

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2012-CP-23-05740

Mac Papers, Inc., Appellant/Respondent,

v.

Genesis Press, Inc., Lawrence I. Kudeviz, Barry Zissok, and Lewis Levin, Defendants,

Of whom Lawrence I. Kudeviz is the Respondent/Appellant.

RECORD ON APPEAL

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Attorneys for the Appellant

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SC Court of Appeals

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FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2305740

Mac Papers Inc

Genesis Press Inc
Barry Zissok

Lawrence I Kudeviz
Lewis Levin

2013 SEP 13 P 4:17

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

Before the Court is Plaintiff's Motion for Summary Judgment against Defendant Kudeviz.

Under Rule 56, a party is entitled to a judgment as a matter of law 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. "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." *McClanahan v. Richland County Council*, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002). "[A]t the summary judgment stage of litigation, 'the judge does not weigh conflicting evidence with respect to a disputed material fact ... Nor does the judge make credibility determinations with respect to statements made in affidavits'" *L & W Wholesale, Inc. v. Gore*, 305 S.C. 250, 407 S.E.2d 658 (Ct. App. 1991). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct.App.2005).

Having fully reviewed the pleadings in the file, the memorandum and exhibits submitted, and the oral arguments of counsel in a light most favorable to the Defendant Kudeviz, this Court finds that genuine issues of material fact exist with regard to the nature of the purported contract and the obligations of Defendant Kudeviz. Accordingly, because genuine issues of material fact remain, the Plaintiff's Motion for Summary Judgment is DENIED.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

Circuit Court Judge

2137

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 9/13/13, and a copy mailed first class or placed in the appropriate attorney's box on 9/13/13 to attorneys of record or to parties (when appearing pro se) as follows:

Townes Boyd Johnson III Kenison, Dudley & Crawford,
LLC 704 E. McBee Avenue Greenville, SC 29601

Robert Alan Pohl PO Box 27290 Greenville, SC 29616
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Bernie W. Ellis McNair Law Firm, P.A. P.O. Box 447
Greenville, SC 29602
Hunter St. Clair Copley Freeman McNair Law Firm, P.A.
P.O. Box 447 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

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

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

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

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2305740

Mac Papers Inc

Genesis Press Inc
Lewis Levin

Lawrence I Kudeviz

2015 MAR 9 AM 11 44

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

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Circuit Court Judge

2110

Judge Code

2/12/2015

Date

For Clerk of Court Office Use Only

3/9/15

3/9/15

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

Townes Boyd Johnson III 704 E. Mcbee Ave. Greenville,
SC 29601

Robert Alan Pohl Pohl, PA P.O. Box 27290 Greenville, SC
29616
Bernie W. Ellis McNair Law Firm, P.A. P.O. Box 447
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Hunter St. Clair Copley Freeman McNair Law Firm, P.A.
P.O. Box 447 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

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

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

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

Plaintiff Mac Papers, Inc.'s Motion for Summary Judgment is DENIED.

Defendant Lawrence Kudeviz's Motion for Summary Judgment is DENIED.

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2305740**

Mac Papers Inc.	Genesis Press Inc Lewis Levin
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:
 Plaintiff's Motion to Alter or Amend and Defendant Lawrence I Kudeviz's Motion to Alter or Amend are both hereby denied. The Court decided these motions on February 12, 2016; however, the Form 4 order was inadvertently not entered. Therefore, Plaintiff and Defendant Kudeviz's time for appeal shall begin to run from the date listed below.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

	2162	5/14/2016
Circuit Court Judge	Judge Code	Date
For Clerk of Court Office Use Only		

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

Townes Boyd Johnson III PO Box 10529 Greenville, SC 29603

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Bernie W. Ellis PO Box 447 Greenville, SC 29602
Hunter St. Clair Copley Freeman PO Box 447 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

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

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

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



Greenville Common Pleas

Case Caption: Mac Papers Inc vs. Genesis Press Inc , defendant, et al
Case Number: 2012CP2305740
Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-05-14 12:45:51 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Mac Papers, Inc.,)
) Plaintiff,)
)
v.)
)
Genesis Press Inc., Lawrence I. Kudeviz)
) Defendant)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2012-CP-23-5740

ORDER

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKHAM, JR.
2016 JAN 8 PM 1 23

This matter arises out of a breach of contract dispute between the Plaintiff, Mac Papers, Inc., and the Defendants Genesis Press Inc., and Lawrence I. Kudeviz. This matter came before the Court as a non-jury trial on Wednesday, November 18, 2015. At trial, testimony was taken from the Defendant as well as the Plaintiff and exhibits were entered into evidence by stipulation of the parties. In his complaint, Plaintiff Mac Papers seeks judgment against Defendants Genesis Press and Lawrence Kudeviz in the amount of \$432,195.60. Based upon the testimony, evidence, arguments of counsel, and applicable law, this Court hereby finds that Defendant Lawrence I. Kudeviz did not terminate his personal guaranty, that promissory and equitable estoppel are not appropriate in this case, and that Mr. Kudeviz's personal liability to Mac Papers is limited to \$70,000.

FINDINGS OF FACT

In October of 1991, Genesis Press, a publishing company, approached Mac Papers, a merchant distributor for office supplies, with a credit application to open an account for a desired amount of \$70,000. In order to supply Genesis, Mac Papers required personal guaranty agreements from the three principals of Genesis Press, Lawrence Kudeviz, Barry Zissok, and Lewis Levin. Mr. Kudeviz signed a personal guaranty on December 2, 1991. Genesis Press



moved their headquarters to South Carolina in 2007. In 2008, Genesis suffered a devastating fire and ultimately sued its insurer when the insurer refused to pay Genesis' claim. In the aftermath of the fire, Mac Papers continued to supply Genesis between the years of 2008 and 2011.

In 2010, Genesis paid Mac Papers its debt in full after receiving the payout for the fire from its insurance company. On July 12, 2010, Mr. Kudeviz sent an email to Craig Boortz, a general manager of Mac Papers and in charge of Genesis' account. In one part of this email, Kudeviz asked if "Tonja" (Mac Paper's credit manager) was "working on releasing [his] personal note." Mr. Boortz replied "Yes she is, and feel free to call her on anything related to the note," and provided Tonja's phone number. *See Plaintiff's Exhibit 9.* Mr. Kudeviz never followed up with Tonja regarding the release of his personal note. The release provision of the personal guaranty contained a provision that stated there were no limitations or conditions except within the guaranty, and it would remain in full force and effect until written notice was received in certified mail at Mac Papers' office in Jacksonville, Florida. Mac Papers never received a registered letter from Mr. Kudeviz at his office in Jacksonville, only the email conversation between Mr. Kudeviz and Mr. Boortz about Tonja working on the release of the note. Mr. Levin is deceased and Barry Zissok settled separately; therefore, Mr. Kudeviz is the only remaining defendant in the case.

Genesis and Mac Papers continued to do business, and by December 2012, Genesis was indebted to Mac Papers in the sum of \$432,185.60.

CONCLUSIONS OF LAW

1. Guaranty Not Terminated

The original signed personal guaranty took place in Florida, and therefore Florida law applies to the creation of the guaranty in this case. Defendant argues that the guaranty he agreed

to was a continuing guaranty. A conventional guaranty generally involves one person guaranteeing the debt of another for a particular amount. A guaranty is a promise to pay some debt (or to perform some obligation) of another on the default of the person primarily liable for payment or performance. *New Holland, Inc. v. Trunk*, 579 So. 2d 215, 216-17 (Fla. Dist. Ct. App. 1991).

A continuing guaranty is a special type of guaranty that covers all transactions including those arising in the future which are within the terms of the agreement. *Fidelity Nat'l Bank of South Miami v. Melo*, 366 So.2d 1218, 1221 (Fla. Dist. Ct. App. 1979). However, the guarantor may terminate the guaranty at will for all future transactions and only remains liable for debts incurred prior to the termination of the guaranty. Thus, with a continuing guaranty, the guarantor's right to terminate is not subject to the creditor's consent or approval. *See Brann v. Flagship Bank of Pinellas, N.A.* 450 So.2d 237, 238 (Fla. Dist. Ct. App. 1984).

The signed guaranty agreement between Mr. Kudeviz and Mac Papers contained instructions for termination of the guaranty. The guaranty agreement states "[t]his guaranty contains no limitations or conditions except as written herein, may be modified only in writing signed by the parties hereto, and is to remain in full force and effect until written notice of its termination is received by registered mail by Mac Papers, Inc., its successors or assigns, at its office in Jacksonville, Florida." *See Plaintiff's Exhibit 2*.

Defendant argues that he effectively terminated the guaranty in an email to Craig Boortz. In an email from July 12, 2010, Mr. Kudeviz asked Mr. Boortz "On a separate subject is Tanja working on releasing my personal note?" Mr. Boortz replied, "Yes she is and feel free to call her on anything related to the note. Her direct line is 904-348-3387." *See Plaintiff's Exhibit 9*. Nothing in the record reflects any further action taken by Mr. Kudeviz to terminate the guaranty.

The guaranty agreement clearly states the process in which Mr. Kudeviz could terminate the guaranty. While the guaranty was a continuing one, and Mac Papers did not have to consent to its termination, the termination must have been in writing, and sent by registered mail to Mac Papers office in Jacksonville, Florida, pursuant to the guaranty agreement. Therefore, because no notice was sent by registered mail to Mac Papers' office in Jacksonville, Mr. Kudeviz did not terminate the personal guaranty.

2. Promissory and Equitable Estoppel

Defendant argues that even if the guaranty was not effectively terminated, the principle of equitable estoppel prevents the guaranty from only being terminated by registered mail and the principle of promissory estoppel modifies the contract.

The elements of equitable estoppel under South Carolina law as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position. *Regions Bank v. Schmauch* 582 S.E.2d 432 (Ct. App. 2003).

The elements of promissory estoppel under South Carolina law are (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Satcher v. Satcher*, 570 S.E.2d 535, 538 (Ct. App. 2002).



In South Carolina "equitable relief is precluded under a theory of promissory estoppel if the estoppel claim is in direct conflict with a specific contract term." *Volvo Construction Equipment North America, Inc., v. CLM Equipment Company, Inc.*, 386 F.3d 581, 599 (4th Cir. 2004).

Here, Mr. Kudeviz is precluded from equitable relief because the estoppel claim is in direct conflict with a specific contract term. The guaranty agreement is clear that the only way to terminate the guaranty is by registered mail to Mac Papers' office in Jacksonville, Florida. This specific contract term precludes Mr. Kudeviz from equitable relief.

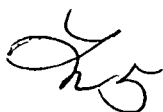
3. Guaranty is Limited to \$70,000

Defendant argues that if the foregoing doctrines do not apply and the Court strictly applies the language of the guaranty, then the guaranty should be limited to the \$70,000 credit limit set forth in the credit application because this was executed at the same time as the personal guaranty.

"Two documents executed by the same parties as part of a single transaction regarding the same subject matter must be read and construed together." *Sims v. New Falls Corp.*, 37 So.3d 358, 361 (Fla. Dist. Ct. App. 2010).

The guaranty and the credit application are both part of the same transaction involving the same subject matter, and therefore are construed together. Plaintiff was unable to prove that Defendant Kudeviz intended to be personally liable for an amount in excess of \$70,000. Thus, the guaranty is limited to the \$70,000 credit limit that Mr. Kudeviz sought in the credit application, *See Plaintiff's Exhibit 1*.

CONCLUSION AND ORDER



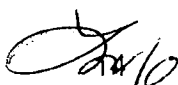
The Court hereby finds that Defendant Lawrence Kudeviz did not terminate the personal guaranty, that promissory and equitable estoppel are not appropriate in this case, and that Mr. Kudeviz's personal liability to the Plaintiff is limited to \$70,000.

IT IS SO ORDERED.

January 8, 2016



Letitia H. Verdin
Circuit Judge



FORM 4

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

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENBARGER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012-CP-23-5740

Mac Papers, Inc.

Genesis Press, Inc

Lawrence I. Kudeviz

2016 JAN 8 PM 1 23

Barry Zissok

Lewis Levin

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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Mac Papers, Inc.	Lawrence I. Kudeviz	\$70,000

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

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Circuit Court Judge

2162

Judge Code

1/8/2016

Date

For Clerk of Court Office Use Only

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

Townes B. Johnson, III Kenison, Dudley, Crawford LLC
704 E. McBee Avenue Greenville, SC 29601

Bernie W. Ellis McNair Law Firm, P.A.
P.O. Box 447 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

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

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

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

Drz

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mac Papers, Inc.,

Plaintiff,

v.

Genesis Press, Inc., Lawrence I.

Kudeviz, Barry Zisook, and Lewis Levin,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C. A. No. 2012-CP-23-5740

)
) **PLAINTIFF'S MOTION FOR**
) **DEFAULT JUDGMENT**
) **OR, IN THE ALTERNATIVE,**
) **SUMMARY JUDGMENT AS TO**
) **DEFENDANT LAWRENCE I. KUDDEVIZ**

**TO: BERNIE W. ELLIS, ESQ., COUNSEL FOR DEFENDANT ADVANCED
COMPOSITE MATERIALS, LLC:**

COMES NOW, the plaintiff, Mac Papers, Inc. ("Plaintiff"), pursuant to *South Carolina Rules of Civil Procedure* Rules 55 and 56(c), and hereby moves this Court, at such date and time as the Court shall direct, for the entry of an Order of Default Judgment against Defendant Lawrence I. Kudeviz ("Defendant") or, in the alternative, an Order granting summary judgment in favor of Plaintiff on the fourth count of its complaint as it applies to Defendant. In support of Plaintiff's Motion for Default Judgment, Plaintiff would show the following:

1. Plaintiff filed a Summons and Complaint against Defendant on September 5, 2012.
2. Defendant was served said Summons and Complaint by and through personal service on September 7, 2012 at 7122 Augusta Rd., Piedmont, South Carolina 29673. The Court's records indicate proof of service.
3. An answer or other appropriate response was due from Defendant on or before October 7, 2012.

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
JUN 28 P 3:32

4. Defendant's first appearance was on March 28, 2013 when Defendant filed its opposition to Plaintiff's Motion for Entry of Default and/or Motion to set aside Plaintiff's Motion for Entry of Default.

5. Defendant filed its answer on or about April 29, 2013.

6. Defendant is in default. *See Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211 (S.C. App, 2011) (*Negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default judgment*).

7. Defendant is not a minor.

8. Defendant has not been found legally incompetent.

9. Defendant is not entitled to the protections of the Servicemembers Civil Relief Act and Amendments thereto.

10. This Court has subject matter and personal jurisdiction over Defendants.

11. The amount that Plaintiff is seeking judgment for is a liquidated amount or sum certain and is easily ascertainable from the Complaint, and its accompanying Exhibits.

In the alternative, in support of Plaintiff's Motion for Summary Judgment, Plaintiff would show the following undisputed facts:

1. Defendant executed a valid and binding guaranty agreement wherein Defendant agreed to guarantee the prompt and satisfactory performance of the Plaintiff's Contract with Genesis Press, Inc. ("Genesis"). *See Defendant's Answer*, ¶ 40.

2. Pursuant to Defendant's guaranty agreement, attached to Plaintiff's Complaint as "Exhibit C" (hereinafter "Guaranty"), the Guaranty could only be modified in writing signed by

both parties and could only be terminated by written notice served on Plaintiff by registered mail. *See Plaintiff's Complaint*, Exhibit C.

3. The Guaranty has neither been modified nor terminated.

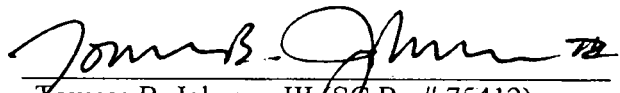
4. Genesis' account balance as of March 19, 2013 was in the amount of Four Hundred Twenty-Two Thousand, Eight Hundred Six and 19/100ths Dollars (\$422,806.19). *See Plaintiff's Motion for Entry of Default*, Exhibit C.

5. Plaintiff has not received any monies towards Genesis' account since March 19, 2013.

6. Defendant is liable to Plaintiff for all of Genesis' indebtedness to Plaintiff.

For the foregoing reasons, the Plaintiff respectfully requests that the Court enter an Order granting a default judgment against Defendant, or, in the alternative, enter an Order granting summary judgment in its favor against Defendant on the fourth count of Plaintiff's complaint.

Respectfully submitted this 28th of June, 2013.



Townes B. Johnson III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Mac Papers, Inc.,)

Plaintiff,)

vs.)

Genesis Press, Inc., Lawrence I Kudeviz,
Barry Zisook, and Lewis Levin,)

Defendants.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. NO.: 2013-CP-40-0448

**CERTIFICATE OF
SERVICE**

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS JR.
2013 JUN 28 P 3:32

I do hereby certify that I have this day served a true copy of the **Plaintiffs Motion for Default Judgment or, in the Alternative, Summary Judgment as to Defendant, Lawrence Kudeviz** in the above-captioned case upon all counsel of record, by personally depositing in the United States Mail, proper postage affixed, with the return address clearly visible, addressed as follows:

**Bernie W. Ellis, Esq.
McNair Law Firm, P.A.
Post Office Box 447
Greenville, SC 29602**

KENISON, DUDLEY & CRAWFORD, LLC

Jennifer R. Moser
Jennifer R. Moser
Legal Assistant

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mac Papers, Inc.

☒ Plaintiff

v.

Genesis Press, Inc., Lawrence I. Kudeviz, Barry
Zisook, And Lewis Levin

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-23-5740

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2013 JUN 28 P 3:33

Plaintiff's Attorney:
Townes B. Johnson, Iii, Esq., Bar No. 75412
Address:
704 East McBee Ave., Greenville, SC 29601
phone: 864-242-4899 fax: 864-242-4844
e-mail: johnson@conlaw.com 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:

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

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 28, 2013

Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: JBnd

Date Filed:

- ☒ MOTION FEE COLLECTED: 25⁰⁰ CL# 17808
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mac Papers, Inc.,

Plaintiff,

v.

Genesis Press, Inc., Lawrence I.
Kudeviz, Barry Zisook, and Lewis Levin,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C. A. No. 2012-CP-23-5740

) **PLAINTIFF'S MOTION FOR**
) **SUMMARY JUDGMENT AS TO**
) **DEFENDANT LAWRENCE I. KUDEVIZ**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 SEP 26 AM 11 37

TO: BERNIE W. ELLIS, ESQ., COUNSEL FOR DEFENDANT LAWRENCE I. KUDEVIZ:

COMES NOW, the plaintiff, Mac Papers, Inc. ("Plaintiff"), pursuant to *South Carolina Rules of Civil Procedure* Rules 55 and 56(c), and hereby moves this Court, at such date and time as the Court shall direct, for an Order granting summary judgment in favor of Plaintiff on the fourth count of its complaint as it applies to Defendant Lawrence I. Kudeviz ("Defendant"). In support of Plaintiff's Motion for Default Judgment, Plaintiff would show the following:

1. Defendant executed valid and binding guaranty agreements wherein Defendant agreed to guarantee the prompt and satisfactory performance of the Plaintiff's Contract with Genesis Press, Inc. ("Genesis"). *See Defendant's Answer*, ¶ 40.

2. Pursuant to Defendant's guaranty agreements, attached to Plaintiff's Complaint, the guarantees could only be modified in writing signed by both parties and could only be terminated by written notice served on Plaintiff by registered mail.

3. Although there was preliminary discussion regarding terminating the guarantees, the guarantees have neither been modified nor terminated.

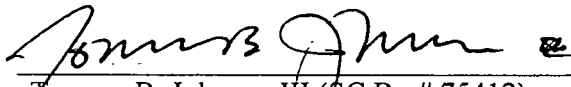
ENTERED COMPUTER

4. Genesis' account balance as of March 19, 2013 was in the amount of Four Hundred Twenty-Two Thousand, Eight Hundred Six and 19/100ths Dollars (\$422,806.19).

5. Defendant is liable to Plaintiff for all of Genesis' indebtedness to Plaintiff.

For the foregoing reasons, the Plaintiff respectfully requests that the Court enter an Order granting summary judgment in its favor against Defendant on the fourth count of Plaintiff's complaint.

Respectfully submitted this 22nd of September, 2014.



Townes B. Johnson III (SC Bar# 75412)

KENISON, DUDLEY & CRAWFORD, LLC

704 E. McBee Avenue

Greenville, South Carolina 29601

PH: (864) 242-4899

FAX: (864) 242-4844

Attorneys for Plaintiff

Greenville, South Carolina

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C. A. No. 2012-CP-23-5740

)

)

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mac Papers, Inc.

☒ Plaintiff

v.

Genesis Press, Inc., Lawrence I. Kudeviz, Barry
Zisook, And Lewis Levin

☐ Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

2014 SEP 26 AM 11 29

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-23-5740

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Townes B. Johnson, Iii, Esq., Bar No. 75412

Address:

704 East McBee Ave., Greenville, SC 29601

phone: 864-242-4899 fax: 864-242-4844

e-mail: johnson@conlaw.com other:

Defendant's Attorney:

Bernie W. Ellis, Bar No.

Address:

McNair Law Firm, P.A.

Post Office Box 447

Greenville, SC 29602

phone: fax:

e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 30 mins Court Reporter Needed: ☒ YES / ☐ NO

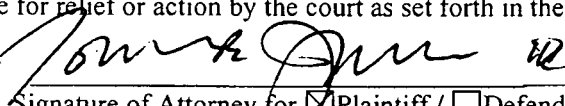
11/20@
9:30

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

September 22, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)

☐ 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.

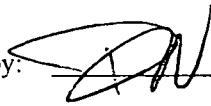
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by:



Date Filed:

☒ MOTION FEE COLLECTED: \$85.00 #19328 Kenison, Dudley...

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)
 PAUL D. WILKINSON, JR.)
 THIRTEENTH JUDICIAL CIRCUIT

Mac Papers, Inc., 2016 FEB 4) P.D. N. 26 2012-CP-23-5740

Plaintiff,

v.

Genesis Press, Inc., Lawrence I.
 Kudeviz, Barry Zisook, and Lewis Levin,

Defendants.

**TO: BERNIE W. ELLIS, ESQ., COUNSEL FOR DEFENDANT ADVANCED
 COMPOSITE MATERIALS, LLC:**

YOU WILL PLEASE TAKE NOTICE that the plaintiff, Mac Papers, Inc. ("Plaintiff"), by and through its undersigned counsel, will move before the Honorable Letitia H. Verdin, Circuit Court Judge, at such time and place as is convenient to the Court and counsel, for an Order pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e) altering or amending the Order entering judgment against Defendant Lawrence I. Kudeviz ("Defendant") filed January 8, 2016 (hereinafter "Order") and received by Plaintiff on January 26, 2016 wherein the Court concluded that guaranty at issue was limited to \$70,000.

DISCUSSION

I. NO LIMITATION IN GUARANTY OR CREDIT AGREEMENT

As properly stated in the Order, the initial 1991 guaranty had a provision wherein it stated that there were "no limitations or conditions except within the guaranty". *Order*, pg. 2. As also properly stated in the Order, the guaranty and the credit application are both part of the same transaction involving the same subject matter, and therefore are construed together. *Order*, pg. 5.

The only evidence within the guaranty or the credit application with respect to a \$70,000 figure is Genesis Press, Inc.'s "credit desired" of \$70,000 within the credit application. *Order*, pg. 1.

In Florida, an objective test is used to determine the agreement of the parties. *Fivecoat v. Publix Super Markets, Inc.*, 928 So.2d 402, 403 (Fla. 1st DCA 2006). The agreement of the parties "is ascertained from the language used in the instrument and the objects to be accomplished" *Rylander v. Sears Roebuck & Co.*, 302 So.2d 478, 479 (Fla. 3d DCA 1974); *Jones v. Treasure*, 984 So.2d 634, 638 (Fla. 4th DCA 2008). When determining the agreement of the parties, a court need not consider whether or not the parties reached a subjective meeting of the minds as to the terms of a contract. *Robbie v. City of Miami*, 469 So.2d 1384, 1385 (Fla. 1985). "The making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs – not on the parties having meant the same thing but on their having said the same thing." *Id.* (quoting *Gendzier v. Bielecki*, 97 So.2d 604, 608 (Fla. 1957)). Accordingly, the plain meaning of the language used by the parties controls as the best indication of the parties' agreement. *SPP Real Estate (Grand Bay), Inc. v. Portuondo, P.A.*, 756 So.2d 182, 184 (Fla. 3d DCA 2000). Thus, the terms in a contract should be interpreted in accordance with their plain and ordinary meaning. *Kel Homes, LLC, v. Burris*, 933 So.2d 699, 702 (Fla. 2d DCA 2006).

As an initial matter, the guaranty, itself, states that there were no limitations except those listed in the guaranty. The plain and ordinary meaning of the guaranty, therefore, has to be that there is not a \$70,000 credit limit since that was not a provision to the guaranty. Furthermore, even if the plain and ordinary meaning of the guaranty, stating that there were no limitations except those listed in the guaranty, includes the provisions of the credit application since they must be construed together, the plain and ordinary meaning of the credit agreement cannot be construed to create a \$70,000 credit limit since the actual language credit application, stating "credit desired",

does not create any limitations whatsoever. *See also Paper Corp. of America v. Sandow*, 558 So. 2d 75 (1990) (*wherein guarantor of buyer's corporate account with seller was liable to entire debt incurred by buyer under credit application, although seller had initially approved only \$1,500 credit limit*).

For the foregoing reasons, the Plaintiff respectfully asks this Court to alter or amend the Order and enter judgment against Defendant in the amount of \$432,185.60.

II. DEFENDANT IN CONTROL OF CREDIT DESIRED

Assuming, *arguendo*, that an "amount of credit desired" creates a limitation of credit, Plaintiff proffered evidence that Genesis Press, Inc., by and through Defendant, was in control of the amount of credit it desired throughout its entire contractual relationship with Plaintiff since Defendant was in control of the credit orders it placed to Plaintiff. Accordingly, the final contractual balance of \$432,185.60 represents the amount of credit Genesis Press desired at that time. *Id.*, at 76 ("*[The] facts do not, in our view, serve to limit the [Guarantor's] liability to... the amount of credit initially allowed; they simply indicate that [Defendant Company] anticipated 'minimal' purchases of paper from the [Seller] (an erroneous anticipation as it turned out), and that the credit line extended for \$1,500 was an initial credit line, not a maximum credit line*".)

For the foregoing reasons, the Plaintiff respectfully asks this Court to alter or amend the Order and enter judgment against Defendant in the amount of \$432,185.60.

III. NO LIMITATIONS ON SUBSEQUENT GUARANTY

Assuming, *arguendo*, that the original 1991 guaranty was limited to \$70,000 by the language of the credit agreement, Plaintiff proffered evidence of Defendant's 2008 guaranty which had the same no limitations provision as the 1991 guaranty but was not bound by any "credit

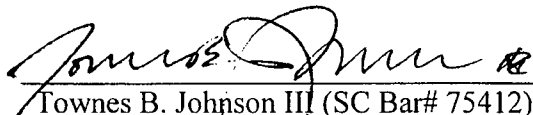
desired" language. Moreover, if the 1991 guaranty was limited to \$70,000, the 2008 guaranty had new consideration since it was not bound by and credit limit.

For the foregoing reasons, the Plaintiff respectfully asks this Court to alter or amend the Order and enter judgment against Defendant in the amount of \$432,185.60.

CONCLUSION

For the foregoing reasons, the Court's Order erroneously limits Defendant's liability to \$70,000 and Plaintiff respectfully requests that the Court reconsider its finding regarding same.

Respectfully submitted this 4th of February, 2016.



Townes B. Johnson III (SC Bar# 75412)

ROE CASSIDY COATES & PRICE, PA

PO BOX 10529

GREENVILLE, SC 29603

PH: (864) 349-2600

FAX: (864) 349-0303

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mac Papers, Inc.,

vs.

Genesis Press, Inc., Lawrence I. Kudeviz,

Barry Zisook, and Lewis Levin,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

FILED-CLERK OF COURT

GRINTV) CASE NO.: 2012-CP-23-5740

PAUL E. VOCKENSIMER

MOTION AND ORDER INFORMATION

2012 FEB 9 PM 4 25 FORM AND COVERSHEET

Plaintiff's Attorney:

Townes B. Johnson III, Bar No. 75412

Address:

PO Box 10529, Greenville, SC 29603

Phone: 864-349-2605 Fax 864-349-0303

E-mail: tjohnson@roecassidy.com Other: _____

Defendant's Attorney:

Bernie W. Ellis, Bar No. _____

Address:

Post Office Box 447, Greenville, SC 29602

Phone: 864 271 4940 Fax _____

E-mail: bellis@mcnair.net 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 Alter or Amend

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

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

2/4/16

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

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

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: *Cy*

Date Filed: _____

☒ MOTION FEE COLLECTED: \$ *45.00*

#45645 Roe, Cassidy...

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Mac Papers, Inc.,

Plaintiff,

vs.

Genesis Press Inc., Lawrence I.
Kudeviz, Barry Zisook, and Lewis
Levin,

Defendants.

IN THE COURT OF COMMON
PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2012-CP-23-5740

**DEFENDANT LAWRENCE I.
KUDEVIZ'S MOTION TO ALTER
OR AMEND**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCKENSIEMER
2016 FEB 9 PM 3 01

Pursuant to SCRCP 52(b) and 59(e), Defendant Lawrence I. Kudeviz respectfully requests that this Court alter or amend its order in this case dated January 8, 2016. Defendant first received written notice of the entry of this Order on December 26, 2016.

The Order of the Court does not address Defendant Kudeviz's argument made at trial that the doctrine of waiver applies to the July 12, 2010 email in which Mr. Kudeviz asked if [Tonja] was working on releasing his personal note, and Mr. Boortz replied, "Yes she is, and feel to call her on anything related to the note." Under the doctrine of waiver, if Plaintiff had sent an email to Defendant Kudeviz stating that the guaranty had been terminated, this Court would not allow Plaintiff to claim at a later time that the guaranty was still in place even if Mr. Kudeviz had taken no further action because Plaintiff would have waived the right to insist on strict performance of the terms of the guaranty by telling Mr. Kudeviz that the guaranty had been terminated.

Mr. Kudeviz argues that the same principal should apply here because the email clearly indicates that Mac Papers was releasing the personal guaranty.¹ If Plaintiff was "working on"

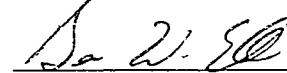
¹ It was undisputed that the reference to "personal note" referred to the personal guaranty at issue in this case.

releasing the personal guaranty, that meant that the information that Mr. Kudeviz wanted to release the guaranty had been received and that Plaintiff was taking care of the matter. Plaintiff therefore voluntarily relinquished its clearly known right to insist that Mr. Kudeviz strictly follow the terms of the guaranty to have it terminated.

WHEREFORE, Mr. Kudeviz respectfully requests that this court alter or amend the Order to find that Plaintiff waived its right to insist on strict enforcement of the terms of the guaranty as they related to terminating the guaranty and that Mr. Kudeviz has no liability to Plaintiff.

Respectfully submitted,

MCNAIR LAW FIRM, P.A.



Bernie W. Ellis (SC Bar No. 064841)

Post Office Box 447

Greenville, SC 29602

Tel. (864) 271-4940

Fax (864) 271-4015

bellis@mcnair.net

Attorney for Lawrence I. Kudeviz

Greenville, South Carolina
February 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Mac Papers, Inc.,)
Plaintiff,)
v.)
Genesis Press Inc., Lawrence I. Kudeviz)
Defendant)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2012-CP-23-5740

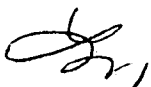
ORDER

FILED-CLERK OF COURT
OFFICE OF THE CLERK
PAUL B. M. J. J. J.
2016 JAN 8 PM 1 29

This matter arises out of a breach of contract dispute between the Plaintiff, Mac Papers, Inc., and the Defendants Genesis Press Inc., and Lawrence I. Kudeviz. This matter came before the Court as a non-jury trial on Wednesday, November 18, 2015. At trial, testimony was taken from the Defendant as well as the Plaintiff and exhibits were entered into evidence by stipulation of the parties. In his complaint, Plaintiff Mac Papers seeks judgment against Defendants Genesis Press and Lawrence Kudeviz in the amount of \$432,195.60. Based upon the testimony, evidence, arguments of counsel, and applicable law, this Court hereby finds that Defendant Lawrence I. Kudeviz did not terminate his personal guaranty, that promissory and equitable estoppel are not appropriate in this case, and that Mr. Kudeviz's personal liability to Mac Papers is limited to \$70,000.

FINDINGS OF FACT

In October of 1991, Genesis Press, a publishing company, approached Mac Papers, a merchant distributor for office supplies, with a credit application to open an account for a desired amount of \$70,000. In order to supply Genesis, Mac Papers required personal guaranty agreements from the three principals of Genesis Press, Lawrence Kudeviz, Barry Zissok, and Lewis Levin. Mr. Kudeviz signed a personal guaranty on December 2, 1991. Genesis Press



moved their headquarters to South Carolina in 2007. In 2008, Genesis suffered a devastating fire and ultimately sued its insurer when the insurer refused to pay Genesis' claim. In the aftermath of the fire, Mac Papers continued to supply Genesis between the years of 2008 and 2011.

In 2010, Genesis paid Mac Papers its debt in full after receiving the payout for the fire from its insurance company. On July 12, 2010, Mr. Kudeviz sent an email to Craig Boortz, a general manager of Mac Papers and in charge of Genesis' account. In one part of this email, Kudeviz asked if "Tonja" (Mac Paper's credit manager) was "working on releasing [his] personal note." Mr. Boortz replied "Yes she is, and feel free to call her on anything related to the note," and provided Tonja's phone number. *See Plaintiff's Exhibit 9.* Mr. Kudeviz never followed up with Tonja regarding the release of his personal note. The release provision of the personal guaranty contained a provision that stated there were no limitations or conditions except within the guaranty, and it would remain in full force and effect until written notice was received in certified mail at Mac Papers' office in Jacksonville, Florida. Mac Papers never received a registered letter from Mr. Kudeviz at his office in Jacksonville, only the email conversation between Mr. Kudeviz and Mr. Boortz about Tonja working on the release of the note. Mr. Levin is deceased and Barry Zissok settled separately; therefore, Mr. Kudeviz is the only remaining defendant in the case.

Genesis and Mac Papers continued to do business, and by December 2012, Genesis was indebted to Mac Papers in the sum of \$432,185.60.

CONCLUSIONS OF LAW

1. Guaranty Not Terminated

The original signed personal guaranty took place in Florida, and therefore Florida law applies to the creation of the guaranty in this case. Defendant argues that the guaranty he agreed

to was a continuing guaranty. A conventional guaranty generally involves one person guaranteeing the debt of another for a particular amount. A guaranty is a promise to pay some debt (or to perform some obligation) of another on the default of the person primarily liable for payment or performance. *New Holland, Inc. v. Trunk*, 579 So. 2d 215, 216-17 (Fla. Dist. Ct. App. 1991).

A continuing guaranty is a special type of guaranty that covers all transactions including those arising in the future which are within the terms of the agreement. *Fidelity Natl' Bank of South Miami v. Melo*, 366 So.2d 1218, 1221 (Fla. Dist. Ct. App. 1979). However, the guarantor may terminate the guaranty at will for all future transactions and only remains liable for debts incurred prior to the termination of the guaranty. Thus, with a continuing guaranty, the guarantor's right to terminate is not subject to the creditor's consent or approval. *See Brann v. Flagship Bank of Pinellas, N.A.* 450 So.2d 237, 238 (Fla. Dist. Ct. App. 1984).

The signed guaranty agreement between Mr. Kudeviz and Mac Papers contained instructions for termination of the guaranty. The guaranty agreement states "[t]his guaranty contains no limitations or conditions except as written herein, may be modified only in writing signed by the parties hereto, and is to remain in full force and effect until written notice of its termination is received by registered mail by Mac Papers, Inc., its successors or assigns, at its office in Jacksonville, Florida." *See Plaintiff's Exhibit 2.*

Defendant argues that he effectively terminated the guaranty in an email to Craig Boortz. In an email from July 12, 2010, Mr. Kudeviz asked Mr. Boortz "On a separate subject is Tanja working on releasing my personal note?" Mr. Boortz replied, "Yes she is and feel free to call her on anything related to the note. Her direct line is 904-348-3387." *See Plaintiff's Exhibit 9.* Nothing in the record reflects any further action taken by Mr. Kudeviz to terminate the guaranty.



The guaranty agreement clearly states the process in which Mr. Kudeviz could terminate the guaranty. While the guaranty was a continuing one, and Mac Papers did not have to consent to its termination, the termination must have been in writing, and sent by registered mail to Mac Papers office in Jacksonville, Florida, pursuant to the guaranty agreement. Therefore, because no notice was sent by registered mail to Mac Papers' office in Jacksonville, Mr. Kudeviz did not terminate the personal guaranty.

2. Promissory and Equitable Estoppel

Defendant argues that even if the guaranty was not effectively terminated, the principle of equitable estoppel prevents the guaranty from only being terminated by registered mail and the principle of promissory estoppel modifies the contract.

The elements of equitable estoppel under South Carolina law as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position. *Regions Bank v. Schmauch* 582 S.E.2d 432 (Ct. App. 2003).

The elements of promissory estoppel under South Carolina law are (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Satcher v. Satcher*, 570 S.E.2d 535, 538 (Ct. App. 2002).

Or 4

In South Carolina "equitable relief is precluded under a theory of promissory estoppel if the estoppel claim is in direct conflict with a specific contract term." *Volvo Construction Equipment North America, Inc., v. CLM Equipment Company, Inc.*, 386 F.3d 581, 599 (4th Cir. 2004).

Here, Mr. Kudeviz is precluded from equitable relief because the estoppel claim is in direct conflict with a specific contract term. The guaranty agreement is clear that the only way to terminate the guaranty is by registered mail to Mac Papers' office in Jacksonville, Florida. This specific contract term precludes Mr. Kudeviz from equitable relief.

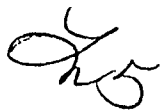
3. Guaranty is Limited to \$70,000

Defendant argues that if the foregoing doctrines do not apply and the Court strictly applies the language of the guaranty, then the guaranty should be limited to the \$70,000 credit limit set forth in the credit application because this was executed at the same time as the personal guaranty.

"Two documents executed by the same parties as part of a single transaction regarding the same subject matter must be read and construed together." *Sims v. New Falls Corp.*, 37 So.3d 358, 361 (Fla. Dist. Ct. App. 2010).

The guaranty and the credit application are both part of the same transaction involving the same subject matter, and therefore are construed together. Plaintiff was unable to prove that Defendant Kudeviz intended to be personally liable for an amount in excess of \$70,000. Thus, the guaranty is limited to the \$70,000 credit limit that Mr. Kudeviz sought in the credit application, *See Plaintiff's Exhibit 1*.

CONCLUSION AND ORDER



The Court hereby finds that Defendant Lawrence Kudeviz did not terminate the personal guaranty, that promissory and equitable estoppel are not appropriate in this case, and that Mr. Kudeviz's personal liability to the Plaintiff is limited to \$70,000.

IT IS SO ORDERED.

January 8, 2016



Letitia H. Verdin
Circuit Judge

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Mac Papers, Inc.,

Plaintiff,

vs.

Genesis Press Inc., Lawrence I.
Kudeviz, Barry Zisook, and Lewis
Levin,

Defendants.

IN THE COURT OF COMMON
PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2012-CP-23-5740

CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINER
2016 FEB 9 PM 3 01

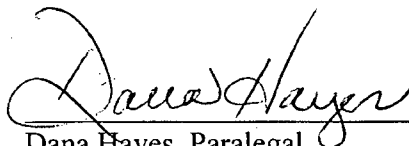
I, Dana Hayes, do hereby certify that I have this 5th day of February, 2016, served a copy of the *Defendant Lawrence I. Kudeviz's Motion to Alter or Amend* by U.S. mail and via electronic transmission to the following address(es):

E-Mail Address:

tjohnson@roecassidy.com

Mail Address:

Townes B. Johnson, III
ROE CASSIDY COATES & PRICE PA
1052 North Church Street
Greenville, SC 29601



Dana Hayes, Paralegal
McNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, SC 29602

Greenville, South Carolina
February 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
13TH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-23-5740

Mac Papers, Inc.,

Plaintiff,

vs.

Genesis Press, Inc., Lawrence I. Kudeviz,
Barry Zisook, and Lewis Levin,

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCNEMISMER
2016 FEB 9 PM 3 01

Plaintiff's Attorney:

Townes B. Johnson, III, Bar No. _____

Address:

P.O. Box 10529, Greenville, SC 29603

Phone: 864-349-2605 Fax 864-349-0303

E-mail: _____ Other: _____

Defendant's Attorney:

Bernie W. Ellis, Bar No. 064841

Address:

P.O. Box 447, Greenville, SC 29602

Phone: 864-271-4940 Fax 864-271-4015

E-mail: bellis@mcnair.net 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 Alter or Amend

Estimated Time Needed: 15-30 min.

