

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2017-002434

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SC Court of Appeals

Laurens Cycle Sales, Inc. D/b/a Honda of Laurens and Cooper Motor

Sales, LLC Respondent,

vs.

Estate of Ruth Tumblin Appellant.

RECORD ON APPEAL

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State of South Carolina)
) Court of Common Pleas
County of Laurens)
)
) 2012-CP-30-00149

Laurens Cycle Sales, et al)
) vs.) Transcript of Record
)
)
Estate of Ruth F. Tumblin)
) Defendant)

September 28th and October 3rd, 2017

Laurens, South Carolina

B E F O R E:

Honorable Frank R. Addy, Judge

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

John Ferguson, Esq.
Attorney for the Plaintiff

Rauch Wise, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

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(DW) - Denotes Defense Witness
(PW) - Denotes State's Witness

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EXHIBITSPlaintiff's

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1 THE COURT: All right. We are going back on the
2 record I believe in Freeman as personal representative of
3 Tumblin Estate, is that correct?

4 MR. WISE: We started as Defendants.

5 THE COURT: Right.

6 MR. WISE: It's actually Cooper vs. Tumblin or
7 Tumblin vs. Cooper.

8 THE COURT: Okay.

9 MR. WISE: One or the two.

10 THE COURT: All right. My understanding is that this
11 is the, this involves the action to try to recover on the
12 proceeds of the policy.

13 MR. WISE: I think we've got it captioned as Laurens
14 Cycle Sales vs. Estate of Ruth Tumblin.

15 THE COURT: Okay.

16 MR. WISE: The caption is a little off from my
17 previous counterclaim, but that's not, I don't think it's
18 that big a deal.

19 THE COURT: All right. You gentlemen ready to
20 proceed, everything good?

21 MR. WISE: We are.

22 THE COURT: Mr. Wise, I think you're the moving
23 party.

24 MR. WISE: Excuse me?

25 THE COURT: This is on the counterclaim?

1 MR. WISE: This is on my, actually, I would be the
2 moving party, although the caption is a little different.

3 THE COURT: Go right ahead.

4 MR. WISE: First of all, I want to submit the amended
5 answer to the second counterclaim which as Mr. Ferguson
6 mentioned. I'd like to call Mr. Cooper.

7 MR. FERGUSON: Your Honor, I'm confused here, because
8 it seems to me that we are the moving party here. We
9 were, as Rauch says, we were both defendants, but we are
10 the ones who initiated the cross-complaint that forms--

11 MR. WISE: That's true. That's true.

12 MR. FERGUSON: -- basis for this action.

13 THE COURT: All right. Well, if you want to go
14 first, Mr. Ferguson, go right ahead.

15 MR. FERGUSON: I think so. I'll call the same guy.

16 THE COURT: I figured that is how it was going to
17 play out. Come on up, sir.

18 LYNN W. COOPER, being
19 first duly sworn, testified as follows:

20 MR. WISE: Your Honor, I do have one matter before
21 Mr. Cooper testifies. I think a lot of his testimony may
22 be barred under what's called the Dead Man's Statute. As
23 I read the cases in this, I think he can testify as to, I
24 don't know if he can testify to that. But his testimony
25 is going to be, I think, extremely limited. And we've

1 taken his deposition and there's some facts in this case
2 that really are beyond dispute, even though we don't have
3 a note on one of them. I think he can, under the law,
4 identify some documents perhaps. But I don't think he can
5 testify as to what Ms. Tumblin told him about any of these
6 transactions or at least what she told him directly.

7 THE COURT: All right. Well, let's just proceed with
8 his testimony. I'm very familiar with the Dead Man's
9 Statute, it's transactional aspects of testimony. So
10 let's see where we go and if you want to object.

11 MR. WISE: Now, well, I guess my real question then
12 is do I have to object each time I think it violates the
13 Dead Man's Statute? I probably should.

14 THE COURT: Let's just start and see how it goes.

15 MR. WISE: Okay.

16 THE COURT: And we're doing this non-jury, so I'm not
17 too concerned about it.

18 MR. WISE: It's non-jury.

19 THE COURT: Right. Mr. Ferguson.

20 MR. WISE: And one other thing, too. We have a
21 counterclaim on the grounds of statute of limitations.
22 And, obviously, that will be a matter of the testimony.

23 THE COURT: Correct.

24 MR. WISE: Just note that for the record.

25 THE COURT: Very good. Proceed, please.

1 MR. FERGUSON: Okay.

2 DIRECT EXAMINATION

3 By Mr. Ferguson:

4 Q State your name?

5 A Lynn W. Cooper, III.

6 Q Where do you live?

7 A In Clinton, South Carolina.

8 Q How long have you lived in Clinton, South Carolina?

9 A For 47 years.

10 Q And what is it that you do?

11 A I run an automobile dealership, Cooper Motor Company,
12 and Destination Power Sports and owner.

13 Q In the original action, there was made mention of
14 Cooper Motor Sales, LLC, does that exist?

15 A Does not exist.

16 Q Okay. Do you have any health problems?

17 A I do. I have multiple brain tumors. Discovered in
18 1993 and do suffer from seizures every once in a while.

19 Q Okay. Does that sometimes affect your ability to, to
20 speak and recall things?

21 A It does. I do have a speech, one of my tumors is in
22 my speech and memory area. So it does affect my memory
23 and my speech when I do have a seizure.

24 Q Okay. When did you first meet Ruth Tumblin?

25 A I had met Ruth through David Bagwell back in 2008. I

1 knew of her but had never really formally met her until
2 that time.

3 Q Okay. And what was Ruth Tumblin doing?

4 A At the time she was the owner of Laurens Cycle Sales.

5 Q And what did Laurens Cycle Sales do?

6 A They were a Honda Power Sports dealer.

7 Q All right. And did you become involved with that
8 business?

9 A I did.

10 Q How did that happen?

11 A David came to me in early of '08 and --

12 Q -- this is David Bagwell?

13 A David Bagwell, correct.

14 Q Okay.

15 A David was owed a significant amount of money from
16 Ruth and Ruth was about to lose her business or was close
17 to it--

18 MR. WISE: And that one I would object to. It's not,
19 it's violating the Dead Man's Statute and as hearsay.

20 THE COURT: All right. It's sustained.

21 MR. FERGUSON: I think it needs to be determined
22 whether that information came from Ruth Tumblin.

23 THE COURT: All right. Maybe ask the question a
24 different way and let's see where we are.

25 MR. FERGUSON: Okay.

1 Q How did you know that Ruth Tumblin was having
2 difficulties with her business?

3 A Through David Bagwell.

4 MR. WISE: Then I object on the grounds of hearsay.

5 THE COURT: Okay. Did you ultimately become involved
6 in this business?

7 A Yes, ultimately, I did.

8 THE COURT: All right. As a result of your becoming
9 involved in the business did you have an opportunity to
10 review the books and the financial aspects of the
11 business?

12 A As quickly as I became involved, I did not have a
13 chance to look at the total books other than after that
14 purchase.

15 THE COURT: All right. But your motivation and did
16 you buy the business or how did you get involved in it?

17 A I bought into the business.

18 THE COURT: You bought into the business. Okay. And
19 that was in an effort to assist the owners of the
20 business?

21 A That's correct.

22 THE COURT: All right. Go ahead, Mr. Ferguson.

23 MR. FERGUSON: Thank you.

24 Q So when did you start negotiating the purchase of an
25 interest in Laurens Cycle Sales?

1 A After the original loan it came to my attention that
2 Honda was about to take back the franchise due to what
3 would be called, out of trust. She owed more than what
4 the, she owed for units that had not been paid for.

5 Q Okay. And was David Bagwell going to be involved in
6 buying the business, too?

7 A Yes.

8 Q Now, he doesn't have anything to do with selling
9 vehicles normally, does he?

10 A No, he's a contractor.

11 Q Okay. So you say this was because Ruth Tumblin owed
12 him money?

13 A Yes.

14 Q Okay. Did you make a loan to Ruth?

15 A Originally I did make a loan of \$50,000.00 dollars
16 just in February of '08.

17 Q Was that in February of '08?

18 A Yes.

19 Q And she asked you for this loan?

20 A David came to me about helping her at that time, yes
21 sir.

22 Q Okay.

23 A And we did sit with her and asked for the loan.

24 Q Okay. Had you had a chance to look at the books at
25 that time?

1 A At that time, no.

2 Q Had you had conversations with Ruth Tumblin about her
3 business?

4 A Not until that time.

5 Q Okay. At that time, prior to your making the loan
6 did you have conversations with her?

7 A Only that day of making the loan.

8 Q Okay. And did the conversations deal with the health
9 of the business?

10 A No, it really did not because the need was there.

11 Q Okay. At some point did she give you a balance sheet
12 for her business?

13 MR. WISE: The objection I have, I think this
14 argument would violate the Dead Man's Statute. So I would
15 object on that basis.

16 THE COURT: It's a writing. I think it would be
17 comparable to like a letter or something like that which
18 typically doesn't involve the Dead Man's Statute. So your
19 objection is noted but overruled. Go ahead.

20 A The balance sheet was given to me at the end of July
21 of '08, after the purchase had already been made.

22 Q Okay.

23 MR. FERGUSON: Well, let's get this introduced into
24 evidence before I ask you more questions about that. Do
25 you have an objection, Rauch?

1 MR. WISE: No objection..

2 (Whereupon, Plaintiff's Exhibit number 1 was admitted
3 into evidence.)

4 Q Based on that balance sheet, what did you conclude
5 about the basic health of the business?

6 A Basic health looked good except for there was a big
7 loss for that year-to-date. But the retained earnings and
8 the receivables were tremendous.

9 Q Okay. Was there anything about parts in that balance
10 sheet?

11 A Yes. Parts inventory was, let's see, if I remember
12 correctly, it was \$408,000.00.

13 Q All right.

14 A Yes. That's correct.

15 Q And would it be fair to say she gave you this balance
16 sheet to encourage you to continue in the --

17 MR. WISE: Objection, he is leading the witness, Your
18 Honor.

19 THE COURT: It's non-jury. Let's try and move it
20 along, so go ahead.

21 Q Would it be fair to say she gave you this balance
22 sheet to encourage your interest in buying into her
23 business?

24 A Yes, sir.

25 MR. WISE: And my objection would also be on the Dead

1 Man's Statute, because it's basically an opinion about
2 what she said in giving them to him.

3 THE COURT: To the extent that that question asks
4 about the, the Tumblin individual, I'll sustain the
5 objection. But did you take her presentation of that
6 balance sheet, did you personally perceive that as her
7 effort to encourage you to buy into the business?

8 A Yes, sir.

9 THE COURT: All right. Go ahead.

10 Q Tell me what this document is?

11 A This was the document dated June 23rd of the purchase
12 of Laurens Cycle Sales between David Bagwell and myself
13 with Ruth.

14 Q Okay.

15 MR. FERGUSON: I'd like to introduce that.

16 THE COURT: No objection?

17 MR. WISE: No objection.

18 (Whereupon, Plaintiff's Exhibit number 2 was admitted
19 into evidence.)

