 B.R. 282, 291 (E.D. N.Y. 2001) (affirming the bankruptcy court's decision to decline to apply collateral estoppel where the settlement order did not contain stipulated facts that would establish that a debt was nondischargeable under §523(a)(4)); Kohlenberg v. Baumhaft (In re Baumhaft), 271 B.R. 517, 522-23 (Bankr. E.D. Mich. 2001) (applying collateral estoppel and granting summary judgment where the settlement agreement related to a consent judgment listed specific facts allowing the court to conclude a debt was excepted from discharge pursuant to §523(a)(2)(A) and (B) and where the agreement provided that the parties would not object to the dischargeability of the debt in any subsequent bankruptcy proceeding); Mustaine v. Kennedy (In re Kennedy), 243 B.R. 1, 12 (Bankr. W.D. Ky. 1997) (finding that the

consent order did not manifest an intent for the judgment to be conclusive where the judgment at issue was a blanket entry of judgment on the fraud counts of a complaint and contained no discussion of culpability); Estate of Samson v. Ward (In re Ward), 194 B.R. 53, 58 (Bankr. D. S.C. 1995) (denying summary judgment motion because the form order entered resolving a trial after the parties reached a settlement was silent as to the exact terms of settlement or the basis for the judgment but suggesting that collateral estoppel could be appropriate if the evidence indicated that a party confessed to committing a particular type of fraud or defalcation that would preclude discharge); Pasada Del Rey v. Pearson (In re Pearson), 120 B.R. 396, 399 (Bankr. N.D. Tex. 1990) (declining to apply collateral estoppel because there were insufficient facts in the consent order to establish that the debt was excepted from discharge); Fisher v. Heatly (In re Fisher), C/A No. 92-73995, Adv. Pro. No. 92-8250, slip op. at 8 (Bankr. D. S.C. Feb. 1, 1993) ("Without the legal basis for the court's findings or a discussion or record of the elements constituting the plaintiff's burden of proof, this Court is unable to determine whether the plaintiff in the state court proved and whether that court properly considered the elements and issues of fraud as are required for a finding of non-dischargeability pursuant to 11 U.S.C. section 523. Therefore, the issues raised by 11 U.S.C. section 523(a)(2) and this lawsuit were not actually litigated."); see also Nissan v. Weiss (In re Weiss), 235 B.R. 349, 358-59 (Bankr. S.D. N.Y. 1999), aff'd by 255 B.R. 115 (S.D. N.Y. 2000) (finding that a confession of judgment satisfied the actually litigated requirement and applied collateral estoppel to find that the debts at issue in the judgment were excepted from discharge where the confession of judgment represented a confession to each claim in the complaint, including fraud and breach of fiduciary duty). Other courts review prior consent or settlement orders to determine if it is clear that the parties intended the prior litigation to have a collateral estoppel effect. Courts using this

approach have applied collateral estoppel even if the prior judgment does not contain specific stipulated or court-found facts to support a conclusion that a debt would be excepted from discharge pursuant to §523. See, e.g., Peoples Bank of Dickson v. Duke (In re Duke), 172 B.R. 575, 579 (M.D. Tenn. 1994) (applying collateral estoppel to bar the debtor from arguing that her debt at issue was discharged when she asserted in a prior criminal matter that the debt would be excepted from discharge); Doughty v. Hill (In re Hill), 265 B.R. 270, 279 (Bankr. M.D. Fla. 2001) (concluding that a consent judgment without specific factual findings but with a specific stipulation to an amount of fraud damages satisfied the actually litigated element in a subsequent proceeding regarding dischargeability); Buglione v. Berlingeri (In re Berlingeri), 246 B.R. 196, 201 (Bankr. D. N.J. 2000) (applying collateral estoppel to a prior settlement order declaring that certain debts arising from a divorce proceeding would be excepted from discharge where it was evident the parties intended to settle an intentional tort claim and intended the settlement to survive a bankruptcy discharge); Smith v. Smith (In re Smith), 189 B.R. 240, 244 (Bankr. D. N.H. 1995) (declining to apply collateral estoppel because the prior judgment contained neither findings that the court could rely on to determine dischargeability or a statement indicating that the judgment would be excepted from discharge); Smith v. Beeson (In re Smith), 128 B.R. 488, 491 (Bankr. S.D. Fla. 1991) (finding the issue of the debtor's fraud was sufficiently litigated in the prior state court proceeding to invoke collateral estoppel from language in the settlement agreement treating the judgment against the debtor as excepted from discharge).