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

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

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

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: CJN Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** 35.00

☐ **CONTESTED - AMOUNT DUE: \$** _____

CK# 20260
McNair Law

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2012CP2305740
	)	
Mac Papers, Inc.,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Genesis Press, Inc., et al,	)	
	)	
Defendant.	)	
	)	

November 18, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

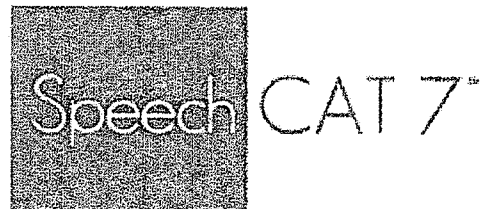
A P P E A R A N C E S:

TOWNES B. JOHNSON, III, Esquire
Attorney for the Plaintiff

BERNIE W. ELLIS, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



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(No exhibits offered.)

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 18th day of November, 2015 at approximately 9:48 a.m.)

THE COURT: All right. This is Mac Papers versus Genesis Press, and this is set today for a non-jury trial. Any matters we need to take up before we get started?

MR. JOHNSON: Not from the plaintiff, Your Honor.

MR. ELLIS: Not from the defendant.

THE COURT: Okay. Okay. Y'all are going to challenge my brain today. If I call you the plaintiff, Bernie, then forgive me. Okay. All right.

Yes, sir. And I'm happy if y'all would like to, uh, you know, make some brief opening statements or however you'd like to do that would be fine by me.

MR. JOHNSON: I did prepare an opening statement, Your Honor.

THE COURT: All right. Very well. And I hate to interrupt you once again. I'm so sorry. But I think at the docket meeting or the roster meeting this week, I understood this case might be about three-quarters of a day to maybe a

1 day. Is that right?

2 MR. JOHNSON: I don't expect to go the
3 full day, Your Honor.

4 THE COURT: Okay.

5 MR. ELLIS: I don't either.

6 THE COURT: Okay. Okay. All right. Just
7 for planning purposes, that's the only reason I
8 ask. Okay. Yes, sir.

9 MR. JOHNSON: May it please the Court,
10 Your Honor?

11 THE COURT: Yes, sir.

12 MR. JOHNSON: Townes Johnson and I
13 represent the plaintiff, Mac Papers,
14 Incorporated. Your Honor, the matter before you
15 today is a fairly simple one. It's really
16 whether liability exists under a personal
17 guaranty. The parties are here today and we
18 need your guidance as to the law and the facts
19 of the case.

20 A little bit of the background into
21 everything we're going to get into, Mac Papers
22 is based out of Jacksonville, Florida. They are
23 a leading merchant distributor for paper print
24 packaging, supplies and office products for the
25 southeastern United States. Genesis Press

1 Incorporated, who was previously a defendant in
2 this matter, was a publishing and printing
3 company founded in Miami, Florida, in 1991 by
4 three gentlemen named Larry Kudeviz, Barry
5 Zisook and Lewis Levin.

6 In October of 1991, Genesis Press
7 approached Mac Papers regarding supplying
8 materials for Genesis Press' business. In
9 connection with that, they submitted a credit
10 application to Mac Paper for supplying
11 materials on opening an account. After Mac
12 Papers reviewed that credit application, they
13 decided they needed personal guarantees in
14 order to provide materials to Genesis Press. So
15 they received guarantees from the three
16 principals, the three founders, Mr. Kudeviz,
17 Mr. Zisook and Mr. Levin. That guaranty, Your
18 Honor, was signed on December 2nd, 1991.

19 In 2007, Genesis Press moved their
20 operations here to Greenville. That's where the
21 company continued to do business until they
22 filed for bankruptcy in 2013. In March of 2008,
23 while the business was here in Greenville,
24 Genesis Press suffered devastating casualty
25 loss, a fire, which severely interrupted their

1 operations. A bunch of accusations were made
2 regarding who set the fire and how that came
3 about. But despite all that, Mac Paper stood
4 beside Genesis Press throughout the entire time
5 and continued to supply Genesis Press with
6 supplies and truly kept them in business
7 between 2008 and 2010. During that time, they
8 extended Genesis Press credit upwards of
9 \$700,000.

10 In November of 2008, right after the fire,
11 shortly after the fire, Mac Papers reached out
12 to Genesis Press in order to shift some of
13 Genesis Press' debt off this credit line into a
14 note. They also wanted collateral for the
15 indebtedness, specifically UCC-1, that covered
16 assets and any insurance proceeds, settlement
17 awards or judgements they received in the
18 pending litigation.

19 A new credit application was sent to
20 Genesis Press as well as a new guaranty
21 agreement. On December 8th or December 9th of
22 2008, Genesis Press signed this promissory note
23 for around \$303,000 and Larry Kudeviz
24 personally guaranteed that note. Genesis Press
25 also executed a security agreement giving that

1 collateral of security in the investment, in
2 the insurance proceeds or settlement.

3 On December 11th, 2008, Larry Kudeviz
4 executed a second continuing guaranty on the
5 account. This is a separate guaranty that was
6 related to the note. Shortly thereafter, in
7 February of 2009, where it was clear that
8 Genesis couldn't perform under the note as it
9 was structured, Mac again came back to Genesis
10 Press and restructured the note so that Genesis
11 Press could be able to meet the payment
12 obligations therein. That note was for 401 --
13 around \$401,000, Your Honor.

14 In July of 2010, I want to say that's when
15 they resolved their matter with Hartford, Your
16 Honor. I don't know that exact date. But in
17 July of 2010, that's when Genesis Press
18 received their settlement payment from
19 Hartford. At that time, they paid Mac Papers in
20 full. Thereafter, Mac and Genesis Press
21 continued to do business with each other. By
22 September of 2012, the amount due and owing Mac
23 on the account was 432-some-odd-thousand
24 dollars. It is Mac's position that Mr. Kudeviz
25 remains the personal guarantor for those

1 amounts and that is what Mac is seeking here
2 today.

3 What the parties need the Court's
4 determination on is whether the guaranty was
5 terminated or whether the conduct by the
6 parties affected a release of the guaranty.
7 That, I would submit, was never either a
8 determination, nor any conduct that would act
9 as a release.

10 As the Court knows, in construing a
11 contract, the main concern of the Court is to
12 ascertain and give effect to the intention of
13 the parties. In the matter at hand, the
14 intention is very clear. The release contains a
15 provision that says this guaranty contains no
16 limitations or conditions except as written
17 herein. It may be modified only in writing,
18 signed by the parties hereto and is to remain
19 in full force and effect until a written notice
20 of its termination is received by registered
21 mail by Mac Papers, Inc, its successors or
22 assigns at its office in Jacksonville, Florida.
23 At no time has Mac received a registered letter
24 from Mr. Kudeviz terminating the continuing
25 guaranty.

1 Accordingly, since the language of the
2 guaranty is clear, explicit and unambiguous,
3 the court's -- the contract's language
4 determines its force and effect. The Court must
5 construe it in accordance with its plain,
6 ordinary or popular meaning. That registered
7 letter from Larry Kudeviz is required to
8 terminate this continuing guaranty.

9 Despite the clear language requiring the
10 registered letter, Mr. Kudeviz would submit
11 that there was certain conduct and
12 correspondence that equates to a termination or
13 a release of the agreement. Mac Papers not only
14 rejects this premise that the guaranty could be
15 terminated outside the requirements of the
16 language of the guaranty itself, but also will
17 present testimony today from Tonja Van Zandt
18 and Craig Boortz to dispute the same.

19 Accordingly, at the end of the day when the
20 parties will continue to disagree about the
21 facts of this matter, the only evidence that
22 will be submitted today that will be
23 uncontroverted is the language in the guaranty
24 agreement. It is not the function of this Court
25 to rewrite the contracts for the parties. Thank

1 you.

2 **THE COURT:** Thank you.

3 Yes, sir.

4 **MR. ELLIS:** Thank you, Your Honor. May it
5 please the Court. I represent, uh, Mr. Larry
6 Kudeviz. Your Honor, as you can see from
7 pleadings, there needs to be more defendants,
8 so Genesis Press was one of the defendants and
9 also Mr. Barry Zisook. Genesis Press went into
10 bankruptcy. They are no longer available to be
11 sued. The plaintiffs settled out with Mr. Barry
12 Zisook. Even though he's not any longer a party
13 to the case, we do have his deposition
14 testimony which we will submit to the Court.

15 **THE COURT:** And I did receive your
16 designations. Thank you.

17 **MR. ELLIS:** Thank you. So the only
18 defendant we have here today is Mr. Larry
19 Kudeviz. Your Honor, what -- this case revolves
20 around, sort of, two concepts that we have.
21 Number 1 is that we really do believe that the
22 guaranty that was in existence was terminated.
23 Even though the release language from the
24 guaranty that Mr. Johnson just read does refer
25 to a contract being modified in writing, we

1 have a writing. We have email correspondence
2 between Mr. Kudeviz and his contact at Mac
3 Papers discussing terminating this.

4 Your Honor, another issue is that when this
5 credit application was first submitted, the
6 credit application said that the amount of
7 credit desired was \$70,000. Your Honor, I'm
8 going to, hopefully, show the Court through --
9 the way the law construes these guarantees, it
10 actually puts Mr. Kudeviz in the position of
11 being the offeror and puts Mac in the terms of
12 being the offeree. What that means is Mac
13 doesn't have the power to bind Mr. Kudeviz to
14 more than he agreed to.

15 The way continuing guarantees work is a
16 rather confusing, uh, labyrinthian sort of
17 thing. They are not like conventional
18 guarantees where your creditor has complete
19 control over this matter. The guarantor
20 actually has the ability to be relieved from
21 the guaranty at any time. He just remains
22 liable for whatever has been charged up to that
23 point. Your Honor, the point here is that Mr.
24 Kudeviz, when he notified Mac that he did not
25 want to have the personal guaranty anymore,

1 didn't owe any money. All the money had been
2 paid off.

3 I think, Your Honor, what you will see in
4 this case is it's true, Mac and Genesis were
5 good friends for a long time. Mac did stand by
6 Genesis. But what you will also see is that Mac
7 was also the first party to get paid. They did
8 work carefully and closely. But Genesis made
9 sure that Mac got paid off, but Genesis also
10 believed, Mr. Kudeviz believed, that he
11 completely notified Mac. They should have been
12 aware of the fact that if they were going to do
13 business with him in the future, it's got to be
14 without his having the personal guaranty.

15 Your Honor, what I will show the Court is
16 that once Mac knows that, once Mac is aware of
17 the fact that Mr. Kudeviz is not willing to do
18 business with them on a personal guaranty
19 basis, they no longer have the ability to force
20 that guaranty on him. They don't have the
21 ability to rely on it anymore.

22 Your Honor, our alternative positions are
23 this. If we don't have -- if the Court finds
24 that there is not a termination of the
25 agreement, I would like to show to the Court

1 that the most that Mr. Kudeviz can be held
2 liable for is \$70,000 because that's all he
3 agreed to be liable for. And the reason for
4 that is this, which, obviously, we'll get into
5 a bit, is that the credit application which was
6 submitted was submitted in conjunct -- the
7 guaranty agreement was submitted in conjunction
8 with a guaranty agreement. The law of South
9 Carolina and the law of Florida, where this was
10 initially entered into, is that documents that
11 are part of the same transaction have to be
12 construed together. So, Your Honor, we're going
13 to submit that if the Court finds this wasn't
14 terminated, that the maximum liability is
15 \$70,000.

16 Your Honor, also, the guaran -- the
17 original guaranty, in this case, uh, says it
18 has a time limit on it. It says it's to be
19 reviewed again in 1992. The reason, again, Your
20 Honor, I'm going to try to show the Court that
21 that's significant, is once again, Larry
22 Kudeviz is the offeror. This is not a
23 conventional guaranty where the creditor has
24 full power over what goes on. He is an offeror.
25 He has the ability to say this is what I'm

1 willing to agree to do and the offeree doesn't
2 have the ability to bind him to more than he
3 agreed to do.

4 Your Honor, Mr. Johnson, I think, misspoke
5 just a minute ago in which he was saying that
6 in 2008, when additional notes were submitted
7 that a new credit app was also given to Genesis
8 to fill out. Your Honor, I don't think that's
9 correct. I'm not aware that I've seen it.

10 There was a second guaranty that Mr.
11 Kudeviz was asked to sign. Your Honor, we'll
12 show the Court that that was merely an updating
13 of existing -- of their existing records, that
14 the original guaranty from 1991 to the extent
15 that it was still in place is the operative
16 guaranty in this -- is the operative guaranty
17 for the Court to consider in this case.

18 Your Honor, we will ask the Court at the
19 end of this to find that the guaranty was
20 terminated and that Mac knew that. If the Court
21 disagrees with that, we will ask the Court
22 then, uh, to find that the guaranty had expired
23 under its own terms; and, if not, the guaranty
24 is, at most, limited to 70,000. Thank you, Your
25 Honor.

1 **THE COURT:** Thank you.

2 All right. Mr. Johnson, you ready to
3 proceed?

4 **MR. JOHNSON:** Yes, Your Honor. Thank you.
5 Your Honor, Mac Papers would call Tonja Van
6 Zandt.

7 **THE COURT:** Ma'am, if you will, come
8 forward. Sure. Certainly. And there's more
9 water up here if you want it. Place your left
10 hand on the Bible and raise your right hand
11 please.

12 **TONJA VAN ZANDT**

13 having first been duly sworn, testifies as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. JOHNSON:**

16 **Q** Ms. Van Zandt, how are you doing today?

17 **A** Wonderful. How are you?

18 **Q** Very well. Will you state your full name
19 for the record please?

20 **A** Tonja Lynn Van Zandt.

21 **Q** Okay. Ms. Van Zandt, who are you employed
22 by?

23 **A** Mac Papers.

24 **Q** And how long have you been with Mac?

25 **A** A little over eight years now.

1 Q Are you familiar with the substance of this
2 matter that we're here on today?

3 A Yes.

4 Q I'm going to hand you a bunch of different
5 documents and get you to identify those.

6 MR. ELLIS: Your Honor, may I make a point
7 before we introduce those?

8 THE COURT: Certainly.

9 MR. ELLIS: Mr. Johnson showed me copies
10 of the credit application and guarantees ahead
11 of time. Uh, they have social security numbers
12 in them that have not been redacted. I would
13 just ask that after today's hearing that we take
14 the time to redact those ---

15 THE COURT: Certainly.

16 MR. ELLIS: --- from the court's records.

17 THE COURT: Certainly. Yeah.

18 You can proceed. I might have something
19 where we can do it while court's going on. But
20 go ahead.

21 MR. JOHNSON: And my apologies about that.

22 THE COURT: That's fine.

23 BY MR. JOHNSON:

24 Q Ms. Van Zandt, the document that I just
25 provided to you, what's the title on that document?

1 A Mac Papers, Incorporated, credit
2 application.

3 Q Okay. And who was applying for credit under
4 this application?

5 A Genesis Press, Barry Zisook, Larry Kudeviz
6 and Lewis Levin.

7 Q And what's the date on that credit
8 application?

9 A October 17th, 1991.

10 Q Okay. And is this a true and correct copy
11 of a credit application in this matter?

12 A Yes.

13 Q Who signed this credit application on
14 behalf of Genesis Press?

15 A Barry Zisook.

16 Q And as Mr. Ellis spoke in his opening, does
17 it have anything about credit on this document?

18 A Yes.

19 Q What does it say?

20 A Amount of credit desired, 70,000.

21 Q Okay. Amount of credit desired?

22 A Uh-huh.

23 Q \$70,000. Does it have any limitations of
24 credit?

25 A No.

1 **MR. JOHNSON:** Your Honor, I would like to
2 move this in as Plaintiff's Exhibit 1.

3 **THE COURT:** Any objection?

4 **MR. ELLIS:** No objection.

5 **THE COURT:** All right. It's admitted.

6 (WHEREUPON, Plaintiff's Exhibit 1 is marked for
7 identification and admitted into the record.)

8 **BY MR. JOHNSON:**

9 **Q** Ms. Van Zandt, in connection with that
10 credit agreement, were there any other documents that
11 were signed by any of the parties in this matter?

12 **A** Guaranty.

13 **Q** Okay. What's the title of the document that
14 I just provided to you?

15 **A** Guaranty agreement.

16 **Q** And who on behalf of Genesis Press signed
17 this guaranty agreement?

18 **A** Barry Zisook, Larry Kudeviz, Lewis Levin.

19 **Q** And what is the date that they each signed?

20 **A** December 2nd, 1991.

21 **Q** And is this a true and correct copy of the
22 guaranty agreement in Mac Papers' file?

23 **A** Yes.

24 **Q** Mr. Ellis noted that there was some
25 language printed on the guaranty, kind of at the

1 bottom middle of the page. What does that -- what
2 does that language say?

3 A This guaranty is to be reviewed by the
4 guarantors and Mac Paper, Inc, on or before March
5 31st, 1992.

6 Q Okay. So it's to be reviewed?

7 A Correct.

8 Q And there is no -- no other language in
9 there that it was supposed to be terminated or lapse.
10 Just that it's supposed to be reviewed?

11 A Yes.

12 MR. ELLIS: Your Honor, I'm just going to
13 object to leading the witness.

14 THE COURT: Sustained.

15 BY MR. JOHNSON:

16 Q Ms. Van Zandt, in the middle of the actual
17 guaranty language, is there any language about
18 limitations and conditions?

19 A No. As far as limitations go?

20 Q What is -- what is the sentence that starts
21 with, this guaranty contains? Would you read that
22 sentence for us?

23 A Just a second. I'm trying to locate it.
24 (Reviewing.)

25 I just found it. This guaranty contains no

1 limitations or conditions, except as written herein.
2 May be modified only in writing signed by the parties
3 hereto and is to remain in full force and effect
4 until written notice of termination is received by
5 registered mail by Mac Papers, Inc, its successors
6 and/or assigns at its offices in Jacksonville,
7 Florida, except the written termination of the
8 guaranty by the undersigned will be in effect only
9 for future credit after the date Mac Papers and its
10 successors or assigns received the aforesaid notice.
11 Any termination hereof as aforesaid shall not effect
12 credits extended prior to its effective termination
13 notwithstanding any provisions of this agreement.

14 The aggregate charges to the undersigned
15 for interest, cost of collection, attorneys fees and
16 any other charges shall never exceed the maximum,
17 such charges allowed by law; and in the event any
18 changes herein provide for -- exceeds the maximum
19 amount allowed by law, such amount is hereby
20 automatically reduced as the inception to an amount
21 that does not exceed the maximum amount allowed by
22 law.

23 **MR. JOHNSON:** Your Honor, at this time, I'd
24 like to move this in as Plaintiff's 2.

25 **THE COURT:** Any objection?

1 **MR. ELLIS:** No objection.

2 **THE COURT:** All right. So admitted.

3 **(WHEREUPON, Plaintiff's Exhibit 2 is marked for**
4 **identification and admitted into the record.)**

5 **BY MR. JOHNSON:**

6 **Q** Ms. Van Zandt, explain to the court how
7 this guaranty agreement could be terminated.

8 **A** The guaranty agreement should be in
9 writing, certified return receipt, sent to Mac Papers
10 headquarters in Jacksonville, Florida.

11 **Q** Have you ever received any registered mail
12 from any of the parties to this matter relating to
13 this guaranty agreement?

14 **A** Not -- well, I did receive a certified
15 return receipt. I received a letter after suit was
16 filed by Mr. Zisook's attorney saying he was
17 rescinding his guaranty going forward. But that's
18 after the complaint had been filed and the balance
19 had -- we'd stopped selling them. It was quite some
20 time after.

21 **Q** Okay. Mr. Zisook sent a letter --

22 **A** His attorney actually sent it.

23 **Q** Okay. But it was in response to the
24 language in this guaranty?

25 **A** Correct.

1 Q To terminate his guaranty with Mac Papers?

2 A Correct. That was post-complaint.

3 Q Okay. So in 2013?

4 A Somewhere thereabouts. I don't have the
5 exact date. I don't have the letter with me.

6 Q Did you ever receive any registered mail
7 from either Mr. Kudeviz or Mr. Levin?

8 A No.

9 Q Okay. Do you know if Mac Papers reviewed
10 this guaranty on or before March 31st, 1992?

11 A I have no way of knowing. I wasn't an
12 employee with Mac Papers at that time.

13 Q Okay. I'm going to give you an email that
14 is dated November 26th, 2008. I'll give you a second
15 to look at that email.

16 A Okay. (Reviewing.)

17 Q Are you familiar with this email?

18 A Yes, I drafted it.

19 Q So it is from you. Who is it to?

20 A Uh, Bruce and Larry Kudeviz.

21 Q Okay. And tell me the date on that email
22 again.

23 A November 26th, 2008.

24 Q Okay. And with this email, what did you
25 send to Bruce Kudeviz and Larry Kudeviz?

1 **A** This was after the fire. We were attempting
2 to work with them to help their cash flow situation
3 given the disruption in their business. And what the
4 proposed solution was, uh, extending a note to move
5 part of their receivables off their account onto a
6 note. In order to be able to do this for them, they
7 would be required to sign a note, which contains a
8 personal guaranty, a security agreement and separate
9 guaranty agreements for the account. We intended to
10 continue to sell them on open terms. So we really
11 have two separate issues going on simultaneously.

12 The note was to take account -- take
13 receivables that were due on a now 30-day basis and
14 push those over to a fully amortizing loan to give
15 them some cash flow reprieve over a period of time.
16 But they still had to address the day-to-day need for
17 product to continue to do business. So we had the
18 note, the guaranty, drafted, as well as sent over new
19 documentations for the guaranty in order to continue
20 to sell them on open account.

21 He -- we had kind of talked about what was
22 realistic from a note standpoint prior to. And this
23 note acknowledges -- I mean, this email acknowledges
24 the fact that, uh, he wanted to have his attorney
25 review these documents, which is reasonable, prior to

1 signing the documents.

2 Q Okay. So you sent this to Mr. Larry Kudeviz
3 and Mr. Bruce Kudeviz and told them that they needed
4 to have their counselor review it?

5 A Yes. Well, actually, he indicated, I guess,
6 previously he wanted to have his attorney review it.
7 So I said I understand you want to have your attorney
8 review it. You know, here's the documents fully
9 drafted. If everybody's in agreement, essentially,
10 draft them and send them back and we can get this
11 taken care of.

12 Q With this email, did you send a new credit
13 application to Mr. Larry Kudeviz and Bruce Kudeviz?

14 A Yes.

15 Q And on the attachments, the first
16 attachment is a PDF. Tell me about the second
17 attachment. What does that say?

18 A I can't -- it didn't print out.

19 Q Where it says -- excuse me. Where it says
20 attachments on email.

21 A Okay. It says attachments. What I'm saying
22 is it only printed out one line. It's got credit
23 application and guaranty.

24 Q Okay.

25 A Okay.

1 Q So that credit application and guaranty are
2 two different documents?

3 A It's two different documents from the note
4 and security agreement.

5 Q Okay. So the first PDF was the note and
6 security agreement?

7 A Uh-huh.

8 Q And the note had its own personal guaranty?

9 A Yes.

10 Q And then --

11 A And security agreement as well.

12 Q Right. And the second document had a
13 guaranty agreement and a credit application?

14 A Correct.

15 **MR. ELLIS:** Your Honor, I want to object
16 to this testimony for this reason. I think what
17 she just testified to is her knowledge of the
18 credit app -- and if I'm incorrect about this, I
19 will withdraw it -- comes from the fact that it
20 says this on the email. I'm not aware that there
21 is a credit application or a separate credit
22 application.

23 **THE WITNESS:** It's -- it's --

24 **THE COURT:** Hold on just one second.

25 **THE WITNESS:** Okay.

1 **THE COURT:** Mr. Johnson?

2 **MR. JOHNSON:** Your Honor, we do not have a
3 record. In my opening statement, I never said we
4 received it back. But a credit application was
5 sent to Genesis Press. She authored this email.
6 She has personal knowledge of what the
7 attachments were. She -- her testimony is that
8 she sent her credit application.

9 **THE COURT:** Okay. I think that clears it
10 up. I think that clears it up. Good. Okay. All
11 right.

12 Yes, ma'am.

13 Uh, yes, sir. I'm sorry. Mr. Johnson, I'm
14 sorry.

15 **BY MR. JOHNSON:**

16 **Q** In reply -- well, I'll move this into
17 evidence first. Ms. Van Zandt, is this a true and
18 correct copy of your email, your November 26, 2008
19 email to Mr. Larry Kudeviz and Mr. Bruce Kudeviz?

20 **A** Yes.

21 **MR. JOHNSON:** I'd like to move this in as
22 Plaintiff's Exhibit 3.

23 **THE COURT:** Any objection?

24 **MR. ELLIS:** No objection, Your Honor.

25 **THE COURT:** All right. It's admitted.

1 (WHEREUPON, Plaintiff's Exhibit 3 is marked for
2 identification and admitted into the record.)

3 BY MR. JOHNSON:

4 Q In response to this email, Ms. Van Zandt,
5 did Genesis Press or Mr. Larry Kudeviz take any
6 action?

7 A Yes, they signed the note, the security
8 agreement, as well as the personal guaranty, which is
9 separate for the account.

10 Q Okay. I'm going to hand you two documents.
11 Let's look at the note first. What is the date on
12 that note?

13 A December 9th, 2008.

14 Q Okay. And who signed that note on behalf of
15 Genesis Press, Inc.?

16 A Larry Kudeviz.

17 Q On the second page of that document, what
18 is that -- what is that second page?

19 A The second page is a personal guaranty
20 signed by Larry Kudeviz.

21 Q What is the date on that document?

22 A December 9th, 2008.

23 Q Okay. Moving on to the third page of that
24 document, what is the title of this document?

25 A Security agreement.

1 Q Who signed on behalf of Genesis Press, this
2 security agreement?

3 A Uh, Larry Kudeviz.

4 Q And then moving on to the second document,
5 what is the title of that document?

6 A It is guaranty agreement.

7 Q Okay. And who is the purchaser under this
8 guaranty agreement?

9 A Larry Kudeviz. And it was signed on
10 December 11th, 2008.

11 Q Okay. Are these -- are these the responsive
12 documents that you received after your email of
13 November 26th, 2008?

14 A Correct.

15 Q Okay. Are these true and correct copies of
16 the note and the guaranty agreement?

17 A Yes.

18 Q And as well, the security agreement?

19 A Correct.

20 MR. JOHNSON: Your Honor, at this time, I'd
21 like to move those in as Plaintiff's 4 and 5.

22 MR. ELLIS: Your Honor, uh, ---

23 THE COURT: Yes, sir.

24 MR. ELLIS: --- the only thing I would
25 note with respect to Exhibit 4, I understand

1 this is non-jury and the Court will consider
2 everything in its context, but Exhibit 4 and the
3 next note that's going to be introduced, I just
4 would note for the Court that those aren't
5 relevant here. Those are paid in full. They're
6 not liable here. I certainly don't mind the
7 Court seeing those, but I do want to note for
8 the Court's records that the only issue here is
9 the guaranty. I don't have an objection to
10 Exhibit 5. Again, that's only my objection to
11 the two notes being entered.

12 **THE COURT:** All right. Yes, sir.

13 **MR. JOHNSON:** Your Honor, they are very
14 relevant. Excuse me.

15 **THE COURT:** No, go ahead.

16 **MR. JOHNSON:** They are very relevant in the
17 fact that, later on, there will be testimony
18 about the use of a personal note. I think it's
19 ambiguous as to what was being discussed,
20 whether we're talking about a note or whether
21 we're talking about a personal guaranty.

22 **THE COURT:** Okay. So, uh, I'll just say
23 this, from the standpoint of the note itself
24 substantively, I understand and I'll look for
25 you to clarify that further. But I will allow

1 the exhibit if there's no other objection to it.

2 MR. ELLIS: No objection.

3 THE COURT: All right.

4 MR. JOHNSON: Your Honor, we will stipulate
5 that we're not seeking any amounts underneath
6 the note in this case.

7 (WHEREUPON, Plaintiff's Exhibits 4 and 5 are marked
8 for identification purposes.)

9 THE COURT: Okay. And that number -- that
10 number of that exhibit was what?

11 MR. JOHNSON: The note, Your Honor --

12 THE COURT: 4 and 5?

13 MR. JOHNSON: The note was 4 and the 2008
14 guaranty is Number 5, Your Honor.

15 THE COURT: The note. And the guaranty was
16 5. Okay. Thank you.

17 MR. JOHNSON: If Your Honor would like
18 copies as I go, I have one additional copy.

19 THE COURT: I'm going to get those from
20 her in just a moment.

21 MR. JOHNSON: Okay.

22 BY MR. JOHNSON:

23 Q Ms. Van Zandt, explain to us what would
24 have occurred if Mr. Kudeviz, Larry Kudeviz, and
25 Genesis Press had not provided these responsive

1 documents to your email?

2 **A** Two things would have happened. Ultimately,
3 I couldn't have shifted the receivables to a note to
4 allow him more time in which to pay. The second thing
5 is, I wouldn't have been able to continue to sell
6 them on open terms. In other words, we had a blanket
7 lien on business assets, you know, via the security
8 agreement attached to the note as well as a guaranty
9 specific to that note. He also provided, uh, an
10 updated guaranty to guarantee the account going
11 forward so we could continue to sell him on open
12 terms. Had that not happened, essentially, the
13 account would have remained on absolute credit hold.
14 We wouldn't have allowed him more time to pay. We
15 certainly wouldn't have continued to allow him to buy
16 on open terms.

17 **Q** Okay. So if they hadn't had signed the
18 note, security agreement and the guaranty, you would
19 not have provided them any further credit?

20 **A** No.

21 **Q** Tell us what happened next in relation to
22 the first note.

23 **A** It ultimately turned out that the payment
24 structure, you know, although we try to not extend
25 those out any further than we have to. We set them to

1 where we think they can make those payments. We give
 2 it as good of an educated guess as we can to set the
 3 parameters for the note. Sometimes, it doesn't quite
 4 work out. In this case, they were able to meet the
 5 initial obligation. So we agreed to -- we agreed to
 6 modify that note to give them a little more
 7 flexibility with regards to the payment. We reduced
 8 the payment amount.

9 Q So y'all adjusted the note?

10 A Correct. We made the payment less, the
 11 monthly payment. And we absorbed the original note
 12 into the secondary note.

13 Q Okay.

14 A As well as putting a little more in the way
 15 of receivables on here.

16 Q What is the date on that second payment?

17 A February 2nd, 2009.

18 Q What is the amount?

19 A 401 -- 401 -- 400 -- \$800,052.51.

20 Q Okay. The second page of that document,
 21 what is the second page of that document?

22 A Personal guaranty.

23 Q Okay. And who signed that personal
 24 guaranty?

25 A Larry Kudeviz.

1 Q Okay. And just like, uh, the prior one, the
2 -- there's another security agreement attached?

3 A Correct.

4 Q Who signed that security agreement?

5 A Larry Kudeviz.

6 Q Is this a true and correct copy of the
7 December 2nd, 2009 note?

8 A Yes.

9 Q And again, just for the Court's knowledge,
10 these notes, are they still open?

11 A They are paid.

12 Q They are paid. Okay. All right. So Mac is
13 not seeking any amounts under these notes?

14 A No.

15 MR. JOHNSON: Your Honor, at this time, I'd
16 like to move this in as Plaintiff's 6.

17 MR. ELLIS: Your Honor, same objection.

18 THE COURT: Same objection. But, uh, --
19 All right. It's so noted. I'm going to allow the
20 document.

21 (WHEREUPON, Plaintiff's Exhibit 6 is marked for
22 identification and admitted into the record.)

23 BY MR. JOHNSON:

24 Q Ms. Van Zandt, you noted earlier that the
25 -- your email of November, 2008 was after the fire.

1 Tell us -- tell us a little bit about the lengths
2 that Mac went to help out Genesis Press during that
3 time.

4 A The fire happened to coincide with -- real
5 close to our month-end closeout. Larry was -- in
6 other words, we go through a process where we try to
7 clear our receivables at month-end closeout. The fire
8 happened, I believe, on March 28th of 2008, which
9 there was a payment due on the account. Craig found
10 out about the fire. Obviously, it hit the local news.
11 Everybody was somewhat aware. Craig called me and let
12 me know what had happened. Craig was actually over
13 there. Larry actually had a check available for
14 payment that day.

15 In talking to Craig, I said, you may want
16 to have Larry just hold off on that payment. It was
17 32-some-odd thousand dollars. \$30,000-something. I
18 don't remember the exact dollar amount. I said, you
19 may want to hold onto that check because things might
20 get a little tough for the next, you know, however
21 long given the fact that it was a fire. From Craig's
22 perspective and, I think, probably Larry's at that
23 point in time, was that it would be taken care of
24 fairly quickly because he was insured. My experience
25 on these situations is it takes a lot longer,

1 especially when there is a fire involved. There's
2 usually a very thorough investigation. So you have to
3 meet payroll obligations and so forth. I said hold on
4 to the check and let's see how this thing kind of
5 works out over the course of the next few weeks.

6 Q And how did it work out?

7 A The insurance didn't pay out immediately.
8 Obviously, it took several years for that to get
9 resolved. Ultimately, what happened is the disruption
10 of service, the damage to the equipment, so on and so
11 forth. Larry had to begin outsourcing a lot of work
12 he typically would have handled in-house. All those
13 posed cash flow challenges. We continued to sell
14 Larry on open terms.

15 Then it became very apparent that he
16 couldn't keep up with making those monthly payments.
17 That's when we decided to think in terms of a note to
18 take a substantial portion off the line. It was
19 303,000 on that initial note, to shift that over,
20 update the documents, continue to sell him, one, an
21 open line, as well as let him pay down that note over
22 the course of time. Obviously, we did the secondary
23 note when we realized the payments that we originally
24 set were a little bit too tight.

25 Q And do you know if Genesis Press prevailed

1 in their claim?

2 A Yes.

3 Q What happened when Genesis Press prevailed?

4 A Uh, there was a series of thank you letters
5 sent to Mac Papers by Larry Kudeviz thanking them
6 profusely for everything that Mac had done over the
7 course of several years. He paid the -- at the time
8 of the fire, there was a substantial -- after they
9 settled, rather, there was a substantial balance
10 still owing on the account. He paid that balance
11 down.

12 Q Okay. Did you have any conversations after
13 the payment with anyone at Genesis Press related to
14 notes, guarantees?

15 A No. Well, I -- I -- I take that back. What
16 time frame are we talking about? Because there was
17 several years later that Larry and I had a
18 conversation, but initially following, no.

19 Q I'm going to hand you an email that's dated
20 July 12th.

21 A Okay.

22 Q Are you familiar with this email?

23 A I am now.

24 Q Okay. But you weren't in 2010?

25 A No.

1 Q Did you -- did you have any conversations
2 with Craig Boortz after the payment was made to Mac
3 Papers?

4 A Yes.

5 Q What was the substance of those
6 conversations?

7 A Craig contacted me and let me know he had
8 spoken with Larry and he wanted to have the UCC
9 filing terminated for the note. The note had been
10 paid in full and we had a blanket lien on business
11 assets via the security agreement. He wanted that
12 released.

13 Q Okay. In this email, Mr. Kudeviz wrote the
14 first email, is that correct?

15 A Yes.

16 Q Okay. And what is he asking for in that
17 email?

18 MR. ELLIS: Your Honor, I'm going to
19 object. The note speaks for itself. I will also
20 note that she was not familiar with this email
21 at the time it was sent. Was not familiar with
22 it until this litigation started.

23 THE COURT: All right. Let me take a look
24 at the email.

25 THE WITNESS: Okay.

1 **THE COURT:** (Reviewing.)

2 **MR. ELLIS:** And I'm glad for the email to
3 come in. I'm not objecting to the email coming
4 in. But I'm objecting to her giving an
5 interpretation of it. It wasn't written to her.
6 I think her testimony is she didn't see it until
7 after this litigation started.

8 **THE COURT:** All right.

9 **MR. JOHNSON:** Your Honor, I --

10 **THE COURT:** I'm going to sustain that
11 objection.

12 **MR. JOHNSON:** That's fine.

13 **BY MR. JOHNSON:**

14 **Q** Ms. Van Zandt, will you read on the second
15 line of Mr. Kudeviz's email what it says?

16 **A** On a separate subject, is Tonja working on
17 releasing my personal note?

18 **Q** Okay. Was there a reply from Mr. Boortz or
19 Mr. Kudeviz regarding that question?

20 **A** Yes.

21 **Q** Would you read what Mr. Boortz wrote back?

22 **A** Yes, she is. And feel free to call her on
23 any related -- on anything related to the note. Her
24 direct line is 904-348-3387.

25 **Q** Okay. And is that your direct line?

1 A Yes.

2 Q In response to this email, did you receive
3 any calls from anyone?

4 A No.

5 Q Okay. After your conversation with Mr.
6 Boortz, what action did you take in regards to the
7 note?

8 A I terminated the UCC file.

9 Q Okay. And did you ever have any
10 correspondence or conversation with anyone about
11 that?

12 A There was an email later per Bruce's
13 request to send him copies of the note documents. In
14 other words, all the documents themselves. I sent
15 over that copy of all the detail of the receivables
16 that were originally transferred to those notes as
17 well as a copy of the termination agreement that I
18 had filed to terminate that night -- that note.

19 Q I'm going to give you two emails and get
20 you to identify those. Are these the emails you are
21 referring to?

22 A Yes.

23 Q What are the dates on those emails?

24 A August 17th, 2010.

25 Q Okay. And they are from you to who?

1 A Myself to Bruce Kudeviz.

2 Q And who is Bruce Kudeviz?

3 A Bruce Kudeviz is Larry's brother. He also
4 handled the accounting or at least a substantial
5 portion of the accounting. I'm not sure if his title
6 was accountant or not, but he handled a lot of their
7 books.

8 Q Okay. And did you often correspond with Mr.
9 Bruce Kudeviz?

10 A As it relates to updated -- you know, at
11 some points, we got financial statements
12 occasionally. I would often talk about payments or
13 setting -- when you think in terms of structuring
14 notes, there would have been dialog between Bruce and
15 myself to figure out what that number should look
16 like as far as monthly payments go. Day in and day
17 out, as far as product information goes or even
18 standard collection of checks, that really -- as
19 those payments come due, that really would have
20 fallen more to the branch.

21 Q Okay. In looking at the first email, which
22 has a Bates number of MAC726 on the bottom right-hand
23 corner ---

24 A Yes.

25 Q --- quickly go through that packet and tell

1 us what all is in there.

2 **A** The first screen is literally a copy of our
3 notes screen. It's the screen print from our main
4 frame. It gives you the basic information of the
5 note, the original note date, the original amount and
6 what the payment would have been set to and the fact,
7 obviously, the payoff information, which at that
8 time, it was paid off. The, uh, second page is just
9 more in the way of screenshots. The third page and
10 the fourth page is a copy of the note security -- I'm
11 sorry -- the note itself dated December 9th, 2008.
12 The following two pages are the security agreements.

13 The next page is just a -- kind of a cover
14 letter that we give to our accounting department to
15 instruct them on how to set the note up, the
16 particulars of the note, the payment, the interest
17 rates, so on and so forth. The remaining pages are
18 copies of -- well, the next several pages are copies
19 of the screen print showing the outstanding invoices,
20 at the time, that were shifted to this note to come
21 up to the total, plus the remaining balance of the
22 303,000.

23 There's a page in there that is Sandra
24 Finch, who was a former employee, just reaching out
25 to someone in our accounting department asking for

1 detail on the note. And then there was the UCC-1, the
2 original UCC filing that was filed followed by the
3 UCC-3 that I filed to terminate the original UCC
4 agreement.

5 Q Okay. And when did you file this UCC-3 and
6 why?

7 A The termination or the original?

8 Q The UCC-3.

9 A Okay. I know it's got the date on here.

10 Q Was it before or after the --

11 A Oh, it was after.

12 Q Okay. Why did you -- why did you file this
13 UCC-3?

14 A Uh, the note had been paid off and Larry
15 wanted the UCC filed and released according to Craig.

16 Q So in response to their request to
17 terminate the note, you terminated the note and the
18 UCC?

19 A Yes.

20 MR. ELLIS: Objection, Your Honor.
21 Leading.

22 THE WITNESS: The note had been --

23 THE COURT: Sustained.

24 THE WITNESS: The note had been --

25 THE COURT: Hold on just one second.

1 **THE WITNESS:** Okay. I'm sorry.

2 **THE COURT:** All right. Will you rephrase?

3 **MR. JOHNSON:** Yes.

4 **BY MR. JOHNSON:**

5 **Q** Explain to us what you did in response to
6 their request to terminate the note.

7 **A** Okay. After speaking with, uh, Craig, that
8 the note was paid off, so we, uh, we terminated the
9 UCC filing which was a blanket lien on business
10 assets via the security agreement attached to the
11 note.

12 **Q** Okay. In that second email that I provided
13 you, that just goes to the second note. Is that
14 correct?

15 **A** Yes.

16 **Q** And it's -- let's go through that
17 paperwork.

18 **A** Okay.

19 **Q** The second page of that document is what?

20 **A** It is a list of the additional invoices
21 that were switched over to the note. I think I had my
22 notes backwards a second ago because of where the UCC
23 filings attached.

24 **Q** Uh, but --

25 **A** Okay.

1 Q Is there a copy of the note within this
2 document?

3 A Yes.

4 Q What else is -- what else is in this
5 document?

6 A The screen prints from our accounting side
7 that shows the invoices that were transferred to the
8 note, it gives you the same payoff information on the
9 one that's created as far as the original note
10 amount, no date, payment amount, some additional
11 screen prints from the note itself. It's got the copy
12 of the note, two-page note, two-page security
13 agreement and then some detail from our accounting
14 department.