20 Q After you signed that contract, did you make any
21 further loans to Ruth?

22 A No further loans.

23 Q And did you put in any operating capital?

24 A I did put in operating capital.

25 Q Okay. How much operating capital did you put in?

1 A The total on that note there was \$300,000.00 dollars
2 and it's described what it went to..

3 Q All right. And did some of that go to the Honda
4 finance people?

5 A It did. A tremendous amount did.

6 Q And what was it that they were owed for?

7 A They were owed for sold and unpaid units.

8 Q And had you been fully informed of that before you
9 signed the contract?

10 A Yes.

11 Q Okay. And did you think about pulling the plug at
12 that point?

13 A No. At that point in time it was, I'd already had
14 money invested.

15 Q That \$50,000.00 dollars?

16 A Yes.

17 Q Okay. Tell me about the foreclosure?

18 A We had originally planned, due to the site that was
19 there, to move eventually to a building we would build
20 between Highway 76. At that time we did not realize the
21 state of her contract with Palmetto Bank. It ended up
22 being that the building was going to be foreclosed upon
23 and therefore we had to make a move quickly. We did not
24 have the opportunity to build a building. We had to take
25 an existing building and convert it.

1 Q Had Ms. Tumblin told you about the foreclosure before
2 you entered into the contract with her?

3 A No.

4 Q When you had to buy another building, were there
5 standards that Honda required for their dealerships to
6 have?

7 A Yes.

8 Q And did that cause further expenditures?

9 A Yes.

10 Q Tell me about those.

11 A Due to being a Honda dealer we had to come up with
12 certain signage and had to meet their specifications to do
13 that and it was a tremendous amount. We had to buy new
14 signage, meet their interior requests and exterior
15 requests.

16 Q And what was the total cost of this sudden move?

17 A If I remember right, it was probably about
18 \$250,000.00.

19 Q Were you, was Ruth receiving any compensation from
20 you for the use of her building before you got pitched out
21 through foreclosure?

22 A Yes.

23 Q What were you paying her?

24 A \$6,500.00 a month.

25 Q Okay. And do you have any indication that any of

1 that reached Palmetto Bank?

2 A No.

3 Q Were there undisclosed business debts that you
4 discovered?

5 A We had things, yes, that came out afterwards. There
6 was a tax lien that came about afterwards, as well as a
7 few other things that we have gone to court over already.

8 Q And let's start with the tax lien that popped up.
9 How much did you have to pay to resolve that?

10 A With everything was over \$30,000.00.

11 Q Okay. That includes interest and penalties?

12 A Yes. Penalties included, yes.

13 Q Okay. You said that you put capital into the
14 business. Was Ruth supposed to put capital into the
15 business too?

16 A As a partner in the business, yes.

17 Q And did she make capital contributions?

18 A No.

19 Q Did that shift further burden to you?

20 A It did.

21 Q How much capital contribution did you make?

22 A Over the years, it was, by that time it would have
23 been over \$300,000.00.

24 Q Okay. In your deposition you said \$308,000.00
25 dollars in 2008. Does that sound right?

1 A That sounds correct.

2 Q You also said that the tax lien without penalties was
3 \$23,371.93. Does that sound right?

4 A That is correct.

5 Q Tell me about the Freeman lawsuit.

6 A The Freeman lawsuit dealt with paperwork that Ruth,
7 as the agent, did not have signed correctly.

8 Q And what kind of agent?

9 A She was a Progressive agent.

10 Q Progressive Insurance Company?

11 A Progressive Insurance.

12 Q Okay. Was she working for the, the business, your
13 business, this Laurens Cycle Sales when she was selling
14 insurance or was she independently selling that?

15 A She was working for the business.

16 Q But as far as her insurance sales, was she an agent
17 for the business in selling insurance?

18 A Correct.

19 Q Let me show you Ruth's response to request for
20 admissions. Well, before we do that. Tell me what that
21 lawsuit, that Freeman lawsuit was about.

22 A It was about, the gentleman passed away in a
23 motorcycle accident. And with the, everything not signed
24 correctly the insurance company refused to pay the
25 insurance.

1 Q All right. When Ruth sold insurance, did she keep
2 the profit that, the agent's profit that resulted from
3 that for herself?

4 A She was paid on that, correct.

5 Q So the company didn't receive anything from her sales
6 of insurance, did it?

7 A John, I can't remember.

8 Q Okay. Well, let's introduce what she said, this
9 response.

10 MR. WISE: No objection.

11 MR. FERGUSON: Okay.

12 (Whereupon, Plaintiff's Exhibit number 3 was admitted
13 into evidence.)

14 MR. WISE: The record should reflect that the
15 response to the request to admit was supplied while Ms.
16 Tumblin was still alive, if my memory is correct.

17 THE COURT: Mr. Wise, would y'all stipulate that
18 basically the money that was paid on these premiums didn't
19 go into Laurens Cycle Sales?

20 MR. WISE: Yeah, that's correct.

21 THE COURT: All right.

22 MR. WISE: Yeah.

23 THE COURT: Because I think he was simply confused
24 about--

25 MR. WISE: No. I think his question was when it went

1 to Progressive Insurance.

2 THE COURT: Right.

3 MR. WISE: And that it did not go to them either.

4 THE COURT: Right.

5 MR. FERGUSON: Right.

6 THE COURT: Money never made it to the insurance
7 company and it wasn't really part of Laurens Cycle Sales
8 business either.

9 MR. WISE: Yeah. We took the position that Laurens
10 Cycle Sales wasn't involved in it at all.

11 THE COURT: Right. All right. I think we got that
12 square.

13 Q So the, that lawsuit which was the starting point for
14 the one that we're dealing with now began in 2012?

15 A I think that's correct.

16 Q Okay. And did you give the Decedent's estate some
17 money to end their lawsuit?

18 A Yes.

19 Q How much did you give them?

20 A \$5,750.00. dollars.

21 Q And is this a copy of the check for that?

22 A That's correct.

23 MR. WISE: Yeah. No objection, Your Honor. Let me
24 correct that. We have no objection he paid that out. I
25 would object as to whether or not he was legally obligated

1 to pay.

2 THE COURT: I understand your position.

3 MR. WISE: Okay.

4 (Whereupon, Plaintiff's Exhibit 4 was admitted into
5 evidence.)

6 Q And did you also have attorney's fees during those,
7 during that time from 2012 to 2014 in defending the
8 Freeman case?

9 A Yes, sir.

10 Q Do you remember the amount of those attorney's fees?

11 A Right at \$12,000.00 dollars, if I remember correctly,
12 maybe more.

13 Q If I told you it was \$13,650.00, would you dispute
14 that?

15 A No.

16 Q Do you remember that there was, in that Freeman case
17 there was prolonged discovery and lots of amendments to
18 the pleadings by the insurance company?

19 A Yes.

20 MR. WISE: Your Honor, for the record, we're not
21 disputing the amount of the attorney's fees paid or the
22 reasonableness of it, because having been involved in it,
23 I well understand what he's talking about. There were
24 more amended complaints than I wanted. So we're not
25 disputing that amount, again, just whether or not it's

1 legally obligated.

2 Q Well, let's ask about that. They're saying, well,
3 hey it's all her fault that this Freeman guy popped up and
4 was suing you. So why did you pay money if it wasn't your
5 fault?

6 A It needed to be resolved. It was affecting, you
7 know, business that shouldn't have lasted as long as it
8 had.

9 Q And did you want to pay an attorney's fee to try that
10 case?

11 A No.

12 Q At some point, did Ruth become seriously ill?

13 A Yes.

14 Q What did she have?

15 A Cancer.

16 Q Okay. And you agreed to buy her out?

17 A That's correct.

18 Q Now, the original agreement was for \$136,000.00
19 dollars, is that right?

20 A That's correct.

21 Q But that was later reduced to deduct the payment to
22 the tax commission, at least \$26,000.00 dollars of it?

23 A Yes.

24 Q Did you at some point stop making payments on that?

25 A Yes.

1 Q Would that have been in January 2012?

2 A I believe that's correct.

3 Q Okay. Why did you stop making payments?

4 A We were in the middle of that lawsuit.

5 Q Excuse me?

6 A The lawsuit.

7 Q The Freeman lawsuit?

8 A Yes.

9 Q Had you found out more about the business also and
10 whether or not she had been honest with you in her
11 representations?

12 MR. WISE: I'm going to object to that as a violation
13 of the Dead Man's Statute.

14 THE COURT: All right. If he wants to simply testify
15 as to why he, himself, decided to stop making payments,
16 any other reasons that he independently became aware of,
17 that's perfectly legitimate. It explains, it's for the
18 purposes of explaining why he didn't pay the full \$136 on
19 the purchase agreement.

20 Q Tell me what you found out about the business that
21 was a factor in your decision to stop paying Ruth?

22 A Things just kept coming out and one of the biggest
23 was the fact that part sales or parts were never
24 represented correctly. And in this day and time, parts,
25 it takes a week of being closed to even count parts.

1 Q The parts were stored how?

2 A They were stored in parts bins, in boxes, in files.
3 and when I say files, gaskets were stored in files and we
4 just couldn't find, parts misplaced or parts not there or
5 parts in a box that were not, that were used parts. Some
6 boxes being empty.

7 Q So some old parts were in new part boxes?

8 A Correct.

9 Q So if you were going to fully understand the scope of
10 this problem with the parts, that would require
11 inventorying?

12 A It would require inventory check.

13 Q And the inventory would require going box by box?

14 A Box by box, key by key.

15 Q And about how many boxes do you think there were?

16 A Thousands.

17 Q Did you eventually get that inventory done?

18 A It took years.

19 Q And once you, that inventory was done, what did you
20 discover?

21 A That represented at \$400,000.00 plus, parts ended up
22 being \$208,000.00 or somewhere in that area.

23 Q Okay. In 2010, you bought out David Bagwell. Why
24 was that?

25 A David was involved with building or remodeling a

1 house that she had and David was in a position that cash
2 was needed for him to take on projects. And by purchasing
3 him, I was able to help out. And too, I felt like there
4 had to be a way that I could continue to make this
5 business work.

6 Q How long have you known David Bagwell?

7 A I have known David for thirty-plus years.

8 Q He's a friend?

9 A Yes.

10 Q Well, obviously, the defendants are going to say if
11 this business was in such bad shape, why are you putting
12 more money into it? Why are you buying out somebody
13 else's interest in it?

14 A Here again, David is a friend. She owed him
15 \$340,000.00-plus thousand dollars. David needed the
16 dollars from that to help him move forward on other
17 projects. And after taking businesses through the 2008
18 automobile business and turning it around through the
19 great, whatever you want to call, the great recession, I
20 still felt like I could do that with this Honda Power
21 Sports store.

22 Q You told us about the paid-in capital that you paid
23 to the business and remind me how much that was?

24 A Just in one year it was \$300,000.00 and that was in
25 '08, and then it continued up from there.

1 Q Did you also make loans to the business?

2 A Yes, I had to make loans.

3 Q And for operating expenses?

4 A That's correct.

5 Q To keep it going?

6 A To keep it going.

7 Q Do you know how much you made in loans to the
8 business to keep it going?

9 A It would have been \$600, I mean, a total paid in cap
10 of everything, probably \$600,000.00-plus dollars.

11 Q Okay. How much was Ruth paid for the business?

12 A If you considered what I paid David, we paid
13 \$300,000.00 dollars originally for fifty-one percent.
14 Then, after purchasing David, it was another
15 \$200,000.00-plus. And then I contracted Ruth after that.
16 I'm having a hard time following your question there to be
17 exact.

18 Q Just as exact as you can, I want you to tell me how
19 much you paid for the business.

20 A It would have been \$600,000.00-plus thousand.

21 Q All right. Okay. That's in addition to your having
22 loaned the business \$600,000.00-plus thousand.

23 A John, I believe that's correct, because the total
24 purchase price from my, out of my cash flow was
25 \$500,000.00 dollars and then plus the loans. Yes.