Upon reviewing the Oklahoma Judgment, the Settlement Agreement, and the settlement conference transcript, the Court concludes that the parties clearly intended the Oklahoma Judgment to have preclusive effect as to the dischargeability of the amount owed under the judgment. The

language of the Oklahoma Judgment is unequivocal and thoroughly describes the judgment amount as nondischargeable, and the language is much more than a mere statement that the debt would be excepted from discharge. Cf. Klingman v. Levinson, 831 F.2d 1292, 1296 (7th Cir. 1987) (finding that language in a consent decree providing that the debt at issue would not be dischargeable in a bankruptcy proceeding illustrated the parties' intent for the decree to have preclusive effect). Indeed, the Oklahoma Judgment indicates that the parties intended to conclusively resolve the issue of dischargeability by agreeing that (1) the pleadings are deemed amended to assert claims that cannot be discharged in bankruptcy, (2) the Oklahoma Judgment is entered on one or more of the claims that are of such character and nature that they cannot be discharged in bankruptcy, (3) the Oklahoma Judgment is based upon a factual finding by the Court, and (4) the Oklahoma Judgment is not dischargeable in bankruptcy. Moreover, during the settlement conference, Judge Purcell carefully reviewed all of the terms of the Settlement Agreement, and he asked the parties whether they agreed to and understood these terms, including terms that indicated the judgment would be based upon factual findings. Defendant clearly acknowledged that he willingly accepted the terms, including the provisions concerning the nondischargeability of the debt. To this Court, the settlement materials clearly illustrate that the parties intended the Oklahoma Judgment to be the final resolution of the dispute, including the future dischargeability of the debt, and this Court will honor and enforce that intent. While the Oklahoma Judgment does contain a detailed enumeration of findings of fact, this step is not necessary when it is clear that the Oklahoma court relied on the factual basis that Defendant, Ms. Knuckles, and Protocol Asset Management Trust acknowledged and stipulated to prior to the entry of the Oklahoma Judgment in finding that the debt it represents would be excepted from discharge. In other words, the Oklahoma Judgment is based on factual findings that were

agreed upon and established in an unappealed order and record. For these reasons, the Court finds that the Oklahoma Judgment satisfies the actually litigated element of collateral estoppel.⁵

The Court also finds that the issue of dischargeability was a necessary part of the Oklahoma litigation. The original complaint includes specific allegations of acquiring money under false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement and larceny, and the Oklahoma court and the settlement materials recognize these allegations and buttress them further by a specific provision amending the complaint to ensure the allegations are pled sufficiently to support a finding of nondischargeability. This specificity leads the Court to conclude that the determination that the elements of §523(a)(2) and §523(a)(4) on which the Oklahoma Judgment was found to be nondischargeable were a necessary part of the proceeding. See Nissan v. Weiss (In re Weiss), 235 B.R. 349, 359 (Bankr. S.D. N.Y. 1999), aff'd by 255 B.R. 115 (S.D. N.Y. 2000).

For the above stated reasons, the Court concludes that all of the elements of federal collateral estoppel are satisfied. Accordingly, the Court applies the principle to bar Defendant from arguing

⁵ Although the Court's prior cases involving collateral estoppel in the context of a dischargeability proceeding are slightly different from the case at bar, the finding that the Oklahoma Judgment was actually litigated is consistent with rulings in prior cases. For example, the Court previously applied collateral estoppel to default judgments where the judgments resulted in implicit findings satisfying the elements of subsections of §523. See, e.g., Stroud v. Read (In re Read), C/A No. 98-08285-W, Adv. Pro. No. 98-80295-W, slip op. at 9-10 (Bankr. D. S.C. Jul. 1, 1999); Brown v. Evans (In re Evans), C/A No. 98-05148-W, Adv. Pro. No. 98-80212-W, slip op. at 11 (Bankr. D. S.C. Apr. 26, 1999); Fed. Trade Comm'n v. Harrell (In re Harrell), C/A No. 98-06980-W, Adv. Pro. No. 98-80266-W, slip op. at 15 (Bankr. D. S.C. Apr. 23, 1999). Arguably, a default judgment is less "actually litigated" than a settlement or consent order that both parties participate in drafting and then in presenting to a court for approval. Further, the Court has previously held that a prior judgment could clearly establish that a punitive damages award was based upon actions that were willful and malicious without making specific findings of willfulness or maliciousness. See Read, at 6.

that the debt represented by the Oklahoma Judgment is dischargeable and grants Plaintiff's Motion.

Judicial Estoppel

"Judicial estoppel precludes a party from adopting a position that is inconsistent with a stance taken in prior litigation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process." John S. Clark Co. v. Faggert & Frieden, P.C., 65 F.3d 26, 28-29 (4th Cir. 1995); see also In re Brown, C/A No. 01-12506-B, slip op. at 5-6 (Bankr. D. S.C. Jun. 4, 2002); Dunes Hotel Associates v. Hyatt Corp. (In re Dunes Hotel Associates), C/A No. 94-75715-W, Adv. Pro. No. 95-8042-W, slip op. at 8-9 (Bankr. D. S.C. Feb. 12, 1997). "Acting on the assumption that there is only one truth about a given set of circumstances, the courts apply judicial estoppel to prevent a party from benefitting itself by maintaining mutually inconsistent positions regarding a particular situation. As we have previously observed, the doctrine is invoked to prevent a party from 'playing fast and loose with the courts,' from 'blowing hot and cold as the occasion demands,' or from attempting 'to mislead the courts to gain unfair advantage.'" King v. Herbert J. Thomas Mem'l Hosp., 159 F.3d 192, 196 (4th Cir. 1998). "Because the rule is intended to prevent improper use of judicial machinery, judicial estoppel is an equitable doctrine invoked by a court at its discretion." 1000 Friends of Maryland v. Browner, 265 F.3d 216, 226 (4th Cir. 2001).