15 Q It's similar to the last, but this is just
16 showing -- tell us what this showing.

17 A Uh, I'm sorry. You lost me.

18 Q Is this -- this is showing us the
19 termination of the note?

20 A Well, the termin -- that's why I was trying
21 to find the date on the UCC filing. The UCC filing
22 was ultimately terminated after the second note, not
23 the first note. The first note was done. It was paid
24 off with the second note. In other words, what -- the
25 remaining balance was rolled in. We realized the

1 payment was too tight. So we rolled it in, modified,
2 actually added a few more in the way of receivables.
3 The UCC filing was left in force or continued on. It
4 was ultimately terminated after payment of the -- the
5 final payment on the secondary note. That's why I got
6 confused just where it was stapled at.

7 Q Okay.

8 A I had my notes backwards when I originally
9 was talking about it.

10 MR. JOHNSON: Your Honor, at this time, I'd
11 like to move these in evidence, Plaintiff's 7
12 and 8.

13 THE COURT: All right. So let's be clear.
14 Plaintiff's 7, you're asking for this Bate
15 stamped --

16 MR. JOHNSON: MAC726.

17 THE COURT: Oh, okay, 726.

18 MR. JOHNSON: And Plaintiff's 8 is Bate
19 stamped MAC728.

20 MR. ELLIS: I'm sorry. It's 8 and 9.
21 Aren't they already numbered?

22 THE COURT: I think we skipped -- I think
23 our problem is we may have skipped over that
24 email, so that would be -- Number 7 would be
25 726. And then the second email would be?

1 MR. JOHNSON: MAC728.

2 THE COURT: 728, Plaintiff's Number 8. Any
3 objection?

4 MR. ELLIS: Your Honor, just the same
5 objection before that these were paid. They are
6 not involved in this lawsuit.

7 THE COURT: And it's so noted and
8 admitted.

9 (WHEREUPON, Plaintiff's Exhibits 7 and 8 are
10 marked for identification and admitted into the
11 record.)

12 MR. JOHNSON: Thank you, Your Honor.

13 THE COURT: Why don't we do this, just to
14 be clear. I just want the record to be clear.
15 Let's make the email that you've not yet moved
16 in Plaintiff's 9 at this point.

17 MR. JOHNSON: Okay..

18 THE COURT: Does that mess anybody's sheet
19 up?

20 MR. JOHNSON: Not at all, Your Honor.

21 THE COURT: We'll make that Plaintiff's 9.
22 We'll just know that that's what we were
23 discussing earlier.

24 (WHEREUPON, Plaintiff's Exhibit 9 is marked for
25 identification purposes.)

1 **MR. ELLIS:** Uh, I don't object to
2 Plaintiff's 9 coming in.

3 **THE COURT:** Okay. Okay. I just wanted the
4 record to be clear. Because when we were
5 discussing it, we weren't extremely -- it was my
6 fault, but I didn't ask you to refer to it by
7 number.

8 **(WHEREUPON, Plaintiff's Exhibit 9 is admitted**
9 **into the record.)**

10 **BY MR. JOHNSON:**

11 **Q** Ms. Van Zandt, tell us about any
12 conversations you had with Larry Kudeviz directly
13 regarding the release of his note or his guaranty.

14 **A** Uh, the only conversations that I had with
15 Larry regarding either was a few years later in 2012.
16 He didn't contact me with the purpose of discussing
17 the note. The context that the guaranty on the
18 account was discussed was centered around the
19 potential sale of Genesis Press to Mr. Sheref. I do
20 not remember his last name. Prior to that, uh, no
21 conversations.

22 **Q** Okay. So tell me about the conversation
23 y'all had in 2012.

24 **A** 2012, Craig called me. We talked through
25 the fact that Larry -- Genesis Press continued to

1 struggle from a financial standpoint even though they
2 received the settlement and all their equipment was
3 paid off. They still continued to have cash
4 struggles. We continued to keep them on open line
5 throughout all these years. We kept their amount --
6 their account on an open status.

7 It had gotten to the point, though, that it
8 was becoming very challenging to continue to sell on
9 open terms. It began to disrupt service. In other
10 words, pending money. The account was never
11 completely closed. It was just like we can't release
12 any more until we get money. Larry, apparently, had
13 begun the process of trying to find a potential buyer
14 for Genesis Press. Apparently, he had located a
15 gentleman he wanted -- it was a gentleman -- he owned
16 an equity firm -- wanted to buy Genesis Press. Craig
17 initially contacted me and said here's what's going
18 on.

19 I got a little bit concerned given the
20 situation because a lot of times when you see a
21 struggling business that owes you substantial money,
22 you have to certainly ask yourself what type of
23 transaction this might look like if ultimately the
24 sale commences. So that prompted some dialog between
25 me, Craig, Larry, uh, some dialog between me, Craig

1 and the potential new owner. There were several
2 conversations regarding that.

3 During that conversation, there was some --
4 there was a request that -- Larry owed 300-and-some-
5 odd-thousand dollars at the time -- what they were
6 proposing was that I extend the new, the acquiring
7 party a line of credit similar to what Larry had,
8 300-and-some-odd-thousand-dollar range. And what they
9 -- what they -- or Mr. Sheref, I guess, agreed to or
10 said that he would consider doing was if I would
11 extend him that same \$300,000 line, he would
12 essentially assume the debt. In other words, he
13 wouldn't pay it off and then begin anew. He would
14 just keep things going and then pay that within
15 terms. Ultimately, he would just kind of assume that
16 debt for Larry.

17 I had a lot of concerns, obviously, to the
18 extent that he did fill out an application. I
19 couldn't get comfortable with the extension of
20 credit. I'd actually asked for copies of -- I
21 expressed my concern about the fact that this could
22 potentially be an asset sale. They had agreed at one
23 point to give me one page of that -- that, uh, sales
24 agreement. They didn't want to give me the whole
25 thing because it was kind of a nondisclosure issue.

1 But they did try to give me one thing to sort of give
2 me a comfort level.

3 The long and the short of it is that during
4 the conversation, Larry said, Tonja, if you just let
5 the sale go through, I promise you'll get paid. I
6 said, Larry, I'm not concerned about getting paid,
7 truthfully, because I have a guaranty on file.

8 Q What was Mr. Kudeviz's response when you
9 said that?

10 A Uh, no, I think you released that. First,
11 he initially said you don't have a guaranty on file.
12 I said, yes, Larry, I do. He said, well, I think you
13 released that. I said, no, Larry. I didn't release
14 that. The dialog kind of went back and forth, you
15 know, I have it, you don't have it. He seemed very
16 taken back by the fact that I had a guaranty on file.
17 He said that, no, no, no, I remember you released it.
18 I said, Larry, I said, if I think I had released it,
19 which is certainly, you know, very much outside of my
20 -- the norm -- in other words, I typically don't
21 release guarantees. We ask for guarantees for a
22 reason. Obviously, it's a substantial amount of
23 money.

24 Larry then said, well, you sent me
25 something in writing. I said, Larry, if I sent -- if

1 you sent me something in writing and I'm somehow not
2 remembering, by all means, if you can produce that --
3 because he said he emailed me. I said, by all means,
4 if you can produce that, I certainly -- if I
5 committed to something, I certainly would honor that.
6 He said, well, I think I threw it away. I said, well,
7 you know, unless you can produce that, as far as I'm
8 concerned, I have a guaranty on file.

9 Q Why don't you release guarantees as a
10 normal practice?

11 A The vast majority of our client base is
12 comprised of small privately-held corporations. Even
13 though they are an S-Corp or a C-Corp, the owner and
14 the business are essentially one and the same. In
15 other words, they have the autonomy to leave in as
16 much cash as they want or take out as much cash. So
17 ultimately, we -- if we're going to believe in your
18 business and extend credit so you can maintain, you
19 know, day-to-day operations for your business,
20 ultimately, we want you to be as invested because you
21 are in business as we are. So it just makes good
22 sense. A lot of our printers are highly leveraged.
23 There's not a whole lot in the worse case, default.
24 There's, generally speaking, not a whole lot to go
25 after to make your sale whole. So we rely very

1 heavily on guarantees.

2 Q And tell us a little about Genesis Press'
3 account with Mac Papers after the fire.

4 A It was zeroed out at one point. And we
5 continued to do business on day-in, day-out basis. As
6 time went by, you know -- in other words, once the
7 balance was 300,000-ish, they bought from -- I don't
8 have the exact figures in front of me. The balance
9 was up there substantially. At some point later, I
10 want to say late 2011, early 2012, they really began
11 to struggle financially again. The account was in a
12 past due status. We began receiving substantial NSF
13 checks. It would remain -- it was a constant
14 challenge to get, uh, payment in, you know, do
15 release orders. We'd hold orders. Then ultimately, it
16 just flat went into default.

17 Q Okay.

18 A And then ultimately, Genesis filed
19 bankruptcy.

20 Q In Mac's typical practice, when there is
21 not a guaranty in place, what happens from your side,
22 accounting side, when an account gets behind?

23 A Depending on the customer, the reason for
24 the -- the reason for the delinquency and what
25 documents we have on file -- and when I say

1 documents, I mean application guaranty. Do we have a
2 blanket lien on assets? Do I have financial
3 statements on file? All of those things are going to
4 drive how conservative I have to be versus, in other
5 words, the likelihood of you being placed on credit
6 hold and disrupting services is great, if we have
7 absolutely nothing to fall back on versus an account
8 where we have a guaranty, a UCC filing, where we have
9 financial statements, where we have a better
10 understanding of the cash flow at that point in time.
11 Maybe it's a nonrecurring event, you know, that's
12 driving the situation. We can work with them, kind of
13 like what we did with Larry. We understood what was
14 going on was an insurance claim. We can work with
15 him. But it all falls down to guarantees.

16 Q Okay.

17 A Without a guaranty, we act very
18 conservatively.

19 Q Okay. So in the context of Genesis Press,
20 when they fell behind in November of 2011 or 2012,
21 explain to us what you would have done in the context
22 of Genesis Press if there had not been a guaranty.

23 A It would have been an instant credit hold,
24 especially given the volumes. It would have been
25 placed on hold a lot sooner. In other words,

1 initially, they were going a little past due, but
2 they weren't substantially past due. So you kind of
3 work their way through it. At some point, you know,
4 it just became a permanent pattern versus I went past
5 due. I got it cleaned up. It went past due. I got it
6 cleaned up. It became very apparent that the company
7 was sorely undercapitalized. We continued to work
8 with them in hopes that they could right that ship,
9 so to speak. It just didn't happen.

10 Q Okay. So y'all continued to extend credit
11 after they first --

12 A Yeah, and the reason for that is when you
13 have 300,000, 400,000, whatever the dollar amount
14 might be, one of the challenges that we have, you
15 know, even with the personal guaranty or without, is
16 what we refer to as an exit strategy. In other words,
17 if you have a customer who is very reliant on the
18 extension of credit, in other words, I need my
19 product to produce jobs, to produce receivables to in
20 turn pay you, if you put those brakes on very
21 abruptly, you cause yourself and your client more
22 harm than you do good. So usually, we try to find
23 ways to work with a customer, you know, early on. It
24 took the form of a note.

25 That really didn't make sense at this point

1 in time to go back and consider those things. And
2 ultimately, he was looking to sell the shop anyway.
3 So we did keep on credit hold for a period of time.
4 At some point, it absolutely began to create
5 disruption in service, even with the guaranty. I
6 mean, that's only going to -- that's only going to do
7 so much for you if you go out, you know, 90, 120 days
8 past -- you know, past due.

9 Q When did all this kind of come to a head on
10 the account with Genesis Press?

11 A I don't remember the dates. These are -- I
12 wish I had my other screen prints with me. I don't
13 know if Bernie has those or not. Normally, we have a
14 screenshot that very clearly show what's in billing
15 cycles so they are super easy to read. I'm just
16 trying to figure out where we're at here. They were
17 past due as of 9/4/2012. They got much further past
18 due after that point in time. I know when I was
19 deposed, I had the absolute sheets. I could tell you
20 exactly where that break-off was. I just -- I simply
21 don't have the information with me.

22 Q Okay. Do you recall if it was in the fall
23 of 2012?

24 A Yeah, it was around that time frame. They
25 began to struggle and go into that -- what we refer

1 to our 60-day column in that late 2011 time frame.
2 Early 2012, they kind of were consistent. If you look
3 at the very last page on this document, it might help
4 put things in perspective. We cycle our accounts
5 based more on billing cycles versus from date of
6 invoice. August would have represented what we call
7 the current -- you know, this month and then the
8 current to close out. August business closed out
9 early September.

10 Then you would have what we would call our
11 current column. Then what we call a 30-day column and
12 then what we call our 60-day column. Our 60-day
13 columns, if you think in terms of it, that's actually
14 90 days and older. We were already at 90-plus days
15 here. And, you know, going a little bit further into
16 the year, it got, obviously, substantially past due.
17 They just completely went into default.

18 Q And that document I handed to you, what is
19 this document?

20 A This is a screen print. We call it our AR-
21 46 screen. It is basically a screen that shows us all
22 the activity on the account, any open -- all open
23 invoices, you know, all open orders, all open credit,
24 all unapplied checks or checks received, you know,
25 earlier on in the month.

1 Q Okay.

2 A It's just an accounting history.

3 Q Okay. So it's a statement of account?

4 A Yes.

5 Q What is the date on this statement of
6 account?

7 A September 4th, 2012.

8 Q Okay. And on September 4th, 2012, how much
9 was owed by Genesis Press?

10 A \$432,185.60.

11 Q Okay. Had there been any payments against
12 this account since September 4th, 2012?

13 A No.

14 Q No settlement payments, no --

15 A Well, I'll take that back. I was thinking
16 in terms of Larry. We settled for a piece of a
17 balance from Larry -- I'm sorry, Barry Zisook, at
18 mediation.

19 Q And would Genesis Press get credit from
20 that payment?--

21 A Yes.

22 Q Okay.

23 A I believe that was -- don't hold me to it,
24 but I believe it was in the realm of 32.5.

25 Q All right. So what y'all -- what Mac is

1 seeking here today is the 432 listed on this
2 statement account list --

3 A Plus the 32.5. That's correct.

4 Q Okay. It's \$399,685.60.

5 THE COURT: Thank you for doing that.

6 MR. JOHNSON: Sorry.

7 THE COURT: No, that's good. Okay.

8 BY MR. JOHNSON:

9 Q So Ms. Van Zandt, is it your testimony that
10 Genesis Press is indebted to Mac Papers for
11 \$399,685.60?

12 A Yes. Genesis Press as well as Larry. I
13 guess Genesis Press, technically speaking, filed
14 bankruptcy. So I don't think they are truly indebted
15 anymore.

16 Q And Larry would be indebted for that amount
17 based on what?

18 A Personal guaranty on account.

19 Q Okay. That is all the questions I have.
20 Please answer any questions --

21 THE COURT: Before you -- let's take a
22 quick break. But before you do, that last
23 exhibit.

24 MR. JOHNSON: Thank you, Your Honor.

25 THE COURT: That's fine.

1 **MR. JOHNSON:** Your Honor, I'd like to move
2 this statement account in as Plaintiff's 10.

3 **THE COURT:** Any objection?

4 **MR. ELLIS:** No objection.

5 **THE COURT:** All right. It's so admitted.
6 Let's take a five-minute break.

7 **(WHEREUPON, Plaintiff's Exhibit 10 is marked for**
8 **identification and admitted into the record.)**

9 **(WHEREUPON, a short recess is taken.)**

10 **THE COURT:** Yes, sir.

11 **MR. ELLIS:** Thank you, Your Honor. May it
12 please the Court.

13 **THE COURT:** Yes, sir.

14 **CROSS-EXAMINATION**

15 **BY MR. ELLIS:**

16 **Q** Ms. Van Zandt, you are the vice president,
17 correct, for Mac Papers now?

18 **A** Correct.

19 **Q** And you began working, I think, in 2007, is
20 that right?

21 **A** Correct.

22 **Q** So you were obviously not working there in
23 1991 when the original documents were filled out,
24 right?

25 **A** No, sir.

1 Q If you take a look at Exhibits 1 and 2,
2 these documents, the credit application and guaranty
3 agreement, these were originally filled out in 1991,
4 correct?

5 A Yes.

6 Q Okay. And in response to -- I take it you
7 don't know specifically what was done in response to
8 the credit application and the guaranty, do you?

9 A No.

10 Q Okay. You don't have a document from, uh,
11 Mac Papers that says to Genesis, congratulations, you
12 now have been extended credit in X amount of dollars,
13 right?

14 A No.

15 Q And Mac doesn't typically do that, correct?

16 A No.

17 Q What does Mac typically do?

18 A We typically -- we get requests. We have
19 the customer fill out a credit app and give us an
20 indication of what they are looking for, credit
21 desired. In other words, we have no idea how big
22 their shops are. At least from a credit standpoint, I
23 don't. So I need an indicator as to what we're trying
24 to get to from a numbers standpoint. We will evaluate
25 the credit. Ultimately, whatever the credit decision

1 is, the baseline credit decision is, will be
2 communicated back to the branch manager and the
3 salesperson or just to the branch manager. He will
4 communicate to the salesperson.

5 Q But Mac does not actually have -- I think
6 we ---

7 A Uh-huh.

8 Q --- talked about this once before. If I
9 have a \$5000 credit limit on my MasterCard, I go into
10 a store and buy something, I have a guarantee that
11 MasterCard is going to pay that amount. I have
12 entered into a contract with them that they are going
13 to give me that much credit. Mac doesn't actually do
14 that with its -- with its purchasers, right?

15 A Well, we extend a credit. We do the same
16 thing similarly to MasterCard, Visa, whoever, unless
17 say with MasterCard, Visa, unless you go into a past-
18 due status. There is not a set amount simply because
19 you are dealing in businesses who have absent flows,
20 take on new clients, in other words, maybe I do an
21 annual job, maybe it's, uh, campaign related. In
22 election years, maybe I have a onetime job that I do
23 for Blue Cross Blue Shield for their annual provider.
24 So we set a baseline to handle their day in, day out.
25 We have the latitude at headquarters to let that ebb

1 and flow as necessary.

2 Q When you say ebb and flow, Mac makes a
3 monthly or periodic credit decision as to how much
4 credit you have for a particular buyer, right?

5 A Yeah. In other words, if we -- if we -- we
6 set it as a baseline, \$300,000 or whatever the case
7 may be, but Larry calls his general manager or our
8 sales rep for that matter, and says, I've got this
9 big job coming up, can you take the order. It is
10 either we ask Larry to give us a check, we are not
11 comfortable with that new level, or we honor the
12 order based on their request.

13 Q You also have the ability to say to Genesis
14 or whoever it was, we are getting kind of
15 uncomfortable with your situation. We are only
16 willing to float you 50,000 this month, or nothing,
17 until we could get things caught up, right?

18 A Absolutely. If they are in a past-due
19 status, it's one of those things. Technically
20 speaking, past-due status will theoretically disrupt
21 terms. In the case of Larry, we worked with him for
22 years on end. Cutting him off at the knees so to
23 speak would have been somewhat catastrophic. We
24 continued to work with him during which time he
25 maintained constant dialogue.

1 Q Okay. Looking at Exhibit 1, it does say in
2 the lower left-hand corner, amount of credit desired
3 \$70,000, right?

4 A Correct.

5 Q Just looking at that record, it would
6 appear that that was the amount that Genesis was
7 asking for, right?

8 A It's -- well, it is what they desired at
9 the time. I'm assuming that that letter -- that
10 dollar amount was determined by the company size at
11 the time.

12 Q Okay. Did you have any records about ---

13 A Uh-huh.

14 Q --- anything related to that request for
15 \$70,000 credit?

16 A No, but all of our credit -- all of our
17 applications say credit desired.

18 Q Okay. And then going to Number 2, I
19 believe that -- tell me, with respect to Number 2,
20 this guaranty agreement that was signed on 12/2/1991,
21 it would appear from Mac's records that this guaranty
22 agreement and the credit application are part of the
23 same transaction, right?

24 A Yes.

25 Q Okay. And you did note earlier that there

1 is typewritten language in here that this guaranty
2 could be reviewed by the guarantors at Mac Papers,
3 Inc, on or before March 31, 1992, right?

4 A Correct.

5 Q What did you make of that?

6 A Not a whole lot. It doesn't specify what
7 it is looking for. It just simply says this guaranty
8 is to be reviewed by the guarantors and Mac Papers on
9 or before March 31, 1992. It lacks any clarity
10 whatsoever. It simply says reviewed.

11 Q But you weren't there at the time this was
12 entered into, right?

13 A No, what I am saying is not being in there,
14 simply looking at the document in front of me, the
15 document itself lacks clarity. It simply says the
16 guaranty is to be reviewed by the guarantors at Mac
17 Papers on or before March 31, 1992. It doesn't -- it
18 doesn't indicate what the ultimate goal of that
19 review might be.

20 Q But Larry was there, right, in 1991? He
21 signed the document, right?

22 A Yes.

23 Q And Barry Zisook was there ---

24 A Correct.

25 Q --- in 1991, correct?

1 A Uh-huh.

2 Q Okay. Let me ask you to take a look at
3 Exhibit 3 please.

4 A Okay.

5 Q And Exhibit 3, I note the last sentence of
6 the first paragraph --

7 A I'm sorry.

8 Q I'm sorry. Let me go to the last two
9 sentences of the first paragraph. It says, after
10 speaking with you today, I realize the application on
11 file reflects your previous address in Florida and
12 Lewis Levin as guarantor.

13 A Uh-huh.

14 Q Please update this information in addition
15 to signing the note-related documents, correct?

16 A Uh-huh.

17 Q And I think you testified earlier that you
18 believe that a credit app was sent with this?

19 A Yes.

20 Q But you didn't get a signed credit app
21 back?

22 A No.

23 Q Okay. So what you got back --

24 A Well, I say I didn't get it back. I don't
25 have it here.

1 Q You don't have it?

2 A I don't have it here.

3 Q Okay. And you don't know if one was
4 provided to us in this case?

5 A I don't -- not that I'm aware of. I don't
6 know.

7 Q Well, probably the best way to put it,
8 isn't it, is that Mac's records do not reflect --

9 A Not here.

10 Q I'm sorry.

11 A Not here. I'm saying I don't know that it
12 doesn't exist or it simply is not here.

13 Q What I am saying is you don't have
14 knowledge that a credit app was actually filled out
15 by Genesis and sent back, correct?

16 A I couldn't say definitively. I'd have to
17 go back and check the credit file.

18 Q Thank you. So you don't have personal
19 knowledge of that is my point, right?

20 A I couldn't say specifically.

21 Q Okay. The purpose of the guaranty
22 agreement in this Number 5 then, you stated this was
23 for the purpose of updating the files, right?

24 A To a large degree, but also a new
25 commitment. Larry continued to ask for more and more

1 credit. In other words, when we updated this,
2 certainly we wanted to look at the creditworthiness,
3 his current creditworthiness. Updated applications
4 and guarantees give us up-to-date information to pull
5 credit.

6 Q Uh, let me show you your deposition that
7 you gave earlier in this case. If you would, turn to
8 Page 25. Also, if you will, get Exhibit 3 which is
9 there at the back.

10 A Right.

11 Q I'm sorry, Exhibit 3 to your deposition. I
12 apologize.

13 A Okay.

14 Q Exhibit 3 to your deposition is the same
15 document that has been marked as Exhibit 5 in this
16 case, right?

17 A (Reviewing.)

18 I don't appear to have Exhibit 5 of today's
19 -- of the -- 1, 2, 3, 4 -- 5 appears to be missing.

20 Q Well I'll share you -- I'll share mine with
21 you, Exhibit 5, the guaranty agreement.

22 A Yes, that is the same.

23 Q That's the same as Exhibit 3, correct?

24 A Right.

25 Q Page 25 of your deposition starting at the

1 top.

2 A Uh-huh.

3 Q I ask you this question, okay, where on
4 Exhibit 3. Why was it signed? And you stated?

5 A Because the old guaranty didn't provide
6 things like address --

7 Q Let me ask you to stick to the deposition
8 language.

9 A That's what I'm reading.

10 Q No, I'm sorry. I am reading from line 2.
11 Okay. We're on Exhibit 3. Why was it signed? And
12 you said?

13 A Update.

14 Q Okay. I said okay, why.

15 A Okay. Because the old guarantees didn't
16 provide things like addresses, the ability to pull
17 personal credit. I like to keep them updated so if
18 something comes up, I can actually pull personal
19 credit to continue to determine creditworthiness
20 going forward -- creditworthiness of the guarantor.

21 Q You actually said you can pull personal
22 credit to determine or try to determine the worth of
23 the guaranty, right?

24 A Correct. One of the reasons for that is
25 when you update -- when you are trying to pull a

1 credit bureau, you are required to put in certain key
2 pieces of information, guaranty -- I mean guaranty --
3 social security number, date of birth, address. You
4 know, the more accurate your information, the better
5 the file pull. Especially when you get into
6 scenarios where you have potential Junior, Senior.
7 That information is somewhat important.

8 Q The reason I'm asking the question is that
9 in your note in Exhibit 3, you say, I realize the
10 application on file represents your previous address
11 in Florida and Lewis Levin as a guarantor. Please
12 update this information. In addition to signing it
13 then, I also asked you this question in your
14 deposition earlier in this case. I asked you why the
15 second guaranty was signed. At that time, you just
16 said it was an update. Why are you testifying
17 differently?

18 A I am not testifying differently. In other
19 words, when I say we have personal guarantees on
20 file, you know, we initially get the personal
21 guarantees to make the initial credit decision. But
22 if you do business with me over the course of 20
23 years, we are going to continue to revisit the credit
24 file on a very regular basis as the need arises.
25 There is no set time. We're not going to say we're

1 going to do an annual review every 12 months. But as
2 your business grows or as your business struggles, so
3 on and so forth, I still go back.

4 In other words, when speaking in terms of
5 the ebbs and flows, someone calls me up and says, I
6 normally do -- have a \$250,000 buy, but I have an
7 opportunity of a lifetime and I need \$1 million in
8 credit, I'm going to go back and I'm going to pull
9 and I'm going to assist that scenario at that point
10 in time. Do I want to exceed where the balance is
11 now? Maybe, maybe not. I will pull trades. I will
12 look at credit. I will do all kinds of things.

13 The exercise is always the same, to ensure
14 that the guarantor continues to be creditworthy to
15 allow me to make those ongoing decisions. The more
16 accurate my credit bureau is to be able to pull the
17 information, you know, updated info -- updated
18 addresses, social securities, I'm going to get a
19 better credit rate.

20 Q But let me see if we are on the same page.
21 In your email to Mr. Kudeviz, you state that the
22 problem that you got with the old guaranty is that it
23 reflects your previous address in Florida so please
24 update this information. Then when I asked in your
25 deposition as to why you asked for the second

1 guaranty to be signed, you again stated that the
2 purpose was to update your information. Here is my
3 question, it is Mac's contention that the original
4 guaranty signed in 1991 was in full force and effect,
5 right?

6 A I believe so.

7 Q In fact, when you all sued Barry Zisook in
8 this case, it was on the 1991 guaranty, right?

9 A Both. In my mind? Both guarantees.

10 Q How is it on both for Barry Zisook?

11 A I'm sorry. I'm thinking Larry. I'm glad
12 you said that.

13 Q No, I asked you on Barry on purpose.

14 A Uh-huh.

15 Q When you sued Barry Zisook, he only signed
16 the 1991 guaranty?

17 A Correct.

18 Q But you all sued him on that. So it was
19 Mac's contention that that guaranty, whatever is the
20 effect of this was was still ---

21 A Still valid.

22 Q --- still in place.

23 A Correct.

24 Q And then you sent this email saying to
25 Larry -- saying to Larry what you said in Exhibit 3.

1 That you did not get a new credit application back
2 that you know of?

3 A I don't have record of it here.

4 Q Okay. Let me talk to you a little bit about
5 Exhibits 4 and 6 which were the notes that I objected
6 to. I'm sorry, in the trial today.

7 A Okay.

8 Q I'll take the deposition back. I don't
9 want to lose that. Thank you.

10 A You're welcome. Okay.

11 Q Now, both of these notes -- let me be clear
12 because I think this can lead to some lack of
13 clarity. The ultimate operative note in this was
14 Exhibit 6, right?

15 A As far as the endnote?

16 Q Yes.

17 A Because this one was operative until we
18 modified it. So the endnote was here.

19 Q Well, what I am saying is Exhibit 6
20 absorbed Exhibit 3?

21 A Correct.

22 Q Okay. So what we are talking about here is
23 -- what we are really talking about that you all had
24 a note on his Exhibit 6.

25 A Uh-huh.

1 Q And just to note, this was -- this was all
2 for payment of -- this was all to memorialize
3 existing debt, correct, that Genesis had?

4 A I'm not sure.

5 Q Okay. The amount that is reflected, let me
6 clarify my question.

7 A Okay.

8 Q The amount that is reflected on Exhibit 6
9 is the amount -- is an amount that Matt calculated
10 that Genesis owed at the time?

11 A Well, it was -- no. It was comprised of
12 two parts.

13 Q Okay.

14 A There was more, all right. I have to go
15 back. I don't have my screen prints with me. We
16 continue to leave Larry on an open line. So the
17 secondary note absorbed the first note so we could
18 modify the payment. We obviously -- you know, you
19 can't have a \$300,000 note that all of a sudden grows
20 to 100,000 -- by \$100,000. The secondary note was
21 due 400,000 and change. We took and we absorbed this
22 note.

23 We took a portion of the receivables that
24 was outstanding at the time, which was attached and
25 one of the exhibits that Townes just went over.

1 Then, we spread that out over a little bit more time
2 to reduce those monthly payments. At the time that
3 this note was done, he remained with the portion of
4 that and we continue to sell him on his revolving
5 account simultaneously. So this doesn't represent
6 all. It represents a portion.

7 Q Right. Here is what I am trying to
8 clarify, though, this note does not reflect a new
9 note from Mac Papers where you all wrote him a check
10 for \$400,000 and he -- Genesis promised to pay it
11 back?

12 A No, there is no cash out at --

13 Q This was not new -- this was not new money
14 going to Genesis Press, right? This reflected
15 amounts that Genesis Press actually already owed to
16 Mac Papers based upon paper that had already been
17 shipped?

18 A Correct.

19 Q Okay. Thank you. Let me take you to the
20 next page of this exhibit which is for value
21 received.

22 A On 6? Exhibit 6?

23 Q Yeah. It's Bates stamped MAC3964.

24 A Okay.

25 Q And it states for value received, the

1 undersigned jointly and severally, if more than one,
2 hereby endorses this note and conditional guarantees
3 to any whole or full payment of the indebtedness
4 evidenced by this note and do by acceleration or
5 otherwise and all other sums due here under and
6 agrees to all the terms and conditions of this note
7 and consents from time to time would notice to the
8 undersigned any time of payment under this note may
9 be extended or accelerated in whole or in part. This
10 note may be renewed in whole or in part. The
11 undersigned waives presentment, notice or dishonor or
12 protests. This guaranty that we are talking about
13 was clearly a guarantee of a specific note, right?

14 A Of this specific note, correct.

15 Q Right. And that note was paid in full?

16 A Yes.

17 Q So once this note is paid in full, as a
18 matter of fact, the guaranty of this note
19 automatically goes away, right?

20 A I don't know.

21 Q Okay.

22 A I'm not an attorney.

23 Q Uh, let me ask you to take another look at
24 Exhibit 2, please.

25 A Okay.

1 **THE COURT:** Just to be clear, Plaintiff's
2 Exhibit Number 2?

3 **MR. ELLIS:** It is, right.

4 **THE COURT:** Okay.

5 **MR. ELLIS:** He has put in most of my
6 exhibits.

7 **THE COURT:** That's fine. I just wanted to
8 be clear.

9 **BY MR. ELLIS:**

10 **Q** In Exhibit 2, it states that the
11 termination must be received by registered mail by
12 Mac Papers, its successors or assigns, right?

13 **A** Correct.

14 **Q** Okay. It doesn't say that it has to be
15 specifically received by any particular person,
16 right?

17 **A** No.

18 **Q** It also states earlier in here that this
19 can be -- this guaranty contains no limitations or
20 conditions except as written herein, may be modified
21 only in writing, signed by the parties hereto, right?

22 **A** Correct.

23 **Q** Okay. An email is a writing, correct?

24 **A** Uh, yes.

25 **Q** Okay. When -- when we talked earlier about

1 the relationship between -- the email that I think
2 was marked as Plaintiff's 9 with Craig Boortz and
3 Larry and there is talk about a personal note, a
4 personal note and a UCC don't have -- I won't say
5 they don't have anything to do with each other. But a
6 personal guaranty and a UCC are not the same type of
7 document, right?

8 A No, that's why when we draft the notes, we
9 actually ask for both.

10 Q Got it.

11 A A guaranty and a UCC filing specific to the
12 note, not the account.

13 Q So if someone is talking about releasing a
14 personal note or a personal guaranty, that can't be
15 talking about a UCC, right?

16 A That's talking about the personal note, the
17 note -- the two notes that were drafted.

18 Q Well, that note doesn't have to be -- well,
19 first of all, when you talk about a personal note,
20 you were not a party to that email, correct, Number
21 9?

22 A You are correct. But I do know the
23 conversation Craig and I had. I do know what our
24 documents are titled.

25 Q Well, it's interesting you say that.

1 Because if you'll go to Number 4 and Number 6 ---

2 A Uh-huh.

3 Q --- those aren't personal notes, are they?

4 A Well, it doesn't say personal, but it's a
5 note with a personal guaranty. If you look at the
6 very first page, it's a note. That's what -- the only
7 thing I can say is internally, if Craig and I are
8 discussing a note, we have very specific parameters
9 regarding notes and specific times when they might or
10 might not be used. It's always referred to as a note
11 versus account.

12 Q But a -- but Number 4 and Number 6 ---

13 A Uh-huh.

14 Q --- were not personal notes of Larry
15 Kudeviz, were they? They were notes of Genesis Press.

16 A He assumed personal liability when he
17 guaranteed it.

18 Q Okay. I get to ask my question though.

19 A Okay. Sorry.

20 Q Number 4 and Number 6 are not personal
21 notes. Those are notes of Genesis Press, correct?

22 A I disagree.

23 Q Okay.

24 A And let me -- I'm not trying to be hard to
25 get along with here, but the reason I say that is

1 when you sign a note and then you guarantee it, it
2 becomes a personal note. You assume personal
3 liability.

4 Q Who says it becomes a personal note?

5 A I'm saying he's personally liable. It's a
6 note with a personal guaranty, so it's a personal
7 note. In other words, you're talking about
8 terminology here. What Larry might choose to call it
9 or me or anybody else off the street, I can tell you
10 it's a note which has a related personal guaranty on
11 that note as well as a security agreement
12 collateralizing the note.

13 Q But if we're going to be talking about what
14 the terms actually mean ---

15 A Uh-huh.

16 Q --- and not say we're going to mix up the
17 terms, the actual note is from Genesis Press, the
18 guaranty is from Larry Kudeviz and both of those
19 things were completely paid in full and you don't
20 have any ability to do anything with them at that
21 point, correct?

22 A The whole note is -- the whole note is
23 shored up with the personal guaranty and the UCC
24 file. When they say release my note -- and I get this
25 on a regular basis -- when accounts are paid -- when

1 notes are paid off. Okay. You've got a blanket lien
2 on business assets. They want that satisfied. I paid
3 my note off and satisfied it. Nobody gets real
4 specific. I'm not being contacted by attorneys. I'm
5 being contacted by individuals. When Craig and I
6 talked, we were speaking in terms of this note.

7 Q Well, the point, though, about being
8 released, though, is that a note and guaranty, once
9 it's paid off in full, goes away on its own. It's not
10 something that continues on into the future once it's
11 paid. I mean, if you all tried to sell this to a
12 third party, you would probably get in some trouble,
13 wouldn't you?

14 A I don't know.

15 Q Uh, the last exhibit that you all put in,
16 Exhibit Number 10, uh, this -- Genesis Press had kind
17 of been in trouble for some period of time, right?

18 A Uh, ever since the fire.

19 Q Okay.

20 A He struggled. He never really -- I think
21 after payment, he got into better shape, you know,
22 for a period of time. But no, he was in constant
23 struggle, the account was.

24 Q But when you got -- when you got as far out
25 as Exhibit 2 is reflecting, at that point, Genesis --

1 Mac knew Genesis was still in some -- some trouble
2 was continuing to exist, right?

3 A We knew that the -- I can tell you that the
4 educated guess was that Genesis Press was sorely
5 undercapitalized. But we also knew that Larry had
6 received a substantial settlement from the fire. We
7 certainly felt, based on the personal guaranty and
8 what we knew of the situation from what Larry
9 disclosed to us, all his equipment was paid off. So
10 when you think in terms of required working capital,
11 we continued to work with Larry for two reasons: A,
12 we have a substantial portion of money owed. It was
13 felt, at the time, that Larry had the personal
14 wherewithal based on the settlement to inject cash
15 into that business at some point in time. Even if he
16 failed -- if he opted not to do that, we still had
17 the guaranty to fall back on. So --

18 Q But if he doesn't have substantial cash in
19 2012 to inject in this, then his personal guaranty's
20 not worth a whole lot, right?

21 A That's the problem with guarantees all the
22 time unless you have someone who discloses
23 everything. Even if you have it today, you may not
24 have it tomorrow. It's a moving target.

25 Q Why didn't you all contact Larry about your

1 belief that he had substantial cash and say Larry,
2 we're having a problem here, but we think you have
3 money and we have your guaranty?

4 A I didn't, you know, have no way of knowing
5 that he -- you know, in other words, that's common
6 knowledge. You've signed the guaranty. We've gone
7 through these series of documents over and over
8 again. You know, I thought it was very, uh, clear
9 that we had a guaranty on file. With respect to
10 telling Larry how to run his business, no, we didn't
11 do that. It was a constant exercise, though, of
12 Larry, I can't really send any more orders until you
13 get this 60-day call in money cleared up. And now, --
14 just to be clear, that's a conversation, in other
15 words, until it truly gets into a default situation.
16 You know, we're having dialog with the branch
17 manager, with the ownership. Do we stay in here?

18 Larry -- according to Larry, he sustained a
19 lot of damage, not just because of the initial
20 disruption in business, but during that period of
21 time that he was without his equipment, so on and so
22 forth, he claims a loss of business. So we're trying
23 to, you know, the same thing we've done for years.
24 We've kind of established a pattern of working with
25 Larry. We continued to hang in there with him.

1 Q But my question to you is, though, you all
2 basically just assumed that he had received a
3 substantial amount of money from the settlement. You
4 obviously didn't have firsthand knowledge of that,
5 correct?

6 A We asked about the specific dollar amounts.
7 We were point-blank told that there was a
8 nondisclosure agreement. He was not allowed to share
9 that information. So what we were told repeatedly was
10 that it was substantial in nature and we were also
11 told that he was able to accomplish paying off all of
12 his equipment.

13 Q But that's -- the payment that Mac received
14 in 2010 where Mac was paid in full by Genesis, that's
15 2010. We're fast-forwarding to 2012, right ---

16 A Right.

17 Q --- when Genesis is obviously getting
18 behind and Genesis is in some trouble financially. My
19 question is why, at the -- at the -- why, at an
20 earlier level, did you guys not -- I mean it appears
21 to me that you guys didn't at an earlier level
22 communicate with Larry about this because you had
23 believed he had gotten a lot of money, right?

24 A Well, at the point that we weren't
25 communicating a whole lot was because the account was

1 back within good standing. Okay. So this goes on for
2 a period of time. Then late 2011, 2012, he starts --
3 I don't have the exact dates because I don't have the
4 screen prints or the history in front of me. I've got
5 one snapshot. As he begins to experience difficulty,
6 you constantly have those conversations. It's a
7 question of, you know, understanding what's going on,
8 when you get paid. It's a constant exercise in making
9 arrangements for that next pay down.

10 So I don't want you to believe that we just
11 kind of sat there and complacently did nothing. Do we
12 specifically say, Larry, we know you got a lot of
13 money in your pocket, put it in your business? No.
14 Not to my knowledge, anyway. Craig may have. I have
15 no idea. That's not a conversation I had with him.

16 Q When you talked to Larry in 2012 and said I
17 have a guaranty on file for you, he was surprised,
18 right?

19 A Hard to tell. He acted surprised. I have no
20 idea. Or maybe he was just surprised that I brought
21 it up. I have no idea. The initial context of that
22 conversation was not about the account balance or the
23 guaranty. The initial conversation was about the
24 potential sale and extending new credit to Mr. She --
25 I believe Sheref is his first name.