1 Q Okay.

2 A I just can't remember an exact amount.

3 Q Once you became fully informed of the state of the
4 business and its assets, did you form any conclusion as to
5 what the business was actually worth at the time you were
6 buying it?

7 A The assets or the parts which would have probably
8 been about \$200,000.00 dollars. That's more or less after
9 you take depreciation out of it.

10 Q Okay. Did Ruth remove anything from the business,
11 any assets?

12 MR. WISE: I'm going to object to that as being a
13 violation of the Dead Man's statute, because I assume she
14 would have to tell it, otherwise, it would be hearsay.

15 MR. FERGUSON: I don't think we're dealing with what
16 she told him.

17 THE COURT: I mean, he can testify to anything that
18 he personally observed or anything that went missing or
19 anything like that. I don't think that's a problem, so
20 proceed.

21 A There were things that came out missing. There was
22 a, there was a trailer that was missing. There were
23 washer/dryer, things that were showed on the general
24 ledger that weren't there. There were loans that were not
25 collectible.

1 Q Well, I have a note about men's stuff, a bad debt to
2 men's stuff. Do you know anything about that?

3 A Yes, that was, I think there were loans made to that
4 to which and probably some assets went there as well, that
5 were not collectible.

6 Q And was there a loan to Steve Farnsworth?

7 A Yes.

8 Q Was that collectible?

9 A No.

10 Q Was there a loan to Neil Meyer?

11 A Yes.

12 Q Was that collectible?

13 A No.

14 Q These were, were these loans made before you bought
15 the business?

16 A Yes.

17 Q Were they disclosed to you?

18 A No.

19 THE COURT: Were these loans that were payable to the
20 business or that the business owed to it. Were these
21 loans, I took the initial line of questioning to mean that
22 these were loans that were payable to the business?

23 A Correct.

24 THE COURT: Okay. All right. But they, they were
25 reflected on the original ledger. And then you

1 subsequently realized that they were simply bad debt. Is
2 that how it played out?

3 A They were bad debt. They had no contracts.

4 THE COURT: Okay.

5 A There was no hard assets that were receivable from
6 them.

7 THE COURT: Okay. All right. But they were
8 reflected as good debt or receivables on the ledger at the
9 time that you purchased it?

10 A Yes, sir.

11 THE COURT: Okay. Go ahead.

12 Q When you sell a vehicle to someone, I'm talking about
13 your car business now, and they don't give you all the
14 money up front do you normally take a lien on their title?

15 A Yes, sir.

16 Q Was Ruth doing that for units that she was selling in
17 the business?

18 A No.

19 Q Did you know that before you bought into the
20 business?

21 A I did not.

22 Q So these were unsecured debts?

23 A That's correct.

24 Q Did you have trouble collecting this?

25 A For instance, the trailer was, we had no, we couldn't

1 find it. We had no asset, the title did not exist and
2 therefore we had no recourse.

3 Q Would all of this information that we've talked about
4 how things worked, how she did not disclose things to you
5 or maybe things were told to you that turned out not to be
6 true, would that have affected your decision to buy the
7 business?

8 A Yes. I would have walked away from my \$50,000.00
9 dollar loan.

10 Q Did she breach her contract with you?

11 A Yes.

12 MR. WISE: I object to that as a violation of the
13 Dead Man's Statute also.

14 THE COURT: Overruled. I'm taking it as opinion
15 testimony. It also perhaps is a legal conclusion, but I'm
16 taking it as this witness' testimony about why he's
17 involved in this litigation.

18 Q Have you had a lot of damages that have flowed from
19 the way Ruth treated you?

20 A Yes.

21 Q Let me show you this sheet. Let's go down that. The
22 settlement of the Freeman case, we've already talked about
23 that \$5,750.00 dollars. Attorney's fees for the Freeman
24 case, how much for that?

25 A \$13,650.

1 Q The tax lien, it says, with penalty. But is that
2 with the penalty. Was the total, \$23,371.93, or was there
3 something else for, with the penalty?

4 A John, this does look correct.

5 Q Okay. Paid in capital that Ms. Tumblin owed but did
6 not pay, we had \$52,248.00 dollars. Is that correct?

7 A That's correct.

8 Q And tell me more specifically what that's about?

9 A When we have to put money into the business as
10 owners, you should put it in as paid in capital. In this
11 case, Ruth could not put the money in, therefore, I had to
12 count my money as a loan because she could not put in the
13 \$52,000.00.

14 Q Okay. And we've already talked about the loan you
15 made for \$50,000.00 dollars.

16 A Yes.

17 Q Missing parts, what was the value of the parts that
18 were missing?

19 A If I remember correctly, the parts represented were
20 over \$400,000.00 and once we got that down to an accurate
21 amount, it ended up being about \$208.

22 Q We have here, \$219,410.28. Does that sound right?

23 A That sounds right.

24 THE COURT: Repeat that figure again, if you would
25 for me.

1 Q The cost to move the business and up fit the new
2 location because of foreclosure, that's listed as
3 \$253,899.48. Is that correct?

4 A Yes.

5 Q All right. And we talked about the bad debts before.
6 Look these over and does that appear to be accurate?

7 A That is accurate.

8 MR. FERGUSON: Then, I would like to introduce this
9 damages sheet.

10 THE COURT: Without objection.

11 (Whereupon, Plaintiff's Exhibit number 5 was admitted
12 into evidence.)

13 Q Are you asking the Judge to void any obligation you
14 may have to Ruth Tumblin's estate because of her prior
15 breach of the contracts you had with her?

16 A Yes.

17 Q Are you asking to recoup the money her estate owes
18 you and have that offset any money the Court might find
19 that you owe the estate?

20 A Yes.

21 Q Are you asking that the Tumblin estate reimburse you
22 for your costs and attorney's fees generated by the
23 Freeman case and, in fact, the whole case, that would
24 include everything after Freeman? Are you asking for
25 that?

1 A Yes.

2 MR. FERGUSON: That's all the questions I have.

3 THE COURT: Mr. Wise. You need the exhibits?
4 They're up here.

5 MR. WISE: Yes.

6 CROSS-EXAMINATION

7 By Mr. Wise:

8 Q All right. Mr. Cooper, let me see Exhibit 1.

9 A Yes, sir.

10 Q Let me see it a second. Now, if you look at this
11 exhibit, well, you got this in the middle of July?

12 A I got this at the end of July.

13 Q End of July. Okay. When you were looking into
14 buying the business? You'd already lent \$50,000.00?

15 A The loan was made in February of \$50,000.00.

16 Q Right.

17 A The purchase took place on June 23rd.

18 Q And would it be fair to say that the loan was made
19 basically in a sense sight unseen?

20 A On trust.

21 Q Right. Now, I mean, just you knew the business. You
22 had been that, been there a while and decided to lend her
23 \$50,000.00 dollars?

24 A No, sir. The \$50,000.00 dollars loan made in June, I
25 mean February --

1 Q February.

2 A -- was made on trust of what she had described to me.

3 Q Right. Okay, y'all had some basic conversations but
4 you didn't look into the hard books?

5 A No.

6 Q Okay. So then in July, you start looking at hard
7 books?

8 A In July, I had to make a decision, because of her
9 being out of trust, to either walk away from \$50,000.00
10 dollars of loan or to make the purchase of a business.

11 Q Okay. So in July, you knew that the loan to Honda
12 was out of trust, meaning some items had been sold that
13 Honda had not been paid for?

14 A Correct.

15 Q And with that, any franchise dealer, franchisor is
16 going to yank the franchise?

17 A Correct.

18 Q All right. Now, how much cash was in the bank when
19 you looked at this in July from the previous year?

20 A This dated July 30th which was after the purchased
21 date was \$61,571.

22 Q Let me see that a second.

23 A And that's total cash.

24 Q All right. Now, that's not, that's not total cash,
25 is it?

- 1 A Yes, sir.
- 2 Q Well, how much was in the bank account?
- 3 A This was after purchase.
- 4 Q I understand. How much was in the bank account?
- 5 A I cannot remember.
- 6 Q Is it on that sheet?
- 7 A It is after purchase.
- 8 Q All right. How much was in the bank account? Let me
- 9 help you out. Let me borrow your copy that you have. All
- 10 right. Look at the first item. That's petty cash fund.
- 11 A Yes, sir.
- 12 Q It has \$300.00 dollars, right?
- 13 A That's correct.
- 14 Q The next item is cash on hand.
- 15 A Yes.
- 16 Q It has zero?
- 17 A Correct.
- 18 Q And the next item is Palmetto Bank main account.
- 19 A Correct.
- 20 Q And it's negative \$2,000.
- 21 A That's correct.
- 22 Q And the next item is Provident Insurance Account,
- 23 which I assume is insurance, a deposit of some sort?
- 24 A That's correct.
- 25 Q And it's a thousand.

1 A Correct.

2 Q And that's as of December 31st, 2007?

3 A That's correct.

4 Q That is before you purchased it?

5 A No, sir. This was after.

6 Q Well, these bank balances are December 31st, 2007.

7 It was printed on --

8 A No, I'm sorry. You're correct.

9 Q Okay.

10 A You're correct.

11 Q So those were the balances that you got when you
12 decided to purchase it, correct?

13 A This was printed after I purchased it.

14 Q All right. So you're telling us that you did not
15 even get a printout after you, before you purchased it?

16 A I did not. I knew what was due to Honda. I knew
17 what was due to others because Honda was your main, is
18 your main one.

19 Q So on June 23rd of 2008, you made a purchase of about
20 and put in about \$300,000.00 dollars?

21 A Yes, sir.

22 Q All right. And then you got the balance sheet
23 afterwards?

24 A Yes, sir.

25 Q Okay. Now, and at that time you had not bought Ruth

1 out?

2 A That's correct.

3 Q All right. She was still in it?

4 A That's correct.

5 Q So then you get the balance sheet a few days, a month
6 after you put in \$300,000, correct?

7 A Yes.

8 Q Now, and you realize I guess, when you get that bank
9 sheet, things may be worse than you thought?

10 A Yes, sir.

11 Q All right. Because did you, you didn't sit down and
12 talk to her before you put in \$300,000, how much do you
13 have cash in the bank?

14 A The biggest at that point in time was what was owed
15 to Honda.

16 Q Correct. All right. But you, you were going to put
17 \$300,000.00 dollars, again, basically sight unseen?

18 A When I knew what Honda was owed --

19 Q Uh-huh.

20 A -- and I knew that I either put that money into a
21 business that I felt that I could turn around or walk away
22 from \$50,000.00 dollars, yes, I did.

23 Q So you spent, put \$300,000 after fifty?

24 A That's correct.

25 THE COURT: One quick question. How much was Honda

1 owed, do you recall?

2 A Honda was owed, it's on a document, but it was right
3 at \$190,000.00, somewhere in that area.

4 MR. WISE: It's in Plaintiff's Exhibit 2 which is
5 \$179,000.

6 A Yes, sir.

7 THE COURT: Thanks.

8 Q All right. So this was in June or July of 2008, you
9 were really fully aware of the financial situation of the
10 Honda of Laurens?