In the Fourth Circuit, there is no specific formula for applying judicial estoppel; however, the presence of the following factors is generally required: (1) the party to be estopped must be asserting a position that is factually incompatible with a position taken in a prior judicial or administrative proceeding and the position sought to be estopped must be one of fact rather than law or legal theory; (2) the prior inconsistent position must have been accepted by the tribunal; and (3)

the party to be estopped must have taken inconsistent positions intentionally for the purpose of gaining unfair advantage. See 1000 Friends, 265 F.3d at 226-27; Lowery v. Stovall, 92 F.3d 219, 224 (4th Cir. 1996); Dunes Hotel, at 9. Of these factors, the third is the most critical. See Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co., 232 F.3d 383, 390 (4th Cir. 2000) (citing Lowery, 92 F.3d at 224). Judicial estoppel, however, will not be applied where the party's inconsistent positions results from inadvertence or mistake. See King, 159 F.3d at 196-97.

In this case, the inconsistent position is that Defendant previously agreed to settlement terms and the entry of the Oklahoma Judgment based upon his stipulation and agreement to facts that rendered that debt excepted from discharge. Now, only a few months after consenting to the Oklahoma Judgment, Defendant attempts to deny this prior position, reject these facts, and argue that the Oklahoma Judgment is dischargeable. The elements are present to invoke judicial estoppel as Defendant asserts an inconsistent factual position that was accepted by the Oklahoma federal court during the settlement conference and by entry of the Oklahoma Judgment. While it has been held that judicial estoppel does not apply to the settlement of an ordinary civil suit because there is no judicial acceptance of anyone's position, in this case the federal court undertook a thorough effort to ensure the judgment was voluntary, complete and fully agreeable and therefore, there is sufficient judicial acceptance. See Lowery, 92 F.3d at 225 and Reynolds v. Commissioner of Internal Revenue, 861 F.2d 469, 473 (6th Cir. 1988). Moreover, these inconsistent positions are an attempt to gain an unfair advantage as Defendant previously resolved litigation, which sought a recovery of \$125,000,000 against him, for a significantly lesser amount conditioned upon its nondischargeability. In March 2002, Defendant adopted one position on dischargeability and less than five months later upon his filing bankruptcy, he argues a directly contrary position. In similar circumstances, other

courts applied judicial estoppel in the bankruptcy context to bar a debtor who previously agreed that certain debts were excepted from discharge from subsequently asserting that the debts were dischargeable. See Dunkley, 221 B.R. at 213 (applying judicial estoppel to bar the debtor from adopting the inconsistent legal position that debts incurred pursuant to his divorce or separation were dischargeable when the debtor had, in a prior bankruptcy case, entered into a stipulated settlement order that treated the debt as excepted from discharge); see also In the Matter of Cassidy, 892 F.2d 637, 642 (7th Cir. 1990) (applying judicial estoppel to bar the debtor from relitigating the issue of the dischargeability of his tax debts where the debtor previously urged the Seventh Circuit Court of Appeals to address the issue of discharge of his tax debts on appeal after his Tax Court proceeding, but, after receiving a ruling that the tax debts were excepted from discharge, the debtor returned to the bankruptcy court and argued that the Tax Court lacked jurisdiction to consider dischargeability). Likewise, because Defendant's position in the Oklahoma litigation was unequivocal and relied upon by Plaintiff and the court and he has now entirely reversed his position, this Court applies judicial estoppel in this case to bar Defendant from asserting that the underlying facts supporting the Oklahoma Judgment are insufficient to establish that the debt represented by the Oklahoma Judgment is excepted from discharge pursuant to §523(a)(2) and §523(a)(4). The Court has serious concerns about what appears to be Defendant's manipulation of the judicial process, and it will not countenance such gamesmanship.⁶

CONCLUSION

For the above stated reasons, the Court grants Plaintiff's Motion and

⁶ The Court also believes equitable estoppel or promissory estoppel may be additional principles that bar Defendant from disputing the agreed-upon facts supporting the determination that the debt represented by the Oklahoma Judgment is excepted from discharge.

ORDERS that the debt Defendant owes represented by the Oklahoma Judgment is excepted from discharge pursuant to §523(a)(2) and §523(a)(4).

AND IT IS SO ORDERED.

Columbia, South Carolina,
April 17, 2003.


UNITED STATES BANKRUPTCY JUDGE

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