1 Q Does Shefik sound right?

2 A It might be. It might be Shefik. I can't
3 remember.

4 Q All right.

5 A I'm going off memory there. The initial
6 contact was I want to sell my business. I have a
7 buyer. He liked to talk in terms of open lines, what
8 we are proposing is. I said, well, you know, we had
9 dialog around the fact -- I had some offline
10 conversations with him that really what it all comes
11 down to at the end of the day is is this gentleman
12 creditworthy, period. And you know, as we go through
13 the same -- Larry said let the transaction go
14 through. You will get paid. I said, Larry, I'm not
15 worried about getting paid because we have your
16 personal guaranty on file. How shocked he was or how
17 not shocked --

18 Q Let me say this though, he acted and
19 sounded surprised, correct?

20 A I don't know that he acted as -- I can't
21 say what his emotional state was at the time.

22 Q Okay.

23 A What I will tell you is when I brought it
24 up, he said, no, no, no, I think you released that.
25 We go through some dialog. I said Larry, I said,

1 that's not something I generally do. He said no, no,
2 you sent me something in writing. I said, well, if I
3 did, I can't imagine I did. I said, if I did, if you
4 can send me what I sent you, I'll certainly honor
5 that. He made a comment about, I think I threw it
6 away. But I left that door open to provide said
7 document.

8 MR. ELLIS: Beg the Court's indulgence just
9 one moment.

10 THE COURT: Certainly.

11 (WHEREUPON, there is a pause.)

12 BY MR. ELLIS:

13 Q Uh, if you will, go back to Exhibit Number 6.

14 A Okay.

15 Q Exhibit Number 6, do you know how long it
16 was after this got paid off in 2010 before Genesis
17 started incurring debt again on a regular basis?

18 A I don't have the screen prints in front of
19 me.

20 Q But I mean, it was -- how long was the
21 Genesis account in trouble before it went into
22 bankruptcy? Do you recall was it, like, a full year,
23 a year and a half?

24 A It seems like they really started
25 experiencing -- I'm going off of memory here and

1 there's probably something in there because I know we
2 covered it in the deposition, so I'm sure it's in the
3 deposition, my deposition, the dates and the rough
4 time frames because I provided at the deposition
5 copies of the screen prints. I think you took those
6 and entered them into record. I don't have -- without
7 having the deposition in front of me or those screen
8 prints, I can't give you the time frame. I know that
9 there are some passages in there. I know that I
10 absolutely brought the screen prints because we
11 talked about the fact that blacked out a column. You
12 asked what it was and I said it's gross profit.

13 Q Let me show you what was Exhibit 6 to your
14 deposition. Does that refresh your recollection?

15 A Yeah, that's helpful.

16 Q Okay.

17 A Now, I don't know that you have all the
18 screens though. Is that the only one you have?

19 Q Whatever's there is what I have.

20 A You only took one and not all of them. So
21 this is the one that actually shows them still in
22 good standing.

23 Q What date is that?

24 A This is on January of 2009 to December of
25 2009.

1 Q Okay.

2 A There were other screen prints that were
3 there that day that would show -- and I could show
4 you here if you want to take a look where you've got
5 money in what's considered a 30-day column, which is
6 -- you're okay to be in that area. When you start
7 moving into what we call a 60-day column or a 90-day
8 column is when you get into real trouble. I want to
9 say late 2011, early 2012 is when they move out of
10 this 30-day column into this 60-day column, is when
11 we begin to see trouble. I don't have the exact
12 dates but I think we covered the date issues in the
13 deposition somewhere.

14 Q Okay. Thank you.

15 A Okay.

16 MR. ELLIS: I don't have anything else
17 further for this witness at this time. Thank
18 you.

19 THE COURT: All right. Any redirect?

20 MR. JOHNSON: Very quickly, Your Honor.

21 THE COURT: Certainly.

22 **REDIRECT EXAMINATION**

23 **BY MR. JOHNSON:**

24 Q Ms. Van Zandt, there was some discussion
25 about your request from Exhibit 3, the email to Mr.

1 Larry Kudeviz and Mr. Bruce Kudeviz about the update.
2 Is it -- when you get information on any creditor or
3 any grantor, what do you do with that information?

4 A We assess the situation as to ongoing --
5 it's an ongoing exercise. I mean, we don't set up an
6 account in 1991 and just assume they are creditworthy
7 for the rest of their life. It's an ongoing exercise.
8 And really, the triggers for that exercise is going
9 to be changes in trends. Maybe they say my business
10 is growing. Those kinds of things. So when we get
11 documentation, it, literally -- like a note and a
12 guaranty, obviously, they are experiencing trouble.
13 We get the note and the guaranty to shore up the
14 file. You know -- I'm sorry -- the security guaranty
15 as in the UCC filing and updated guaranty, which
16 prompted us to do a little background screening, or
17 have it on file so we can. That would take the form
18 of a personal guaranty. Maybe we might look at, uh,
19 asset searches, those kinds of things depending on
20 where we're at in the process.

21 Q Okay. So that information was used to
22 determine if business would go forward.

23 A Creditworthiness, correct, to go forward.

24 Q Okay. Also Plaintiff's Exhibit 3, it
25 mentions that Lewis Levin was a guarantor.

1 A Yes.

2 Q Did Larry Kudeviz at that time reply back
3 and say anything about that statement?

4 A No.

5 Q So there was no statement that the guaranty
6 had lapsed?

7 A No.

8 Q No statement that the guaranty was under
9 review?

10 A No.

11 MR. JOHNSON: That's all the questions I
12 have, Your Honor.

13 THE COURT: All right. Anything else?

14 MR. ELLIS: Just one more thing on the
15 exhibit.

16 THE COURT: Sure.

17 **RECROSS EXAMINATION**

18 BY MR. ELLIS:

19 Q On Exhibit 3.

20 A Okay.

21 Q The relationship with Larry in terms of
22 this -- in terms of the guaranty -- in terms of the
23 guaranty didn't change. We testified -- you testified
24 to this earlier. Again, Mac doesn't send somebody a
25 response to filling out a guaranty agreement that

1 says congratulations, you now have \$450,000 in credit
2 or something like that. I mean, nothing -- Larry
3 didn't receive anything in response to the guaranty
4 agreement that says this has changed, right? He
5 didn't get new credit.

6 A We continued to sell. In other words, what
7 happens is -- when we shift your balance to a note
8 and you request that we continue to keep you on open
9 terms, that guaranty is a part of that process.
10 Failure to provide that guaranty or deciding you all
11 of a sudden rescind that guaranty is going to result
12 in no open terms. So that -- there's no express
13 writing saying you've got X amount of dollars. But
14 Larry is in total control of how much he places in
15 the way of orders. We send out invoices every third
16 day. Once a month, we send out statements. So Larry
17 knew he signed the personal guaranty. He knew he
18 updated the guaranty and he knew how much he was
19 placing, not on the note, but on an open account.

20 Q And Larry has the right as a guarantor to
21 just unilaterally revoke his guaranty according to
22 the document, right?

23 A According to what?

24 Q According to the guaranty agreement. I
25 mean, he could just say I decided not to guarantee

1 this anymore. And Mac could say, okay, our
2 relationship has now changed.

3 A Well, he can't just say.

4 Q I apologize.

5 A He could revoke it, but it wouldn't change
6 the guaranty with respect to anything going prior to
7 that date.

8 Q Right.

9 A But you could revoke it going forward. Yes,
10 you are quite correct. You can say we're not doing
11 this.

12 Q He could say -- he could say guaranty is
13 over with. You could say, okay, we're only going to
14 sell COD or -- well, COD or something else, right?

15 A Correct.

16 Q I was asking you before, though, because
17 you testified earlier about releasing the guaranty.
18 He, in fact, has a unilateral right to say or notify
19 Mac in the appropriate way that this guaranty is
20 done. Then Mac has the unilateral right to say that's
21 your right, but we're going to change the way we do
22 business with you, correct?

23 A I guess. I would agree with that, I guess.

24 Q Uh, thank you. Nothing further.

25 THE COURT: Anything else?

1 **MR. JOHNSON:** Nothing else.

2 **THE COURT:** Ma'am, you may step down.

3 **THE WITNESS:** Okay. Thank you.

4 **THE COURT:** Do you anticipate your next

5 witness being lengthy? I mean, it's fine. It's

6 fine. We can go on with him and take a break

7 during. I was just wondering if --

8 **MR. JOHNSON:** I would imagine that cross-

9 examination might be lengthy.

10 **MR. ELLIS:** I would think it would be.

11 **THE COURT:** Okay.

12 **MR. ELLIS:** I --

13 **MR. JOHNSON:** My guess would be I would be

14 surprised if it took 45 minutes.

15 **THE COURT:** Okay.

16 **MR. JOHNSON:** But I've been surprised

17 many, many times about many things.

18 **THE COURT:** How about we do it like this,

19 I won't hold either one of you to it, but we'll

20 get going and see how far we get before we all

21 get too hungry.

22 **MR. JOHNSON:** Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 **MR. JOHNSON:** Your Honor, I'd like Craig

25 Boortz.

1 **THE COURT:** Will you place your right hand
2 -- excuse me. Place your left hand on the Bible.
3 Place your left hand on the Bible and raise your
4 right hand. I'm all turned around. I'm sorry.

5 **CRAIG BOORTZ**

6 having first been duly sworn, testifies as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. JOHNSON:**

9 **Q** Mr. Boortz, how are you today?

10 **A** Doing fine.

11 **Q** State your name for the record please.

12 **A** Craig Joseph Boortz.

13 **Q** Okay. Mr. Boortz, who are you employed by?

14 **A** Mac Papers.

15 **Q** How long have you been with Mac Papers?

16 **A** Since 1992.

17 **Q** Okay. Between -- tell me what all locations
18 you been to with Mac, Mac Papers.

19 **A** I started with them in Tampa, Florida. Then
20 went to Greensboro, North Carolina. From Greensboro,
21 North Carolina, to Greenville, South Carolina. Now,
22 I'm currently in Jacksonville, Florida.

23 **Q** Okay. How long were you in Greenville,
24 South Carolina?

25 **A** February 1997 until November 2013.

1 Q Okay. And have you held different positions
2 with Mac throughout those years?

3 A Yes.

4 Q Okay. In Greenville, what positions did you
5 hold with Mac Papers?

6 A I was a general manager..

7 Q Okay. Of the whole Greenville office?

8 A Of the Greenville location, yes.

9 Q Okay. And what were your duties as a GM for
10 Mac Papers at the Greenville location?

11 A That facility and most of our facilities,
12 all of our facilities is a wholesale distributor,
13 meaning that we have drivers, we have a fleet of
14 trucks, we have warehouse personnel, night crew, day
15 crew, we have a customer service team, we have a sale
16 staff, we have managers, at the time, an operations
17 manager and also warehouse manager. As general
18 manager, essentially all those folks report to me,
19 some directly, some indirectly.

20 Q Okay. In your role as a general manager of
21 the Greenville office, did you have interaction with
22 Genesis Press?

23 A Yes.

24 Q What was your interaction with Genesis
25 Press?

1 A I was actually the, uh, salesperson on the
2 account.

3 Q Okay. So you were the direct salesperson on
4 the account?

5 A Yes.

6 Q And with that, you had direct contact with
7 Mr. Kudeviz?

8 A Yes.

9 Q So let's go back to just your role as a
10 general manager for Mac Papers, what, uh, -- when you
11 would go and open an account, tell us about that
12 process. Or when you would go out on a call on a new
13 client to try to open up a new account, tell us about
14 that process.

15 A Typically, as a general manager, I think I
16 had, at the time, four, six, maybe eight accounts.
17 Typically, what happens is, someone on my sales
18 force, either a new account is opened up. They
19 contact us directly or they contact that salesperson
20 because it's a referral, or we go and try to solicit
21 and open up an account. Essentially what happens is
22 they go gather information. Then, what we do is the
23 first thing we have to do is we contact our credit
24 department. We get our credit department involved.

25 Q Why do you contact the credit department?

1 A Because they are involved with establishing
2 credit limits. With authorizing anything we do,
3 that's based on credit.

4 Q Did you have -- in your position as a
5 general manager, did you have any authorization over
6 credit decisions?

7 A Very, very limited.

8 Q Okay. And what was that limit?

9 A My limit was up to \$15,000. But that also
10 does not give me carte blanche to be able to open
11 somebody up. I always had dialog with the credit
12 department.

13 Q Okay. So for any credit decision over
14 \$15,000, you had to report back to headquarters?

15 A Correct.

16 Q Okay. Who was your main contact at
17 headquarters when you were making those credit
18 decisions?

19 A Tonja.

20 Q Okay.

21 A Well, Tonja when she came on board in 2007.
22 Obviously, before her was a gentleman named Lou
23 Collins.

24 Q Uh, what other authority did you have as
25 general manager of the Greenville office?

1 A Explain yourself.

2 Q Could you -- could you release guarantees?

3 A No.

4 Q Could you draft notes for clients?

5 A No.

6 Q Could you -- I'll limit it to those right
7 now. When Genesis Press moved to Greenville, tell us
8 about how they became in relationship with you.

9 A Uh, it was sometime in 2007, possibly the
10 summer of 2007 -- I'm not concerned -- I mean, I
11 don't know the exact date. But essentially, it got
12 out that Genesis Press was, uh, moving from Miami up
13 to Greenville, South Carolina. It was a big deal. It
14 was a newspaper article written on it. In our
15 industry, when a printer of that size comes into your
16 market, it's a big deal. You've got to understand
17 that, I mean, right now, the printer industry is a
18 declining industry. At that time, it was probably
19 flat, at best. So I mean, for Larry's company to move
20 up to Greenville, South Carolina, was a very big
21 deal.

22 Q Okay. And obviously, there was a prior
23 relationship between Mac and Genesis at the time of
24 the move?

25 A Yes. That was my understanding.

1 Q Okay. And so when they moved, what
2 happened? How did you make contact with -- how did
3 that all go down?

4 A Well, I'm trying to think. I'm not sure if
5 it was either through -- if it was either through the
6 newspaper article of Larry's name or possibly, it
7 could have been through, uh, -- I know he was friends
8 with our sales manager that's still employed with Mac
9 Papers in Miami, Geoff Colton. Jeff possibly could
10 have called me and informed me that Larry's company
11 was moving up to Greenville, South Carolina, and
12 that's how I got in contact with him.

13 Q Okay. And during your time in Greenville,
14 you were in pretty regular contact with Larry
15 Kudeviz?

16 A Yes.

17 Q Tell us -- tell us a little bit about the
18 events that transpired surrounding the fire at
19 Genesis Press.

20 A Essentially, what I know, uh, is that it
21 was late March. Larry contacted me. There was a fire
22 at his facility. It looked like, unfortunately, it
23 was racially motivated because there was, uh, some
24 stuff that was written on his building, especially on
25 the back of it. I came over to talk to him. He walked

1 me through the facility to see the damage of the
2 fire. It was extensive. It was on his equipment, as
3 well as on product that was on his floor. I contacted
4 Tonja and let her know what was going on. I mean, I
5 felt awful. I can't remember what was written on the
6 building, but like I said, it was racially motivated,
7 or at least that's what it looked like as far as what
8 was written on the building. I wanted to do something
9 for him and for his staff. So I came over and threw a
10 barbecue for his staff. At that time, it just seemed
11 like -- and I'm sure it was, morale was down. I mean,
12 you know, I'm sure he thought that, uh, this was a
13 personal affront on him.

14 Q Did you go to bat for Genesis Press with
15 headquarters about, you know, the process forward?

16 A Uh, yeah. Tonja and I were in constant
17 contact as far as, uh, how to proceed going forward.
18 This is the first time, the only time I ever dealt
19 with something like that. I was in constant contact
20 with headquarters.

21 Q After the fire, your testimony earlier was
22 that Genesis Press paid Mac Papers in full. Is that
23 your understanding as well?

24 A Yes, after the settlement, correct.

25 Q Okay. At that time, did you have any

1 conversations with Larry or Bruce or anyone
2 surrounding those events and what would transpire
3 afterwards?

4 A As far as after the settlement?

5 Q Uh-huh.

6 A I think we got paid two weeks. I may be
7 wrong, but I think we got paid two weeks after the
8 settlement. I know he paid us in full. We were happy.
9 He was happy. Going forward, I know they are going to
10 bring up the email. I remember -- specifically
11 remember sitting in Larry's office. He and I were
12 talking about a lot of things, I mean, what all he
13 been through, everything like that. He had mentioned
14 to me about his personal note, which I associate
15 personal note as personal guaranty. I said that in
16 the deposition. I told him at the time that anything
17 like that related to that, he needed to contact
18 Tonja. I asked him -- also I said, you should have
19 her email. If you don't, I can give it to you, her
20 telephone number. He said, no, he had that
21 information.

22 Q Okay. Why did you tell him he needed to
23 contact Tonja?

24 A Because I don't have authority over that.

25 Q Okay. Throughout this process, did you have

1 knowledge that Genesis Press had signed a note for
2 part of the account balance?

3 A Yes. My name's on it.

4 Q Okay. So you actually witnessed Larry's
5 signature to that note?

6 A Yes.

7 Q Did you also have knowledge of the personal
8 guaranty that Larry signed in conjunction with this
9 note?

10 A Yes.

11 Q Okay. And those are both in Plaintiff's
12 Exhibit 6?

13 A Okay.

14 Q Is that correct?

15 A Yes.

16 Q Okay. Did you also have knowledge of the
17 guaranty on the overall account?

18 A Yes.

19 Q In your mind, is there a difference between
20 the guaranty on the note and the guaranty on the
21 account?

22 A Yes.

23 Q What is that difference?

24 A Well, one is on that note, you've got a
25 guaranty that's personal just to that note. The other

1 one is the guaranty that's on ongoing business.

2 Q Okay. So there's a personal guaranty of the
3 note and a personal guaranty of the account?

4 A Correct.

5 Q And when Mr. Kudeviz asked you about his
6 personal note, what did that mean to you?

7 A That he was asking about his personal note.
8 He was working on the personal note, personal
9 guaranty.

10 Q Which personal guaranty is that?

11 A I assumed it was the note.

12 Q But you didn't have any clarity as to what

13 --

14 A I didn't have any clarity. Once again, when
15 Larry was talking to me about that information, I
16 specifically told him he needed to contact Tonja.

17 Q Okay. So let's take a look at that email. I
18 think it's Plaintiff's Exhibit 9.

19 A (Reviewing.)

20 Q Are you familiar with this email?

21 A Yes, I am.

22 Q Okay. The -- let's start with the second, I
23 guess the email from Larry first. What is the date on
24 that email?

25 A July 12th.

1 Q Of what year?

2 A I'm sorry July 12th, 2010.

3 Q And on the second line, Larry poses a
4 question to you. What is -- what is that question?

5 A On a separate subject, is Tonja working on
6 releasing my personal note.

7 Q And is it your understanding that where Mr.
8 Kudeviz says Tanya, he's really referring to Tonja
9 Van Zandt, he testified earlier?

10 A Yes.

11 Q How did you reply to that question?

12 A Yes, she is and feel free to call her on
13 anything related to the note. Her direct line is 904-
14 349-3387.

15 Q Okay. Why did you tell Larry that he needed
16 to contact Tonja?

17 MR. ELLIS: I object to the question. I
18 think he's mischaracterizing what it says.

19 THE COURT: If you would, rephrase.

20 MR. JOHNSON: Okay.

21 BY MR. JOHNSON:

22 Q Why did you tell Larry to feel free to call
23 her immediately relating to the note?

24 A Because she was the only one that could do
25 any of the releasing of the note, personal guaranty,

1 anything.

2 Q Okay. Did you have any subsequent
3 conversations with Larry about -- anything about the
4 note or the guaranty or anything relating to this
5 account as far as liability?

6 A The only conversation that I can recall
7 having with Larry was the one that you asked me about
8 earlier. We were sitting in his office. Then, of
9 course, obviously, he asked me in an email form and I
10 responded to him in an email form.

11 Q Okay. Did you ever represent to Larry that
12 he was released from a note or a guaranty or any
13 other item?

14 MR. ELLIS: Your Honor, I'm going to
15 object to the leading.

16 THE COURT: All right. If you would, just
17 rephrase.

18 BY MR. JOHNSON:

19 Q Tell me about any representations you made
20 to Larry regarding his guaranty or his note.

21 A I didn't make any representations to him.
22 Anything regarding that, I've always told him he had
23 to speak with Tonja.

24 MR. JOHNSON: One second, Your Honor.

25 THE COURT: Certainly.

1 BY MR. JOHNSON:

2 Q Mr. Boortz, at your time at Mac Papers, you
3 ever released any guaranty of any account you've ever
4 worked on?

5 A No.

6 Q Have you ever terminated any note on any
7 account you've ever worked on?

8 A No.

9 Q Okay. In every situation that you're asked
10 about that, what do you tell those folks?

11 A I'm not authorized.

12 Q Do you tell them -- direct them to someone
13 who is authorized?

14 A Yes.

15 Q Is that what you did in this situation
16 today?

17 A Yes.

18 MR. JOHNSON: Your Honor, I think that's
19 all the questions I have.

20 THE COURT: All right. Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. ELLIS:

23 Q Mr. Boortz, let me hand you a stack of
24 documents. I'd like to have you -- just glance
25 through them real quickly. Take your time.

1 A (Reviewing.)

2 Q Mr. Boortz, I have handed to you what I
3 will represent to you are 100 pages copied out of the
4 documents that were produced to me from Mac Papers.

5 A Okay.

6 Q I will represent to you that Mac Papers
7 produced 4200-some-odd documents, right? I mean, I
8 don't know if you know that or not.

9 A No, I have no idea.

10 Q In its production, this is MAC-1 through
11 100. Looking at these emails, it's fair to say you
12 and Larry communicated a lot, correct?

13 A Oh, yeah. Oh, yeah.

14 Q And it was your job as head -- as the
15 general manager of Greenville to manage Larry's --
16 I'm sorry -- to manage Genesis' account, right?

17 A Correct.

18 Q Okay. So on this first page, he says --
19 you're copied on this, but this is from Mark Rienzo
20 who was at Genesis, correct?

21 A Correct.

22 Q He's a Genesis person. He's telling you
23 they need 286 ink jet -- tells you what they need.
24 And there's an email on MAC-3 from Larry Kudeviz to
25 Craig Boortz saying 14,500 sheets, 23 by 35 any cream

1 colored offset, right?

2 A You talking about the second one?

3 Q I'm talking about page 3.

4 A Yes.

5 Q My point in this is just that you were his
6 point of contact with Mac Papers, right?

7 A Uh, yes.

8 MR. ELLIS: Your Honor, I would just like
9 to offer this collection of emails in as
10 Defendant's 1.

11 THE COURT: Any objection?

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: All right. So admitted.

14 MR. ELLIS: You manage both the sales and
15 the...(Pause.)

16 (WHEREUPON, Defendant's Exhibit 1 is marked for
17 identification and admitted into the record.)

18 BY MR. ELLIS:

19 Q So you communicated with him, you managed
20 both the sales and the credit side of what Genesis
21 was doing, right?

22 A Sales and collection of invoices.

23 Q Okay. We talked about before that, after
24 the fire, Genesis got behind, but then they paid in
25 full, right?

1 A Uh-huh.

2 Q And of course, one of the things that
3 brings us here today is what's been marked as Exhibit
4 9, Plaintiff's Exhibit 9, right?

5 A Yes.

6 Q Okay. You've testified previously -- I want
7 to be clear about this. When he refers in this email
8 to his personal note, you understood he was talking
9 about a personal guaranty, right?

10 A Yes, in my deposition, you asked about it,
11 yes.

12 Q And that's your testimony today, you
13 understand he's talking about being released from his
14 personal guaranty, correct?

15 A Yes.

16 Q Okay. We talked before about Exhibits 4 and
17 6, the note on those, the notes that were Exhibits 4
18 and 6. If you will, take a look at those.

19 A Okay.

20 Q Okay. Those notes -- those guarantees, with
21 respect to those two notes, and again, Exhibit 6 is
22 actually the operative one, right. I mean, Exhibit 4
23 is more of a history situation. Exhibit 6 is actually
24 the note that was operative.

25 A The second note, correct.

1 Q Right. So that has a note -- that has a
2 personal guaranty attached to that note, right?

3 A Yes.

4 Q And that guaranty strictly refers to that
5 note, right?

6 A Yes.

7 Q And that note was actually paid in full by
8 Genesis, right?

9 A Yes.

10 Q So Mac doesn't have any right, that note
11 ends as a matter of law, right? I mean, it's paid up,
12 it's done.

13 A You tell me. I'm not an attorney.

14 MR. JOHNSON: Legal -- legal -- he's asking
15 for a legal conclusion.

16 MR. ELLIS: Okay.

17 THE COURT: All right. Anything in
18 response on that?

19 MR. ELLIS: I mean, I'm really asking for
20 his understanding. I'm trying to get to his
21 understanding.

22 THE COURT: I'm going to sustain that
23 objection. All right.

24 BY MR. ELLIS:

25 Q At the point in which -- at the point in

1 which a guaranty -- the point in which a note has
2 been paid in full, a promissory note has been paid in
3 full, you wouldn't expect ordinarily for someone to
4 be concerned about releasing a personal guaranty of
5 that note because that's a totally completed
6 transaction, correct?

7 A I would not know that.

8 Q Okay.

9 A This is my first time doing it.

10 Q Uh, when Larry's talking about a personal
11 guaranty, he said, is Tonja working on releasing my
12 personal guaranty, you were aware of the personal
13 guaranty that he had with Mac for the general open
14 accounts, if you will call them, right? The exhibits
15 to that guaranty agreement, you are aware of that as
16 well?

17 A We had a guaranty on an ongoing business,
18 yes.

19 Q So when he's asking you about releasing my
20 personal note, I think we've established before that
21 he didn't have a personal note. He had a personal
22 guaranty, which ends. Why wouldn't he, of course, be
23 talking about the guaranty that's the subject of this
24 litigation today?

25 A I don't know.

1 **MR. JOHNSON:** Your Honor, objection to
2 leading. He's asking about Mr. Kudeviz's mental
3 state.

4 **THE COURT:** Sustained.

5 **BY MR. ELLIS:**

6 **Q** Well, my question to you, though, is you
7 understand he has a personal guaranty that has been
8 marked as -- as Exhibit 2. You understand he's got
9 that signed, correct?

10 **A** I understood he had this personal guaranty
11 also, yes.

12 **Q** Okay. And you understand that he's also got
13 a -- he also signed a later document which we will
14 argue about the meaning of later, but that -- you
15 understand he's got a personal guaranty, right?

16 **A** I understand -- yes, he's signed a personal
17 guaranty, if that's what you're asking.

18 **Q** Okay. And then you also testified that you
19 understand that when he's talking about a personal
20 note, he's talking about his personal guaranty,
21 right?

22 **A** Yes.

23 **Q** In Exhibit 9, he asked you is Tonja working
24 on releasing my personal note. Your response is yes,
25 she is. Right? And feel free to call her about

1 anything related to the note, right?

2 A He asked is she working on releasing. Yes,
3 she is working. Please feel free to call her.

4 Q Well, not just yes she is working, she is
5 working on releasing the personal note.

6 A She was working on -- exactly what that
7 says. She was working on it. Please feel free to call
8 her.

9 Q Well, what I'm trying to understand is --
10 I'm trying to be sure we get clarification ---

11 A Sure.

12 Q --- as to exactly what this says and what's
13 a reasonable understanding of it. Mr. Kudeviz asked
14 you is she working on releasing my personal note,
15 which you understand to mean personal guaranty. You
16 respond -- you're his contact at Mac?

17 A Uh-huh.

18 Q You're the person he talks to. You said,
19 yes, she is and feel free to contact her on anything
20 related to the note, right?

21 A I did say that in the email, yes.

22 Q So in the email, were you saying feel free
23 to contact her? When you are telling somebody you
24 must call somebody, why would you use the term feel
25 free to contact her? Feel free and you must don't

1 mean the same thing, do they?

2 A Well, considering that I was pretty direct
3 in telling Larry before to contact Tonja, I didn't
4 realize that I had to say you must contact her.

5 Q He sent you an email and asked you is she
6 working on releasing it. You say yes, she is and feel
7 free to contact her. That doesn't mean the same thing
8 as I don't know if she is or not and you have to call
9 her, does it?

10 A All I know is he asked me the question is
11 she working on it. I said yes, she's working on it,
12 feel free to call her.

13 Q With respect to -- with respect to
14 releasing the personal guaranty, again, these
15 guaranty agreements provide that a guarantor such as
16 Mr. Kudeviz has a unilateral right to release -- to
17 terminate the guaranty, correct?

18 A I have no idea.

19 Q Well, I mean you have --

20 A I mean, based upon -- based upon what you
21 all have talked about today, it's my understanding.

22 Q A continuing guaranty like this, he can
23 terminate the guaranty on his own, right?

24 A All I know is what I read on the document.
25 You are the attorney. You tell us.

1 Q And so all that really needs to be done
2 from Mac Papers release standpoint, from a working on
3 it standpoint would be for Mac Papers just to update
4 its own records, right?

5 A I have no idea.

6 Q Even though you were at Genesis in 1992,
7 you were not involved at all in Exhibits 1 and 2,
8 right? That's the original credit app.

9 A I wasn't at Genesis in 1992.

10 Q I'm sorry. When did you go to work there?

11 A You said when you were involved with
12 Genesis in 1992.

13 Q I'm glad that you corrected me. I'm very
14 sorry. When you worked at Mac in 1992, right?

15 A Yes. I started working for Mac in 1992.

16 Q Yeah, I apologize. You're correct. So when
17 you started at Mac, you were not involved with
18 Genesis, right?

19 A Correct.

20 Q You got involved with Genesis in 2007?

21 A Correct.

22 Q So you do not know what any sort of
23 consideration may or may not have been originally
24 given for the guaranty agreement or the credit app or
25 in response to the credit app, do you?

1 **A** Correct. I was not employed until 1992. The
2 original credit app was 1991.

3 **Q** Okay.

4 **MR. ELLIS:** Excuse me just one moment.

5 **THE COURT:** That's alright.

6 **BY MR. ELLIS:**

7 **Q** Going back to the note issue, Exhibit 6,
8 there would be nothing left to be paid -- there would
9 be nothing left for Genesis to pay once that note's
10 paid off, right?

11 **A** It is my understanding once the note's paid
12 off, it's paid off.

13 **Q** I'm sorry. There's nothing else for Larry
14 to pay on that note once the note's paid off. Once
15 Genesis has paid off the note, you guys get your
16 money. Larry doesn't have any further responsibility
17 from that note because there's no more responsibility
18 for that note, right?

19 **A** On that note. As far as UCC and everything
20 else associated with it, once again, that's Tonja's
21 department.

22 **Q** Okay. Uh, do you recall Larry saying to you
23 that he was not any longer going to have any personal
24 guarantees, that he would rather close the business
25 and pay COD than have a personal guaranty?

1 A I do not recall.

2 Q Do you recall his discussing with you how
3 big a deal the personal guarantees were made during
4 the trial throughout the fire?

5 A If he did, I did not recall.

6 Q Nothing further. Thank you.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q Mr. Boortz, I'm going to ask you to look at
11 Exhibit 2, Plaintiff's Exhibit 2, which are the two
12 guarantees in this matter. I've underlined some
13 language so it's easier to find. Read that language
14 real quick. Not out loud. Just to yourself.

15 A Okay. (Reviewing.)

16 Okay.

17 Q As Mr. Ellis was just asking you, it's
18 clear from the language in Exhibit 2 that Larry --

19 MR. ELLIS: Objection. I'm objecting to
20 the leading nature of the question.

21 THE COURT: All right. The anticipatory
22 objection.

23 MR. ELLIS: Yes.

24 BY MR. JOHNSON:

25 Q From looking at the language of Exhibit 2,

1 do you believe that Larry could unilaterally
2 terminate this guaranty?

3 A Essentially, what I read and what I believe
4 is what's written in here, which essentially says the
5 guaranty contains no limitations and conditions
6 except as written herein, may be modified only in
7 writing, signed by the parties hereto, and is to
8 remain in full force and effect until written notice
9 of its termination is received by registered mail by
10 Mac Papers, Incorporated, successors or assigns, at
11 its office in Jacksonville, Florida, except the
12 written termination of this guaranty by the
13 undersigned shall be effective only as to future
14 credit from and after the date Mac Papers,
15 Incorporated, its successors or assigns receives
16 aforesaid notice.

17 Q Okay. Pursuant to this guaranty agreement,
18 what action needed to be taken to terminate this
19 guaranty?

20 A Larry needed to send, uh, I guess,
21 termination by registered mail.

22 Q And so the work that needed to be done to
23 release this was work by who?

24 A By Tonja.

25 Q Work to terminate it.

1 A Larry. Which is why I told Larry he needed
2 to contact Tonja on anything associated with it.

3 Q That's all the questions I have.

4 **RECROSS EXAMINATION**

5 **BY MR. ELLIS:**

6 Q But if he needed to contact Tonja, why did
7 you say feel free to contact Tonja and not you need
8 to contact Tonja?

9 A I didn't realize it was that big of a
10 designation. I didn't realize I had to be extremely
11 forceful.

12 Q Well, it's a question of communicating with
13 your client over something that's extremely
14 important, right? I mean, he is asking you about
15 being released from a personal guaranty. A personal
16 guaranty is a fairly big deal to most people, isn't
17 it?

18 A I would assume so, yes.

19 Q So he's asking you about that. And he's
20 asking you if she's working on it, is she working on
21 it.

22 A Sure.

23 Q You said yes, she is and feel free to
24 contact her.

25 A Just like I told him many times, or in that

1 meeting, contact Tonja.

2 Q So you think that you need to contact Tonja
3 or contact Tonja means the same thing as telling
4 somebody yes, she's working on it and feel free to
5 contact her. You think those mean the same thing to
6 you?

7 A Any way I -- any way I worded it, whether
8 it was you must call her, feel free to call her, he
9 needed to contact Tonja.

10 Q Uh, the point of registered mail, the point
11 of sending somebody registered mail was just to make
12 sure that the recipient actually gets the notice,
13 right?

14 A Yes. When I've sent certified mail, I got
15 the receipt. That's to make sure they received it.

16 Q Certified mail and registered mail aren't
17 the same thing though, right?

18 A I don't know.

19 Q The agreement also says, though, this could
20 be modified in writing, right?

21 A Which agreement are you talking about?

22 Q I'm sorry. The guaranty agreement, Number
23 2. May be modified only in writing.

24 A Correct. If that's what I read, then that's
25 what it says.

1 **MR. ELLIS:** Okay. Nothing further. Thank
2 you, Your Honor.

3 **THE COURT:** All right. Anything else, Mr.
4 Johnson?

5 **REDIRECT EXAMINATION**

6 **BY MR. JOHNSON:**

7 **Q** Is there a requirement that goes with it
8 that it be modified in writing, if you wanted, the
9 guaranty?

10 **A** Give me the one you underlined obviously.

11 **MR. JOHNSON:** And Your Honor, I would say
12 that the document speaks for itself as well.

13 **THE COURT:** I will tell everybody I'm
14 going to review the exhibits certainly very
15 thoroughly, but go ahead. You can answer the
16 question.

17 **THE WITNESS:** All right. Where am I
18 reading again, Townes? Oh, right here. Okay. You
19 just want me to read from here, may be modified?

20 **BY MR. JOHNSON:**

21 **Q** Yeah. In writing. What does it say after
22 modified in writing?

23 **A** May be modified only in writing signed by
24 the parties.

25 **Q** Signed by the parties.

1 A Right. Signed by the parties.

2 Q Is there anything that you executed to
3 modify any guaranty agreement in this matter?

4 A No.

5 MR. JOHNSON: That's all the questions I
6 have.

7 **RECROSS EXAMINATION**

8 BY MR. ELLIS:

9 Q Just to follow up on that, on Defendant's
10 Exhibit 1 that I handed to you, the stack of papers.

11 A Yes.

12 Q When Larry sent you an email that says I
13 need 14,500 pages of cream colored paper, did you
14 think that was something you needed to do for him?

15 A That was something that I needed to look
16 into for him, yes.

17 Q Well, that's an order, right? I mean, he
18 says I need to order this paper and you sent him the
19 paper based on the email he sent you, right?

20 A Well, subject matter says please ASAP
21 14,500 sheets of 2335 any cream colored offset. So
22 what I read that as is he wants to order 14,500
23 sheets of 2335 any cream colored offset.

24 Q So based on that, you give him the 14,500
25 pages of cream colored offset?

1 **A** Then I called his purchasing agent first. I
2 needed a PO. Everything had to be associated with PO.

3 **Q** But in the course of any these things that
4 he gave you, I mean, if somebody sent you an email
5 saying I want something, you took action based on the
6 email, right?

7 **A** I took action in looking into it, yes.

8 **MR. ELLIS:** Okay. Nothing further. Thank
9 you.

10 **THE COURT:** All right. Anything else, Mr.
11 Johnson?

12 **REDIRECT EXAMINATION**

13 **BY MR. JOHNSON:**

14 **Q** Mr. Boortz, it's good business practice to
15 reply to a purchase order request, isn't it?

16 **A** Yes.

17 **THE COURT:** Anything else?

18 **MR. ELLIS:** I think we're done.

19 **THE COURT:** All right.

20 **MR. JOHNSON:** That's all that I have, Your
21 Honor, and the plaintiff will rest.

22 **THE COURT:** All right. I'll tell you what,
23 why don't we wait until after lunch for any
24 motions that we might need to take up.

25 **MR. JOHNSON:** Okay.

1 **THE COURT:** Let's start back at, uh, --
2 let's start back at two o'clock. You think that
3 will give you time to get finished?

4 **MR. ELLIS:** Certainly, yeah. Yes, ma'am. I
5 won't take that long, I don't think.

6 **THE COURT:** Okay. All right.

7 **MR. JOHNSON:** And Your Honor, if we could
8 start back at maybe 1:30, that would be great.
9 They have to drive back to Jacksonville.

10 **THE COURT:** Does that give y'all enough
11 time to get lunch and get out of the courthouse?

12 **MR. ELLIS:** I would assume so.

13 **THE COURT:** Okay. All right. All right.
14 Well, we'll give every effort to start back at
15 1:30.

16 **MR. JOHNSON:** Okay.

17 **THE COURT:** My lunch is sitting in my
18 office, but getting in and out of the
19 courthouse, I didn't know how long it would take
20 y'all. All right. All right. Well, we'll be in
21 recess until 1:30.

22 **MR. JOHNSON:** Thank you, Judge.

23 (WHEREUPON, a lunch recess is taken.)

24 **MR. ELLIS:** I'd like to present a motion
25 to the Court please.

1 **THE COURT:** Yes, sir.

2 **MR. ELLIS:** It's a -- non-jury cases are a
3 little bit, uh, -- a little confusing to me.
4 Judgement as a matter of law, Rule 41 or
5 directed verdict.

6 **THE COURT:** Yes, sir.

7 **MR. ELLIS:** I would like to ask the Court
8 to consider this. Your Honor, obviously, the
9 less supportive point we're stressing here is
10 our belief that the guaranty agreement at issue
11 here, the operative one, is the 1992 guaranty
12 because the other one was just for an update. It
13 was not accomplished with a new credit app or
14 any sort of reconsideration. But it was
15 terminated and it was terminated by this email,
16 that's Plaintiff's 9. And the reason for that is
17 that the only operative guarantee that didn't
18 terminate by its own accord was this personal
19 guaranty that's at issue in this case. The, uh,
20 -- the note and guaranty that was introduced as
21 Exhibit 6, that terminates by itself. Once
22 that's paid off, that's gone. There's nothing
23 else to do.

24 Your Honor, let me present it to you this
25 way. If Mac Papers, if Mr. Boortz had written an

1 email to Larry and Larry had said it's my
2 personal note, terminate it, and Mac Papers
3 writes back and says, yes, it is. Understanding
4 they are talking about personal guaranty, I
5 don't think this court would allow them to come
6 in and say well, you didn't send something in by
7 registered mail. If Mac had clearly said to
8 Larry Kudeviz, sent something, an email, that
9 said Larry, this hereby informs you that your
10 personal guaranty with Mac Papers is hereby
11 terminated, I don't think that this court would
12 allow Mac Papers to stand on ceremony and say,
13 well, you've got to send something by registered
14 mail, we can still put it out two years later
15 because he's got a right to rely on that. That's
16 his relationship with these folks.

17 Your Honor, what I would suggest to the
18 court is that particularly as a matter of --
19 it's more of a matter of contract, as a matter
20 of equity. I don't think this is particularly
21 different from that. If it isn't -- if it is
22 somewhat different, you know, on a -- my burden
23 of proof on this thing is not going to be 100
24 percent. The question is by a preponderance of
25 the evidence. And the question is, uh, when

1 Larry is talking about his personal note, and
2 it's understood he's talking about a personal
3 guaranty and it's understood also that he can
4 terminate that unilaterally, Mac Papers doesn't
5 have to approve it. Mac Papers doesn't have to
6 meet with somebody. There's not a credit
7 committee there that gets to say we've decided
8 not to release your guaranty.

9 In the context of what I call a
10 conventional guaranty, that is what you would
11 have. When somebody guarantees a promissory
12 note, if you sign a note for a child's car or
13 something and you call the bank and say I'd like
14 to be released from my guaranty before it's paid
15 off, people at the bank would have to have a
16 meeting about it. They would have to decide
17 whether or not to release. 99 times out of 100,
18 they wouldn't.

19 This is not that situation. This is
20 something that as soon as Mac Papers knows Larry
21 wants to be released from the guaranty, he's
22 released from the guaranty. So the question is
23 when Craig writes back and says -- when Larry
24 says yes, is she working on it, those are his
25 words, the only work that needs to be done is

1 for a backup. What Craig sends back is a
2 confirmation that Mac Papers knows that he wants
3 to be released from the guaranty. That's what
4 that effectively is. It is something that tells
5 him I want to be released from the guaranty. So
6 at that point, Mac knows. At that point, Mac is
7 not entitled to rely anymore on the existence of
8 the guaranty.