11 A Not fully aware of it.

12 Q Well, you knew, you were aware there were a lot of
13 red flags?

14 A Yes.

15 Q Okay. And at that time when you bought it they were
16 out on the Bypass?

17 A That's correct.

18 Q And how long had it been out there on that Bypass,
19 the Interstate?

20 A I'm not sure.

21 Q Been out there a year, a month or?

22 A I'm not sure.

23 Q Okay. And you made no inquiry as to the status of
24 the loan with Palmetto Bank at that time?

25 A No.

1 Q Okay. All right. And at that point in June of 2008,
2 you were then majority owner?

3 A At the end of June 2008, HOL, LLC; which was David
4 and I owned fifty-one percent.

5 Q All right. Y'all owned fifty-one percent of the
6 company?

7 A Yes.

8 Q And who was your man in there on day-to-day
9 operations?

10 A The original general manager that I hired was Eric
11 Rodgers.

12 Q Okay. And you hired him?

13 A Ruth had brought him in originally. And then I took
14 him to help him and then she advised me to bring him on
15 full-time.

16 Q Did you know him?

17 A No.

18 Q Okay. All right. Mr. Bagwell was involved with you?

19 A Yes.

20 Q All right. He was working there?

21 A No.

22 Q Where was he?

23 A He has a construction business.

24 Q Okay. All right. So but in June 30th of 2008, you
25 were fifty-one percent owner of this company, correct?

1 A Correct.

2 Q You had a right to look at the books?

3 A Yes.

4 Q You had the right to go through the building and look
5 at anything you wanted to?

6 A Yes, sir.

7 Q You pretty much had a right to hire and fire
8 fifty-one percent, correct?

9 A Correct.

10 Q All right. And did you hire a manager other than the
11 gentleman you just mentioned?

12 A No.

13 Q Okay. So you hired this man to run it?

14 A I brought him on, yes.

15 Q Okay. And his name again was?

16 A Eric Rodgers.

17 Q All right. How long did he stay there?

18 A Through June of two-thousand and, this past year, I
19 am sorry.

20 Q Excuse me?

21 A 2016, June of 2016.

22 Q So he was there for a number of years?

23 A Yes.

24 Q So he obviously knew what he was doing?

25 A Yes.

1 Q Okay. Did you have discussions with him on a weekly
2 basis about the business?

3 A I'm not going to say weekly but.

4 Q Monthly?

5 A Yes.

6 Q Okay. So you got \$300,000.00 dollars in this
7 business now, right. And you wanted to keep up with it?

8 A I tried. At that time it was the end of the era when
9 the automobile business was crashing too.

10 Q Right. So you would talk to Mr. Rodgers at least on
11 a monthly basis about the business?

12 A Yes, sir.

13 Q Did he report any problems to you?

14 A He did mention about the problem we were having with
15 parts. But here again, we could not take the time to
16 close and count parts.

17 Q And then you decided to move the business to the
18 Bypass, the building you were in was in foreclosure?

19 A Yes.

20 Q All right. And when was that?

21 A Mr. Wise, if I could remember correct, that would
22 have been the end of, the end of '09 or the beginning of
23 2010, if I can remember correctly.

24 Q Sometime in late '09/early 2010, right?

25 A Yes, sir.

1 Q Is that correct? All right. You attributed here
2 \$250,899.48 to moving costs on your exhibit?

3 A Yes.

4 Q All right. Have you got any documents to back any of
5 that up with you today?

6 A Not today.

7 Q Okay. Now, when you saw the balance sheet in July of
8 2008, you saw the loans to Men's Stuff, Steve Farnsworth,
9 Neil Meyer, did you not?

10 A Yes, sir.

11 Q All right. Did you ever try to collect any of those?

12 A Yes.

13 Q Did you file suit?

14 A Did not file suit.

15 Q So you never filed suit against anybody to try to
16 collect, is that correct?

17 A Correct.

18 Q Okay. But you were aware of those loans being there
19 in 2008?

20 A Yes, but there was no documentation.

21 Q Correct. But did you ask for it?

22 A Yes.

23 Q And you didn't get any?

24 A Did not happen.

25 Q So you knew in 2008 there was no documentation for

1 those loans?

2 A That's correct.

3 Q All right.

4 A After purchase.

5 Q I understand. But you didn't ask for this balance
6 sheet before you purchased it?

7 A Not that I can remember, no.

8 Q Okay. And at this point, Ms. Tumblin was still
9 working there, correct?

10 A Yes, sir.

11 Q All right. Drawing a salary?

12 A Yes.

13 Q All right. And then I believe in July of 2010, you
14 reached an agreement with Ms. Tumblin to basically buy her
15 out?

16 A That was the remaining amount that I had guaranteed
17 to pay her salary.

18 Q Well, you reached what you called a settlement
19 agreement?

20 A That's correct.

21 Q All right. And that was July 2nd, 2010?

22 A That's correct.

23 Q And is this a copy? Well, I think I got the
24 original. Hold on one second. Yes. And is this the
25 original settlement agreement?

1 A Yes, sir.

2 Q All right.

3 MR. WISE: If I could introduce that?

4 MR. FERGUSON: No objection, Your Honor.

5 (Whereupon, Defendant's Exhibit Number 1 admitted
6 into evidence.)

7 Q So on July 2nd of 2010, you had basically been
8 running this business for two years?

9 A Yes.

10 Q Now, your original purchase was June 23rd of 2008?

11 A Yes.

12 Q For two years and a few weeks, you'd been running the
13 business, correct?

14 A Yes, sir.

15 Q You knew what kind of cash flow it had in those two
16 years?

17 A As I kept money, putting money in, yes.

18 Q You knew what kind of cash flow it had from sales in
19 those two years?

20 A Yes.

21 Q Okay. Is that correct?

22 A That's correct.

23 Q And you, and Ms. Tumblin at that point before June
24 2nd owned forty-nine percent of the company?

25 A At that point in time, she owned about thirty percent

1 of the company.

2 Q That's right, because you had another, tell me about
3 that second agreement.

4 A The second agreement was between her and David
5 Bagwell, of where David ended up with ownership of her
6 remaining percentage or I won't say her remaining, yes,
7 her remaining percentage due to how much she owed David.

8 Q Okay. All right. So at that point you own about
9 thirty percent, correct?

10 A Correct.

11 Q All right. So you had been running this company for
12 two years, right?

13 A Correct.

14 Q You understood that at that point that the, there
15 wasn't much cash in the business when you bought it?

16 A Correct.

17 Q I assume by then you had built some of that cash up?

18 A No..

19 Q All right. You hadn't. So you're still having
20 troubles with it?

21 A I'm still having troubles and still having to pay
22 her.

23 Q I understand. You knew then also that at that point
24 there was some, because you said you'd found some problems
25 with inventory, correct?

1 A Yes, sir.

2 Q And you knew by then you've got some problems with
3 these debts you think, that you say are uncollectible?

4 A Yes.

5 Q You knew by then that the trailer that you say was
6 missing was missing?

7 A Yes.

8 Q All right. So you knew by then pretty much
9 everything about this company?

10 A There were still ghosts in the closet that kept
11 coming out.

12 Q All right. So after two years, you'd been running it
13 and you knew what kind of cash flow customers created,
14 correct?

15 A Yes.

16 Q All right. And then you sat down with Ms. Tumblin
17 and said, I'm basically going to buy you out and give you
18 a severance package? Isn't that basically what it was?

19 A Yes.

20 Q It was equivalent of about, what, two year's salary?

21 A That's correct.

22 Q Okay. And you agreed to pay her \$136,000.00 dollars
23 over five years at 5.5 percent interest?

24 A That's correct.

25 Q All right. And you signed on behalf of Honda of

1 Laurens, LLC, and yourself individually?

2 A Correct.

3 Q On a promissory note?

4 A Correct.

5 Q All right. Now, and you, did you start making any
6 payments on that note?

7 A Rauch, I'm sorry, I cannot remember.

8 Q It's kind of moot though, anyway, isn't it, because
9 didn't y'all reach a subsequent agreement?

10 A Yes, sir.

11 Q And that's the one we're missing?

12 A It's --

13 Q Do you have it?

14 A It's signed on, on one of the other sheets, if it's
15 not that one. Look behind that one. Is it at the bottom
16 of that?

17 Q No. This is all the \$139,000. When we took your
18 deposition, you didn't have a copy at your deposition and
19 I didn't either. But y'all later in August of 2010
20 entered into a second agreement?

21 A Yes, sir.

22 Q All right. And that agreement was to reduce it down
23 to \$110,000.00 dollars?

24 A Yes.

25 Q And, I think, we finally figured out that one of the

1 reasons you went from \$139 to \$110 was because of the tax
2 obligation?

3 A I believe you're correct.

4 Q That the tax obligation, you'd either reached an
5 agreement with them by then or come close to paying it
6 off. But there was about \$20-something thousand dollars
7 in taxes due. Isn't that correct?

8 A Rauch, I'm sorry. I cannot remember.

9 Q All right. Hold on. In January of 2010, did you
10 enter into an agreement with the Department of Revenue to
11 pay approximately \$19,000.00 dollars in taxes over a
12 thirty-month period at the rate of \$700 and something
13 dollars per month?

14 A Did I?

15 Q Let me get, see if that refreshes your memory.

16 A I guess we would have paid down \$1,950. Yes, this
17 does, Rauch.

18 Q Okay. And I think you had to pay some penalties --

19 A Penalties.

20 Q -- and interest and it ended up being about
21 \$20-something thousand dollars, if you add all those up?

22 A I believe that's correct.

23 MR. WISE: I'd like to introduce this.

24 THE COURT: No objection.

25 (Whereupon, Defendant's Exhibit number 2 was admitted

1 into evidence.)

2 Q So you entered an agreement with the State Government
3 on January the 20th of 2010?

4 A That's correct.

5 Q Is that the date on that?

6 A That's correct.

7 Q All right. Now, and that was some six months before
8 you agreed to pay \$136,000?

9 A Rauch, you have the agreement, I don't. I'm sorry.

10 Q I'm sorry. I thought it was up there with you.

11 Yeah. Here it is. Defendant's 1. That's dated July 2nd,
12 2010?

13 A Correct.

14 Q And then you went back to Ruth about, I think, you've
15 testified about the 23rd of August of 2010 and cut another
16 deal?

17 A Yes, sir.

18 Q That basically, pretty close to reduce the \$139 by
19 the total amount you were going to pay in taxes?

20 A Mr. Wise, I can't remember that part of it.

21 Q All right. But you know --

22 A I know we did, yes.

23 Q You know you came to an agreement?

24 A Yes.

25 Q And that agreement was \$110 payable at \$1,800.00

1 dollars per month?

2 A Yes, sir.

3 Q All right. At the same interest rate of 5.5 percent?

4 A I assume.

5 Q Okay. All right. And you paid on that for a while?

6 A Yes, sir.

7 Q And you paid that \$1,800 regularly through January of
8 2012, correct?

9 A I'm sorry. I can't remember.

10 Q Well, let me refresh your memory. You paid it up
11 until the dispute with the lawsuit came about?

12 A Yes.

13 Q And that was January of 2012?

14 A Yes, sir.

15 Q All right. And then you stopped paying it, correct?

16 A Yes, sir.

17 Q All right. And then you made a payment in August of
18 2012 of \$2,500.00 dollars?

19 A Yes, sir.

20 Q All right. To Ruth Tumblin?

21 A Yes.

22 Q Okay. So in August of 2010, you had then been
23 operating that business for some thirty months?

24 A Yes, sir.

25 Q All right. And by thirty months, you had moved to

1 the location on Laurens Highway 76?

2 A Yes, sir.

3 Q You had completed that movement. All right. And you
4 were aware of all the problems with the bad debts and all
5 that by then?