9 What Craig says next, which is the subject
10 of a good bit of the testimony was, he said feel
11 free to call her. Feel free to call her does not
12 mean the same thing as you need to call her.
13 That doesn't mean the same thing as you've got
14 to call her. Feel free means to call her -- feel
15 free to call her means you don't need to call
16 her unless you've got something else you want to
17 know.

18 So when the message is given that says, uh,
19 yes, she is, that's all really Mr. Kudeviz needs
20 to know at that point and say, okay, that's off
21 my list. I don't have to do this anymore. And
22 Your Honor, I think that it is a correct
23 argument to say that modifies the agreement that
24 they have in place.

25 Now, one of the things that came up is I

1 brought up the fact that this email constitutes
2 a writing. Your Honor, the contract says that it
3 has to be signed by the parties. Your Honor,
4 this was originally written in 1991. We don't do
5 business quite the same way we did in 1991. We
6 email things to each other all the time. Your
7 Honor, as far as I know, email agreements are
8 usually enforceable. I mean, lawyers certainly
9 transact business that way all the time. We
10 email to each other about are you willing to
11 settle the case, yes, I'm willing to settle the
12 case. If someone grants you an extension in
13 writing and somebody says an email doesn't work,
14 we would all strongly disagree with that. So I
15 do think that an email does constitute a writing
16 sufficient to satisfy a modification of this.

17 Again, starting with the fact that if Mac
18 tells Larry, yes, this is being done, he's
19 entitled to rely on this and say that am I going
20 to -- to understand that that agreement has been
21 terminated. And Your Honor, if it has not -- I
22 will say this, the concept of whether or not
23 Tonja is working on it, that's Mac's internal
24 processing. Once again, Mac doesn't have the
25 power not to accept the termination. Mac can't

1 say to him, okay, we're not going to send you
2 paper anymore. They can say, okay, we're going
3 to sell it to you only on COD, but Mac doesn't
4 have the power not to accept termination of the
5 guaranty. So as far as her working on it,
6 there's nothing left for Larry to do on his
7 side. So, Your Honor, first of all, I think
8 there has been a termination of the guaranty by
9 notifying Larry that when he asked is she
10 working on releasing my personal note, and he
11 says yes and she is.

12 Your Honor, I would also, in addition to
13 just a flat-out termination, I would also go to
14 the doctrines of equitable estoppel, promissory
15 estoppel of waiver. Your Honor, equitable
16 estoppel, we set forth the elements in our
17 pretrial brief. Conduct by the party which
18 amounts to a false representation or concealment
19 of material facts.

20 Your Honor, I would note for the court
21 that, uh, under the same case that was cited,
22 equitable estoppel doesn't have to be
23 intentional. If you say something to somebody
24 that has the effect of misleading them, that
25 could still constitute equitable estoppel. So we

1 don't have to find that -- it doesn't have to be
2 found that Craig Boortz was intentionally
3 misleading Larry. It just has to be found that
4 he said something that lead Larry to believe
5 that the facts were different than they were.

6 Number 2, the intention that such conduct
7 be acted upon by the other party, I think that
8 could be inferred from the fact of him asking
9 you if something is being done and the response
10 is yes, it is.

11 Third, actual knowledge -- knowledge,
12 actual or constructive of the true facts. Once
13 again, their position is that they knew a
14 different way that this agreement had to be
15 terminated. So we certainly would have had that.
16 As to the parties estopped, lack of knowledge
17 and means of knowledge as to the truth of the
18 facts in question.

19 Your Honor, the way I think the courts have
20 interpreted this is to say if somebody is
21 telling you -- is making a promise to you and
22 it's a reasonable promise, you are entitled to
23 understand and rely on that. Let me give you a
24 -- let me give you an example that I think of
25 lots of times. If we get scheduled for a hearing

1 and I need to call Steve Lopez and say can we
2 get this continued, can we get it taken care of
3 and I get an email back that says yeah, that's
4 taken care of, it's pushed off, that's actually
5 technically different than what the rules say
6 I'm supposed to do in asking for relief. I don't
7 think I've got to go back and file a motion that
8 says that.

9 One might say, well, you have a means of
10 knowledge of the truth. The fact of the matter
11 is when a person that I deal with, who I know is
12 authorized to deal with me on behalf of the
13 court tells me something and tells me this is
14 taken care of and its fine, I'm entitled to rely
15 on that. I think that's the same situation here
16 with Mr. Boortz. Mr. Boortz is -- he's not a
17 low-level employee. He's the general manager of
18 the account. He is the contact for the account.
19 That's why I think that is applicable there.

20 Your Honor, reliance and prejudicial --
21 presidential -- prejudicial change in position.
22 Now, I understand the court might say -- and I'm
23 certainly going to present evidence on this if I
24 need to, uh, additional evidence as to what Mr.
25 Kudeviz thought and what he was doing, but

1 obviously, Mr. Kudeviz did not take any further
2 action. What the Court also heard Ms. Van Zandt
3 testify to is yeah, Larry said I don't have a --
4 what are you talking about, I don't have a
5 guaranty anymore. He thought they had sent him
6 something. But the fact is, Larry did think he
7 had communicated with them. I think that
8 equitable estoppel applies.

9 Your Honor, if not equitable estoppel,
10 promissory estoppel, a promise, the presence of
11 a promise unambiguous in its terms. Again, the
12 only personal guaranty that was left that did
13 not die on its own having been extinguished was
14 the personal guaranty at issue. Reasonable
15 reliance upon the promise by the party to whom
16 the promise is made where he clearly relied on
17 it. Reliance is expected and foreseeable by the
18 party who makes the promise. Clearly it's
19 foreseeable if he says is she working on it.
20 Yes. Clearly, if you use the language feel free
21 to call her, not you must call her, but feel
22 free to call her, as I said, the ordinary
23 meaning of those words is you don't have to call
24 her.

25 Finally, the party to whom the promise is

1 made sustains an injury. Well, if this court
2 were to say despite this, you still have to, uh,
3 -- you still have to send in your registered
4 letter, then Larry has certainly been injured by
5 conduct by Mac Papers. If he still had to send
6 in a registered letter, because once again, once
7 somebody tells you something and tells you
8 something is taken care of, he's entitled to
9 say, well, that's off the list.

10 Your Honor, finally, the third document on
11 that is waiver, which is voluntary
12 relinquishment of a known right. Waiver and
13 equitable estoppel are very closely related
14 documents. The court say waiver is, basically,
15 even if you have the right to rely on the strict
16 terms of the guaranty, if you are essentially
17 told by somebody that something's being taken
18 care of, you have waived the right to come in
19 and strictly enforce your guaranty.

20 Your Honor, while we're on the subject of
21 the strict enforcement of the guaranty, one of
22 the things, though, that is critical to Mr.
23 Kudeviz's position is if the Court says we've
24 got to go with strict enforcement of the
25 guaranty, exactly the way its written and all

1 that, Your Honor, the strict enforcement -- the
2 strict guaranty states that, uh, the amount of
3 credit desired was \$70,000, this is the part of
4 -- this is the part of practicing law that I
5 really, really like, I have to say. I had to
6 struggle to understand what a guaranty meant.
7 It's actually rather interesting.

8 I was trying to understand the
9 consideration aspect of this. Because when Larry
10 and the other two gentlemen first signed this
11 guaranty, no consideration was given for the
12 guaranty agreement. There was no consideration,
13 no promises made, nothing that said you are
14 going to have this -- you're going to have this
15 credit going forward. But in trying to
16 understand what this meant, continuing
17 guarantees do exist. My thought was, okay, that
18 seems a little too cute to say that you could
19 sign a guaranty, you could get, uh, paper
20 shipped in and then go, I don't have any
21 responsibility for it once you order the paper.
22 So I found out what the answer is on this, I
23 think.

24 **THE COURT:** Okay.

25 **MR. ELLIS:** And I am going to -- these

1 are cases that I'll hand up to you. They all
2 essentially say the same thing. They all
3 essentially say the same thing, and what they
4 say is that when you don't have present
5 consideration given for a continuing guaranty,
6 what that does is that puts the guarantor in the
7 position of being the offeror. And every time
8 goods are shipped in reliance upon that
9 guaranty, that shipping is the consideration
10 given for that offer.

11 So each one of these -- so rather than the
12 guaranty being a long-term binding contract, the
13 way all the courts I've seen have viewed this
14 as, each one of these is a separate transaction
15 in which the offer stands as a -- the guaranty
16 stands as an offer to do business, Mac Papers
17 accepts that offer by shipping the goods. Here's
18 why that's so critical to this case. The
19 offeror is the master of the offer. The offeree
20 does not have the power to change the terms of
21 the offer. If I offer to sell you 10 acres, you
22 can't say I'll take five acres. We have a deal.
23 You can only take what I offered you. If I
24 offered you five acres, you can't say I'm going
25 to take seven acres, we have a deal. You can

1 only take what I offer you. If you don't take
2 what I offer you, then we don't have a contract.

3 Your Honor, the importance of that for this
4 case is the amount of credit desired on the
5 credit application was \$70,000. That's what it
6 said. I asked Ms. Van Zandt, and she testified
7 accurately, and I don't think there is any
8 dispute about this, but the original guaranty
9 and the credit application were all part of the
10 same transaction. They were done as a part of
11 the same transaction.

12 It is clearly the law of Florida where this
13 was entered into. It's the law of South
14 Carolina, too, I'm fairly sure. I mean, I'm real
15 sure that documents that are part of the same
16 transaction ought to be considered together. So
17 when you have two separate documents part of the
18 same transaction, they are to be considered
19 together. So the amount of the guaranty
20 initially was \$70,000. That's what these people
21 agreed to be personally liable for.

22 You can clearly, under South Carolina law,
23 and I think under any law, you can certainly
24 have a limited guaranty. I can -- I can agree
25 you can sell my company \$500,000 worth of stuff.

1 I agree to be liable up to 100,000. You can
2 clearly do that.

3 So, Your Honor, I think that that's the
4 critical fact of understanding how consideration
5 works with a guaranty. This was not a long-term
6 binding contract. Mac was not the offeror. Mr.
7 Kudeviz and the other guarantors were the
8 offerors. So if the Court finds that the
9 guaranty is valid, it could have only been valid
10 after \$70,000.

11 Your Honor, there's also the issue of the
12 fact as to the offeree that says this is to be
13 reviewed in 1992. Now, once again, I think if
14 Genesis were -- I mean, if Mr. Kudeviz and the
15 others weren't the offerors, we might say that's
16 kind of hard to understand what that means, but
17 they are the offerors. They are the ones who
18 were saying these are the parameters we were
19 putting on Mac. You could take it or leave it
20 and every time Mac accepts, they would have to
21 do a separate contract. I think, Your Honor,
22 from that standpoint, Mac, again, doesn't have
23 the power to extend it.

24 Once again, Your Honor, I would point out
25 that the testimony is clear that this second

1 guaranty agreement that Larry was asked to sign,
2 in Ms. Van Zandt's deposition, she clearly
3 testified that was just for the purpose of
4 updating. It wasn't new consideration. Nothing
5 new happened. It was part of an ongoing process.
6 That was just for the purpose of updating. Also,
7 in her email, she said this was just to update
8 the records. I think that is accurate. That's
9 what it was for. I don't -- I think it was made
10 clear in writing by Mac through Ms. Van Zandt
11 that this was not a new guaranty. The original
12 guaranty was the operating guaranty. Again, as I
13 pointed out, they sued Mr. Zisook on that. So
14 they clearly believed that the 1991 guaranty was
15 the operative guaranty.

16 Your Honor, based on that, I believe I've
17 gotten everything. Your Honor, I think that the
18 sort of key to this is the fact that, as I
19 stated in the pretrial, I think the biggest key
20 to this is understanding that a continuing
21 guaranty is revocable by the guarantor. It
22 doesn't have to have a meeting of the creditors
23 to determine if they are going to let you out of
24 it. He has a right to terminate. Your Honor, I
25 think that the conduct and the facts allow that

1 to be done.

2 Again, Your Honor, I think that these
3 emails constitute, basically, an electronic
4 signature exchange between these parties. Again,
5 Your Honor, I think that contracts, now emails
6 constitute writings between parties that can
7 serve to modify a contract. Again, I think -- I
8 think that -- we do business by emails all the
9 time. I think that would satisfy as a writing.
10 Even if not, Your Honor, I think that they are
11 estopped to deny this or if not, they have
12 waived it. So thank you very much.

13 **THE COURT:** Thank you.

14 Yes, sir.

15 **MR. JOHNSON:** Multiple items to cover, Your
16 Honor. I guess the first prong that I want to
17 cover is the actual consideration prong on each
18 of the guarantees. Your Honor, you heard
19 testimony from Ms. Van Zandt regarding the
20 second guaranty that Mac Papers would not have
21 continued to provide supplies on a credit basis
22 if those documents had not been signed. That, in
23 and of itself, is consideration enough to
24 support a continuing guaranty.

25 **THE COURT:** Okay.

1 **MR. JOHNSON:** In regard to the first
2 guaranty, obviously none of my folks were
3 employed by Mac Papers in 1991. But Mr. Kudeviz
4 testified and he will testify again this
5 afternoon that that was necessary for them to do
6 business with Mac Papers. Obviously, again,
7 enough consideration just for the validity of
8 the guaranty.

9 As it relates to both guarantees, Your
10 Honor, if the first guaranty is limited by this
11 credit -- and I'm going to get to that in a
12 minute -- that credit limit or limited in time
13 to March 21st, 1992, then this second guaranty
14 would be in full effect as it relates to Mr.
15 Kudeviz. It is not based on any different --
16 it's based on a completely different credit
17 limit and it's not limited to a certain fact of
18 time. We don't agree with that position that
19 it's limited in money or in time. But if that's
20 the position that they take, then obviously, the
21 second guaranty is not limited by any of those
22 parameters.

23 Your Honor, as Mr. Ellis said, the original
24 guaranty and the original credit app were signed
25 in Florida. Florida law governs those documents.

1 May it please the Court?

2 THE COURT: Of course.

3 (WHEREUPON, Mr. Johnson hands a document to the
4 Court.)

5 MR. JOHNSON: Florida law is very clear
6 that unless the guaranty on its face limits the
7 liability -- but a credit limit does not limit
8 any liability. So the case in hand, not only
9 does our documentation not even put a credit
10 limit, it's a credit desire. Even if it did put
11 a credit limit, Florida law is clear that that
12 is not a limitation on the liability under a
13 personal guaranty.

14 Your Honor, uh, with respect to the
15 argument for waiver, waiver is the unequivocal
16 intent to relinquish a known right. There was no
17 testimony earlier today that Mac Papers' intent
18 was to release the personal guaranty on the
19 account. None whatsoever. So there could be no
20 waiver of that obligation in this matter.

21 As it relates to promissory estoppel, Your
22 Honor, -- may I approach?

23 THE COURT: Oh, certainly.

24 (WHEREUPON, Mr. Johnson hands a document to the
25 Court.)

1 **MR. JOHNSON:** Page 16 of this case, it's
2 very clear that in South Carolina, equitable
3 relief is precluded under a theory of promissory
4 estoppel if the estoppel claim is in direct
5 conflict with a specific contract term. Your
6 Honor, that's exactly what they are claiming in
7 this matter. It's in direct conflict with a
8 specific contract term, which is that this
9 guaranty be terminated in writing by registered
10 mail, sent to Jacksonville, Florida. So, Your
11 Honor, promissory estoppel could not occur in
12 this matter.

13 With respect to equitable estoppel,
14 equitable estoppel is based on a maxim on common
15 law that no man may take advantage of his own
16 wrong. Your Honor, if anyone is trying to take
17 advantage of this situation, it's Mr. Kudeviz
18 with there not being this guaranty or this
19 obligation. The testimony today that you've
20 heard so far is that Mac Papers would not take
21 on this risk if there's not a guaranty in place.

22 The elements, as Mr. Ellis pointed out, of
23 equitable estoppel is that the conduct of the
24 parties stopped, which amounts to a false
25 representation or concealment of material facts.

1 Your Honor, the only conduct that they are
2 talking about is this email. As Mr. Ellis
3 hammered over and over and over again, in a
4 continuing guaranty situation, the guarantor has
5 the unilateral power to terminate. That's
6 absolutely the law.

7 In this situation, Mr. Kudeviz could have
8 done this by writing a letter at any point in
9 time. And there's nothing that Mac could have
10 done as far as enforcing the guaranty. Why then
11 would he ask if Mac Papers is working on
12 releasing the guaranty or, in his words,
13 releasing a personal note? As Mr. Ellis said
14 just a moment ago, in a situation of a
15 conventional guaranty, as he said on a
16 promissory note, there is a negotiation and
17 there is work to be done as it relates to a
18 guaranty on the note. Your Honor, there is no
19 work to be done on a continuing guaranty. He had
20 the right to terminate pursuant to the agreement
21 itself and he chose not to do that.

22 Furthermore, Mr. Boortz testified that
23 there was a guaranty on the note, a guaranty on
24 the account, and there was some confusion to him
25 as to what was being discussed. In our

1 conversation, he testified that Mr. Kudeviz
2 needed to talk to Tonja, that is, Tonja Van
3 Zandt. That is clear that that conversation
4 happened because in Larry's email, he references
5 Tonja Van Zandt. So he knows prior to that email
6 that this directive needs to come from Tonja.
7 Craig replies, yes, she is working on releasing
8 the personal note. Please feel free to give her
9 a call. Here is her number. The testimony today
10 was there never was a call. Mr. Kudeviz never
11 followed up, never took any affirmative action
12 with corporate headquarters to terminate this
13 guaranty.

14 Why that's important is, Your Honor, that
15 contractual provision that the notice of
16 termination be sent to headquarters is for a
17 purpose and that purpose is that headquarters,
18 who is making the credit decisions, are aware of
19 when guarantees no longer exist. In this
20 instance, Ms. Van Zandt had no knowledge, and
21 she was the one who would have had knowledge,
22 she had no knowledge of the guaranty ever being
23 asked to be released.

24 Your Honor, from the very face of what they
25 are asking, there is no request as Mr. Ellis

1 said in his hypothetical. I hereby revoke my
2 guaranty. That's not what was said. It's an
3 open statement. Is it being worked on. Not only
4 is it an open statement as it relates to -- it
5 relates to a personal note and that is confusing
6 and ambiguous, to say the least, about what he
7 is talking about, since there is nothing to be
8 worked on as far as it relates to a personal
9 guaranty.

10 To Mr. Ellis' point about how business is
11 done via email, and those are writings, that's
12 obviously true in certain circumstances, but
13 when there is a contract in place that requires
14 writings to be signed by the parties, there
15 can't be just these arbitrary writings, emails,
16 oral correspondence to modify the written
17 contract.

18 **THE COURT:** I guess, Mr. Ellis, that's
19 really my -- that really gets to the heart of my
20 question about this. Maybe we're fast-forwarding
21 to after I heard your testimony. I understand
22 that a guarantor could just say I don't want to
23 be -- I don't want to be a guarantor anymore
24 and here is my notice, I don't want to be a
25 guarantor anymore. But if the guarantor has

1 entered into a contract, you can't -- the way
2 you do that, I mean, are you saying it can't be
3 modified? In other words, he entered into this
4 guaranty agreement and he -- he entered into
5 that agreement with specific terms a specific
6 way that he could terminate that agreement.

7 MR. ELLIS: Yes, Your Honor, but it's
8 South Carolina law that a contract that says by
9 its terms it can only be modified in writing can
10 still be modified orally. South Carolina does
11 not respect that.

12 THE COURT: I just -- I wondered if in the
13 guaranty world if you knew of anything that said
14 specifically that you could not do that, but
15 okay.

16 MR. ELLIS: Okay. But I'll -- I'll -- I
17 could respond a little further. There is a
18 Florida case I could give to you -- I don't have
19 it -- where it was basically, once the creditor
20 was on notice, that someone was not intending to
21 be liable for this debt anymore. The fact that
22 she did not give specific notice of the way it
23 was done in the contract, she was still released
24 from it. The guarantor had notice. I understand
25 what the court is saying. In most cases, you'd

1 expect to be followed. But once again, I will
2 say that -- I think what this court would agree
3 with me about -- I don't mean to stop you.

4 MR. JOHNSON: No.

5 THE COURT: I'll -- if you've got any more
6 to say, I certainly will be back to you and
7 allow you to do it.

8 MR. ELLIS: I think this court will agree
9 with me, though, that if Larry had received an
10 email from Mac Papers that says, just an email
11 that says, Dear Larry, we have reviewed this
12 matter. You are no longer personally bound by --
13 you were no longer bound by any personal
14 guaranty agreement with Mac Papers and that's
15 what the letter, that's what the email said. I
16 think this court would say, okay, Mac, you can't
17 come in here two years later and say you never
18 sent us a registered -- you never sent us a
19 notice by registered mail. I think the estoppel
20 principles, waiver principles, all of that would
21 apply to say no, you don't get to do that.

22 THE COURT: Maybe I'm not thinking this
23 one through. That would sort of be to his
24 benefit. It would be a different situation
25 because it would be -- whoever releases the

1 guarantor, it would be to his benefit.

2 MR. ELLIS: It works exactly the way this
3 one does. He would be deemed told by Mac Papers
4 you are no longer on the hook for this. He gets
5 an email from Mac Papers that says you are no
6 longer on the hook. I think the court would say
7 I'm not going to let you come in here with this
8 guaranty agreement and say that Larry still had
9 a duty to send in something by registered mail
10 after that email was sent.

11 What I would suggest to Your Honor is I'm
12 not really sure I understand why, from an
13 equitable standpoint, this is different because
14 Mr. Boortz understands we're talking about a
15 personal guaranty. Larry is asking if you are
16 working on releasing it. Understanding that, all
17 Tonja has to do to release it is update her own
18 files. The response is not I'll check, I'll get
19 back, I think she is, maybe she is. The response
20 is yes, she is and feel free to call her. I do
21 think this contract can be modified this way.

22 Contracts are modified by emails all the
23 time now. I -- you know, I don't know if this
24 gets as far as the Electronic Signature Act. The
25 Electronic Signature Act, if the conduct of the

1 parties mean that there's indication that the
2 parties intended, uh, -- basically intended to
3 transmit this message, that that constitutes a
4 new binding agreement. Your Honor, once again,
5 these contracts can be modified orally. I know
6 Mr. Boortz is not going to, and didn't and I'm
7 not accusing him of this, of saying, yes, I know
8 this was released. But if the Court were to
9 believe that, even that would modify this
10 writing.

11 THE COURT: I got you. Okay. You answered
12 my question. Thank you.

13 MR. JOHNSON: Thank you. My guess,
14 following along with that, Your Honor, these
15 hypotheticals, they are not what took place. At
16 the very most, there was an email from Mr.
17 Kudeviz asking if there was work to be done on a
18 personal note.

19 THE COURT: Why don't I just stop you
20 right there and just let me say I will deny your
21 motions at this time. I'm going -- I'm going to
22 want to hear the defense's case in this. We'll
23 have some -- hopefully, we'll have some time at
24 the end for, you know, for argument in this
25 case. I don't mean to stop you ungraciously. I

1 just didn't think you needed to go any further
2 if I was going to deny the motion. All right.

3 **MR. JOHNSON:** Thank you, Your Honor.

4 **MR. ELLIS:** Thank you, Your Honor. The
5 defense calls Larry Kudeviz.

6 **THE COURT:** Raise your right hand please.

7 **LARRY KUDEVIZ**

8 having first been duly sworn, testifies as follows:

9 **THE COURT:** Thank you, sir. If you will
10 have a seat please.

11 And so you want to -- you said you want to
12 offer Mr. -- am I saying it right?

13 **MR. ELLIS:** Zisook.

14 **THE COURT:** Zisook. I wanted to say it
15 right for sure. You want to offer that, this
16 deposition. I've got it here.

17 **MR. ELLIS:** Okay. I would like to. It was
18 actually a -- if I could swap out, there was a
19 highlighted error. What we said we were doing,
20 we're doing but there was a highlighted error I
21 noticed. So I wanted to make sure.

22 **THE COURT:** Let's straighten it. Thank
23 you. All right. Let me make sure I get rid of
24 these, if I'm not looking at the wrong ones. I
25 got you. Okay.

DIRECT EXAMINATION

BY MR. ELLIS:

Q State your name please.

A Larry Kudeviz.

Q Mr. Kudeviz, what was your relationship with Genesis Press?

A I was an owner.

Q Okay. How long were you involved with Genesis Press?

A 21 and a half years.

Q And, as we discussed before, this is your signature on Exhibit 2, correct?

A Yes, sir.

Q Okay. Just to confirm, too, when you initially signed Exhibit 2, uh, you didn't get any -- did you get anything back from Mac Papers saying congratulations or anything like that, anything that confirmed to you what sort of credit you had?

A No, sir.

Q Okay. There is a reference in here to the guaranty being reviewed on or before March of 1992, did that ever happen?

A To my knowledge, no.

Q Okay. Tell us -- tell us a little bit about Genesis moving to Greenville in 2007. What happened?

1 **A** Well, the move was precipitated by the fact
2 that in 2005, there were five hurricanes in South
3 Florida. The last one ended up tearing the roof off
4 of one of the buildings. We just got devastated and
5 massacred by it. I said, basically, I had had enough.
6 Also, the economy was going bad in South Florida.
7 Truckers never wanted to -- they never wanted to
8 really come into us. It was a bad place to do
9 business, nationally. I was looking for a better
10 place. By relocating, I was thinking about my
11 employees and looking for a better place where they
12 would have a better quality of life. So I went to
13 many places, but the bottom line is I narrowed it
14 down to Raleigh, Greenville, and I don't quite
15 remember the other one. I ended up choosing
16 Greenville, South Carolina.

17 **Q** You came to Greenville and then who was
18 your representative with Mac Papers that you worked
19 with?

20 **A** Well, it was Craig all along. Before that
21 was Katherine Brown in Miami.

22 **Q** Okay. And did you communicate with Craig a
23 lot?

24 **A** Well, all the time. I mean, he was my main
25 contact.

1 Q Okay. Tell us about the fire.

2 A The fire was -- we had a tough time in the
3 move, we really did. It was a lot, if you could
4 imagine, moving three or four buildings consolidating
5 it into one, moving the equipment. We went through a
6 lot more money than we thought. We took out some
7 extra loans. It was very difficult. It was really
8 tough. Just as we started to get it together -- and I
9 believe that Craig is well aware of this. But just as
10 we started to get it together, we started to click on
11 all cylinders. It's a big machine that has 100 moving
12 parts. All of a sudden, they started moving in sync.

13 We started doing real well and everything
14 was really going gangbusters. We were busy as
15 anything. We got hit with some graffiti that was very
16 upsetting. A week later, I believe it was, I believe
17 it was March -- someone said 28th. It was 28th, 29th,
18 30th, somewhere around there. We got hit with a very
19 contentious arson fire.

20 Q And what -- what -- tell the court a little
21 bit about the aftermath of the arson fire.

22 A Well, I mean it was -- it was nothing short
23 of tragic or horrible but the bottom line is when we
24 called up our insurance company, which was Hartford,
25 they came down and they did their investigation and

1 they ended up deciding that, uh, myself, my partner
2 Chris and Bruce had begun the fire. So they denied
3 our claim. At one point, I think it was October 2nd,
4 they actually arrested us for arson. October 7th, a
5 week later, the charges got thrown out. Some other
6 evidence came into light. Anyway, it ended up
7 resulting in a civil trial in federal court.

8 Q Okay. And then so in the civil trial,
9 Genesis was suing its insurer?

10 A Yes.

11 Q And the jury returned -- tell the court
12 what the jury returned.

13 A The jury returned a verdict in favor of
14 Genesis, but Hartford went to appeal on it. It was
15 what went on during the trial that was very
16 upsetting.

17 Q Okay. And I'll get to that in just a
18 minute.

19 A Okay.

20 Q But eventually, a settlement was reached,
21 right?

22 A Yeah, the settlement -- the jury was -- the
23 verdict came in on May 20th. The settlement was
24 reached on July 5th, 6th or 7th. Something like that.

25 Q Okay. When you -- when you got some money

1 in, what did Genesis do with reference to its
2 obligations to Mac?

3 A Well, with Mac and with all vendors, but
4 with Mac, we -- took us one day, I think, or maybe
5 two days to find out exactly what we owed. We wired
6 the money immediately.

7 Q Were they paid in full?

8 A Absolutely.

9 Q Okay. After Mac was paid in full, did you
10 have any conversations with Craig Boortz about your
11 personal guaranty?

12 A Yes, I did. I had conversations with many
13 people, but just referring to Craig, the answer is
14 yes. I told him, as I told everybody else, in no
15 uncertain terms do I ever want another personal
16 guaranty. I would just as soon pay COD, I would find
17 another vendor or I would close up the business, but
18 I would never take another personal guaranty again.

19 Q Why -- why do personal guarantees have such
20 distaste for you?

21 A When the trial opened up and the plaintiff
22 began their, their offense, their defense or their
23 charges, they had a graphic -- there was a screen
24 with a graphic up on the wall --

25 Q And this was the insurance company?

1 **A** Yes.

2 **Q** Okay. I'm sorry.

3 **A** Yeah, there was no criminal case at all.
4 And then there was a -- there was a graphic of me
5 sitting, just standing on the floor. Then they were
6 telling how much debt piled up. Then they showed a
7 little board on top of my head. There was a personal
8 guaranty from Mitsubishi. There was a personal
9 guaranty from the bank. They kept on piling all this
10 stuff up on top of me. I was a little guy about like
11 that. I became down to about an inch. But
12 realistically, it just made me sick and nauseous. And
13 I swore that day, that night, that I would never,
14 ever do a personal guaranty again. From America
15 Express to whoever it was, whichever ones they
16 listed. I don't even remember if they listed Mac
17 Papers in there. But any personal guaranty, I would
18 never do again.

19 **Q** And after -- after the trial was over with,
20 what did you do about all your personal guarantees
21 with various vendors?

22 **A** Well, we basically cancelled them. We
23 talked to People's Bank. We talked to the building
24 owner that we didn't want it. I remember talking to
25 Craig. I said, under any circumstances, I do not want

1 a personal guaranty. Matter of fact, with Mitsubishi,
2 we were renting a press. I was looking to buy it and
3 they wouldn't sell it to me without a personal
4 guaranty so I continued renting the press. I bought
5 another machine called a Kodak NexPress and I was --
6 I put down \$100,000 rather than put down \$10,000 and
7 take out loans because I absolutely refused to have a
8 personal guaranty. I just wouldn't have one.

9 Q Let me show you what's been marked as
10 Plaintiff's 9. Plaintiff's 9, on a separate note, is
11 Tonja working on releasing my -- I'm sorry. On a
12 separate subject, is Tonja working on releasing my
13 personal note, what did you understand you were
14 transmitting by that?

15 A Well, I told Craig, and we have
16 conversations on it, that I absolutely did not want a
17 personal guaranty, like I just said. When I wrote
18 that email, I was just making sure that my personal
19 guaranty, my personal notes, anything was going to be
20 eliminated. I asked him is Tonja working on it. I
21 realized Tonja was the individual that had to work on
22 it. I got the email back and said yes, she is, to me,
23 that meant that she was working on it. When I said
24 feel free to call her, to me, it was like if I had
25 any questions. But the fact that she was working on

1 it, I assumed that, well, if she didn't want to do
2 it, she certainly would have let me know. If there
3 was any questions about it, she would have let me
4 know. The fact that I paid Mac quickly and fast and
5 every penny that I owed them, I just assumed it was a
6 nonissue because I asked for it. Based on the email,
7 it was going to be done.

8 Q Did, uh, -- were there other paper venders
9 that you could have gotten the paper from? That
10 Genesis could have gotten paper from?

11 A Yes, as a matter of fact, we bought a lot
12 from Athens Paper after the trial. The answer is yes.

13 Q Okay. So after this -- after you got this
14 email, did you believe that you needed to do anything
15 further to make sure that, uh, the personal guaranty
16 had been extinguished?

17 A I swear it was all done. I know on the
18 mortgages that once those two notes were paid off,
19 there was nothing binding against it. The only thing
20 left was the fact of a personal guaranty. I just -- I
21 asked for it. I truly believed that it was taken
22 care of. Therefore, it was out of my mind.

23 Q Okay. Once again, did you have any personal
24 guarantees with anybody else?

25 A No, sir. Not after the fire. I take that

1 back. Not after we won the trial.

2 Q In 2012, as the balance that Genesis owed
3 was going up, did Craig or Tonja or anyone contact
4 you and say, Larry, the -- Genesis balance is getting
5 really high and you've got a personal guaranty, don't
6 you want to do something about this?

7 A Well, they did tell me the balance was
8 getting high. But they never mentioned that I had a
9 personal guaranty at all.

10 Q When did you find out about the personal
11 guaranty?

12 A I went to a -- I was trying to sell the
13 business. The guy's name was Shefik Rahim, I believe
14 was his last name. And we worked out a purchase
15 agreement where I was making sure that all my
16 operational venders were going to be paid. It was
17 written that way on the document.

18 Mac was understandably giving me a hard
19 time about getting their money. I tried to tell them
20 I'm doing everything I can to get them paid. I went
21 and I was able to -- I was allowed to send them page
22 1 of the document, which I ended up sending that all
23 operational vendors will be paid in full. I know
24 Shefik had a conversation with Mac. I'm assuming it
25 was Tonja. I don't know really what transpired. He

1 assured me that they would be paid and he would be
2 made to be paid -- the terms that they were, I don't
3 know. He did the same thing with the building owner
4 and he did the same thing with People's Bank and
5 maybe one or two others. I don't remember. So it was
6 -- at that point, that it was in his hand.

7 And what happened was Tonja had given me a
8 call saying that they were going to cut me off, they
9 were going to cut Genesis Press off from buying
10 paper. I remember going to this attorney, local here
11 in Greenville. His name was Robert Paul. I asked him
12 what I could do about it. I was this close to getting
13 the business sold, et cetera, et cetera. We got on a
14 conversation with Tonja. I believe Robert was on the
15 phone. Tonja said it's time for me to put in some
16 money.

17 She didn't know at the time and I never
18 made a big mention of it, but I put in between 200
19 and \$250,000 into Genesis over the past several
20 months before that, when things were going bad, most
21 of it to pay back paper and payroll. I mean, they
22 were my two biggest things. But regardless of that
23 fact, I had put in money. I was basically being
24 forced into bankruptcy, if you will, Chapter 11, to
25 try to protect myself while I could get the business

1 sold.

2 Tonja told me that I had a personal
3 guaranty. I said no, I didn't because it was taken
4 care of. I honestly don't remember saying that I
5 threw a piece of paper away. But I was sure, I would
6 have sworn on, not just the Bible, on anything, that
7 it was taken care of by that email.

8 Q Okay.

9 A I would not have said I threw anything
10 away, I don't believe.

11 Q Okay. Going back to Exhibit 2, the original
12 credit app, on Exhibit 1, what does it say the amount
13 of credit desired was?

14 A \$70,000.

15 Q Okay. And when you got -- I believe it was
16 Exhibit 5, the guaranty agreement dated 2008.

17 A Yes, sir.

18 Q Once again, what did Tonja say in the email
19 that the purpose of that was?

20 A I don't know if it was Tonja that said it,
21 unless she relayed it to Bruce, but I know Craig had
22 come into the office to collect the signatures on the
23 paper and this was back in 2008 and he's told me that
24 the purpose of re-signing this page was so that they
25 had updated information on me because the information

1 they had on me was old. I don't -- I'm sorry.

2 Q No, no, please.

3 A I don't remember getting a new credit
4 application or anything. It would have technically
5 gone to Bruce, not me. But I would have had to sign
6 it. I didn't sign that. I was forced to sign --
7 wasn't forced. I signed the one that gave them all
8 the new information about me and where I lived and
9 everything else. I thought it was just an update to
10 the old personal guaranty.

11 Q Okay. Let me show you -- just take a quick
12 look at Exhibit 10. Does Exhibit 10 reflect that
13 there was some purchases that Genesis made without a
14 separate PO?

15 A Well, there were plenty of them that were
16 made without a purchase order.

17 Q So how did you communicate to Mac that you
18 wanted to buy paper?

19 A Chances are I remembered when I showed this
20 set of emails to Craig over here. Sometimes they were
21 done by email. Most of the time, they were probably
22 done by email. I doubt he ever took anything over the
23 phone. Sometimes purchase orders came after the fact.
24 Looking over here, I see there were purchase orders
25 from Amanda, from Cathy, from Steve, which are just

1 their names, there was not an official purchase
2 order. There were several or more than several orders
3 that did not have a purchase order number at all.
4 Which does not mean that the orders weren't placed,
5 but not everything had to have a -- maybe it should
6 have, but not everything had to have a purchase
7 order.

8 Q Let me just ask you again, why did you send
9 a -- why did you not send a separate notice after you
10 got the email terminating the guaranty?

11 A Because it said, very simply yes. I don't
12 mean to pull hairs or talk semantics, but just
13 reading it says yes, she is, meaning she's working on
14 it and feel free to call her on anything related to
15 the note. In my mind, that meant very clearly that,
16 uh, if I had any questions on it, let her know. But
17 when he said yes, she is working on it, believe me, I
18 know Tonja. She's nice, but she's strict and she's
19 firm. And if she didn't agree with what was going on,
20 I would have gotten the first call.

21 Q Okay. Nothing further. Please answer any
22 questions Mr. Johnson might have for you.

23 A Yes, sir.

24 THE COURT: Thank you.

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q Mr. Kudeviz, how are you doing today?

3 A Hi. How are you?

4 Q As you know, I'm Townes Johnson. I
5 represent Mac.

6 A Yes, sir.

7 Q Let's go through just a couple of
8 housecleaning items real quick.

9 A Yes, sir.

10 Q On Exhibit 2 and Exhibit 5.

11 A I know what they are. They are the same
12 papers --

13 Q Yes, sir. Both entitled guaranty agreement.

14 A I know what it is. Let me just find it.
15 Okay. I have it. Yes, sir.

16 Q And those are your signatures on these?

17 A Yes, sir.

18 Q Okay. And you agree that you entered into
19 these guaranty agreements?

20 A What I agreed to was I entered into the
21 first guaranty agreement. On the second one, it was
22 really -- it might have been on this piece of paper,
23 but I was told specifically that it was just to
24 update my information.

25 Q Okay. But you executed that document?

1 A Yes, sir.

2 Q Okay. The last Exhibit you were going
3 through with Mr. Ellis, Exhibit 10.

4 A Yes, sir.

5 Q That last page shows a balance due of 432
6 dol -- \$432,185.60. Do you agree that was the amount
7 due and owing as of September 2012?

8 A I do not deny it. I'm not saying that -- I
9 don't deny it. I'm not saying it's not accurate at
10 all.

11 Q Other than Mr. Zisook's payment, do you
12 have any other information that would change that
13 amount?

14 A No, sir.

15 Q Okay. When you executed either guaranty
16 agreement, Exhibits 2 or 5, did you read the
17 substance of those?

18 A On 5, I did not. But on 2, I may have. That
19 was -- honestly, that was in 1991. I don't remember
20 what I had for breakfast this morning, but I just
21 don't remember 1991. I was -- when we first started
22 out, it was Lou Levin and Barry. Lou Levin was the
23 treasurer and basically, if he said sign it, I signed
24 it. If he said do not sign it, I did not sign it. On
25 the one in 2008, my hand was forced. In all honesty -

1 - not all honesty, of course I'm being honest, but I
2 mean, in reality, I believe it was tied to the
3 Chattel mortgage and, more importantly, I was told it
4 was just to update my information. That was going to
5 be the piece of paper that was going to substitute
6 from the other one. As far as I know, there was not a
7 credit application given that we had to re-fill out.

8 Q Have you seen that Mac tried to assert that
9 a new credit application was presented in this
10 matter?

11 A Well, I heard it, but never saw it, nor did
12 I ever have it.

13 Q Well, let's take a look at Plaintiff's
14 Exhibit 3.

15 A Hold on a second please. 3, the -- oh, the
16 letter from Tonja?

17 Q It is an email.

18 A Okay.

19 Q Do you agree that this was a true and
20 correct copy of the email you received from Tonja?

21 A I don't see why not.

22 Q And she states in there that a credit app
23 is being sent. Do you have any reason to dispute that
24 it was not sent to you?

25 A I'm sorry. Unless I'm missing it, I see it

1 says up on the attachments PDF credit application and
2 guaranty. But if you read the body of the letter, the
3 body of the letter, unless I'm missing it, does not
4 say credit application, it says the note, security
5 agreement, guaranty agreements and application and a
6 copy of the UCC filing.

7 Q Okay. Do you have any other -- do you know
8 what the application would have been that was not a
9 credit application?

10 A Well, it could have been the application
11 that could have easily been for the UCC filing. As
12 far as I know, there would be no reason for them to
13 get another credit application because, number one,
14 they were our major supplier. We did more business
15 with them than anybody else. So I don't see why even
16 a credit application would have normally been asked
17 for. They knew who our bank was. I mean, they knew
18 everything about us. I don't even know why there was
19 -- why this would even be requested or required. I
20 also find it odd that -- I mean, I know Mac Papers
21 and I know how -- I just know how they operate. They
22 would have one of the papers, like page 2 of it, but
23 not page 1 of it put together. So if it was -- if it
24 was sent, I certainly didn't see it and I certainly
25 didn't sign it.