6 A I wouldn't say all.

7 Q Well, the bad debts.

8 A Yes.

9 Q Now you've got on your list of missing parts,
10 \$219,410,29?

11 A Yes, sir.

12 Q All right. Have you got a list of the audit that was
13 done to show those missing parts?

14 A I'm not sure. It's probably in our computer system
15 I'm sure.

16 Q All right. Did you do a formal audit?

17 A It could not be done. Formerly, yes.

18 Q But you knew there were missing parts even before you
19 agreed to pay Ruth \$110,000.00 dollars?

20 A And then we've done another one since, and it's still
21 reduced from there.

22 Q Well, what have you, what documents have you got to
23 show that you learned of any missing parts after you
24 signed with Ruth Tumblin to pay her \$110,000.00 dollars?

25 A Before?

1 Q No. What documents have you got to show that you
2 found missing parts after you agreed to pay her
3 \$110,000.00 dollars on July, on August 23rd, 2010?

4 A We have notebooks full of things that show that.

5 Q You have what, sir?

6 A We have notebooks, like a documentation that we did.

7 Q Do you have them with you here today in the
8 courtroom?

9 A No.

10 Q Now, the loan to Ruth Tumblin was made in 2008?

11 A That's correct.

12 Q All right. And was that to her or to the business?

13 A That was to both.

14 Q That was to both?

15 A That was to both.

16 Q Twenty-five to her and twenty-five to the business?

17 A It was given, Rauch, if I remember correctly, it was
18 given \$50,000 to the business signed for by her and the
19 business.

20 Q Okay. All right. Have you got anything that she
21 signed on that?

22 A Yes, sir.

23 Q You got it with you?

24 A Yes, sir.

25 Q Where is it?

1 A Do you have that promissory note?

2 MR. FERGUSON: He e-mailed that to me last night. I
3 e-mailed that to you. I couldn't get it to print out.

4 MR. WISE: All right. I hadn't checked my e-mail
5 this morning.

6 Q All right. But Ms. Tumblin individually never paid
7 anything on the \$50,000.00 dollars?

8 A That's correct.

9 Q Okay. And so whatever the business, it was like she
10 guaranteed it?

11 A Yes, sir.

12 Q Okay. Similar to what you did?

13 A Yes, sir.

14 Q Okay. But when you bought the business, bought her
15 out, then that loan was subsumed into that business,
16 wasn't it?

17 A It was separate. I have no documentation that said
18 it was an agreement.

19 Q Back up. It was a loan to her and the business,
20 according to you, correct?

21 A Yes.

22 Q All right. She guaranteed the loan to the business?

23 A Yes.

24 Q All right. Then you subsequently bought the
25 business?

1 A Yes, sir.

2 Q All right. So when you bought the business, the
3 business' obligation would be subsumed into the business
4 that you bought?

5 A You're correct.

6 Q Okay. Now, you say that Ms. Tumblin did not pay into
7 the paid capital of \$52,248.00 dollars?

8 A That's correct.

9 Q Have you got any documentation of that as to how that
10 number was arrived at?

11 A I have where I made the loans to the business.

12 Q Okay. And so therefore the same amount, correct?

13 A Her percentage would have been due about now.

14 Q All right. You bought her out originally in July the
15 2nd of 2010?

16 A Rauch, I'm sorry. My memory, yes, yes.

17 Q Okay. And it would be fair to say that you never
18 filed any suit against her until sometime in 2014 or do
19 you even recall?

20 A I can't recall.

21 Q Okay. Well, the documents will show what the
22 documents show. Okay. So by July 2nd or by August 23rd
23 of 2010, you'd been operating the business, I think you
24 said, for roughly thirty months?

25 A July of 2010?

1 Q Right. No two years.

2 A Something like, yeah.

3 Q Two years. In August, you had been operating it
4 thirty-one months, I mean, twenty-five months.

5 A Twenty-five.

6 Q Two years, roughly. Correct?

7 A I would say I was an owner. I wouldn't say the
8 operator.

9 Q All right. Probably a good point.

10 A Ruth was still there at that time.

11 Q Right.

12 A Right.

13 Q So my question is then, you had been majority owner
14 of this company for a little over two years when you
15 agreed to pay her \$110,000.00 dollars?

16 A Yes, sir.

17 Q Okay. And I believe you testified that, well,
18 nevermind. And you paid on that up until January of 2012?

19 A The documents would show that.

20 Q I mean, that was when the suit was filed with the
21 company, the Freeman suit.

22 A Okay.

23 Q Okay. And you stopped paying when the Freeman suit
24 was filed, correct?

25 A That's correct.

1 Q Okay. Now, when you took over the business in July
2 of 2008, you had access to the computers?

3 A Yes, sir.

4 Q You had access to go through and look at anything you
5 wanted to in the books?

6 A Yes.

7 Q Correct?

8 A Yes, sir.

9 Q And I assume you did that?

10 A To the best of my ability.

11 Q Right. Well, the man that you hired to run the
12 businesses, you met with monthly at least?

13 A Tried to.

14 Q He had access to those books, correct?

15 A Yes.

16 Q And you could look at anything you wanted to to your
17 heart's content?

18 A With over a thousand general ledger accounts, it
19 would have been tough.

20 Q But you could, you had an opportunity to look at
21 them?

22 A Yes.

23 Q All right. Now, also on June 23rd of 2008, you
24 entered into a Stock by Sale Agreement, did you not, in
25 conjunction with purchasing the business?

1 A With David or, let's see.

2 Q It would be quicker if you will, the signature is on
3 the last page, I believe. The next to the last page,
4 excuse me.

5 A June 23rd of '08, yes sir.

6 Q Okay. And that was actually the formal agreement by
7 which you bought the stock, correct?

8 A Yes.

9 Q All right.

10 MR. WISE: I'd like to move to introduce this.

11 MR. FERGUSON: No objection.

12 (Whereupon, Defendant's Exhibit 3 was admitted into
13 evidence.)

14 Q And would you look at paragraph 1.5. That basically
15 provided for a buy-out of Ruth Tumblin?

16 A Yes.

17 Q Okay. And that's why the, that was done, the
18 \$139,000 was pursuant to this agreement, I assume?

19 A I assume.

20 Q Okay. Now, you'd bought out Mr. Bagwell when?

21 A It was also, I believe, in 2010, I believe. We
22 should have documentation on that. I'm not sure.

23 Q I don't. When did you pay him?

24 A I cannot remember.

25 Q You don't remember whether there was, you got any

1 documentation with you on what you paid him or with Mr.
2 Ferguson?

3 A We should have some documentation.

4 Q I mean, did you pay him a substantial sum or a
5 penitence?

6 A Yes. I mean, it was a sum, but I can't remember the
7 amount.

8 Q In excess of a \$100,000.00?

9 A Yes.

10 Q Okay. In excess of \$200?

11 A I can't remember.

12 Q All right. So in 2010, Mr. Bagwell owed how much of
13 the company? You owned half, fifty-one or?

14 A HOL, LLC still owned 51 percent and he would have
15 owned, I can't remember the percent he would have owned.

16 Q Who actually bought out Ruth's share?

17 A David did.

18 Q David did. All right. So how much did he have on
19 the original purchase, do you remember?

20 A The original purchase, he would have had 51 percent,
21 twenty, 25 1/2, I guess. That's through HOL, LLC.

22 Q All right. The reason I ask because I don't see him
23 in here in the stock buy agreement. All right. Now, did
24 he own Honda of Laurens with you or did he own, or did he
25 own, or did he buy into Ruth's company?

- 1 A He owned HOL, LLC with me.
- 2 Q He owned that with you?
- 3 A He owned that with me, correct.
- 4 Q Okay. So how much of HOLC did he own?
- 5 A Of HOL, LLC?
- 6 Q Right.
- 7 A He owned 50 percent of that.
- 8 Q So y'all were 50/50 on that?
- 9 A We were 50/50 on that.
- 10 Q So if HOL, LLC, bought out Ruth Tumblin, that would
- 11 mean both of you owned the Honda company 50/50?
- 12 A Yes.
- 13 Q Okay. All right. So you don't know how much, but
- 14 sometime in 2010, you paid him in excess of \$100,000.00
- 15 dollars for his interest in that business?
- 16 A Yes.
- 17 Q All right. But you don't remember how much?
- 18 A I don't remember the amount.
- 19 Q Other than the fact it was more than that?
- 20 A That's correct.
- 21 Q And do you know if it was more than \$200?
- 22 A I cannot remember.
- 23 Q Okay. All right.
- 24 A My apologies.
- 25 Q And you don't have a list of any inventory that, you

1 don't have a list of any inventory that was missing after
2 you agreed to pay Ruth \$110,000.00 dollars?

3 A We did go through a full audit earlier this year.
4 That we finally were able to do a full close-down audit,
5 yes.

6 Q All right. Back in 2010 when you agreed to pay Ruth
7 Tumblin \$100,000.00 dollars, right, you knew there were
8 some parts missing?

9 A Yes.

10 Q All right. You knew there was some bad debts?

11 A Yes.

12 Q You knew that previously the company had been without
13 a trust?

14 A Yes.

15 Q All right. And you knew, and you'd been operating
16 the business for two years?

17 A Yes.

18 Q All right. And you cannot come in here today and
19 show us anything that occurred after August the 23rd of
20 2010 as to any damages that have occurred to you because
21 of Ruth Tumblin after that date, or am I confusing you?

22 A You're confusing me.

23 Q Okay.

24 A After that date, you're confusing me.

25 Q Let me get more precise. August 23rd, 2010, you buy

1 out, you've renegotiated your agreement with Ruth Tumblin
2 for \$110,000.00 dollars. All right. Do you have any
3 documentation of any loss that you incurred after August
4 23rd of 2010 concerning the operation of Honda of Laurens?

5 A The Freeman case.

6 Q Excuse me?

7 A The Freeman case.

8 Q The Freeman case. All right. I hadn't even asked
9 you about that, have I? I'm probably not going to, but
10 that's another story. The Freeman case. All right.
11 We'll give you that. Anything else?

12 A I can tell you that the Freeman case caused me a lot,
13 the cash flow there which kept me from putting it into the
14 business to buy parts, et cetera, that would sell.

15 Q Do you have any other documentation other than the
16 Freeman case of any loss that occurred after August 23rd
17 of 2010?

18 A Other than parts?

19 Q Have you got documentation on parts?

20 A We would probably have that in files, yes.

21 Q Do you have it here today for the Court?

22 A I do not have it here today.

23 Q So you have, aside from the Freeman case, you have no
24 documentation of any loss you may have suffered due to
25 anything Ruth Tumblin did or said from that date?

1 A Not with me today.

2 Q Okay. Thank you.

3 THE COURT: Redirect?

4 MR. FERGUSON: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 By Mr. Ferguson:

7 Q In his cross-examination, frequently Rauch was asking
8 you for documents. Did he give you a subpoena to bring
9 any of those documents here today?

10 A No.

11 Q Did he make any written request at all that you have
12 those documents here today?

13 A No.

14 Q The parts inventory that you testified to before, the
15 thorough one, was that after August 23rd, 2010?

16 A Yes.

17 Q How long, when was that, was it 2013 or when?

18 A We did one in, I think it shows on the balance sheet
19 for 2013.

20 Q All right. So the question that Rauch was raising
21 has since Ruth did you so many wrongs, why didn't you sue
22 her?