1 Q And just so we're clear, we're not
2 representing --

3 A No, I understand. I'm trying to just clear
4 it that -- I find it odd that it wasn't put together
5 in one exhibit the way Mac always does things, keep
6 it together. Then the other thing is even by reading
7 the letter, it doesn't say there's a new credit
8 application. There was an application, but not a
9 credit application.

10 Q Okay. And you think that application may
11 have been in relation to a UCC filing?

12 A Well, I know it said here the application
13 and a copy of the UCC filing. I can't imagine what --
14 I can't imagine what it could have been. The only
15 thing that's different really on here that's not on
16 the second page is who I bank with. And I believe
17 they knew who the bank was.

18 Q Okay. I'm just trying to figure out why you
19 don't think that was a credit application that they
20 sent you.

21 A Well, because, number one, when it was to
22 presented her, it wasn't put together. There's no way
23 -- even the first one, our guaranty was put in their
24 files and stapled together, because that's just the
25 way Mac does things. The second reason why is I don't

1 know why they would need another credit application.
2 They already made me sign my life away on the two
3 notes. The last thing that I signed, I believe that,
4 I think -- I know Craig came into the office to
5 collect the papers. I believe on one of them, he
6 witnessed. But the one that I signed was, basically,
7 I was told point-blank, it was just to update my
8 information because I had moved and they had
9 different information on file. Obviously, my social
10 security number never changed. So they could have
11 always checked out my credit rating had they wanted
12 to.

13 Q Well, let's go back to the original credit
14 application and the original guaranty.

15 A Yes, sir.

16 Q Plaintiff's Exhibits 1 and 2. What was your
17 understanding of why Mac Papers needed your, Mr.
18 Levin or Mr. Zisook's guaranty?

19 A Well, we were a brand-new business. We had,
20 obviously, other than the fact that their
21 representative at the time, Catherine Brown, knew me
22 because I worked for CPP/Belwin and we bought paper
23 from them there and Lou Collins -- I had only met
24 once or twice -- as the credit manager, the role that
25 Tonja had taken over. We went out for lunch. They

1 wanted to meet us.

2 When they first asked us to sign the credit
3 app, the personal guaranty, Lou had said no, we are
4 not signing it. Lou Collins, the credit manager, said
5 look, you have to understand our position. You are a
6 new business. We really don't know you. We need this
7 for our protection. Lou said, well then, let's limit
8 the credit guaranty. Mac came back and said, well,
9 we'll put a date on it, which would be the date on
10 the second page. It was supposed to be reviewed and
11 the guaranty was supposed to go away if we did
12 everything right. I don't know if anything ever
13 happened after that conversation at Tony Roma's.

14 Q Okay. But it's your understanding that you
15 had to enter into the guaranty agreement for Mac to
16 do business with Genesis Press?

17 A Because we weren't really an entity. We
18 were a start-up. We were a newborn baby.

19 Q Okay. And let's go to that language that
20 you are referencing on the guaranty agreement. Will
21 you read that to us after it goes through y'all's
22 names and addresses.

23 A This guaranty to be reviewed or up on top?

24 Q This guaranty to be reviewed.

25 A This guaranty to be reviewed by the

1 guarantors and Mac Paper, Incorporated, on or before
2 March 31st, 1992.

3 Q Okay. Did you review this on or before
4 March 31st, 1992?

5 A I would not have because it wasn't my
6 function at the time. It would have been reviewed by
7 Lou Levin, if he did. If I had to take a guess, my
8 guess is that he forgot all about it as well as Mac
9 forgot all about it. Mac had it filed away, but I
10 believe Lou had forgotten all about it.

11 Q Okay. So you didn't review it?

12 A No, sir.

13 Q Do you think that this provision makes the
14 guaranty invalid in any way?

15 A I honestly don't know. Like I'm telling
16 you, Lou was the one that was handling all of this. I
17 probably never even had a copy of this. I know I
18 signed it. Of course, I signed it. I know I signed
19 it. But a copy of this never came to me. All of our
20 financial documents were kept where Lou worked. He
21 was kind of like a silent partner. I definitely never
22 even had a copy of this. Did I read it? I'm sure I
23 glanced at it. Lou said sign it, so I signed it. He
24 was the one that made them put the language on here.
25 However, did he ever follow up on it in 1992, I don't

1 know.

2 Q Okay. And a minute ago, you testified that
3 it was supposed to be reviewed and terminated if
4 y'all were acting in --

5 A That was the way -- that was the way the
6 conversation went with the three of us, Lou Collins
7 and Catherine Brown.

8 Q Do you agree that that is not part of this
9 agreement, that that is nowhere listed in this -- the
10 four corners of this document?

11 A Which document, what exhibit number is
12 that?

13 Q Exhibit 2 we're talking about.

14 A Oh, Exhibit 2. Well, the two of them go
15 together.

16 Q Well, my question is do you agree that
17 nowhere on Plaintiff's Exhibit 2 does it say if this
18 is not reviewed on or before March 31st, 1992 that it
19 lapses?

20 A No, of course, it doesn't say that.

21 Q Okay.

22 A I mean, what was understood is one thing,
23 but is it written on here, the answer is no.

24 Q So you agree that there is nothing in the
25 actual four corners of this document, Plaintiff's

1 Exhibit 2, that makes this lapse or terminate or is
2 released on any particular date?

3 A Not on this piece of paper, the answer is
4 no.

5 Q Also, within the actual language of the
6 guaranty agreement, Plaintiff's Exhibit 2, do you
7 know if there were any limitations or conditions on
8 the guaranty agreement?

9 A Well, as far as limitations go, I mean, you
10 would think that if we asked for \$70,000, that would
11 be all that we asked for. I may not understand your
12 question 100 percent. But, you know, there's nothing
13 that says that I could have ordered more. There's
14 nothing that says I couldn't have ordered more. Me or
15 the company itself, not me in particular.

16 Q Okay. Would you agree with me that it says
17 the actual plain language of the guaranty says that
18 this guaranty contains no limitations and no
19 conditions?

20 A I'll be 1000 percent honest with you, I
21 don't understand a lot of the legalese. What's worse
22 is that Lou was the one that read it and said that we
23 should sign it or he would have said we shouldn't
24 sign it. Do I remember everything that's written
25 there and would I have understood it in 1991? No. I

1 was so excited to have a business that, to me, was
2 like the birth of a baby. I was so excited about it.

3 Q But you agree with me today that that's
4 what it says?

5 A That's what is written down there. It
6 certainly -- it's written down there. The answer is
7 yes, that's what it says.

8 Q Okay. So do you know of any limitations or
9 conditions that applied to this guaranty?

10 A I don't know either. I don't know either
11 limitations or -- the only thing I would tell you is
12 there are limitations that can be construed that the
13 guaranty is to be reviewed. It should be either re-
14 signed or reinstituted or redone. I guess you could
15 read it that way, but as far as this language goes
16 over here, it's just as you said. I mean, it's
17 written in black and white. Lawyer language, but
18 black and white nonetheless.

19 Q Is there -- again, is there anything within
20 the four corners of the document that says that it
21 needs to be re-signed or rewritten after 1992, March
22 31st, 1992?

23 A It says that it's going to be reviewed by
24 both Mac Papers and Lou, Barry and I. I don't know if
25 that ever happened, but that's what it says on there.

1 I mean, there's nothing that says it was and there's
2 nothing that says it wasn't.

3 Q Right. But there's nothing that says that
4 if it's not reviewed --

5 A It goes away. No.

6 Q Or needs to be re-signed or any of that
7 language.

8 A No, sir. Not on here.

9 Q Okay. Let's -- let's fast forward to after
10 you prevailed against Hartford or after Genesis Press
11 prevailed against Hartford.

12 A Yes, sir.

13 Q And you paid Mac in full, you paid a bunch
14 of vendors in full.

15 A Every vendor in full.

16 Q Okay. Tell me about your conversation with
17 Craig Boortz.

18 A As Craig said, we were friendly. We are
19 kind of friendly. It's just that they are suing us.
20 So obviously, that changes the dynamics. But I
21 remember talking to Craig several times telling him
22 about what happened, telling him that, you know, I'm
23 sure I told him about the little graphic that started
24 the trial. I'm sure I told him even before the trial
25 was over about the graphic. I know I would have said

1 the same thing to him like I said to everybody else.
2 There's no way I will ever accept another personal
3 guaranty, period, after I paid everything off.

4 Q Okay. And is that a personal guaranty of a
5 business or any kind of personal obligation?

6 A Any kind of personal obligation. I wouldn't
7 take another credit card to be hon -- I mean, I
8 wouldn't even take another credit card. I was so
9 afraid and so skittish and had so many nightmares. I
10 swore I would never take any other kind of a
11 guaranty. I never even took out another mortgage. I
12 just wouldn't do it because I figured that would be
13 another reason why someone could have me or try me.

14 Q So it's your testimony that after July of
15 2010, you never took out another credit card, never
16 took out another mortgage?

17 A No, I mean -- I don't remember I did. I
18 know there was one time where L.L.Bean, we had a
19 joint account and they split it up between the two of
20 us. But I always had the Bank of America card. Well,
21 that's not true because I moved -- when I moved, I
22 went to another bank. I ended up taking out their
23 credit card for Chase Bank. But other than that, as
24 far as I can remember, no. Yes, I bought a car and I
25 did take out a loan on the car. I guess it was not

1 really as much of a personal guaranty because if you
2 didn't pay it, they take the car away. But for
3 business, for sure, the answer is no. Personally,
4 other than the car or automobile or something that I
5 couldn't afford to buy outright, I don't remember
6 anything else.

7 Q But -- so you have taken personal
8 obligations since July of 20 --

9 A Probably just a car or two and maybe a
10 Chase credit card for the new bank that we went to.

11 Q Would it surprise you to know that you have
12 seven open revolving accounts today?

13 A Well, it would. I'd like to know what they
14 are. I can think of three of them as far as that they
15 are open credit cards. Some of them might be old.
16 They just aren't used anymore. So if you could tell
17 me what they are, I'll be glad to -- like I said,
18 they still show an old Bank of America card which
19 doesn't exist anymore as an open card. I don't even
20 have a card anymore.

21 There's an old Citibank card that's open. I
22 know, I mean I have an Amazon card that came through
23 Chase too. That I limited myself to like \$4500. When
24 they offered to give me more money on it, I turned it
25 down. I don't want it anymore. So the ones I have

1 open, chances are some of them don't really exist
2 anymore. They may show open, but I don't believe they
3 have a balance on them, sir.

4 Q Okay. But you would agree with me that
5 numerous of these accounts, even some of the closed
6 ones were opened after July 2010?

7 A I would be shocked if they were opened
8 after 2010 other than the two from Chase. They may
9 be, but as far as I know, I don't remember. I don't
10 have American Express anymore. I still have the
11 L.L.Bean, the world points, which I share with my
12 wife. There might be another one. I can look through
13 my wallet, but I don't remember. I don't remember
14 applying for one. That's for sure. I don't even have
15 a gas credit card.

16 Q You don't remember applying for any credit
17 card after 2010?

18 A Other than Chase. I don't remember, but no.
19 The answer is I don't remember.

20 Q Okay.

21 A I'm sure you may have one on there that
22 you're going to show me, but I just don't remember
23 except for the two Chase I told you about.

24 Q Take a minute to go through that document,
25 Mr. Kudeviz.

1 A (Reviewing.)

2 Penny's, I might have done Penny's when I
3 moved. But there's no balance on it. It hasn't been
4 used since the Day 1 I moved to Atlanta. Chase Bank,
5 I told you about. The Penny -- I don't know why there
6 are two Penny's. Maybe one of them is an old one and
7 one of them is a new one. The Chase Bank, I told you
8 about. Wells Fargo Home Mortgage, you know about.

9 Sears -- I don't have a Sears card. If they
10 gave me one, I don't have it. You can look in my
11 wallet. Bank of America card, I've always had. Of the
12 two that are here, one of them we discontinued. We
13 had two at one time. One of them is discontinued.
14 They are no longer and you won't see a balance on
15 them. South State Bank, that was the one that doesn't
16 exist anymore. One of them was a debit card, which
17 I'm not in South State Bank anymore. So there's no
18 card there.

19 I don't know what SYNCB is or Belk -- Belk,
20 if it is, my wife took out the credit card, but I
21 don't think you'll see a balance on it. I don't
22 believe I ever had one. I don't know what SmartCon
23 is. PayPal, I don't have a credit card. I may have a
24 PayPal account. I don't care what they put here, I
25 don't have an account. Barclay's, I told you about. I

1 never applied for a new Macy's. That's old. Align
2 Financial Services, I don't know what that is. And I
3 don't believe you're going to see any balance on
4 there because I don't know what that is, unless you
5 can tell me.

6 Amex, I told you I never renewed it. They
7 keep on wanting to give me. I refuse to take it. U.S.
8 Bank, I don't know what that is either. It might have
9 been an old one, but I don't think I have one in my
10 wallet. I could check. Ferguson goes back to when I
11 bought my house in Franklin. That's not really a
12 credit card. I have credit with them but I don't buy
13 anything from Franklin. The CitiCard CBNA, I
14 cancelled a long, long time ago. They kept it open on
15 13 and 14, but you don't see it used.

16 Wells Fargo is the same mortgage or maybe
17 one of the mortgages that -- when we sold the house.
18 Barclay's Bank of Delaware is that Barclay's card
19 which I told you about. FMC Omaha Service, I don't
20 know what that is, I certainly don't have any card
21 that says Omaha on it. Again, you see it's 2012, 2013
22 which looks like it was continued, but you won't see
23 any activity on it. Toyota is a car that was paid off
24 that Bank of America was one of the old Bank of
25 America cards. We only share one account. You could

1 petition Bank of America. American Express, we don't
2 have anymore. I got rid of it. FMC Omaha Service,
3 again, I don't know what that is. Then the inquiries
4 from Mac Paper, Chase, Direct TV, AT&T, Comcast,
5 those are regular services to use at home. The alert
6 summaries, I'm not sure what that page is. It's
7 unregulated. I assume the other one is just a
8 different credit report.

9 Q It's a prior --

10 A All right. It's a prior one. So you're not
11 going to see anything different and certainly nothing
12 new except for the two Chases like I told you. Yes, I
13 got 20 percent off when I first moved to Atlanta. So
14 they gave me a credit card at Penny's. I did not --
15 I mean, a Belk. My wife might have gotten it and they
16 might have put me on the account. I did not apply for
17 one. I don't have a Best Buy one. Matter of fact, I
18 know I don't have a Best Buy one. I didn't even apply
19 for credit for a Best Buy. I mean, you can look in my
20 wallet now. My credit cards are with me. I'll give it
21 to you. You aren't going to find anything in there
22 that I didn't just tell you.

23 Q No, I was just -- I -- the simple fact is,
24 would you agree with me that this report shows that
25 you have opened up at least six accounts since 2010?

1 **A** No, sir. Well, let me count. I know the two
2 Chases and the Penny's. After that, I refuse to
3 believe there's any others as far as a revolving
4 credit card goes. If you take away the -- if you take
5 away the cars and everything else, I don't think
6 you'll find another credit card. If you give me a
7 minute to look in my wallet, I'll let you know if I'm
8 missing one.

9 **Q** And I'm not -- excuse me. I didn't mean to
10 limit it just to credit cards. But you understand
11 that an auto loan is a personal obligation?

12 **A** Well, I understand that but it's also
13 backed by the car. So if I didn't pay it, they would
14 come and tow my car.

15 **Q** And potentially seek a deficiency against
16 you?

17 **A** If there is a deficiency. But I take care
18 of my cars so there wouldn't be.

19 **Q** Okay. But you understand that it could --

20 **A** Yes, that's a personal thing too. You're
21 not talking about the same thing. I mean, in all
22 honesty, you're not talking about the same thing.
23 When it came to business and if you would have been
24 on trial, I would have seen a graph on things that
25 you know weren't true, you would be a little

1 defensive also. I'm not trying to be nasty, but you
2 have to understand the way I feel and the way
3 everything was done to me. Do I have a chip on my
4 shoulder? A very big one. A very big one, and for
5 good reason. My mother died, I think it was two or
6 three days after they put it on the news that I was
7 arrested, from cancer. The doctor said she wasn't
8 going to die. If you don't think that's what killed
9 her, believe me, it did. So yeah, I have a big chip
10 on my shoulder about anything that could put me in a
11 bad light.

12 Q I'm not trying to upset you.

13 A I understand. But you have to understand
14 where I'm coming from. That's all.

15 Q I guess my point is, though, that after
16 2010, you still took on personal obligations.

17 A All right. After 2010, I took on a couple
18 of personal obligations. The answer is yes. Did I
19 take it on for business? No. But then again, our fire
20 wasn't started in my house. I had nothing to do with
21 -- I don't think that if a fire started in my house I
22 would be arrested for arson because I couldn't pay a
23 credit card back.

24 Q Okay.

25 A They are different animals. Excuse me.

1 Q Yes, please get some water.

2 A No one should know what I went through.

3 Q Oh, I --

4 A No one should know what I went through.

5 Q And I hate that you went through it.

6 A I believe you. You're a nice guy. I believe
7 you.

8 THE COURT: Let's just -- let's stick to
9 questions and answers.

10 MR. JOHNSON: Sorry, Your Honor.

11 BY MR. JOHNSON:

12 Q Mr. Kudeviz, did you ever write a
13 registered letter to Mac Papers terminating your
14 agreement?

15 A No, sir.

16 Q Do you agree that that is a provision of
17 your --

18 MR. ELLIS: Objection, Your Honor. The
19 document speaks for itself and I think it calls
20 for a legal conclusion.

21 THE COURT: I'm going to allow him to
22 answer the question just based on what his
23 belief was.

24 THE WITNESS: Would you repeat the
25 question now?

1 BY MR. JOHNSON:

2 Q Do you believe that that was a provision of
3 your guaranty agreement that required you to send a
4 registered letter to terminate this?

5 A No, I didn't. I believe it's written in
6 there but I did not believe that it was part of a
7 revision. I thought that asking -- requesting it to
8 be over with and the email I got back from Craig, I
9 thought that that was enough when she said she is
10 working on it. I'm sure if I would have asked
11 something that Tonja didn't want, I would have been
12 the first to hear about it.

13 Q Would you agree with me that there's a
14 difference between a guaranty and a note?

15 A Honestly, to me, no. That still means I'm
16 obligated. I'm not legal, but to me, it's the same
17 thing. If I make a promissory note to somebody or a
18 guaranty, I realize that I have an obligation to pay
19 it.

20 Q Okay. So your personal note was -- could
21 have been a personal guaranty on the note, could have
22 been a personal guaranty on the account?

23 A Right. Well, again, I didn't know the
24 differentiation between the two of them. I know the
25 Chattel mortgage had a guaranty on itself and then

1 there was a guaranty on Mac Papers, both of which I
2 specified I want out of it, you are now paid. I don't
3 owe you anything and I want out, like I did with
4 everybody else.

5 Q You have a writing where you specified that
6 you want out?

7 A No, I had a conversation with Craig and
8 then I had the email that I wrote before Craig
9 answered me is Tonja working on releasing my personal
10 note or my personal guaranty. Whatever I wrote, Craig
11 answered back yes, she is and feel free to call
12 Tonja, but not that I had to call her. Like I said,
13 believe me, if she didn't want to do it, she would
14 have called me or I would have thought she would have
15 called me.

16 Q Okay. So let's look at Exhibit 9. That's
17 the email you were referencing.

18 A Oh, the email. Okay. I have it here, sir.

19 Q Okay. So you asked on a separate subject is
20 Tonja working on releasing my personal note.

21 A Yes, sir.

22 Q What work would Mac have needed to do to
23 release your guaranty agreement on your account?

24 A Well, they would have had to do something
25 to do it. I know the Chattel mortgage is one that has

1 to be properly filed. The other one is just saying it
2 was released. I mean the Chattel mortgage is a
3 separate type of a deal that would show up in a
4 credit report or whatever. A personal guaranty
5 wouldn't show up in a credit report, I don't believe.
6 But I made no bones about it that I wanted out.

7 Q You think that this is a clear statement
8 that you want a release of your personal guaranty?

9 A Yes, Craig knew it verbally. We had many
10 conversations on it just in passing, not a threat,
11 not anything else other than -- and I told him what.
12 He knew why or at least at the time, whether he
13 remembers or not, he knew why I did not want another
14 personal guaranty. For all the reasons I told you. I
15 don't want to repeat.

16 Q Okay.

17 A Unless you ask me. But seriously, I'm not
18 trying to be funny. I made it very clear I just don't
19 want a personal guaranty. I will not accept one. I
20 will do whatever I have to do not to have one.

21 Q Except for when you applied for six more
22 after 2003?

23 MR. ELLIS: Your Honor, I'm going object
24 on relevance. I don't think applying for credit
25 cards in small amount is even remotely analogous

1 to possibly --

2 **THE COURT:** Well, and I think we've
3 established -- even if it were relevant, I think
4 we've established and I think he's answered that
5 question.

6 **BY MR. JOHNSON:**

7 **Q** Why, Mr. Kudeviz, in your email, do you ask
8 if Tonja was working on releasing the personal
9 guaranty?

10 **A** I know who Tonja is. I know who she was
11 back then and I know who she is now. I know she's the
12 one that has to execute the paperwork, but my main
13 contact was Craig. If I had one conversation with
14 Tonja, I had 200 with Craig. Craig was always my
15 contact. So I asked Craig is Tonja working on it.
16 That's what I would have done -- at the time, I mean,
17 I'm not -- listen. I wasn't friendly with Tonja like
18 I was with Fred, with Craig. I didn't talk to Tonja
19 all the time. I had one lunch with her, one or two
20 when she came down. We were trying to struggle to get
21 through it. Tonja was never my contact.

22 **Q** Okay. So it was your understanding that the
23 authority to terminate the release, your guaranty or
24 your note had to come through Tonja?

25 **A** It was my understanding that if Craig told

1 me so, that it was good enough. That was my
2 understanding. Tonja maybe had to sign the note or
3 whatever she had to do, but it was my understanding
4 that Craig was Mac's spokesperson. Craig was my
5 spokesperson. He was my -- Craig was my main contact
6 through -- we wouldn't even call customer service
7 when we dealt with Mac. Craig always took all our
8 orders. Well, I shouldn't say that. There might have
9 been some times we called customer service, but 99 --
10 90 out of 100 orders came through directly to Craig.

11 Q Well, why then didn't you write just to
12 Craig and say, Craig, release my personal guaranty or
13 my personal note?

14 A Because I asked him to. I don't know why I
15 didn't -- we were talking. I asked him to and then I
16 followed up with an email. Obviously, I paid Mac
17 probably on July 10th or July 9th or something like
18 that. If Monday was the 12th, we must have paid Mac
19 on the 7th, 8th or 9th. I don't know the exact date.
20 So the 12th was probably the next time I saw him or
21 the next time I had spoken to him because it was the
22 July 4th weekend. Maybe I took some time off, I don't
23 remember. But the first opportunity I got, I reminded
24 Craig after our conversation.

25 Q But I guess my question is if you thought

1 Craig had the authority to take any action, why would
2 you not just ask him instead of asking him if someone
3 else, Tonja Van Zandt, was doing something?

4 MR. ELLIS: Your Honor, objection. I think
5 the question lacks foundation.

6 THE COURT: If he can answer, I will allow
7 him to.

8 THE WITNESS: Well, like I said, again, I
9 don't mean -- I'm not screwing an issue, but
10 Craig was always my contact. I'm sure Craig told
11 me Tonja has to get the official paperwork in.
12 And I'm also sure Craig told me I will talk to
13 Tonja. So when I asked him about it, he said
14 yes, she is. Honestly, if you read it too, it
15 means -- to me, it means I've spoken to Tonja
16 and yes, she is working on it.

17 BY MR. JOHNSON:

18 Q Okay. Would you agree with me that from the
19 actual language of the guaranty that the only action
20 that needed to be taken was an action by you to
21 terminate this guaranty?

22 A After the fact, yes, I would agree with
23 you. But during the fact and before the fact and the
24 fact that I didn't have that piece of paper in front
25 of me to read and when I got out of People's personal

1 guaranty and I got out of the builder's guaranty, it
2 was just a verbal thing back and forth. The answer to
3 you is, on the paper, it says I need to do that.
4 Instinctively, intuitively, conversationally and the
5 fact that I wrote it in an email because I got hung
6 out to dry in a lot of emails I wrote, by the way,
7 but everything that I did tells me that I was saying
8 that I wanted to get out of it. But yes, technically,
9 on there, it says I should have done X, Y and Z.
10 That's all I know how to tell you.

11 Q Technically, it says you knew to do X, Y
12 and Z.

13 A But I didn't know about it. I thought that
14 the email I got back from Craig, talking to Craig and
15 writing it in an email that I got out and I know that
16 Bruce Boortz talked to every vendor about making sure
17 he had no personal guarantees. There is no way that
18 this wasn't a secret. No way that this was done
19 hidden. Everybody, we were upfront with, everybody,
20 about the personal guaranty part. I promise you.

21 Q Do you believe that Mac would have extended
22 you \$400,000 of credit without a personal guaranty?

23 A I don't know what Mac would have done.
24 Listen, I was the one that kept on putting money into
25 the business because I felt bad about what was going

1 on. So do I believe they would have? I don't know.
2 Maybe Tonja just didn't -- maybe she wasn't paying
3 attention to my account. I certainly wasn't trying to
4 hide it. Craig never came to me and said Tonja --
5 Tonja said you owe this. I said no, I don't, make
6 sure you order me my paper. I mean, at any time, they
7 could have said, look, you're extended too far. We
8 don't want you to. Or they could have said, alright,
9 you know, you're getting up there and you have a
10 personal guaranty. That would have ended it right
11 there.

12 I would have given them back every piece of
13 paper I could have and then everything I could
14 because I refused to work under a personal guaranty.
15 Honestly, Townes, I mean, Mr. Johnson, I don't know
16 how else to say it. I've said it every which way to
17 Sunday. There's no way I would have accepted a
18 personal guaranty if I would have know I was still
19 under that umbrella.

20 Q Do you agree it would have been beneficial
21 for Mac Papers headquarters to know that you wanted
22 to terminate your guaranty?

23 A Well, if I told Craig and Craig said he
24 talked to Tonja, I don't know what more I could have
25 done without writing a letter to the president or not

1 -- who I don't even know who is. But I mean, I told
2 Craig, who was the general manager of Mac. He told
3 Tonja, who was the CFO of Mac or the head credit
4 manager or something in that capacity. So as far as I
5 know, Mac knew. I didn't tell every single person
6 that existed at Mac.

7 Q Do you agree that something else you could
8 have done was sent a registered letter?

9 A We've already been through this, sir. Yes,
10 I agree that I could have done that. But I thought
11 that doing the email, talking about it, writing that
12 I didn't want it and making it well-known to every
13 human that existed on this planet that I knew that I
14 didn't want one was more than enough. Nothing has
15 wavered since my deposition since Day 1 it started
16 after the trial.

17 Q Did -- in your conversation with Craig and
18 in your subsequent email about is Tonja working on
19 releasing my personal note, did you give any benefit
20 to Mac for changing the -- for, in your mind,
21 changing the terms of the guaranty?

22 A Well, I may not have taken -- all the money
23 I put in was to make sure I was able to get it to Mac
24 and payroll. I didn't pay anybody else. No, I didn't
25 say, oh, Craig, by the way, I'm putting in this money

1 so you can get paid. I did do it, but I didn't find a
2 reason to announce it or take out an add in the
3 paper.

4 Q I guess my question is did Mac get any
5 benefit out of you, your conversation with Craig or
6 this email about your wanting to be released from
7 your personal note.

8 A Well, I mean, in all honesty, I think that
9 the people at Mac know that I wouldn't have done
10 anything intentionally. So the fact that they knew
11 they were getting business from me and they were
12 making money off me and they assumed that I would pay
13 and I assumed that I would pay was a good thing for
14 them. They are in business to sell supplies, to sell
15 paper and supplies.

16 Obviously, up until I had a hard time, they
17 were always getting paid. When I started to have a
18 hard time, I struggled to get the company sold so
19 that I could have Mac taken care of. I didn't really
20 care much about the others, although I did try to
21 make all operational debt paid. But I had a personal,
22 uh, -- just a personal thing with Mac because of how
23 they helped me and I did not want to hurt them. That
24 doesn't mean that I would ignore -- I would say, oh,
25 I'll take a personal guaranty for you because I'm a

1 great guy. Everything I did was to try to make sure
2 that Mac got taken care of. The fact that I failed,
3 I'm sorry. But I did try.

4 Q Do you wish that Mac had gotten paid
5 throughout all this?

6 A Of course, I did. Of course, I wish that. I
7 wouldn't put all the money I did if -- like I said
8 when it all went to Mac, I felt bad. Just because --
9 you don't fail and you don't go around jumping up and
10 down. When the Green Bay Packers lost three games in
11 a row, I'm sure they're not happy in their locker
12 room. I still rue the day that I went bankrupt and I
13 hurt people. I hurt Mac. I hurt other people too. It
14 wasn't what I intended to do. It's something I have
15 to live with. I didn't do it on purpose. That would
16 be terrible. And you would see that coming right
17 through me. I know you know that.

18 Q I do know that.

19 MR. JOHNSON: I think that's all the
20 questions I have, Your Honor.

21 THE COURT: All right. Mr. Ellis, anything
22 else for this witness?

23 MR. ELLIS: Just quick follow-up.

24 REDIRECT EXAMINATION

25 BY MR. ELLIS:

1 Q When, uh, -- with respect to the second
2 guaranty agreement, once again, did Mac say anything
3 to you other than we won't keep doing business with
4 you? Anything besides that?

5 A Well, they said that they needed to keep
6 the records updated.

7 Q Okay. They said they needed to keep the
8 records updated. But Mac -- did Genesis get a letter
9 from Mac that said you now have more credit as a
10 result of signing this?

11 A No, we talked verbally about it that they
12 would keep on doing business with -- they would keep
13 on doing business with me as long as they had my
14 updated information.

15 Q Okay. Once again, there was -- strike that.
16 Let me ask you to take a quick look at Exhibit 2.

17 A I can see this in my sleep. Yes, sir.

18 Q And you were asked to read the line, this
19 guaranty contains no limitations or conditions. Read
20 that again.

21 A I don't have the copy where it was
22 underlined. You want to just -- oh, this guaranty
23 contains no limitations or conditions except as
24 written herein. May be modified only in writing,
25 signed by the parties hereto, and is to remain in

1 full force and effect until written notice of its
2 termination is received by registered mail by Mac
3 Papers, Incorporated, its successors or assigns, at
4 its offices in Jacksonville, Florida, except, uh, --

5 Q That's good. I just wanted to ask you about
6 the limitations except as written herein, right? It
7 didn't just say this contains no limitations or
8 conditions. It says no limitations or conditions
9 except as written herein, correct?

10 A That's what it says.

11 Q Okay. And then as we talked about before,
12 take a look at Exhibit 1. The original credit app?

13 A Yes, sir.

14 Q And it says the amount of credit desired is
15 what?

16 A \$70,000.

17 Q Okay.

18 MR. ELLIS: Your Honor, I don't have
19 anything further for this witness.

20 THE COURT: Anything else?

21 **RECROSS-EXAMINATION**

22 **BY MR. JOHNSON:**

23 Q Just real quick. On that Exhibit 2, as we
24 discussed, was there any -- this provision that says
25 this guaranty is to be reviewed by the guarantors and

1 Mac Papers on or before March 31st, 1992, does it say
2 anything that's going to happen if it's not reviewed
3 or if it is reviewed?

4 A Of course not. You know that. It doesn't
5 say that.

6 Q Okay. And in any of the documentation that
7 you signed or received from Mac, any documentation
8 you have before you, is there ever listed a credit
9 limit whatsoever?

10 A After the first one, no. But then again --
11 well, the Chattel mortgages were signed for specific
12 notes. I guess you could say I couldn't add on to
13 that. And then the other one was just to update. So
14 there was nothing else with any type of credit
15 information.

16 Q Okay. But does Plaintiff's Exhibit 1 have a
17 credit limit?

18 A Yes, credit, Exhibit 1 does. Well, it has
19 the amount of credit desired.

20 Q Okay.

21 A \$70,000.

22 Q Is that a limit?

23 MR. ELLIS: Your Honor, I object. It calls
24 for a legal conclusion. The document speaks for
25 itself.

1 **THE COURT:** Well, to the extent that --
2 uh, to the extent that he's answering what he
3 believed, what he had in his mind at the time,
4 I'll allow him to answer.

5 **THE WITNESS:** This wasn't our writing. So
6 we requested that we didn't want any more of
7 that. It said amount of credit desired. If we
8 thought we wanted more, we would have asked for
9 more.

10 **BY MR. JOHNSON:**

11 **Q** When you placed a credit order for Mac
12 Papers -- to Mac Papers for, say \$150,000 worth of
13 supplies, is that not you asking for more credit?

14 **A** Well, --

15 **MR. ELLIS:** Again, Your Honor, possible
16 legal conclusion. These are legal arguments.

17 **THE COURT:** I understand. But again, I'm
18 going to allow him to answer to what he believed
19 at the time.

20 **THE WITNESS:** Well, uh, back in 1994, 1995
21 when our business started growing and we were
22 exceeding that \$70,000, for sure, they actually
23 made me take out another Chattel mortgage to
24 cover the overages of -- it was either over
25 \$100,000 or over \$70,000. I don't remember the

1 exact number. When we ended up moving to
2 Greenville, they ended up releasing it. I don't
3 know where our balance was. I don't remember.
4 Lou Collins was the one that executed it. Lou
5 Collins was the one that took it away. That
6 would have been in 2006 when we were signing the
7 notes with the bank. The bank asked for it to go
8 away because we didn't owe that much. I called
9 up Mac. Mac had absolved that one too. I didn't
10 have to do it in writing. We just asked them for
11 --

12 **BY MR. JOHNSON:**

13 **Q** But you were in control of how much credit
14 orders you placed to Mac Papers throughout this
15 entire relationship?

16 **A** Theoretically, the answer is yes, because I
17 was the owner.

18 **Q** Okay. That's all the questions I have for
19 you.

20 **MR. ELLIS:** Nothing further, Your Honor.

21 **THE COURT:** Okay. Sir, you can step down.

22 **THE WITNESS:** Thank you.

23 **MR. ELLIS:** And with Mr. Kudeviz's
24 testimony, that's our case.

25 **THE COURT:** All right.

1 MR. ELLIS: That's the defense's case. May
2 I take a quick -- may we take a real quick
3 break?

4 THE COURT: Absolutely. Please. I'll tell
5 you what, let's be in recess for 10 minutes.

6 MR. ELLIS: Thank you.

7 (WHEREUPON, a short recess is taken.)

8 (WHEREUPON, Defendant's Exhibits 2, 3 and 4 are
9 marked for identification.)

10 MR. JOHNSON: Your Honor, at this time, I'd
11 like to move for directed verdict.

12 THE COURT: All right. All right. And do
13 you -- do you want to make argument or just
14 preserving it for the record? Since we are about
15 to move into argument.

16 MR. JOHNSON: Yes.

17 THE COURT: Okay. And your motion, at this
18 time, is respectfully denied. Anything you want
19 to do?

20 MR. ELLIS: I'd like to renew my motions.

21 THE COURT: And your motion is
22 respectfully denied.

23 All right. So we'll just -- since we're
24 here at the end, there's no further -- oh, I did
25 something without asking y'all. I hope it's

1 okay. I did not ask you about this. I marked,
2 just for clarity sake, since there were three
3 different deposition excerpts, I marked those as
4 Defendant's Exhibit 1, 2 and 3.

5 **MR. ELLIS:** That's fine.

6 **THE COURT:** Is that okay?

7 **MR. ELLIS:** It's actually 2, 3 and 4.

8 **THE COURT:** Oh, I'm sorry. If I looked at
9 it, I would know. 2, 3 and 4.

10 **MR. ELLIS:** That's fine.

11 **THE COURT:** You're exactly right. 2, 3 and
12 4. I did do that just for clarity sake. Anyway,
13 I did that without asking you if there's no
14 objection.

15 **MR. JOHNSON:** No objection, Your Honor.

16 **THE COURT:** All right then. Yes, sir.
17 Anything else? No other matters.

18 **MR. JOHNSON:** May it please the Court?

19 **THE COURT:** Yes.

20 **MR. JOHNSON:** Your Honor, as I opened up
21 this morning saying this is a pretty simple case
22 from what needs to be decided. We need a
23 determination on the law and the facts. There's
24 no dispute that the guaranty, the 1991 guaranty
25 or the 2008 guaranty were entered into. We

1 presented -- those are valid and binding
2 agreements in place. And the amount due and
3 owing from Genesis Press to Mac Papers is
4 \$399,685.60. How that relates today, Your Honor,
5 is just through the guaranty agreement and the
6 actual language on its face.

7 As we talked about this morning, the main
8 concern of the Court is to ascertain and give
9 affect to the intention of the parties. The
10 clear intention of the parties with respect to
11 the guaranty is that -- if the guaranty was
12 going to be terminated, it needed to be
13 terminated in writing with a registered letter
14 to Mac Papers headquarters in Jacksonville,
15 Florida. The guaranty further stated that if it
16 were to be modified, it needed to be modified in
17 writing and signed by the parties.

18 Your Honor, under South Carolina law, to
19 modify a written agreement, it has to be
20 supported by separate and adequate
21 consideration, that is *Evatt v. Campbell*, 234
22 S.C. 1 (1959), South Carolina Supreme Court
23 case. Your Honor, there is no consideration
24 whatsoever in the record to support any kind of
25 modification of the guaranty agreement. Couple

1 that with the clear and concise and explicit
2 unambiguous language of the guaranty itself that
3 required that the notice of termination be sent
4 registered mail to Jacksonville. There is no
5 other result that could occur other than finding
6 liability underneath the guaranty agreement. As
7 we further talked about this morning, it's not
8 the function of this court to rewrite the
9 contract of the parties. The testimony provided
10 today by Mr. Kudeviz supports that he signed a
11 guaranty, that there was consideration for the
12 guaranty and that he never sent a written
13 termination of the guaranty. The testimony from
14 Tonja Van Zandt and Craig Boortz coincides with
15 that, Your Honor. They believed a guaranty was
16 in place. They never received written
17 termination of the guaranty from Mr. Kudeviz at
18 the home office. And they were operating from
19 2010 all the way up until the bankruptcy under
20 that privilege. That's why they continued to
21 extend credit to Genesis Press and Larry
22 Kudeviz. There has been no conduct by Mac Papers
23 that would support any equitable estoppel.
24 There's never been a false representation by Mac
25 and there was never any concealment of material

1 facts. The whole premise of equitable estoppel
2 that no man may take advantage of his own wrong
3 does not apply. It applies more to Mr. Kudeviz
4 because the wrong action that he took is he
5 indeed was trying to release his guaranty
6 agreement, he did it in the wrong way. Mac
7 didn't know about it. Your Honor, I lost a piece
8 of paper.

9 **THE COURT:** That's fine. Take your time.

10 **MR. JOHNSON:** The defense brought testimony
11 that alleged that Mac Papers waived terms of the
12 guaranty. South Carolina requires a waiver that
13 is an unequivocal intent to relinquish a known
14 right. In none of the evidence presented today
15 did they show that there was an unequivocal
16 intent by Mac to relinquish either the right of
17 the guaranty enforceability or the right of
18 requiring the termination be sent by registered
19 mail to Mac in Jacksonville. In conclusion, Your
20 Honor, the only evidence presented here today
21 that can't be uncontroverted is the actual
22 language in the agreements, the admission that
23 the guarantees were entered into, the admission
24 that there was consideration for them, the
25 admission that the amounts due and owing are the

1 \$399,000 figure and that Mr. Kudeviz never sent
2 a notice of termination pursuant to the
3 guaranty. Thank you, Your Honor.

4 **THE COURT:** Thank you.

5 **MR. ELLIS:** Thank you, Your Honor. May it
6 please the Court.

7 **THE COURT:** Certainly.

8 **MR. ELLIS:** Your Honor, several years ago,
9 lots of employees had noncompetes that their
10 employers asked them to sign in consideration of
11 further employment. It seemed those were valid
12 contracts. I think it was around 1998, the Court
13 of Appeals suddenly up and said no, all these
14 contracts that you think were valid and all
15 these contracts that you thought were supported
16 by valid consideration, which was promise of
17 future employment or I'm going to have to let
18 you go if you won't sign this noncompete, the
19 Court of Appeals said no, that's actually not
20 valid consideration. Valid consideration is
21 getting something new. Valid consideration is
22 getting something concrete in exchange for your
23 agreement. Now, there was not consideration
24 given for the guaranty agreement when these
25 guarantees were signed. There was not

1 consideration given for that. As Ms. Van Zandt
2 testified, first of all, neither one of them
3 were there in 1991 so they can't testify to what
4 Mac did. They have no knowledge of what Mac did
5 as far as what Mac gave to Genesis in exchange
6 for filing these. They can't testify as to what
7 the credit limit was. They don't know that. They
8 don't have any proof of that.