23 A I just didn't have the heart to do that.

24 Q Explain that.

25 A Given her situation --

1 Q You mean her cancer?

2 A -- and given her financial situation, I just, it was
3 no reason to. I mean, I could have sued, but there would
4 be nothing there to get.

5 Q There was mention of a check that you sent to her for
6 \$2,500.00 dollars at the end of August in 2012. Do you
7 remember that?

8 A Yes.

9 Q And why was that, did you send her that check?

10 A At that time she was in need of money and I remember
11 calling you and asking you your thoughts about that. But
12 I did, she did need financial help at that time. And I
13 did send that \$2,500.00 dollars to her.

14 Q Did you actually owe that money to her?

15 A No.

16 Q Okay. I would like to --

17 MR. FERGUSON: We're going to need some copies made
18 of this. This is from the estate exhibit.

19 MR. WISE: No objection.

20 (Whereupon, Plaintiff, Exhibit number 6 was admitted
21 into evidence.)

22 Q Read for me what's in the cover letter for that
23 check.

24 A Lynn W. Cooper, III, Chip, is requiring me to
25 announce that I am reserving all of my rights concerning

1 the issues of the lawsuit and additional any
2 human-to-human discussion regarding the business.

3 Q And on the, For, line of the check, what does it say?

4 A Laurens Cycle Sales, Inc./All Rights Reserved.

5 Q Okay. Why did you buy out David Bagwell?

6 A At the time that Ruth owed David \$340,000 plus
7 thousand dollars for a home renovation that she was doing
8 that obviously continued to --

9 MR. WISE: Your Honor, I would object to that as
10 violation of the Dead Man's Statute and unless he's
11 talking about what Mr. Bagwell said, then it's hearsay.

12 THE COURT: I'd sustain that. I think we've already
13 been down this road.

14 MR. FERGUSON: I have no further questions.

15 THE COURT: No additional questions, Mr. Ferguson?

16 MR. FERGUSON: (No audible response.)

17 THE COURT: Mr. Ferguson, any additional questions?

18 MR. FERGUSON: I beg your pardon?

19 THE COURT: Any additional questions?

20 MR. FERGUSON: I said no further questions.

21 THE COURT: Okay. I'm sorry. I didn't hear you.
22 Nothing on redirect or recross?

23 MR. WISE: Nothing.

24 THE COURT: All right. Sir, thank you. You can step
25 down. We'll be at ease for a few moments and you've still

1 got, yeah, I'd put those down there if you don't mind.
2 You have got two additional witnesses to call for your
3 case?

4 MR. FERGUSON: Yes, sir.

5 MR. WISE: I have got one briefly.

6 THE COURT: We will be at ease for a few minutes.

7 (Whereupon, a short break was taken.)

8 THE COURT: All right.

9 MR. FERGUSON: David Bagwell.

10 DAVID BAGWELL, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Ferguson:

14 Q State your name, tell me your name.

15 A My name is David Bagwell. I own and operate Bagwell
16 Contractors.

17 Q Okay. And when did you first meet Ruth Tumblin?

18 A Thirty-five years ago.

19 Q Okay. What kind of relationship did you have with
20 her?

21 A I had a great relationship with her over the course
22 of thirty-plus years of renovating. I started out
23 renovating the original Honda of Laurens.

24 Q Did you renovate a house for her?

25 A I did.

1 Q Where was that?

2 A That was on Highway 76 in, not in Gray Court, but
3 Hickory Tavern, excuse me.

4 Q Did she make timely payments?

5 A In the beginning.

6 Q And then what happened?

7 A The cash flow got real slow. And the problems were
8 with making decisions through the decorator, things of
9 that nature. And then she got in trouble with the, as far
10 as paying the draws and I got behind on those. I was
11 encouraged during that, by a gentleman out of Greenwood,
12 by the name of Herbert Anderson and he had loaned her some
13 money. And he called me and told me --

14 MR. WISE: Objection, Your Honor, to what Mr.
15 Anderson said as being hearsay.

16 THE COURT: Okay. Sustained.

17 Q All right. You're not supposed to say what somebody
18 else told you.

19 A Okay.

20 Q I know it's hard but that's just the way we do things
21 in court.

22 A Okay. Well, anyway, the only thing I can tell you is
23 --

24 Q You can tell me what he did.

25 A He loaned her money --

1 Q Okay.

2 A -- which kept me caught up, but I didn't receive all
3 of it.

4 Q All right. She held some back?

5 MR. WISE: Objection, Your Honor.

6 THE COURT: All right. Sustained. That calls for
7 hearsay. I get the point.

8 Q Okay. In deciding whether to get into this contract
9 to begin with, did Ruth have a discussion with you about
10 her business, her cash flow, anything like that?

11 A In the beginning, no sir.

12 Q Well, later?

13 A Later, yes.

14 Q Okay. Was she honest with you in what she told you?

15 A As far as I know --

16 MR. WISE: Your Honor, I think he, his testimony
17 actually may come under the Dead Man's Statute also due to
18 the fact that he was a part owner of Honda of Laurens at
19 the time he's talking about.

20 THE COURT: All right. I'd agree. If you want to
21 jump forward and ask him if he ultimately reviewed the
22 books, the balance sheet, the general ledger of Honda in
23 Laurens. And if that balance sheet accurately reflected
24 the conversations that he had, I think that would be a
25 fair question to ask.

1 Q Did you look at the, any of her business papers?

2 A No.

3 Q Okay.

4 MR. FERGUSON: And, Your Honor, and let me ask you a
5 question on the Dead Man's Statute. I understand that if
6 someone who came under the --

7 THE COURT: Hold on one second. On the Dead Man's
8 Statute, because he's not a party in this case, I'm not
9 sure it would apply.

10 MR. WISE: Well, he was a party, he would be applying
11 for benefit of the time he's talking about. That's my
12 objection.

13 THE COURT: I don't disagree, but he has no interest
14 in the outcome of this litigation.

15 MR. WISE: Today, I agree that he has no interest.

16 THE COURT: Which would, that's the disqualifying
17 factor in the Dead Man's Statute. So I think he can
18 actually testify.

19 MR. WISE: Okay.

20 THE COURT: Now, we still have hearsay issues that
21 maybe we would have to deal with. But as far as him
22 testifying as to any transaction with Ms. Tumblin, I think
23 he's competent to do that and he's not disqualified --

24 MR. WISE: Okay.

25 THE COURT: -- with the Dead Man's Statute as a

1 witness. But hearsay is a different matter entirely.

2 MR. WISE: Okay.

3 THE COURT: Keep going, Mr. Ferguson. Sorry about
4 that.

5 Q All right. So in order to protect your right to
6 recover for the work you did on her house, did you enter
7 into this bill of sale agreement?

8 A Yes.

9 Q Okay.

10 MR. FERGUSON: I'd like to introduce this.

11 MR. WISE: No objection.

12 (Whereupon, Plaintiff's Exhibit number 7 was admitted
13 into evidence.)

14 Q Did you ultimately receive from her, well, let me
15 rephrase that. So you entered into this agreement to buy
16 a portion of her business?

17 A Yes.

18 Q And was it your intention in doing that to provide
19 some additional security that you would get paid?

20 A Correct.

21 Q What was your agreement with Chip regarding the
22 business?

23 A In the beginning I came to Chip. We were back and
24 forth with Ms. Tumblin, Ruth that is, trying to work out
25 the cash flow, things of that nature, and trying to get

1 paid. She said she had some investments, hopefully, that
2 would come through and hopefully get me all, but that
3 never did happen. So I went and spent some time with Chip
4 and tried to, well, I did help make some arrangements. I
5 got them two together and he originally loaned her some
6 money. And from that point on, the, his debt wasn't going
7 to get paid. And then we tried to go into business to
8 recuperate our, my money, mainly.

9 Q Can you tell me whether or not from the beginning it
10 was your intention and Chip's intention that he buy you
11 out?

12 A Yes.

13 Q Okay. So before any problems arose in the business,
14 you two had agreed that he would buy you out?

15 A Yes.

16 Q Chip has testified that not long after that, he
17 bought into the business that, to keep the business from
18 going under he had to make a contribution of capital to
19 the business. Did you have to do that, too?

20 A Some, yes sir.

21 Q How much did you have to put in?

22 A I'm not really sure, it's been so long.

23 Q Okay.

24 A It got to be a weekly thing.

25 Q But before you entered into this contract, did you

1 have a discussion with Ms. Tumblin about her business?

2 A Some.

3 Q All right. Your intention was that this business
4 would generate enough income to get you paid for the
5 house, is that right?

6 A That was the goal, yes sir.

7 Q And did you have discussions with her concerning
8 whether the business was healthy enough that it was likely
9 to do that?

10 A Yes, sir.

11 Q Did she tell you that it was healthy enough that it
12 was going to be getting you paid?

13 A Yes, sir.

14 MR. FERGUSON: Thank you. That's all the questions I
15 have.

16 THE COURT: Mr. Wise?

17 MR. FERGUSON: Oh, one more question.

18 Q How much did she owe you?

19 A \$346,000.00 thousand, give or take.

20 Q Thank you.

21 CROSS-EXAMINATION

22 By Mr. Wise:

23 Q So you never ran the business?

24 A Sir?

25 Q You were never involved in running the business?

1 A No.

2 Q All right. And this agreement was, let's see, and
3 this agreement was she was going to give you one-hundred
4 shares of the company and cancel the debt?

5 A Correct.

6 Q That's it?

7 A Yes, sir.

8 Q Okay. And you'd known Ms. Tumblin how long?

9 A As I stated, I think around 35 years.

10 Q And had you been around the business much?

11 A Only working.

12 Q Excuse me?

13 A Only doing work.

14 Q Doing repair work at the business?

15 A Yes, sir.

16 Q Okay. But the agreement was you get one-hundred
17 shares and cancel a \$300,000.00 dollar debt?

18 A Yes, sir.

19 Q And that was in April of '09?

20 A Yes.

21 Q All right. And did Mr. Cooper subsequently buy you
22 out?

23 A Say that again, please.

24 Q Did Mr. Cooper subsequently buy you out?

25 A Yes.

1 Q Did you and Mr. Cooper have an agreement as to your
2 involvement in the business, a written agreement?

3 A No.

4 Q All right. And he bought you out when? When did he
5 buy you out?

6 A I'm not sure of the date. It's been a while.

7 Q Roughly?

8 A 2010, maybe.

9 Q Do you remember what he paid you?

10 A The three-hundred-and-forty-plus.

11 Q Three hundred and forty thousand-plus?

12 A I think so.

13 Q Okay.

14 A I think that's correct. I'm not sure.

15 Q All right. And that was, at that time, you owned
16 about half the business?

17 A Yes.

18 MR. WISE: Thank you.

19 REDIRECT EXAMINATION

20 By Mr. Ferguson:

21 Q So would it be fair to say he was trying to make you
22 whole for what you had lost in the house?

23 MR. WISE: Objection. He's leading the witness.

24 THE COURT: All right. And sustained as to leading,
25 but your point's made. I understand where you're coming

1 from. All right. Sir, thanks. You can step down. All
2 right. Next witness?

3 MR. FERGUSON: Crystal Banks.

4 CRYSTAL BANKS, being first duly sworn, testified as
5 follows:

6 THE COURT: Okay. Give us your name, please, ma'am?

7 THE WITNESS: My name is Crystal Banks.

8 THE COURT: C-r-y-s-t-a-l?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay.

11 MR. FERGUSON: Your Honor, there's apparently one
12 more matter I need to, with Mr. Bagwell.

13 THE COURT: Do you need to do it before we take her
14 testimony or we can defer to it?

15 MR. FERGUSON: I guess I can wait.

16 THE COURT: Okay.

17 MR. FERGUSON: Okay.

18 THE COURT: I didn't know if it was foundation or
19 anything. But we'll recall him after you're done with Ms.
20 Banks.