9 Now, what I would have loved to have been
10 able to come in here and tell you, and I was
11 really hoping I could, is that I win. I would
12 have loved to have told you that. That's not
13 what my research found simply based on that. The
14 research I found is that these continuing
15 guarantees, that happens a fair amount. The
16 owner of a business signs a guaranty for future
17 purposes. So how do we treat the fact that there
18 wasn't consideration at the outset, which there
19 wasn't for any of the documents that were
20 signed. And the way the courts have treated that
21 is to say each purchase is a separate contract.
22 That's how it works. We're going to treat this
23 as though the person who signed the guaranty has
24 a standing offer.

25 Every time the vendor, Mac Papers, ships

1 goods, they've accepted the offer. As I said
2 before, I think that the significance of that
3 for this case is a couple of things. The offeror
4 is the master of the offer. So wherever the
5 offeror has offered from his own standpoint,
6 that's all that the offeree has the power to
7 accept. Your Honor, the other point about that
8 is -- and I don't -- I must confess to you, I
9 don't know the answer to this question because I
10 think it's a little bit confusing. I don't --
11 some courts haven't dealt with this, but the
12 offeror has the power to revoke an offer. I
13 mean, if I make an offer to you and you don't
14 accept it, I have the right to revoke it.

15 While these guarantees were attempted to be
16 bilateral contracts which bound both parties at
17 all times, I think it's very clear under the law
18 they don't. They're not because they are not
19 bilateral contracts. It's a unilateral contract,
20 which Mac then accepts by shipping goods. So
21 Your Honor, what we're talking about here is an
22 offeror who is the master of the offer.

23 Your Honor, it's difficult for me, just the
24 way the real world works, going back to the idea
25 of can we see this email as terminating from the

1 contract. Your Honor, first of all, it is South
2 Carolina law that a contract says it can only be
3 modified in writing, uh, it can be modified
4 orally as well. It can be changed. Your Honor,
5 as I stated to -- Mr. Johnson made the argument
6 that no consideration was given for any
7 modification. Well, that's what promissory
8 estoppel does. Promissory estoppel substitutes
9 detrimental reliance of consideration. It says
10 that -- it says if you relied to your detriment,
11 that fills in the void for lack of
12 consideration.

13 Your Honor, again, I come back to the idea,
14 I do think it's fairly clear that if Craig
15 Boortz or anyone of a management level at Mac
16 had sent an email to Larry that said, Larry,
17 this email would hereby notify you that you are
18 no longer liable to Mac under a personal
19 guaranty going forward. I think this court would
20 say that -- that guaranty is over with.

21 You can't come into court and now complain
22 that they didn't send you notice by registered
23 mail when you clearly told them in writing that
24 you don't have to -- that you don't have to send
25 it, that your guaranty is over with. So I

1 started out with the proposition that it is
2 possible to terminate this guaranty by other
3 than sending a notice by registered mail. That
4 is possible to do that. I think it's likely that
5 could be done.

6 Your Honor, when you get to the nuts and
7 bolts of what Mr. Kudeviz conversation was with
8 Mr. Boortz, you get back to what does
9 preponderance of evidence tell you is going on
10 here. Your Honor, it's not possible that Mr.
11 Kudeviz was realistically talking about anything
12 other than this guaranty that we're talking
13 about here today. Like I said, the other
14 guarantees were specifically tied to notes. They
15 terminated it on their own accord. There's
16 nothing that needs to be done with those. Those
17 terminated.

18 Also, if he's talking about a personal
19 guaranty, I'm not exactly sure why Mac would get
20 to pick and choose what guaranty he's talking
21 about. The guaranty, the only guaranty that's
22 left to be terminated at that point that's not
23 terminated on its own accord is the personal
24 guaranty we're talking about today. So when he
25 says is Tonja working on releasing this and he

1 says yes, she is, as I say, I think it's hard to
2 say that that's not a reasonable response for a
3 business person to go okay, this is off my list.
4 This has been taken care of.

5 Once again, as I say, it's kind of hard to
6 argue that the only way this could be terminated
7 was notice by registered mail when once Mac
8 knows that Larry does not agree to make this
9 offer anymore. Once Mac knows that the offeror
10 is no longer willing to make this offer, they
11 don't have the right to rely on that anymore.
12 Again, if this were a bilateral -- binding
13 bilateral contract, I think Mac's position would
14 be very different. I think if they had given
15 consideration at the outset in the form of,
16 because you have signed this, we're going to
17 increase your credit limit to 400,000 more or
18 they've given them something in return, but they
19 didn't. Again, as I say, I don't think -- from
20 looking at the case law, I don't think that's
21 unusual. I think this is the way a large number
22 of continuing guarantees work, but they are
23 separate transactions.

24 So again, the offeror has the right to
25 terminate this. I think that since we know that

1 it can be terminated by other than sending this
2 document by registered mail, then, uh, that's
3 why I would ask the Court to give consideration
4 to why is this not reasonable for this
5 businessman to read this and say I'd asked them
6 if they are working on releasing it. They said
7 yes, she is. The only work that has to be done
8 is to, is to finish up in their system.

9 They don't have to do anything. They don't
10 have to get an approval. They don't have to get
11 my approval. They don't have to get me to sign
12 anything. She's working on it. That's just
13 basically notifying us that Mac has received the
14 notice. They are just telling us that they've
15 got their own internal processes to take care
16 of. So Mac has received that notice.

17 Your Honor, if we're going to say, no, no,
18 no, no, no, we've got to do the documents, the
19 documents say what the documents say and we've
20 got to do what the documents say, Your Honor,
21 that's where I get back to the issue of the
22 offeror being the master of the offer. Because
23 what was testified to by Ms. Van Zandt, and it
24 was correct. I'm not trying to say gotcha. What
25 she said is legally correct, which is that the

1 original credit application and the guaranty
2 were entered in together. They're part of the
3 same transaction. The Florida law and South
4 Carolina law and I imagine everybody else's law
5 says when you've got two documents that are part
6 of the same transaction, you have to consider
7 them together. They are construed together.

8 Your Honor, the amount that was asked for,
9 credit desired was \$70,000. If we're going to
10 stick to the black letter of the documents,
11 let's stick to the black letter of the documents
12 and say that what Larry agreed to was \$70,000
13 and he could be liable for \$70,000. If the
14 wording of these documents were so important,
15 let's point out that the wording of these
16 documents are so important.

17 Your Honor, handwritten provisions in a
18 contract, I believe, trump printed provisions.
19 Handwritten provisions in a contract are
20 obviously extremely important. The amount of
21 credit desired was \$70,000. I get back to the
22 point that the offeror is the master of the
23 offer. If Genesis does not have a -- I'm sorry,
24 Mac does not have the power to say we are -- on
25 each individual offer, we're going to extend

1 your credit beyond that, because remember, under
2 the law, each of these is a separate credit
3 transaction.

4 Your Honor, the 2008 document that Larry
5 signed, you know, surely Mac is estopped to
6 argue that that's a new guaranty. Ms. Van
7 Zandt's email says it's for the purpose of
8 updating the paperwork. That's not a new
9 guaranty. It's for getting your address correct.
10 I don't think they get to actually send a note
11 that says this is why we are sending you this.
12 This is a brand-new guaranty and its unlimited.
13 They don't get to do that. What they do is send
14 with this note and say this is why we're asking
15 you to sign it. This is what this is for. Again,
16 Ms. Van Zandt's testimony in her deposition, she
17 testified by saying this is just to update the
18 file.

19 Your Honor, again, the -- if this was a
20 bilateral contract, let me go back to the shall
21 be reviewed, 1992 language. Once again, if we're
22 going to stick to exactly what's in the
23 document, we're going to say all that can be
24 looked at in the document, you have a document
25 that says this is be reviewed again in 1992. I

1 mean, again, if we're just going to do what the
2 document says, why not point out the fact that
3 it says it has be reviewed. If a condition of
4 the document was not fulfilled, why is the
5 document still here?

6 If we're not going to buy the argument that
7 something different could happen than what's
8 actually printed in the document, such as it can
9 be terminated by an email, again, the document
10 has to say what the document -- the document
11 says what the document says. It's a condition in
12 the document that it's to be reviewed. If it
13 wasn't, why does Mac get to come in here and
14 say, well, we've decided what this means? Again,
15 the power is with the offeror and not with the
16 offeree.

17 Your Honor, uh, I am not -- maybe Counsel
18 can show me the exact quote. Waiver is voluntary
19 relinquishment of a known right. Maybe the
20 language is unequivocal intent. But if you say
21 something to somebody that they are reasonable
22 in relying upon, I don't think you get to say,
23 well, that's too bad. You should have known
24 better. We all do business this way all the
25 time.

1 As I say, lawyers email each other things.
2 Contracts are formed by emails. That's why I go
3 back to the idea that a reasonable businessman
4 getting this would have said okay I'm reasonably
5 relying on the fact that I no longer have a
6 personal guaranty and I'm going to do business
7 going forward on that basis. As Mr. Kudeviz
8 testified to, he said he would have rather just
9 gone out of business entirely than to be stuck
10 with another personal guaranty. That's what he
11 thought that he had.

12 Your Honor, this isn't a bad or good versus
13 evil. These are companies that worked together.
14 These are companies that supported each other
15 during hard times. So it's not like that. I'm
16 not here to say people, you know, one side is
17 good, one side is bad. But Your Honor, it's a
18 system where I think -- it's a situation where I
19 think Mac inadvertently through one of its
20 representatives told Mr. Kudeviz something about
21 his guaranty for which he formed a reasonable
22 belief that he was not going to be responsible
23 for the guaranty going forward. Therefore, did
24 not take any further action because he had
25 something in writing that notified him that it

1 was being released. If the Court can't get
2 there, then the Court says I've got to say that
3 its registered mail.

4 Your Honor, what I would urge the court to
5 go back to then is to say there was really only
6 one guaranty. After the offeror, which was the
7 guarantor said we'll be liable for \$70,000. I
8 think that that would be the maximum that would
9 be fair to hold Mr. Kudeviz to. Again, if we're
10 going to do the -- if we're going to do the
11 written documents, we've got to do the written
12 documents. Thank you very much.

13 **THE COURT:** Thank you.

14 Anything else you'd like to add?

15 **MR. JOHNSON:** Very briefly, Your Honor.
16 Again, the clear, explicit, unambiguous language
17 of the guaranty calls for modification in
18 writing signed by the parties and it calls for
19 termination by registered mail. The only thing
20 that's unambiguous in all this testimony today
21 is this email about is Tonja working on
22 releasing my personal note. There had been
23 testimony that that's the guaranty, that's the
24 only thing that's unambiguous in all of this.

25 What is clear is that the guarantees are in

1 place and Mac's corporate office had no
2 knowledge and no notice that Mr. Kudeviz wanted
3 to be released.

4 **THE COURT:** Thank you. Let me just say to
5 both sides I don't know what I'm ultimately
6 going to decide in this case. At this point, I
7 want to take a look at the case law that's been
8 handed up today. I want to take a look at the
9 depositions that had been handed up. I want to
10 take a look at all the things, the exhibits and
11 go over my notes. Both I and my law clerk have
12 taken a lot of notes during this trial because
13 there were a lot of things presented.

14 But I do want to say to both sides that no
15 matter what the outcome in this case is, you
16 have to feel good that you could not have had a
17 better tried case between two attorneys. I mean
18 that sincerely, you could not have had a better
19 tried case between two attorneys. They were
20 prepared. They know this case inside out. They
21 were ready to go and they managed to take a very
22 complex issue and break it down very well, very
23 well within a matter of hours. That is the
24 hardest thing to do in the legal world frankly,
25 truthfully. And they both did outstanding jobs

1 and managed to be nothing but absolutely
2 pleasant to one another and to the Court the
3 entire time. So I have to tell you it's been a
4 pleasure to try this case with them and with you
5 today.

6 Now, I'm kind of turning to the hard part,
7 where I've got to sit down and go through
8 everything and think about things. I do not have
9 very many matters that I am considering right
10 now. I don't have them under consideration and I
11 tell you that just to say that I would
12 anticipate having a decision within the next few
13 weeks. I have another non-jury trial tomorrow
14 but I will make this guarantee to you and I
15 won't make it to them. I'll decide this one
16 first. I will -- I will be getting back in touch
17 with you fairly shortly.

18 I say that to tell you I know you're going
19 to be anxious about the result. I say this from
20 my days of practicing law, your attorneys will
21 call you the minute that they are able to call
22 you about the decision in this particular case.
23 You've done all you can do at this point.
24 Unfortunately, now, it's just left to me. But
25 thank you again for being so cordial and so easy

1 to work with today. I wish you both the best of
2 luck. Thank you.

3

4 (WHEREUPON, the proceedings conclude at
5 approximately 4:03 p.m.)

6

7

8

9

CERTIFICATE

224

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 30th day of September, 2016.

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

Teresa B. Johnson

Official Court Reporter

MAC PAPERS, INC.
CREDIT APPLICATION

GE 1515

Business Name GENESIS PRESS, INC. Date 10/17/91
Street Address 10000 N.W. 79th AVE Phone 305-255-6320
City MIAMI GARDENS State FLA Zip Code 33016 *HOME PHONE TO BE CHANGED TO BUS. PHONE*
Business operates as: ☒ Corporation ☐ Partnership ☐ Sole Proprietor
Business property is: ☒ Leased ☐ Owned If owned, by whom: _____

Type of Business: PRINTING Date Established: 10/91

Number of Employees: Approx 10

OFFICERS/PARTNERS/OWNERS

TITLE/AFFILIATION

<u>BARRY ZISOOK</u> ^{53rd} <u>332-34-3492</u>	<u>PRES</u>
<u>LARRY RUDEVIZ</u> <u>10000-10000</u>	<u>VP</u> <u>082-50-5383</u>
<u>LEWIS LEVIN</u> <u>173-30-4259</u>	<u>SEC/TREAS.</u>

Do you pay sales tax? ☒ Yes ☐ No (If answer is "No", State Sales Tax Exemption Certificate must be attached.)

BANKS

Name FIRST UNION BANK Contact Officer John White
Address 201 S. BISCAYNE BLVD. MIAMI, FLA
Name _____ Contact Officer _____
Address _____

TRADE REFERENCES

Name <u>New Bus.</u>	Phone _____
Address _____	
Name _____	Phone _____
Address _____	
Name _____	Phone _____
Address _____	
Name _____	Phone _____
Address _____	

Amount of credit desired: \$ 70,000

I (we) agree that payments will be made in accordance with terms stated on each invoice, that a service charge of 1 1/2% per month will be charged on all past due balances when account is over 30 days past due, and that if my (our) account is referred to an attorney for collection, I (we) will be responsible for reasonable attorney's fees and court costs.

(Signature) [Signature]

PLAINTIFF'S
EXHIBIT

GUARANTY AGREEMENT

For and in consideration of credit extended or to be extended by Mac Papers, Inc., its successors or assigns, to and at the request of

Genesis Press, Inc.

(hereinafter called "Purchaser")

the undersigned, jointly and severally, do hereby unconditionally guarantee the payment at respective maturity dates of any and all indebtedness of any kind whatsoever, whether now due or which may hereafter become due from Purchaser to Mac Papers, Inc., its successors or assigns, and hereby agree to pay punctually such indebtedness, plus interest at the maximum rate allowed by law together with all costs of collection (including a reasonable attorney's fee), if default in payment thereof be made by Purchaser. The undersigned expressly waive presentment for payment, notice of nonpayment, protest to any extension of time of payment granted by Mac Papers, Inc., its successors or assigns. This guaranty contains no limitations or conditions except as written herein, may be modified only in writing signed by the parties hereto, and is to remain in full force and effect until written notice of its termination is received by registered mail by Mac Papers, Inc., its successors or assigns, at its office in Jacksonville, Florida, except the written termination of this guaranty by the undersigned shall be effective only as to future credit from and after the date Mac Papers, Inc., its successors or assigns, receives the aforesaid notice, i.e., any termination hereof as aforesaid shall not affect credits extended prior to its effective termination. Notwithstanding any provisions of this Agreement, the aggregate charges to the undersigned for interest, cost of collection, attorney's fees, and any other charges shall never exceed the maximum of such charges allowed by law; and in the event any charge herein provided for exceeds the maximum amount allowed by law, such amount is hereby automatically reduced as of inception to an amount that does not exceed the maximum amount allowed by law.

<u>Cath U B</u>	Witness	<u>Barry Zisook</u>	Guarantor 332-34-3492	(SEAL)	<u>12/2/91</u>	Date
<u>Cath U B</u>	Witness	<u>Larry Kudviz</u>	Guarantor 082-50-5383	(SEAL)	<u>12/2/91</u>	Date
<u>Cath U B</u>	Witness	<u>Lewis Levin</u>	Guarantor 173-30-4259	(SEAL)	<u>12/2/91</u>	Date

Witness	Guarantor	(SEAL)	Date
Barry Zisook	7644 S.W. 178th Terrace	Miami, FL 33157	
Larry Kudviz	9534 N.W. 52nd Manor	Sunrise, FL 33351	
Lewis Levin	11801 S.W. 57th Ct.	Miami, FL 33156	

THIS GUARANTY TO BE REVIEWED BY THE GUARANTORS AND
MAC PAPERS, INC ON OR BEFORE MARCH 31, 1992.

MAC PAPERS, INC. USE ONLY:

Line of credit _____
Branch approval _____ Date _____
Headquarters approval _____ Date _____

PLAINTIFF'S
EXHIBIT

2

Tonja Vanzandt

From: Tonja Vanzandt
Sent: Wednesday, November 26, 2008 10:07 AM
To: 'BKudeviz@genesispres.com'; 'LKudeviz@genesispres.com'
Subject: FW: Attached Image
Attachments: 1734_001.pdf; credit application and Guaranty.tif

Bruce and Larry,

I have attached the Note, Security Agreement, Guaranty Agreements, application and a copy of the UCC Filing. All the September invoices will be shifted to the note upon receipt of the signed documents. After speaking with you yesterday I realized the application on file reflects your previous address in Florida and Lewis Levin as a guarantor. Please update this information in addition to signing the Note related documents.

I understand you will want your attorney to review the documents under the circumstances. Please feel free to have them call me directly if they have any questions regarding the documents or terms.

If possible we would like the opportunity to speak with your attorney regarding the status of your case. I would very much like to have Sutton McGehee on the conference call. Unfortunately the only time he is available next week is December 2, 2008 between 2:00 – 4:00 PM.

I know we discussed the next payment and agreed on Wednesday of next week for the remaining August invoices. Would it be possible to receive payment on Monday instead which is month end close out? If this is not possible it will not create a problem. I just thought it would be a cleaner process to get all of the August and September invoices taken care of at once.

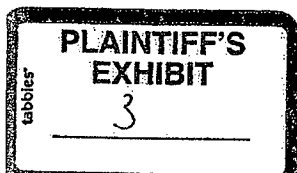
Craig indicated he would pick up the signed documents and forward them to my attention should you decide the Note is beneficial.

always we appreciate your business. If I don't speak with you today I hope you both have a wonderful Thanksgiving.

Thanks,

Tonja Van Zandt

From: canonaccting@macpapers.com [mailto:canonaccting@macpapers.com]
Sent: Tuesday, November 25, 2008 3:46 PM
To: Tonja Vanzandt
Subject: Attached Image



\$ 303,836.32

Date 12/9/08

NOTE

For value received, the undersigned (jointly and severally if more than one), promises to pay to the order of MAC PAPERS, INC. the principal sum of \$ 303,836.32, with interest thereon at the rate of 12% per cent per annum from date until maturity, both principal and interest being payable in lawful money of the United States of America, at P.O. Box 5369, Jacksonville, Fl. 32247, or at such other address as the holder from time to time may specify by written notice to the maker, the principal and interest to be paid at the date or dates listed below. There will be no penalties for pre-payment of this note. Payments will be in the manner following: (terms of payment)

Payments to begin on December 24, 2008 in the amount of \$52,245.30 to be paid monthly until principal and interest are paid in full. This note is to be construed and enforced according to the laws of the State of Florida.

If default be made in the payment of any of said sums or interest or in the performance of any agreements contained herein, then, at the option of the holder of the same, the principal sum then remaining unpaid, with accrued interest, shall immediately become due and collectible without notice, time being of the essence of this contract and said interest at the maximum legal interest rate per annum, from such time until paid.

Each maker and endorser waives presentment, protest, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if counsel shall, after maturity of this note of default thereunder, be employed to collect this note or to protect the security thereof.

Genesis Press Inc

7112 Augusta Rd
Piedmont SC 29673

Witness [Signature]

Date 12/9/08

Witness _____

Date _____

[Signature]
BY: Larry Kudeviz

Title: _____

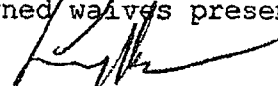
BY: _____

Title: _____



Customer Number GE1532

FOR VALUE RECEIVED the undersigned, (jointly and severally if more than one) hereby endorses this note and unconditionally guarantees to any holder full payment of the indebtedness evidenced by this note when due by acceleration or otherwise and all other sums due hereunder agrees to all the terms and conditions of this note and consents from time to time with notice to the undersigned any time of payment under this note may be extended or accelerated in whole or in part, this note may be renewed in whole or in part. the undersigned waives presentment, notice of dishonor and protest.

Signed  Date 12/9/08
Larry Kudeviz

Date of Birth _____

Social Security Number 082 50 538 3

Address 7112 Augusta Road

City, State, Zip Piedmont, SC 29673

Signed _____ Date _____

Date of Birth _____

Social Security Number _____

Address _____

City, State, Zip _____

Form CR92-011 (92-04-13)

Security Agreement (Chattel Mortgage)

This Agreement, made the 9th day of December, 2008

Under the laws of the state of Florida

Between Genesis Press Inc, herein called the Debtor, whose business address is
7112 Augusta Rd Piedmont SC 29673

And Mac Papers, Inc, herein called the Secured Party, whose address is
3300 Philips Highway (P.O. Box 5369), Jacksonville, FL 32247

Witnesseth:

To secure the payment of an indebtedness in the amount of \$303,836.32 with interest, payable as follows:

Payments to begin on December 24, 2008 in the amount of \$ 52,245.30 and to be paid monthly on the 24th until principal and interest are paid in full.

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein (hereinafter called the collateral), which collateral the Debtor represents will be used primarily
☐ for personal, family or household purposes ☐ in farming operations ☐ in business and other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination
- (c) all proceeds thereof, if any,
- (d) all increases, substitutions, replacements, additions and accessions thereto.

DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

To pay and perform all of the obligations secured by this agreement according to their terms.

To defend the title to the collateral against all persons and against all claims and demands, whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interest, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.

On demand of the secured party to do the following: furnish further assurance of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all cost of filing in connection therewith.

To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.

To keep the collateral at the location specified in the schedule and not remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.

To pay, when due, all taxes, assessments and license fees relating to the collateral.

To keep the collateral, at Debtors own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.

To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

THE PARTIES FURTHER AGREE

Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.

Notice to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.

The following shall constitute a default by Debtor:

Failure to pay the principal or any installments of principal or of interest on the indebtedness or any notes when due. Failure by the debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by the Debtor in connection with this agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligation herein.

Upon any default of the Debtor and at the opinion of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default"

Upon any Default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorney's fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the debtor.

The debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand.

If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

The Secured Party is hereby authorized to file a Financing Statement.

The Terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns.

The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This agreement may not be changed orally.

In Witness Whereof, the Parties have respectively signed and sealed these presents the
day and year first above written.

Genesis Press Inc - L. Kelly

Genesis Press Inc
7112 Augusta Rd
Piedmont SC 29673

SCHEDULE

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amount due thereon. If items are crops or goods affixed or to be affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

ITEMS

LOCATION, ETC.

All debtors tangible and intangible personal property now owned or hereafter acquired, including but not limited to, all cash, profits and rents, fixtures, machinery, equipment, inventory, furniture, accounts receivable, leases, contractual rights and proceeds of any of these, judgements, settlements, awards of damages, and insurance proceeds received on any of this personal property.

GUARANTY AGREEMENT

For and in consideration of credit extended or to be extended by Mac Papers, Inc., its successors or assigns, to and at the request of

Genesis Press - Larry Kucheviz

(herein after called "Purchaser")

the undersigned, jointly and severally, do hereby unconditionally guarantee the payment at respective maturity dates if any and all indebtedness of any kind whatsoever, whether now due or which may hereafter become due from Purchaser to Mac Papers, Inc., its successors or assigns, and hereby agree to pay punctually such indebtedness, plus interest at the maximum rate allowed by law together with all cost of collection (including a reasonable attorney's fee), if default in payment thereof be made by Purchaser. The undersigned expressly waive presentment for payment, notice of nonpayment, protest to any extension of time of payment granted by Mac Papers, Inc., its successors or assigns. This guaranty contains no limitations or conditions except as written herein, may be modified only in writing signed by the parties hereto, and is to remain in full force and effect until written notices of its termination is received by registered mail by Mac Papers, Inc., its successors or assigns, at its office in Jacksonville, Florida, except the written termination of this guaranty by the undersigned shall be effective only as to future credit from and after the date of Mac Papers, Inc., its successors or assigns, receives aforesaid notice, i.e., any termination hereof as aforesaid shall not affect credits extended prior to its effective termination. Notwithstanding any provisions of the Agreement, the aggregate charges to the undersigned for interest, cost of collection, attorney's fees, and any other charges shall never exceed the maximum of such charges allowed by law, and in the event any charge herein provided for exceeds the maximum amount allowed by law, such amount is hereby automatically reduced as of inception to an amount that does not exceed the maximum amount allowed by law.

GUARANTOR(S) INFORMATION

[Signature]
 Witness
12/11/08
 Date

[Signature]
 Signature
Lawrence I Kucheviz
 First Initial Last

Home Address 507 Watts Ave
 City Greenville State SC Zip 29615
 Home Phone _____ Date of Birth 1/11/56
 Social Security Number 082-50-5383

 Witness

 Date

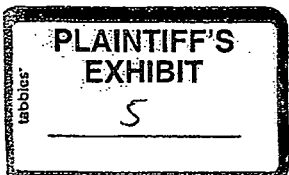
 Signature

 First Initial Last

Home Address _____
 City _____ State _____ Zip _____
 Home Phone _____ Date of Birth _____
 Social Security Number _____

Account Number _____

MP23PG 01/94



\$ 401,852.51

Date 2-2-09

NOTE

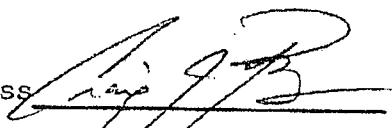
For value received, the undersigned (jointly and severally if more than one), promises to pay to the order of MAC PAPERS, INC. the principal sum of \$ 401,852.51, with interest thereon at the rate of 12% per cent per annum from date until maturity, both principal and interest being payable in lawful money of the United States of America, at P.O. Box 5369, Jacksonville, Fl. 32247, or at such other address as the holder from time to time may specify by written notice to the maker, the principal and interest to be paid at the date or dates listed below. There will be no penalties for pre-payment of this note. Payments will be in the manner following: **(terms of payment)**

Payments to begin on March 2, 2009 in the amount of \$33,156.66 to be paid monthly until principal and interest are paid in full.

This note is to be construed and enforced according to the laws of the **State of South Carolina.**

If default be made in the payment of any of said sums or interest or in the performance of any agreements contained herein, then, at the option of the holder of the same, the principal sum then remaining unpaid, with accrued interest, shall immediately become due and collectible without notice, time being of the essence of this contract and said interest at the maximum legal interest rate per annum, from such time until paid.

Each maker and endorser waives presentment, protest, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if counsel shall, after maturity of this note of default thereunder, be employed to collect this note or to protect the security thereof.

Witness 

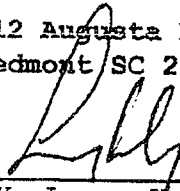
Date 2-2-09

Witness _____

Date _____

Genesis Press Inc

7112 Augusta Rd
Piedmont SC 29673


BY: Larry Kudeviz

Ceo
Title:

BY: _____

Title: _____

**PLAINTIFF'S
EXHIBIT**

6

Customer Number GE9932

FOR VALUE RECEIVED the undersigned, (jointly and severally if more than one) hereby endorses this note and unconditionally guarantees to any holder full payment of the indebtedness evidenced by this note when due by acceleration or otherwise and all other sums due hereunder agrees to all the terms and conditions of this note and consents from time to time with notice to the undersigned any time of payment under this note may be extended or accelerated in whole or in part, this note may be renewed in whole or in part. the undersigned waives presentment, notice of dishonor and protest.

Signed Larry Kudeviz Date 2/2/09

Date of Birth 1-11-56

Social Security Number 082 50 538 3

Address 307 WATS AVE

City, State, Zip Greenville Sc 29601

Signed [Signature] Date 2-2-09

Date of Birth 01-11-56

Social Security Number _____

Address _____

City, State, Zip _____

Form CR92-011 (92-04-13)

Security Agreement (Chattel Mortgage)

This Agreement, made the day of January 28, 2009

Under the laws of the state of South Carolina

Between Genesis Press Inc, herein called the Debtor, whose business address is
7112 Augusta Rd Piedmont SC 29673

And Mac Papers, Inc, herein called the Secured Party, whose address is
3300 Philips Highway (P.O. Box 5369), Jacksonville, FL 32247

Witnesseth:

To secure the payment of an indebtedness in the amount of \$401,852.51 with interest, payable as follows:

Payments to begin on March 2, 2009 in the amount of \$ 33,156.66 and to be paid monthly on the 2nd until principal and interest are paid in full.

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein (hereinafter called the collateral), which collateral the Debtor represents will be used primarily ☐ for personal, family or household purposes ☐ in farming operations ☐ in business and other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination
- (c) all proceeds thereof, if any,
- (d) all increases, substitutions, replacements, additions and accessions thereto.

DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

To pay and perform all of the obligations secured by this agreement according to their terms.

To defend the title to the collateral against all persons and against all claims and demands, whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interest, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.

On demand of the secured party to do the following: furnish further assurance of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all cost of filing in connection therewith.

To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.

To keep the collateral at the location specified in the schedule and not remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.

To pay, when due, all taxes, assessments and license fees relating to the collateral.

To keep the collateral, at Debtors own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.

To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

THE PARTIES FURTHER AGREE

Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.

Notice to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.

The following shall constitute a default by Debtor:

Failure to pay the principal or any installments of principal or of interest on the indebtedness or any notes when due. Failure by the debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by the Debtor in connection with this agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligation herein.

Upon any default of the Debtor and at the opinion of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default".

Upon any Default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorney's fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the debtor.

The debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand.

If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

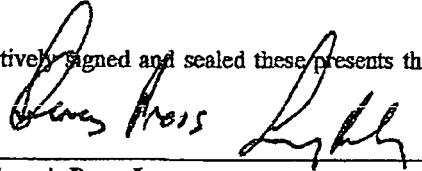
The Secured Party is hereby authorized to file a Financing Statement.

The Terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns.

The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This agreement may not be changed orally.

In Witness Whereof, the Parties have respectively signed and sealed these presents the day and year first above written.


Genesis Press Inc
7112 Augusta Rd
Piedmont SC 29673

SCHEDULE

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amount due thereon. If items are crops or goods affixed or to be affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

ITEMS

LOCATION, ETC.

All debtors tangible and intangible personal property now owned or hereafter acquired, including but not limited to, all cash, profits and rents, fixtures, machinery, equipment, inventory, furniture, accounts receivable, leases, contractual rights and proceeds of any of these, judgements, settlements, awards of damages, and insurance proceeds received on any of this personal property.

From: [Tonja Vanzandt](#)
To: BKudeviz@genesispres.com
Subject: FW: Attached Image
Date: Tuesday, August 17, 2010 4:17:26 PM
Attachments: [2711_001.pdf](#)

Bruce,

This is a copy of the first note, payment history and all supporting documentation. I will be sending a separate e-mail for the second note we did to restructure this balance with a little more of your payables balance at the time.

Tonja

From: canonaccting@macpapers.com [mailto:canonaccting@macpapers.com]
Sent: Tuesday, August 17, 2010 4:25 PM
To: Tonja Vanzandt
Subject: Attached Image



»NR20«

HEADER MAINTENANCE
ACTION »I« I OR ?

CO »01« BR »32«
PAGE • «

NBR »GE1532« TYPE »0« 0 Reg, 1 Bad debt, 2 CONSUMABLES, 5 Employee
NAME »GENESIS PRESS INC « ATTN »LARRY KUDEVIZ «
ADDR » « SHORT NAME »GENE «
ADDR »7112 AUGUSTA RD «
CITY STATE »PIEDMONT SC « ZIP »29673 «
DESC »NOTE RECEIVABLE « ORIG AMT € 303,836.32 « PAYMENT € 52,245.30 «
NOTE DATE »12052008« APPLY INT »0« 1 NO SLS REP »CB1 «
LAST INT »01262009« RATE »12.000«

	PAYOFF	\$0.00	
CURRENT BAL €	.00 «	LAST PYMT AMT €	257,527.34-«
LAST YR BAL €	.00 «	LAST PYMT DT	€01262009«
YRS BAL €	.00 «	UNPAID INTERST €	.00 «
PAYMENT MTD €	.00 «	INTEREST MTD €	.00 «
PAYMENT YTD €	.00 «	INTEREST YTD €	.00 «
PAYMENT LYR €	.00 «	INTEREST LYR €	.00 «
PAYMENT TTD €	303,836.32-«	INTEREST TTD €	4,813.05-«

PRINT STATEMENT »1« 0 YES DELETE NOTE »0« 0 NO, 1 YES
CREATED FROM »0« 0 A/R, 1 A/P
PYMT PLAN »7« 2 WKLY, 4 10TH, 5 15TH, 6 25TH, 7 MTHLY, 8 10TH AND 25TH, 9 SPCL
» «

1 St Note

»NR40«

TRANSACTION INQUIRY

CO »01« BR »32«

ACTION •I« I OR ?
NOTE ID »GE1532« START DATE €

PAGE •- «
« (MMDDCCYY)

NAME GENESIS PRESS INC
REP CB1

ORIGINAL BAL 303,836.32
CURRENT BAL .00

TRANS	TYPE	DATE/TIME	AMOUNT	----- AMOUNT APPLIED TO -----		
				INTEREST	PRINCIPLE	UNPAID INT
010609	PAYMENT	01/02/2009 10:34:21	51,122.03-	2796.96-	48,325.07-	.00
1	PAYMENT	01/26/2009 16:39:21	257,527.34-	2016.09-	255,511.25-	.00

» END OF HISTORY

«

\$ 303,836.32

Date

12/9/08

NOTE

For value received, the undersigned (jointly and severally if more than one), promises to pay to the order of MAC PAPERS, INC. the principal sum of \$ 303,836.32, with interest thereon at the rate of 12% per cent per annum from date until maturity, both principal and interest being payable in lawful money of the United States of America, at P.O. Box 5369, Jacksonville, FL. 32247, or at such other address as the holder from time to time may specify by written notice to the maker, the principal and interest to be paid at the date or dates listed below. There will be no penalties for pre-payment of this note. Payments will be in the manner following: (terms of payment)

Payments to begin on December 24, 2008 in the amount of \$52,245.30 to be paid monthly until principal and interest are paid in full. This note is to be construed and enforced according to the laws of the State of Florida.

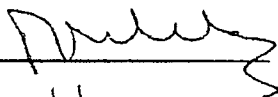
If default be made in the payment of any of said sums or interest or in the performance of any agreements contained herein, then, at the option of the holder of the same, the principal sum then remaining unpaid, with accrued interest, shall immediately become due and collectible without notice, time being of the essence of this contract and said interest at the maximum legal interest rate per annum, from such time until paid.

Each maker and endorser waives presentment, protest, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if counsel shall, after maturity of this note of default thereunder, be employed to collect this note or to protect the security thereof.

Genesis Press Inc

7112 Augusta Rd
Piedmont SC 29673

Witness



Date

12/9/08

Witness

Date

BY: Larry Kudeviz

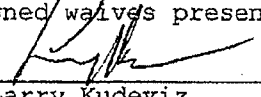
Title:

BY:

Title:

Customer Number GE1532

FOR VALUE RECEIVED the undersigned, (jointly and severally if more than one) hereby endorses this note and unconditionally guarantees to any holder full payment of the indebtedness evidenced by this note when due by acceleration or otherwise and all other sums due hereunder agrees to all the terms and conditions of this note and consents from time to time with notice to the undersigned any time of payment under this note may be extended or accelerated in whole or in part, this note may be renewed in whole or in part. the undersigned waives presentment, notice of dishonor and protest.

Signed  Date 12/9/08
Larry Kudeviz

Date of Birth _____

Social Security Number 082 50 538 3

Address 7112 Augusta Road

City, State, Zip Piedmont, SC 29673

Signed _____ Date _____

Date of Birth _____

Social Security Number _____

Address _____

City, State, Zip _____

Form CR92-011 (92-04-13)

THE PARTIES FURTHER AGREE

Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.

Notice to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision of this agreement.

The following shall constitute a default by Debtor:

Failure to pay the principal or any installments of principal or of interest on the indebtedness or any notes when due. Failure by the debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by the Debtor in connection with this agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligation herein.

Upon any default of the Debtor and at the opinion of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default"

Upon any Default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorney's fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the debtor.

The debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand.

If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

The Secured Party is hereby authorized to file a Financing Statement.

The Terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns.

The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This agreement may not be changed orally.

In Witness Whereof, the Parties have respectively signed and sealed these presents the day and year first above written.

Genesis Press Inc - R. Kelly
Genesis Press Inc
7112 Augusta Rd
Piedmont SC 29673

SCHEDULE

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amount due thereon. If items are crops or goods affixed or to be affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

ITEMS

LOCATION, ETC.

All debtors tangible and intangible personal property now owned or hereafter acquired, including but not limited to, all cash, profits and rents, fixtures, machinery, equipment, inventory, furniture, accounts receivable, leases, contractual rights and proceeds of any of these, judgements, settlements, awards of damages, and insurance proceeds received on any of this personal property.

Security Agreement (Chattel Mortgage)

This Agreement, made the 9th day of December, 2008

Under the laws of the state of Florida

Between Genesis Press Inc, herein called the Debtor, whose business address is
7112 Augusta Rd Piedmont SC 29673

And Mac Papers, Inc, herein called the Secured Party, whose address is
3300 Philips Highway (P.O. Box 5369), Jacksonville, FL 32247

Witnesseth:

To secure the payment of an indebtedness in the amount of \$303,836.32 with interest, payable as follows:

Payments to begin on December 24, 2008 in the amount of \$52,245.30 and to be paid monthly on the 24th until principal and interest are paid in full.

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein (hereinafter called the collateral), which collateral the Debtor represents will be used primarily
☐ for personal, family or household purposes ☐ in farming operations ☐ in business and other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination
- (c) all proceeds thereof, if any,
- (d) all increases, substitutions, replacements, additions and accessions thereto.

DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

To pay and perform all of the obligations secured by this agreement according to their terms.

To defend the title to the collateral against all persons and against all claims and demands, whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interest, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.

On demand of the secured party to do the following: furnish further assurance of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all cost of filing in connection therewith.

To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.

To keep the collateral at the location specified in the schedule and not remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.

To pay, when due, all taxes, assessments and license fees relating to the collateral.

To keep the collateral, at Debtors own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.

To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

MAC PAPERS, INC. - HEADQUARTERS CREDIT

3300 Phillips Highway
Post Office Box 5369
Jacksonville, FL 32247

December 5, 2008

TO: Pee Lea Lee

RE: New Note

Please set up the following new note.

NOTE NUMBER: GE1532

Genesis Press Inc
7112 Augusta Rd
PIEDMONT SC 29673

ATTN: Larry ~~Luettich~~ Kudevitz

NOTE AMOUNT: \$ 303,836.32

A/R \$ 303,836.32

NOTE DATE: 12-05-2008

S/V

INTEREST RATE: 12%

PAYMENT AMOUNT: \$ 52,245.30

DUE DATE: December 24, 2008

TERMS OF PAYMENT: 24th of each month

BRANCH: Greenville

SALESMAN: CB1

TRANS TYPE: Regular

If you have any questions please call.