21 MR. FERGUSON: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 By Mr. Ferguson:

24 Q Ms. Banks, what is your occupation?

25 A Currently I am a substitute teacher pursuing an

1 educational career.

2 Q Okay. And are you training to be something else?

3 A I am. I am pursuing a Master's Degree in Accounting
4 and intending on sitting for the CPA once I get the
5 Master's. But I started substitute teaching while I was
6 pursuing this degree, fell in love with education, so I
7 want to teach business.

8 Q Okay. Did you ever work for Ruth Tumblin?

9 A I did.

10 Q During what period?

11 A I started in September of 1999.

12 Q And you finished when?

13 A I worked all the way through until June of 2016.

14 Q Okay. What kind of shape was Ruth's business in
15 financially?

16 A During which part?

17 Q Well, let's start with 2008.

18 A In 2008, the financial situation had declined
19 greatly.

20 Q Why is that?

21 A A lot of money had been going out of the business
22 that was not typical.

23 Q Like what?

24 A There were a lot of checks being written to a
25 gentleman I never had met. She would get the checks and

1 actually handwrite them. And after the fact I would input
2 them into the system.

3 Q Were these for business expenses?

4 A No.

5 Q Did you talk with her about her use of business
6 expenses for her personal use?

7 A I did talk to her after several of those checks had
8 been written. And she did not want to discuss that with
9 me. It was none of my business.

10 Q What was her financial situation with regard to the
11 Honda people?

12 A We owed quite a bit of money to American Honda
13 Finance.

14 Q When she was selling Honda units, did she always see
15 that Honda was paid?

16 A No.

17 Q Was it frequent that she didn't pay them?

18 A Yes. There the last several months, especially, it
19 got worse and those would get put on the backside. They
20 did not get paid.

21 Q Do you know anything about Ruth's use of the business
22 credit card for her personal use?

23 A There were personal transactions on the business
24 card.

25 MR. WISE: Your Honor, objection to this on

1 relevancy. It's her business. It's her, you know, profit
2 and loss. So it would be between her and the IRS, but
3 it's certainly not between her and Mr. Cooper.

4 MR. FERGUSON: Your Honor, it's part of a pattern of
5 how she ran this business and she didn't disclose it to
6 the people that were going to buy the business. And it
7 impacted the health of the business and the value of the
8 business.

9 THE COURT: Overruled. Keep going.

10 Q Tell me what this document is?

11 A That is a list of the personal expenses that I kept a
12 log of except for it was done on Excel spreadsheet.

13 Q The personal expenses of Ms. Tumblin --

14 A Yes, sir.

15 Q -- that were paid by company funds?

16 A Yes, sir. It's got the date and the amount and the
17 transaction detail as to whether it was cash or paid.

18 MR. FERGUSON: I'd like to introduce this.

19 THE COURT: Subject to the earlier relevancy
20 objection, it is in evidence.

21 MR. WISE: Subject to my other position --

22 THE COURT: Correct.

23 MR. WISE: -- as to relevancy.

24 THE COURT: That's what I said.

25 (Whereupon, Plaintiff's Exhibit number 8 was admitted

1 into evidence.)

2 Q Were there a lot of such charges?

3 A Yes, there is an amount here.

4 Q I see that in 2010 on the third page, \$10,659.72 and
5 it says, See 8/31/09, transfer Roy Crooms life insurance.
6 What is that about?

7 A She had been paying a life insurance policy on Roy
8 Crooms. And that was an amount that was, oh, I'm sorry.
9 It's been a while since I've looked at this.

10 Q I understand. So who was Mr. Crooms?

11 A He was a former employee of Ruth and also a friend of
12 her's.

13 Q All right. I see several charges for computers. Why
14 is it that she was buying computers out of her personal
15 funds, out of the business funds for her personal use?

16 A Not sure of the reason why, but that was computers
17 that she bought for personal.

18 Q All right.

19 MR. FERGUSON: That's all the questions I have of
20 this witness.

21 THE COURT: Mr. Wise?

22 CROSS-EXAMINATION

23 By Mr. Wise:

24 Q Roy Crooms worked for her for a number of years?

25 A Yes, sir.

1 Q And he was kind of a valuable employee?

2 A Yes, sir.

3 Q And this was kind of key-man insurance? Was it, are
4 you familiar with the term, key-man insurance?

5 A Not really.

6 Q And how long had Mr. Crooms been working there?

7 A A long time. It was before my time.

8 Q Before your time. And then he'd stopped working
9 when?

10 A I'm not sure of that either.

11 Q All right. And he stopped because of bad health?

12 A Yes.

13 Q And after he stopped working, Ms. Tumblin through the
14 company, continued to pay his life insurance?

15 A Yes, sir.

16 Q Okay. And he subsequently died?

17 A Yes, sir.

18 Q And do you know who got the proceeds of that life
19 insurance policy?

20 A It came in through the company. We in turn did
21 reimburse for his funeral expense.

22 Q But the rest of it went to the--

23 A --and that's the remainder listed on the last page
24 of that document.

25 Q What do you mean, the remainder?

1 A The remainder of the proceeds.

2 Q You've got a document, an entry on August 31st, 2009,
3 Transfer from Roy Crooms account to Ruth Personal.
4 Exactly what was that? Is that the life insurance
5 proceeds?

6 A I'm not a hundred percent sure. It's been a while
7 since I've seen this information.

8 Q And then you strike that out at the end, the same
9 amount. All right. Let's stop looking at the sheet a
10 minute.

11 A Yes, sir.

12 Q Roy Crooms died while you were working there?

13 A Yes, sir.

14 Q Okay. And you stopped last year. And he died, I
15 believe, was it '14, '13, or do you remember?

16 THE COURT: I thought she said 2009, August 2009.

17 A No, he died after that. That was actually, I
18 remember now what that transaction, it was, we had a
19 separate account set up. And what we did is we moved this
20 into her personal account that we kept on the general
21 ledger.

22 Q So he died in 2014 or '15, '16, he died before you
23 left?

24 A He died probably, '13, '14.

25 Q All right. And you were there when the check came in

1 from the insurance company?

2 A Yes.

3 Q And the check came in payable to Laurens Cycle Sales?

4 A Not sure what exactly it was made to.

5 Q All right.

6 A But it came into the company.

7 Q And out of that, y'all paid Roy's funeral bills?

8 A Yes, sir.

9 Q And then the company kept the rest of it?

10 A As far as where we put the transaction, I'm not
11 familiar. I don't remember that.

12 Q All right. Ruth didn't get it?

13 A I don't really remember exactly.

14 Q All right. So over a period of about two years from
15 October of '08 through, well, year and a half, February of
16 2010, that's the period covered by this?

17 A Yes, sir.

18 Q All right. A total, a net total of about \$9,000.00
19 dollars was paid for Ruth's personal expenses?

20 A Yes, sir.

21 Q And, of course, taking personal expenses out of a
22 business could create problems with the IRS?

23 A Yes, sir.

24 Q And, certainly, it would make the company make less
25 money?

1 A Yes, sir.

2 Q When, in reality, the company was making more money,
3 correct?

4 A It didn't affect the profit/loss per se, it just
5 affected the cash flow.

6 Q Right. But in the profit/loss, well, it did in some
7 extent because it's writing off expenses. Or did you,
8 back up, back up. Let me ask you this question. When you
9 wrote them off, when you paid Ruth's personal expenses out
10 of the company did you take that as a deduction from the
11 company's, on the company's tax records?

12 A No.

13 Q You would just treat it as a payment to Ruth?

14 A Yes. It affected cash flow and her personal account.

15 Q Cash flow only, not the bottom line?

16 A Correct.

17 Q Because none of this was deducted off the taxes?

18 A Correct.

19 Q Okay. Thank you.

20 REDIRECT EXAMINATION

21 By Mr. Ferguson:

22 Q One question.

23 A Yes, sir.

24 Q I'm not sure I asked you this before. You were the
25 bookkeeper for Ruth?

1 A Yes, sir. I was the bookkeeper for Ruth, and then on
2 into for Chip, as well.

3 MR. FERGUSON: No further questions.

4 RECROSS-EXAMINATION

5 By Mr. Wise:

6 Q Just one other question. And Ruth would do an annual
7 inventory in December of every year?

8 A The parts inventory?

9 Q Right.

10 A It was usually done in January.

11 Q January. All right. Didn't they start in December
12 and finish in January?

13 A Sometimes it would start in December.

14 Q All right. And Rhonda Tumblin did part of that, too,
15 correct?

16 A Yes, sir. I usually had no part in that. I created
17 the before's and afters of the inventory.

18 Q All right. And they would turn in the inventory to
19 you?

20 A They would do all the count and turn it into me.

21 Q Okay. Thank you.

22 A Yes, sir.

23 THE COURT: All right, ma'am. Thank you. Step down.
24 Mr. Bagwell, if you'll come on back up, sir. You're still
25 under oath.

CONTINUE DIRECT EXAMINATION OF MR. BAGWELL

By Mr. Ferguson:

Q Mr. Bagwell, in the course of your discussions with Ruth Tumblin about buying a portion of the business, can you tell me whether not she said that she had almost had the business sold before?

A Yes, sir.

Q Tell me about that.

A We had talked a good little bit about that and the reason for we talked and discussing it is trying to recoup. And she had one or two people that were interested at somewhere around four million dollars or so is what I was told by her.

Q Why did she say that person with the four million dollars didn't buy the business?

A Say that again, please.

Q Why did she say that the person with the four million dollars did not follow through and buy the business?

A She didn't say. They, one group came in, if I can remember correctly. And I was there to, if there's any questions about the building or anything like that. And I don't know exactly what transpired after that.

Q She didn't say anything about a plane crash?

A Yes, I'm sorry, sure did.

Q What did she say?

1 A The gentleman that I think flew into Laurens, I'm not
2 sure now, it's been a while. When they flew back and
3 landed in Greenwood. Then they took back off and he was
4 killed, I think that was.

5 Q So she says that's, that's why she didn't get four
6 million dollars for the business?

7 A Yes, sir.

8 Q All right. Thank you.

9 CROSS-EXAMINATION

10 By Mr. Wise:

11 Q Did you meet with these people?

12 A No, sir. I was just there.

13 Q You were there?

14 A Yes, sir.

15 Q So some, how many people showed up?

16 A I am not really sure.

17 Q More than one, I assume?

18 A Yes, sir.

19 Q Okay. And they were, I mean, did you hear them talk
20 about business stuff, about buying the business?

21 A No, sir.

22 Q Thank you.

23 MR. FERGUSON: That's all the questions I have.

24 THE COURT: One quick question. What was the
25 timeframe of these people? When did these, do you

1 remember what year or around the month or the year that
2 these people came in to look at the business?

3 A No, sir.

4 THE COURT: All right. Good enough. Thanks. All
5 right. Nothing further, Mr. Ferguson?

6 MR. FERGUSON: That's all the witnesses that we have
7 today, Your Honor.

8 THE COURT: Mr. Wise, your case?

9 MR. WISE: I've got one witness that will be rather
10 brief, that's all the witnesses we've got today.

11 THE COURT: I'm assuming we're finishing this today,
12 so go ahead and call your witness.

13 MR. WISE: I call Rhonda Tumblin.

14 MR. FERGUSON: Your Honor, before she testifies, we
15 need to clarify something. Under the Defendant's most
16 recent pleadings there is no counterclaim.