Sandra Finch

Copy: Craig Boortz
Region Manager: Dave Milleman

*Old done
needed 1-28-09*

MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
 P.O. BOX 5128 - STATION B
 GREENVILLE, SC 29607
 864-281-9911

GE1532
 GENESIS PRESS INC
 7112 AUGUSTA ROAD
 PIEDMONT, SC 29673

ACCOUNT BALANCE
 AS OF:
 12/05/2008

CB1

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
365880	1359-1401		IN	365880	08/19/2008	377.06	1,293.84
	594916 PAYMENT	916.78-			11/28/2008		
365892	1351-1415		IN	365892	08/20/2008	3,256.00	3,256.00
366193	1359-1423		IN	366193	08/26/2008	928.85	928.85
366337	1359-1440		IN	366337	08/28/2008	168.50	168.50
365878	1351-1402		IN	365878	08/30/2008	20,565.46	20,565.46
366539	1359-1453		IN	366539	09/02/2008	2,325.60	2,325.60
366749	1351-1467		IN	366749	09/05/2008	129.28	129.28
366644	1351-1459		IN	366644	09/05/2008	278.27	278.27
366556	1351-1458		IN	366556	09/05/2008	46,482.63	46,482.63
366828	1359-1469		IN	366828	09/08/2008	2,907.00	2,907.00
366915	1351-1479		IN	366915	09/08/2008	2,345.67	2,345.67
365881	1351-1403		IN	365881	09/08/2008	20,417.54	20,417.54
366985	SEE NARRATIVE		IN	366985	09/10/2008	3,344.53	3,344.53
367024	6800-1490		IN	367024	09/11/2008	157.65	157.65
367023	1359-1493		IN	367023	09/11/2008	928.85	928.85
366961	SEE BELOW		IN	366961	09/11/2008	2,158.50	2,158.50
366971	1359-1489		IN	366971	09/11/2008	1,307.78	1,307.78
366394	1351-1441		IN	366394	09/11/2008	21,910.36	21,910.36
367106	1351-1503		IN	367106	09/12/2008	64.19	64.19
367209	1351-1518		IN	367209	09/15/2008	3,435.21	3,435.21
366096	1359-1422		IN	366096	09/15/2008	759.22	759.22
367240	1351-1519		IN	367240	09/16/2008	2,339.26	2,339.26
367354	1351-1524		IN	367354	09/17/2008	5,290.90	5,290.90
366951	1351-1480		IN	366951	09/17/2008	22,255.50	22,255.50
367426	1351-1525		IN	367426	09/18/2008	127.50	127.50
367185	1351-1492		IN	367185	09/18/2008	94.18	94.18
366952	1351-1481		IN	366952	09/18/2008	22,031.13	22,031.13
367490	1359-1541		IN	367490	09/18/2008	3,948.78	3,948.78
367329	1351-1520		IN	367329	09/19/2008	2,630.70	2,630.70
367504	1351-1556		IN	367504	09/22/2008	41,804.58	41,804.58
367735	1351-1564		IN	367735	09/24/2008	315.69	315.69
367760	1351-1565		IN	367760	09/24/2008	10.29	10.29
367493	1351-1540		IN	367493	09/25/2008	22,457.00	22,457.00
367813	1359-1567		IN	367813	09/25/2008	1,262.76	1,262.76
367596	1359-1559		IN	367596	09/29/2008	564.01	564.01

*** CONTINUED ***

MAC PAPERS - GREENVILLE
4607 DAIRY DR.
P.O. BOX 5128 - STATION B
GREENVILLE, SC 29607
864-281-9911

GE1532
GENESIS PRESS INC
7112 AUGUSTA ROAD
PIEDMONT, SC 29673

ACCOUNT BALANCE
AS OF:
12/05/2008

CB1

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
368003	1351-1588	IN	368003	09/30/2008		2,315.06	2,315.06
368043	1351-1563	IN	368043	10/01/2008		2,325.60	2,325.60
368157	1351-1589	IN	368157	10/02/2008		624.74	624.74
368205	1351-1599	IN	368205	10/02/2008		312.62	312.62
368223	1351-1601	IN	368223	10/03/2008		2,907.00	2,907.00
367194	1351-1506	IN	367194	10/09/2008		24,418.80	24,418.80
368495	1351-1621	IN	368495	10/09/2008		813.96	813.96
368276	1351-1604	IN	368276	10/09/2008		21,954.98	21,954.98
368564	1351-1624	IN	368564	10/10/2008		2,104.60	2,104.60
368612	1351-1632	IN	368612	10/13/2008		1,646.84	1,646.84
367660	1359-1562	IN	367660	10/13/2008		839.58	839.58
368754	1351-1638	IN	368754	10/15/2008		141.01	141.01
368763	1351-1637	IN	368763	10/15/2008		6,220.31	6,220.31
368806	1351-1641	IN	368806	10/16/2008		3,126.66	3,126.66
368831	1351-1646	IN	368831	10/16/2008		3,360.71	3,360.71
368812	1351-1642	IN	368812	10/16/2008		3,840.80	3,840.80
368807	1351-1643	IN	368807	10/16/2008		62.22	62.22
368832	1351-1646	IN	368832	10/17/2008		960.20	960.20
368746	1640/2:00	IN	368746	10/20/2008		1,422.13	1,422.13
368985	1351-1619	IN	368985	10/20/2008		117.71	117.71
369088	1351-1647	IN	369088	10/21/2008		1,663.16	1,663.16
369100	1351-1648	IN	369100	10/22/2008		3,008.66	3,008.66
369163	1351-1672/1673	IN	369163	10/24/2008		414.54	414.54
369244	1351-1588	IN	369244	10/24/2008		1,273.42	1,273.42
369253	1351-1673	IN	369253	10/27/2008		45.23	45.23
369110	1351-1649	IN	369110	10/27/2008		21,592.69	21,592.69
369111	1351-1671	IN	369111	10/27/2008		22,327.50	22,327.50
369366	1351-1683	IN	369366	10/28/2008		712.66	712.66
369638	6800-1707	IN	369638	11/03/2008		70.67	70.67
369560	1351-1678	IN	369560	11/03/2008		4,302.36	4,302.36
369765	1351-1713	IN	369765	11/04/2008		20.15	20.15
369112	1351-1650	IN	369112	11/05/2008		22,316.80	22,316.80
369890	1351-1720	IN	369890	11/06/2008		69.05	69.05
369900	1351-1721	IN	369900	11/07/2008		567.80	567.80
369626	1351-1708	IN	369626	11/09/2008		21,184.80	21,184.80
370023	1351-1724	IN	370023	11/10/2008		434.98	434.98

*** CONTINUED ***

MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
 P.O.BOX 5128 - STATION B
 GREENVILLE, SC 29607
 864-281-9911

GE1532
 GENESIS PRESS INC
 7112 AUGUSTA ROAD
 PIEDMONT, SC 29673

ACCOUNT BALANCE
 AS OF:
 12/05/2008

CB1

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
369786	1351-1714		IN	369786	11/10/2008	21,894.50	21,894.50
370095	1351-1731		IN	370095	11/11/2008	11,250.55	11,250.55
370153	1351-1732		IN	370153	11/13/2008	23.05	23.05
370259	1351-1745		IN	370259	11/14/2008	8.93	8.93
370290	1351-1746		IN	370290	11/17/2008	47.86	47.86
370448	1351-1759 HOLD		IN	370448	11/19/2008	85.49	85.49
370215	1351-1743		IN	370215	11/19/2008	2,046.32	2,046.32
370565	1351-1760 /176		IN	370565	11/21/2008	985.90	985.90
370447	1351-1759		IN	370447	11/21/2008	3,420.03	3,420.03
370632	1351-1768		IN	370632	11/21/2008	220.96	220.96
370575	1351-1765		IN	370575	11/21/2008	2,132.25	2,132.25
370201	1351-1733		IN	370201	11/21/2008	22,065.08	22,065.08
370648	1351-1769		IN	370648	11/24/2008	2,820.00	2,820.00
370588	1351-1766		IN	370588	11/24/2008	22,054.89	22,054.89
81130			SV		11/30/2008	6,302.75	6,302.75
370373	1351-1756		IN	370373	12/02/2008	20,513.56	20,513.56
370975	1351-1775		IN	370975	12/03/2008	683.15	683.15

DECEMBER	NOVEMBER	OCTOBER	SEPTEMBER	PRIOR	TOTAL
21,196.71	144,325.17	128,238.33	236,399.62	25,295.87	555,455.70

Sandra Finch**From:** Pee Lea Lee**Sent:** Friday, December 05, 2008 1:24 PM**To:** Sandra Finch

Customer Name: Genesis Press

Note Amount : 303,836.32

Note Date: 12/05/08

Interest rate: 12.00%

Pay Date	Amount	principal	Note Balance	Interest
			303,836.32	
12/24/08	(52,245.30)	(50,247.47)	253,588.85	1,997.83
01/24/09	(52,245.30)	(49,660.78)	203,928.07	2,584.52
02/24/09	(52,245.30)	(50,166.91)	153,761.16	2,078.39
03/24/09	(52,245.30)	(50,829.85)	102,931.31	1,415.45
04/24/09	(52,245.30)	(51,196.25)	51,735.06	1,049.05
05/24/09	(52,245.32)	(51,735.06)	0.00	510.26

12/5/2008

UCC1

STATE OF SOUTH CAROLINA FILING FEES:

\$ 8.00 - For the FIRST TWO pages \$20.00 - Public Finance Transaction
 \$ 2.00 - For THIRD page \$20.00 - Manufactured Home Transaction
 \$ 1.00 - Each ADDITIONAL page after the THIRD page.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS CAREFULLY

For each additional Debtor more than two (2), add \$2.00 for each additional Debtor.

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
Mac Papers Inc 3300 Phillips Hwy/US 1 South P O Box 5369 Jacksonville FL 32247

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names					
1a. ORGANIZATION'S NAME Genesis Press Inc					
OR	1b. INDIVIDUAL'S LAST NAME Kudeviz		FIRST NAME Larry	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 7112 Augusta Rd			CITY Piedmont	STATE SC	POSTAL CODE 29673
1d. TAX ID #: (Organizations)	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Corporation	1f. JURISDICTION OF ORGANIZATION South Carolina	1g. ORGANIZATIONAL ID #, if any	
(Optional)				☐ NONE	
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names					
2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
2d. TAX ID #: (Organizations)	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any	
(Optional)				☐ NONE	
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only <u>one</u> secured party name (3a or 3b)					
3a. ORGANIZATION'S NAME Mac Papers Inc.					
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 3300 Phillips Hwy/US1 South P O Box 5369			CITY Jacksonville	STATE FL	POSTAL CODE 32247
4. This FINANCING STATEMENT covers the following collateral:					
<i>All debtors tangible and Intangible personal property now owned or hereafter acquired, including but not limited to, all cash, profits and rents, fixtures, machinery, equipment, inventory, furniture, accounts receivables, lease, contractual rights and proceed of any of these, judgments, settlements, awards of damages, and insurance proceeds received on any of this personal property.</i>					

5. ALTERNATIVE DESIGNATION (if applicable):	☐ LESSEE/LESSOR	☐ CONSIGNEE/CONSIGNOR	☐ BAILEE/BAILOR	☐ SELLER/BUYER	☐ AG. LIEN	☐ NON-UCC FILING
6. ☐ This FINANCING STATEMENT is to be filed for record (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	7. REQUEST SEARCH REPORT(S) ON UCC 11 FORM			☐ All Debtors	☐ Debtor 1	☐ Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

GE1532

FILING OFFICE COPY — SC SECRETARY OF STATE

081215-1203380

UCC-1 FINANCING STATEMENT

Lapse Date: 12/15/2013 12:03:38 Filing Fee: 8 ORIG



UCC-3

STATE OF SOUTH CAROLINA FILING FEES:

\$ 8.00 - For the FIRST TWO pages
\$ 2.00 - For the THIRD page

\$ 1.00 - For each ADDITIONAL page after the THIRD page.
For each additional Debtor more than two (2), add \$2.00
for each additional debtor.

\$20.00 - Public Finance Transaction
\$20.00 - Manufactured Home Transaction

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Mac Papers Inc
3300 Philips Hwy/US 1 South
P O Box 5369
Jacksonville FL 32247

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

081215-1203380

1b. This FINANCING STATEMENT AMENDMENT is
to be filed (for record) (or recorded) in the
REAL ESTATE RECORDS.

2. ☒ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c, and also give name of assignor in item 8.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ **CHANGE name and/or address:** Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ **DELETE name:** Give record name to be deleted in item 6a or 6b. ☐ **ADD name:** Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME
Genesis Press Inc

OR 6b. INDIVIDUAL'S LAST NAME
Kudeviz

FIRST NAME
Larry

MIDDLE NAME

SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

7d. TAX ID# (Organizations)

ADD'L INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, if any

☐ NONE

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME
Mac Papers Inc

OR 9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**

GE1532

SC SECRETARY OF STATE'S OFFICE, P.O. E

090223-0932141

Lapse Date: NONE

UCC-3 TERMINATION

Filing Fee: \$ ORIG

(5/14/2003)



From: [Tonja Vanzandt](#)
To: BKudeviz@genesispres.com
Subject: FW: Attached Image
Date: Tuesday, August 17, 2010 4:18:28 PM
Attachments: [2710_001.pdf](#)

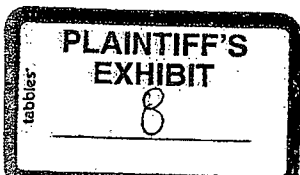
Bruce,

This is the second note. Please let me know if you need any additional information.

Thanks,

Tonja

From: canonaccting@macpapers.com [mailto:canonaccting@macpapers.com]
Sent: Tuesday, August 17, 2010 4:24 PM
To: Tonja Vanzandt
Subject: Attached Image



MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
 P.O.BOX 5128 - STATION B
 GREENVILLE, SC 29607
 864-281-9911

GE1532
 GENESIS PRESS INC
 7112 AUGUSTA ROAD
 PIEDMONT, SC 29673

ACCOUNT BALANCE
 AS OF:
 01/27/2009

CB1

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
369111	1351-1671		IN	369111	10/27/2008	22,327.50	22,327.50
369366	1351-1683		IN	369366	10/28/2008	712.66	712.66
369638	6800-1707		IN	369638	11/03/2008	70.67	70.67
369560	1351-1678		IN	369560	11/03/2008	4,302.36	4,302.36
369765	1351-1713		IN	369765	11/04/2008	20.15	20.15
369112	1351-1650		IN	369112	11/05/2008	22,316.80	22,316.80
369890	1351-1720		IN	369890	11/06/2008	69.05	69.05
369900	1351-1721		IN	369900	11/07/2008	567.80	567.80
369626	1351-1708		IN	369626	11/09/2008	21,184.80	21,184.80
370023	1351-1724		IN	370023	11/10/2008	434.98	434.98
369786	1351-1714		IN	369786	11/10/2008	21,894.50	21,894.50
370095	1351-1731		IN	370095	11/11/2008	11,250.55	11,250.55
370153	1351-1732		IN	370153	11/13/2008	23.05	23.05
370259	1351-1745		IN	370259	11/14/2008	8.93	8.93
370290	1351-1746		IN	370290	11/17/2008	47.86	47.86
370448	1351-1759	HOLD	IN	370448	11/19/2008	85.49	85.49
370215	1351-1743		IN	370215	11/19/2008	2,046.32	2,046.32
370565	1351-1760	/176	IN	370565	11/21/2008	985.90	985.90
370447	1351-1759		IN	370447	11/21/2008	3,420.03	3,420.03
370632	1351-1768		IN	370632	11/21/2008	220.96	220.96
370575	1351-1765		IN	370575	11/21/2008	2,132.25	2,132.25
370201	1351-1733		IN	370201	11/21/2008	22,065.08	22,065.08
370648	1351-1769		IN	370648	11/24/2008	2,820.00	2,820.00
370588	1351-1766		IN	370588	11/24/2008	22,054.89	22,054.89
81130			SV		11/30/2008	6,302.75	6,302.75
370373	1351-1756		IN	370373	12/02/2008	20,513.56	20,513.56
370975	1351-1775		IN	370975	12/03/2008	683.15	683.15
371176	1351-1785		IN	371176	12/08/2008	1,250.48	1,250.48
371326	SEE NARRATIVE		IN	371326	12/10/2008	631.98	631.98
371130	1351-1784		IN	371130	12/10/2008	22,188.27	22,188.27
371442	SEE NARRATIVE		IN	371442	12/12/2008	735.12	735.12
371513	1351-1804		IN	371513	12/15/2008	1,839.42	1,839.42
371609	1551-1806		IN	371609	12/16/2008	68.01	68.01
371566	1351-1805		IN	371566	12/16/2008	1,392.83	1,392.83
371266	1351-1786		IN	371266	12/17/2008	22,056.35	22,056.35
371682	1351-1808		IN	371682	12/17/2008	1,959.60	1,959.60

*** CONTINUED ***

»NR20«

HEADER MAINTENANCE
ACTION »I« I OR ?

CO »01« BR »32«
PAGE . «

NBR »GE9932« TYPE »0« 0 Reg, 1 Bad debt, 2 CONSUMABLES, 5 Employee
NAME »GENESIS PRESS INC « ATTN »LARRY KUDEVIZ «
ADDR » « SHORT NAME »GENE «
ADDR »7112 AUGUSTA RD «
CITY STATE »PIEDMONT SC « ZIP »29673 «
DESC »NOTE RECEIVABLE « ORIG AMT € 144,325.17 « PAYMENT € 33,156.66 «
NOTE DATE »01282009« APPLY INT »0« 1 NO SLS REP »CB1 «
LAST INT »07092010« RATE »12.000«

	PAYOFF	\$0.00	
CURRENT BAL €	.00 «	LAST PYMT AMT €	.96 «
LAST YR BAL €	.00 «	LAST PYMT DT	€07092010«
YRS BAL €	.00 «	UNPAID INTERST €	.00 «
PAYMENT MTD €	.00 «	INTEREST MTD €	.00 «
PAYMENT YTD €	130,899.48-«	INTEREST YTD €	8,133.70-«
PAYMENT LYR €	270,953.03-«	INTEREST LYR €	31,793.62-«
PAYMENT TTD €	257,527.34 «	INTEREST TTD €	.00 «

PRINT STATEMENT »1« 0 YES DELETE NOTE »0« 0 NO, 1 YES
CREATED FROM »0« 0 A/R, 1 A/P
PYMT PLAN »7« 2 WKLY, 4 10TH, 5 15TH, 6 25TH, 7 MTHLY, 8 10TH AND 25TH, 9 SPCL
»

2nd note

\$ 401,852.51

Date 2-2-09

NOTE

For value received, the undersigned (jointly and severally if more than one), promises to pay to the order of MAC PAPERS, INC. the principal sum of \$ 401,852.51, with interest thereon at the rate of **12% per cent** per annum from date until maturity, both principal and interest being payable in lawful money of the United States of America, at P.O. Box 5369, Jacksonville, Fl. 32247, or at such other address as the holder from time to time may specify by written notice to the maker, the principal and interest to be paid at the date or dates listed below. There will be no penalties for pre-payment of this note. Payments will be in the manner following: **(terms of payment)**

Payments to begin on March 2, 2009 in the amount of \$33,156.66 to be paid monthly until principal and interest are paid in full.

This note is to be construed and enforced according to the laws of the **State of South Carolina**.

If default be made in the payment of any of said sums or interest or in the performance of any agreements contained herein, then, at the option of the holder of the same, the principal sum then remaining unpaid, with accrued interest, shall immediately become due and collectible without notice, time being of the essence of this contract and said interest at the maximum legal interest rate per annum, from such time until paid.

Each maker and endorser waives presentment, protest, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if counsel shall, after maturity of this note of default thereunder, be employed to collect this note or to protect the security thereof.

Genesis Press Inc

7112 Augusta Rd
Piedmont SC 29673

Witness

Date

Witness

Date

BY: Larry Kudeviz

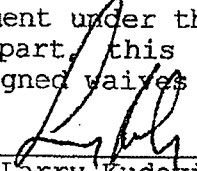
Title:

BY:

Title:

Customer Number GE9932

FOR VALUE RECEIVED the undersigned, (jointly and severally if more than one) hereby endorses this note and unconditionally guarantees to any holder full payment of the indebtedness evidenced by this note when due by acceleration or otherwise and all other sums due hereunder agrees to all the terms and conditions of this note and consents from time to time with notice to the undersigned any time of payment under this note may be extended or accelerated in whole or in part. this note may be renewed in whole or in part. the undersigned waives presentment, notice of dishonor and protest.

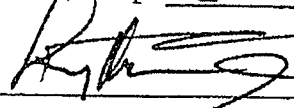
Signed  Date 2/2/09
Larry Kudeviz

Date of Birth 1-11-56

Social Security Number 082 50 538 3

Address 807 WAYS AVE

City, State, Zip  Greenville Sc 29601

Signed  Date 2-2-09

Date of Birth 01-11-56

Social Security Number _____

Address _____

City, State, Zip _____

Form CR92-011 (92-04-13)

Security Agreement (Chattel Mortgage)

This Agreement, made the day of January 28, 2009

Under the laws of the state of South Carolina

Between Genesis Press Inc, herein called the Debtor, whose business address is
7112 Augusta Rd Piedmont SC 29673

And Mac Papers, Inc, herein called the Secured Party, whose address is
3300 Phillips Highway (P.O. Box 5369), Jacksonville, FL 32247

Witnesseth:

To secure the payment of an indebtedness in the amount of \$401,852.51 with interest, payable as follows:

Payments to begin on March 2, 2009 in the amount of \$ 33,156.66 and to be paid monthly on the 2nd until principal and interest are paid in full.

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein (hereinafter called the collateral), which collateral the Debtor represents will be used primarily
☐ for personal, family or household purposes ☐ in farming operations ☐ in business and other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination
- (c) all proceeds thereof, if any,
- (d) all increases, substitutions, replacements, additions and accessions thereto.

DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

To pay and perform all of the obligations secured by this agreement according to their terms.

To defend the title to the collateral against all persons and against all claims and demands, whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interest, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.

On demand of the secured party to do the following: furnish further assurance of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all cost of filing in connection therewith.

To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.

To keep the collateral at the location specified in the schedule and not remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.

To pay, when due, all taxes, assessments and license fees relating to the collateral.

To keep the collateral, at Debtors own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.

To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

THE PARTIES FURTHER AGREE

Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.

Notice to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.

The following shall constitute a default by Debtor:

Failure to pay the principal or any installments of principal or of interest on the indebtedness or any notes when due. Failure by the debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by the Debtor in connection with this agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligation herein.

Upon any default of the Debtor and at the opinion of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default"

Upon any Default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorney's fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the debtor.

The debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand.

If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

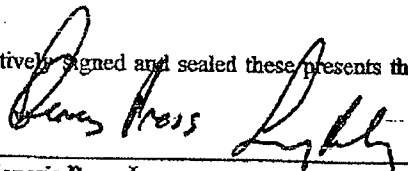
The Secured Party is hereby authorized to file a Financing Statement.

The Terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns.

The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This agreement may not be changed orally.

In Witness Whereof, the Parties have respectively signed and sealed these presents the day and year first above written.


Genesis Press Inc
7112 Augusta Rd
Piedmont SC 29673

SCHEDULE

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amount due thereon. If items are crops or goods affixed or to be affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

ITEMS

LOCATION, ETC.

All debtors tangible and intangible personal property now owned or hereafter acquired, including but not limited to, all cash, profits and rents, fixtures, machinery, equipment, inventory, furniture, accounts receivable, leases, contractual rights and proceeds of any of these, judgements, settlements, awards of damages, and insurance proceeds received on any of this personal property.

Sandra Finch

From: Pee Lea Lee**Sent:** Monday, January 26, 2009 11:57 AM**To:** Sandra Finch

Customer Name: Genesis Press Inc

Note Amount : 401,852.51

Note Date: 01/28/09

Interest rate: 12.00%

Pay Date	Amount	principal	Note Balance	Interest
			401,852.51	
03/02/09	(33,156.66)	(28,796.84)	373,055.67	4,359.82
04/02/09	(33,156.66)	(29,354.56)	343,701.12	3,802.10
05/02/09	(33,156.66)	(29,766.73)	313,934.38	3,389.93
06/02/09	(33,156.66)	(29,957.11)	283,977.28	3,199.55
07/02/09	(33,156.66)	(30,355.79)	253,621.49	2,800.87
08/02/09	(33,156.66)	(30,571.81)	223,049.68	2,584.85
09/02/09	(33,156.66)	(30,883.39)	192,166.30	2,273.27
10/02/09	(33,156.66)	(31,261.32)	160,904.97	1,895.34
11/02/09	(33,156.66)	(31,516.75)	129,388.22	1,639.91
12/01/09	(33,156.66)	(31,880.50)	97,507.72	1,276.16
01/02/10	(33,156.66)	(32,162.88)	65,344.84	993.78
02/02/10	(33,156.66)	(32,490.68)	32,854.16	665.98
03/02/10	(33,156.60)	(32,854.16)	(0.00)	302.44
	(431,036.52)	(401,852.51)		29,184.01

From: Craig Boortz
To: Larry Kudeviz
Subject: RE: price for truck load
Date: Monday, July 12, 2010 4:35:31 PM

Yes she is and feel free to call her on anything related to the note. Her direct line is 904-348-3387.

Since your lunch plans fell through do you want to get a quick bite after our meeting?

From: Larry Kudeviz [mailto:lkudeviz@genesispress.com]
Sent: Monday, July 12, 2010 4:25 PM
To: Craig Boortz
Subject: RE: price for truck load

Correct – we will discuss more in detail when we meet Thursday – also my lunch got cancelled so I do have more time – On a separate subject is Tanya working on releasing my personal note?

Look forward to sitting with you and going forward

Larry Kudeviz



7112 Augusta Road
Piedmont, South Carolina 29673

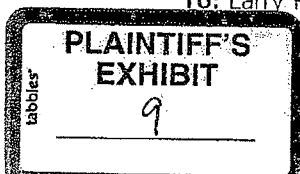
Phone: 864.552.2000
Direct: 864.552.2111
Toll Free: 800.822.9979
Fax: 864.552.2011

Visit us at: <http://www.genesispress.com/>

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From: Craig Boortz [mailto:craig.boortz@macpapers.com]
Sent: Monday, July 12, 2010 4:23 PM
To: Larry Kudeviz
Subject: RE: price for truck load



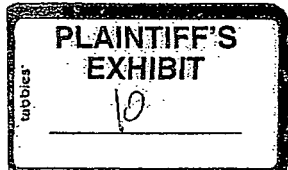
MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
 P.O.BOX 5128 - STATION B
 GREENVILLE, SC 29607
 864-281-9911

GE1532
 GENESIS PRESS INC
 7112 AUGUSTA ROAD
 PIEDMONT, SC 29673

ACCOUNT BALANCE
 AS OF:
 09/04/2012
 CB2

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
430906			IN	430906	05/21/2012	771.65	779.29
	21042 PAYMENT						
		7.64-			08/09/2012		
430976			IN	430976	05/21/2012	1,257.48	1,257.48
431011			IN	431011	05/22/2012	65.08	65.08
430770 6204			IN	430770	05/23/2012	50.60	344.27
	430847 PAYMENT						
		293.67-			08/14/2012		
431046 6201			IN	431046	05/23/2012	43.70	43.70
431074			IN	431074	05/23/2012	488.01	488.01
431141			IN	431141	05/24/2012	1,337.52	1,337.52
431133			IN	431133	05/24/2012	4,971.86	4,971.86
431220 6207			IN	431220	05/24/2012	1,332.12	1,332.12
431346 6209			IN	431346	05/25/2012	4,132.15	4,132.15
431224			IN	431224	05/25/2012	267.12	267.12
431204 6211			IN	431204	05/29/2012	688.54	688.54
431134 6205			IN	431134	05/29/2012	538.80	538.80
430964 6191			IN	430964	05/29/2012	591.01	591.01
431381 6211			IN	431381	05/30/2012	1,162.63	1,162.63
431356			IN	431356	05/30/2012	555.39	555.39
431444			IN	431444	05/30/2012	7,835.71	7,835.71
431432 6217			IN	431432	05/31/2012	688.54	688.54
431524 AMANDA			IN	431524	05/31/2012	4,507.64	4,507.64
431462			IN	431462	05/31/2012	864.92	864.92
120531			SV		05/31/2012	2,328.17	2,672.44
	7770 PAYMENT						
		344.27-			07/27/2012		
431621 6218			IN	431621	06/01/2012	604.10	604.10
431619 6218			IN	431619	06/01/2012	2,688.72	2,688.72
431538			IN	431538	06/01/2012	1,435.25	1,435.25
431622 REF431462		431462	CR	431622	06/01/2012	621.83-	621.83-
431700 6221			IN	431700	06/04/2012	5,607.45	5,607.45
431694 6221			IN	431694	06/04/2012	1,348.95	1,348.95
431620 6218			IN	431620	06/04/2012	8,459.58	8,459.58
431628			IN	431628	06/04/2012	91.56	91.56
431581 6228			IN	431581	06/05/2012	688.54	688.54
431748			IN	431748	06/05/2012	5,311.06	5,311.06
431851 6228			IN	431851	06/06/2012	3,141.03	3,141.03
431878			IN	431878	06/07/2012	2,718.66	2,718.66

*** CONTINUED ***



MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
 P.O.BOX 5128 - STATION B
 GREENVILLE, SC 29607
 864-281-9911

GE1532
 GENESIS PRESS INC
 7112 AUGUSTA ROAD
 PIEDMONT, SC 29673

ACCOUNT BALANCE
 AS OF:
 09/04/2012
 CB2

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
431944	6230		IN	431944	06/07/2012	355.64	355.64
432035	6232		IN	432035	06/08/2012	1,416.58	1,416.58
431708	6223		IN	431708	06/08/2012	13,526.14	13,526.14
431693	6220		IN	431693	06/08/2012	13,637.47	13,637.47
431960			IN	431960	06/08/2012	2,591.26	2,591.26
431864	6235		IN	431864	06/11/2012	688.54	688.54
432085	6235/2:00		IN	432085	06/11/2012	2,143.37	2,143.37
432040			IN	432040	06/11/2012	3,130.99	3,130.99
432180	6236 / 2:00		IN	432180	06/12/2012	4,082.04	4,082.04
432112	6235		IN	432112	06/12/2012	3,430.21	3,430.21
432209			IN	432209	06/13/2012	133.62	133.62
432235	KATHY		IN	432235	06/13/2012	423.11	423.11
431948	6230		IN	431948	06/13/2012	393.11	393.11
432184	6240		IN	432184	06/14/2012	344.27	344.27
432358	6240		IN	432358	06/14/2012	1,442.00	1,442.00
431701	6217		IN	431701	06/14/2012	135.82	135.82
432346	6239		IN	432346	06/14/2012	2,692.42	2,692.42
432278			IN	432278	06/14/2012	4,883.41	4,883.41
432389			IN	432389	06/15/2012	265.65	265.65
432433	6243		IN	432433	06/15/2012	12,358.87	12,358.87
432515	6246		IN	432515	06/18/2012	1,180.23	1,180.23
432498	STEVE		IN	432498	06/18/2012	2,058.71	2,058.71
432418			IN	432418	06/18/2012	4.34	4.34
432504			IN	432504	06/19/2012	2,693.28	2,693.28
432653	6251		IN	432653	06/20/2012	1,260.85	1,260.85
432681	6251		IN	432681	06/20/2012	604.10	604.10
432579			IN	432579	06/20/2012	944.02	944.02
432747	6256		IN	432747	06/21/2012	4,409.08	4,409.08
432662			IN	432662	06/21/2012	2,038.34	2,038.34
432743			IN	432743	06/22/2012	2,134.20	2,134.20
432901	6259		IN	432901	06/25/2012	362.25	362.25
432928			IN	432928	06/25/2012	3,627.20	3,627.20
432830	6258		IN	432830	06/25/2012	1,071.72	1,071.72
431770	6800		IN	431770	06/26/2012	47.42	47.42
432959	6259		IN	432959	06/26/2012	60.38	60.38
433004	6261		IN	433004	06/26/2012	5,351.01	5,351.01

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MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
 P.O.BOX 5128 - STATION B
 GREENVILLE, SC 29607
 864-281-9911

GE1532
 GENESIS PRESS INC
 7112 AUGUSTA ROAD
 PIEDMONT ,SC 29673

ACCOUNT BALANCE
 AS OF:
 09/04/2012
 CB2

ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
433091	6261 / 2:00		IN	433091	06/27/2012	1,091.50	1,091.50
433025	6261		IN	433025	06/27/2012	1,129.41	1,129.41
433082	6265		IN	433082	06/27/2012	5,417.50	5,417.50
433090	6261 / 2:00	433025	CR	433090	06/27/2012	988.61-	988.61-
433101	6267		IN	433101	06/28/2012	1,848.25	1,848.25
433124	6265		IN	433124	06/28/2012	265.65	265.65
433160	6269		IN	433160	06/28/2012	7,284.30	7,284.30
433096			IN	433096	06/28/2012	604.10	604.10
433169	6270		IN	433169	06/29/2012	1,455.44	1,455.44
432660	6251		IN	432660	06/29/2012	632.61	632.61
433313	6275		IN	433313	06/29/2012	3,654.80	3,654.80
433164			IN	433164	06/29/2012	6,962.64	6,962.64
120630			SV		06/30/2012	2,529.26	2,529.26
433295	AMANDA		IN	433295	07/02/2012	699.14	699.14
433250			IN	433250	07/03/2012	52.99	52.99
433317			IN	433317	07/03/2012	1,329.68	1,329.68
433386			IN	433386	07/03/2012	2,091.44	2,091.44
433528	6279		IN	433528	07/05/2012	2,996.37	2,996.37
433382	6277		IN	433382	07/05/2012	323.94	323.94
433399			IN	433399	07/05/2012	4,102.31	4,102.31
433458	6279		IN	433458	07/05/2012	528.60	528.60
433170	6267		IN	433170	07/06/2012	104.24	104.24
433464			IN	433464	07/06/2012	7,156.00	7,156.00
433606	6279		IN	433606	07/09/2012	1,517.86	1,517.86
433604	AMANDA		IN	433604	07/09/2012	1,378.46	1,378.46
433484	6279		IN	433484	07/09/2012	1,317.87	1,317.87
433607	REF433464	433464	CR	433607	07/09/2012	286.13-	286.13-
433695	6285		IN	433695	07/10/2012	1,237.32	1,237.32
433622			IN	433622	07/10/2012	1,828.79	1,828.79
433618	6278		IN	433618	07/10/2012	500.93	500.93
433524	6800		IN	433524	07/10/2012	44.08	44.08
433617	REF433399	433399	CR	433617	07/10/2012	352.31-	352.31-
433804	6290		IN	433804	07/11/2012	12,236.24	12,236.24
433700			IN	433700	07/11/2012	935.39	935.39
433908	6293		IN	433908	07/12/2012	4,016.76	4,016.76
433805			IN	433805	07/12/2012	1,984.12	1,984.12

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MAC PAPERS - GREENVILLE
 4607 DAIRY DR.
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GE1532
 GENESIS PRESS INC
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ACCOUNT BALANCE
 AS OF:
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ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
433899			IN	433899	07/13/2012	1,149.54	1,149.54
433970	KATHY		IN	433970	07/13/2012	4,210.56	4,210.56
433599	AMANDA		IN	433599	07/13/2012	568.80	568.80
434062	6293		IN	434062	07/16/2012	3,647.76	3,647.76
434026	6297		IN	434026	07/16/2012	577.18	577.18
434016	KATHY		IN	434016	07/16/2012	349.57	349.57
434047	KATHY		IN	434047	07/16/2012	1,032.81	1,032.81
434102	6299		IN	434102	07/17/2012	1,350.24	1,350.24
433383	6277		IN	433383	07/18/2012	846.76	846.76
434228	6303		IN	434228	07/18/2012	94.08	94.08
434154	AMANDA		IN	434154	07/18/2012	699.14	699.14
434156			IN	434156	07/18/2012	422.88	422.88
434234			IN	434234	07/19/2012	435.73	435.73
434294	6304		IN	434294	07/19/2012	1,831.41	1,831.41
434396	6307		IN	434396	07/20/2012	1,824.88	1,824.88
434361	6304 / 2:00		IN	434361	07/20/2012	93.80	93.80
434354	6307		IN	434354	07/20/2012	3,221.76	3,221.76
434293			IN	434293	07/20/2012	3,156.13	3,156.13
434366	AMANDA		IN	434366	07/23/2012	1,225.34	1,225.34
434373	6307		IN	434373	07/23/2012	3,990.73	3,990.73
434441			IN	434441	07/24/2012	1,294.73	1,294.73
434547			IN	434547	07/25/2012	2,281.62	2,281.62
434639	AMANDA		IN	434639	07/25/2012	743.18	743.18
434367	6307		IN	434367	07/25/2012	198.73	198.73
434644	AMANDA		IN	434644	07/25/2012	994.84	994.84
434717	6316		IN	434717	07/26/2012	4,037.72	4,037.72
434630			IN	434630	07/26/2012	2,212.69	2,212.69
434704	AMANDA		IN	434704	07/27/2012	587.34	587.34
434720			IN	434720	07/27/2012	2,582.68	2,582.68
434790	KATHY/6318		IN	434790	07/30/2012	456.26	456.26
434849	6319		IN	434849	07/30/2012	1,450.44	1,450.44
434850	6319		IN	434850	07/30/2012	1,462.68	1,462.68
434851	6319		IN	434851	07/31/2012	1,021.57	1,021.57
434949	KATHY/2:00		IN	434949	07/31/2012	349.57	349.57
434975	KATHY		IN	434975	07/31/2012	1,460.64	1,460.64
434867	6319		IN	434867	07/31/2012	3,624.57	3,624.57

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GE1532
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ACCOUNT BALANCE
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ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
120731			SV		07/31/2012	3,424.74	3,424.74
435038	AMANDA		IN	435038	08/01/2012	1,322.52	1,322.52
807770			NF		08/01/2012	25,522.08	25,522.08
907792			NF		08/01/2012	26,142.36	26,142.36
435131	6324		IN	435131	08/02/2012	126.96	126.96
435075			IN	435075	08/02/2012	2,698.73	2,698.73
435122	6324		IN	435122	08/02/2012	2,925.87	2,925.87
435260	6327		IN	435260	08/03/2012	3,659.33	3,659.33
435120			IN	435120	08/03/2012	455.20	455.20
435187	6327		IN	435187	08/03/2012	1,291.28	1,291.28
435116	AMANDA		IN	435116	08/03/2012	13.44	13.44
435213			IN	435213	08/06/2012	2,047.54	2,047.54
435358	AMANDA		IN	435358	08/07/2012	901.98	901.98
435375	6331		IN	435375	08/07/2012	1,173.94	1,173.94
435323	6329		IN	435323	08/07/2012	1,380.33	1,380.33
435113	6321		IN	435113	08/07/2012	12,908.19	12,908.19
435193	6321		IN	435193	08/07/2012	97.98	97.98
435453	AMANDA		IN	435453	08/08/2012	699.14	699.14
435456	6332		IN	435456	08/08/2012	1,463.46	1,463.46
435377			IN	435377	08/08/2012	1,792.21	1,792.21
435402	6321	435113	CR	435402	08/08/2012	1,698.32-	1,698.32-
435577	6335		IN	435577	08/09/2012	1,600.34	1,600.34
435443			IN	435443	08/09/2012	1,741.27	1,741.27
435568			IN	435568	08/10/2012	2,027.30	2,027.30
435624			IN	435624	08/13/2012	6,770.41	6,770.41
433351	6274		IN	433351	08/13/2012	19,328.07	19,328.07
435708	KATHY		IN	435708	08/14/2012	674.12	674.12
435775	6343		IN	435775	08/14/2012	2,328.54	2,328.54
435784	6343		IN	435784	08/14/2012	1,422.72	1,422.72
435495	6321		IN	435495	08/14/2012	417.24	417.24
435633	6340		IN	435633	08/15/2012	34.22	34.22
435785			IN	435785	08/15/2012	4,179.61	4,179.61
435962	6348		IN	435962	08/16/2012	2,276.07	2,276.07
435954	6348		IN	435954	08/16/2012	1,543.62	1,543.62
435886			IN	435886	08/16/2012	1,712.39	1,712.39
435964			IN	435964	08/17/2012	2,584.97	2,584.97

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864-281-9911

GE1532
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PIEDMONT ,SC 29673

ACCOUNT BALANCE
AS OF:
09/04/2012
CB2

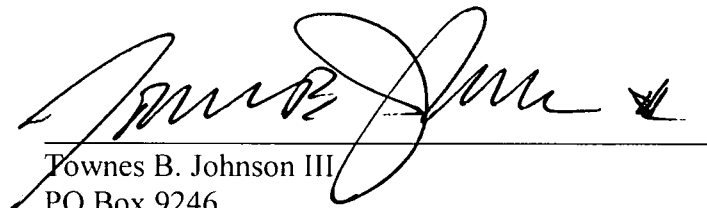
ITEM	PO #	REF	TYP	ORD #	DATE	UNPD BALANCE	ORIG AMOUNT
435592	AMANDA		IN	435592	08/30/2012	97.94	97.94
435670	6340		IN	435670	08/31/2012	105.15	105.15

AUGUST	JULY	JUNE	MAY	PRIOR	TOTAL
133,768.20	104,657.19	159,281.57	34,478.64	.00	432,185.60

Certificate of Counsel

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

September 27, 2017



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Attorneys for the Appellant

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin

2012-CP-23-05740

RECEIVED
SEP 28 2017
SC Court of Appeals

Mac Papers, Inc., Plaintiff.....Appellant/Respondent

v.

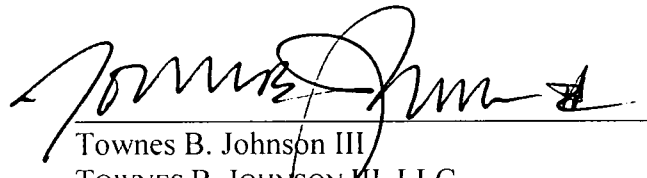
Genesis Press, Inc., Lawrence I. Kudeviz, Barry Zisook, and Lewis Levin,
Defendants

Of whom Lawrence I. Kudeviz is Respondent/Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Record on Appeal in the above-referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 26th day of September 2017, addressed as follows:

Robert L. Widener, Esq.
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