17 MR. WISE: Well, it's the reply to his reply to my
18 counterclaim. I mean, these pleadings, they got
19 convoluted to say the least.

20 MR. FERGUSON: No. It's not a reply to the
21 counterclaim, it's a cross-complaint.

22 MR. WISE: Well, as a reply to your cross-complaint,
23 my counterclaim goes back to the former pleadings.

24 MR. FERGUSON: No, sir. If you look at the
25 cross-complaint which is the pleading that we are

1 operating under today in court, we established that at the
2 very beginning. And he has submitted an answer to that
3 second amended complaint. So that is his most recent
4 pleading and he includes no counterclaim.

5 MR. WISE: The counterclaim goes back three years
6 ago.

7 MR. FERGUSON: Well, you know, prior pleadings are
8 not at issue, it's the current pleadings.

9 MR. WISE: What happened procedurally. Freeman, now,
10 is it Freeman? The Freeman suit. Yeah. He filed suit
11 against Mr. Cooper and Ms. Tumblin. I can't remember who
12 started the cross-claim. He cross-claimed against Ms.
13 Tumblin, but then we counterclaimed in that action for the
14 note. All right. Then he's amended his complaint but
15 that still stands or he amended his, he amended his reply
16 to our counterclaim is what it was.

17 MR. FERGUSON: No. This is not a reply to a
18 counterclaim. This is a complaint. And he has submitted
19 an answer and regardless of what he pled in the past, what
20 we're dealing with today is his current pleadings.

21 MR. WISE: I've always interpreted what you filed was
22 an answer to my counterclaim.

23 MR. FERGUSON: We got past that at the beginning of
24 the case when we decided that Laurens Cycle Sales was the
25 moving party.

1 MR. WISE: No. Because you filed the suit against
2 Ms. Tumblin first, and then I counterclaimed against you.

3 THE COURT: All right. Let's handle it this way. As
4 I understand Mr. Ferguson's motion and Mr. Wise handed up
5 the, Answer to Second Amended Complaint. It's dated
6 September the 26th, 2017.

7 MR. WISE: That's correct.

8 THE COURT: It doesn't look like it's ever been
9 filed.

10 MR. WISE: No, it hadn't been.

11 THE COURT: All right. Well, the Clerk can deal with
12 this in a variety of ways. The Clerk can always entertain
13 a motion to conform the pleadings to the testimony. It's
14 clear that at some point in time the Estate of Ruth
15 Tumblin filed a counterclaim or cross-claim, however you
16 want to characterize it. My favorite Rule of Civil
17 Procedure is Rule 1 and it basically says that the rule
18 should be interpreted to provide for the fair, just, and
19 speedy resolution of disputes. Maybe this dispute hasn't
20 been terribly speedy, but I'm going to make sure it's
21 fair. If you want to withdraw the second amended answer
22 or the answer to the second amended complaint because it
23 has not been filed, Mr. Wise, you're at liberty to do so.
24 But I'm not seeing any filed stamp on it, so I don't know
25 that it's of anything --

1 MR. WISE: Okay.

2 THE COURT: -- of any import. So if you want to
3 withdraw it, that's fine. And you can later make the
4 motion to amend.

5 Ma'am, if you'll raise your right hand.

6 RHONDA TUMBLIN, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Wise:

10 Q Where do you live at the present time?

11 A Jacksonville, Florida.

12 Q All right. And how long have you been living down
13 there?

14 A Three years.

15 Q And you are the daughter of Ruth Tumblin?

16 A I am.

17 Q All right. Did you, back in, before the business was
18 purchased by Mr. Cooper, did you work at the Honda, what
19 was it, Laurens Cycle Sales?

20 A On and off for about thirty years.

21 Q All right. Were you working there when the business
22 was sold back in 2008?

23 A For a short time and yeah.

24 Q Tell us about what you know about inventory-taking at
25 that business when you were there?

1 A Mom would have us to do inventory every year. At the
2 end of the year we'd start counting and we'd count every
3 box, every nut, box, screw, key, everything in the
4 inventory.

5 Q Was there ever a substantial problem with missing
6 merchandise?

7 A No. Sometimes the computer would say we had ten of
8 them when we had eight. And then sometimes it'd say that
9 we had eight and we had ten. So it's kind of even.

10 Q Was there ever a time where you were missing tens of
11 thousands of dollars in inventory?

12 A Never.

13 Q Okay. Thank you. I will hand you--

14 COURT REPORTER: Number 4.

15 Q I hand you this document and ask you if you're
16 familiar with it?

17 A Yes. My mom talked to me about it.

18 Q Okay. And you've been in the courtroom today?

19 A I have.

20 Q And you're aware that there was a subsequent
21 agreement between Mr. Cooper and your mother about
22 \$110,000.00 dollars?

23 A Yes.

24 Q Even though that one's missing?

25 A Yes.

1 Q That's never been disputed?

2 A That's right.

3 Q Correct.

4 A That's right.

5 Q And you're aware he made a number of payments on that
6 \$110?

7 A That's correct.

8 Q And it's your best knowledge that he paid through
9 January of 2012?

10 A Right.

11 Q Okay. What does that, does that document do an
12 interest calculation on what Mr. Cooper owes as of today?

13 A It does.

14 Q All right. And what's the total amount he owes?

15 A \$23,000 and --

16 Q Wait. Back up. The bottom line.

17 A \$2,350.00, that's interest.

18 Q What's the bottom line he owes, at the very bottom?

19 A Oh, the bottom line is \$108,924.44.

20 Q All right. Now, when he stopped making payments, how
21 much did he owe?

22 A \$83,296.68.

23 Q All right. And then he made a \$2,500.00 dollar
24 payment since then?

25 A No. The balance before the \$2,500.00 dollar payment

1 was \$85,796.68.

2 Q Then he made a \$2,500.00 payment?

3 A Then he made the payment.

4 Q And you've calculated interest on the unpaid balance
5 at 5.5?

6 A Right.

7 Q Okay. And it adds up to a \$108?

8 A \$108,924.44.

9 Q Okay. Thank you.

10 MR. WISE: Thank you. That's all we have, Your
11 Honor.

12 THE COURT: Mr. Ferguson?

13 CROSS-EXAMINATION

14 By Mr. Ferguson:

15 Q When did you say you left Laurens Cycle Sales?

16 A When Chip fired me. I don't know.

17 THE COURT: One housekeeping matter before I forget.
18 You moved Defendant's 4 into evidence, right?

19 MR. WISE: Excuse me?

20 THE COURT: You did move Defendant's 4 into evidence
21 or you did not?

22 MR. WISE: Did I not introduce it?

23 THE COURT: I don't think it's been moved into
24 evidence.

25 MR. WISE: I thought I did, because I've got it.

1 THE COURT: No objection to Defendant's 4?

2 MR. FERGUSON: No objection.

3 (Whereupon, Defendant's Exhibit 4 was admitted into
4 evidence.)

5 A Maybe 2009 or so. I really don't remember.

6 Q Isn't it a fact that the circumstances under which
7 you left were after Eric and Jay discovered there was a
8 problem with a seat that got returned but was never billed
9 out and never put into the records?

10 A Yeah. It was a seat cover that a guy had given, that
11 had taken out and he was going to see if it worked and
12 bring it back.

13 Q So why was it not entered into the records?

14 A Well, because we didn't know if it was going to work
15 or not.

16 Q Well, you took cash for it, didn't you?

17 A I didn't.

18 Q And you didn't enter that into the records?

19 A No. But afterwards, I paid for it after --

20 Q After it came to light?

21 A Yeah.

22 Q That wasn't the first time that you had sold
23 something for cash and it didn't get into the records, did
24 it?

25 A Yes.

1 Q You have before been in drug rehab?

2 A I haven't been in rehab, but I, before that.

3 Q You've received drug treatment?

4 A Yes.

5 Q Okay. What kind of drugs were you on?

6 A Alcohol and cocaine.

7 Q Okay. Meth?

8 A I've done, yeah. I've tried meth. I've done a lot
9 of things.

10 Q Okay. Pain pills?

11 A Yes.

12 MR. WISE: Your Honor, I really don't know the
13 relevancy of this.

14 MR. FERGUSON: Deals with the credibility of the
15 witness.

16 MR. WISE: I don't, I think he can impeach with the
17 criminal record in the last ten years, but that's it.

18 THE COURT: All right. Why don't you cut to the
19 chase. If you want to ask her if she was financing any
20 drug habit that she had with the cash she received for
21 these parts, if that's what you're getting at, maybe we
22 can cut to the chase on that question.

23 Q Did you use any of the money that you kept from the
24 business to buy drugs?

25 A No. I gave the \$20.00 dollars back to them and

1 apologized to them for holding it overnight or that night.

2 I still had it.

3 Q Okay. You're aware about used parts getting put in
4 new boxes, aren't you?

5 A No.

6 Q You deny that?

7 A Yes. And if there was a used part there, we put it
8 in the system as used.

9 Q Okay. When the parts inventory was done while you
10 were there, you were one of the people doing the parts
11 inventory?

12 A For years, I did.

13 Q And was your mother doing the parts inventory too?

14 A No. It was usually me and Roy, the mechanic, or
15 whoever else was running the parts department. My niece,
16 Jasmine had helped me before. Usually it's two of us, one
17 of them counting and one of them writing it down.

18 Q Who is that sitting at the table over there?

19 A That's my brother's daughter, Jasmine.

20 Q Okay. Did she have anything to do with the parts
21 inventory?

22 A Yes. She's helped me before, but we did it every
23 year. So she didn't do it with me every year.

24 Q It's just family members doing the parts inventory?

25 A No. It was usually me and whoever was working in the

1 parts department.

2 Q Okay.

3 A Sometimes the mechanic would do it too. We would
4 team up.

5 Q Did you know about your mother making personal
6 charges on the company credit card?

7 A Now, I know my mom had a credit card. That's all I
8 know.

9 Q Did you ever make personal charges on the company
10 credit card?

11 A Never.

12 Q Okay.

13 MR. FERGUSON: No further questions.

14 REDIRECT EXAMINATION

15 By Mr. Wise:

16 Q Just one thing since he brought it up. What are you
17 doing down in Jacksonville, Florida?

18 A I work at a detox center.

19 Q How long you been working there?

20 A Three years.

21 Q You enjoy it?

22 A I love it.

23 MR. WISE: Thank you. With that, Ms. Tumblin rest,
24 Your Honor.

25 THE COURT: Ma'am, you can step down. Thank you. No

1 additional witnesses from anyone?

2 MR. FERGUSON: Your Honor, because of the short
3 notice about this case, there are some witnesses that we
4 would wish to have that we were not able to get. And I
5 would ask that the case be recessed so that I can get
6 those witnesses, it will not be today.

7 THE COURT: Okay.

8 MR. FERGUSON: I'm not sure if I can get them here
9 tomorrow. One of them is well out of state.

10 THE COURT: What are they going to testify to, if I
11 might ask?

12 MR. FERGUSON: The parts inventory.

13 THE COURT: Okay. All three of them, their testimony
14 or two of them, both their testimony will relate to the
15 parts inventory and that issue?

16 MR. FERGUSON: Yes, sir.

17 MR. WISE: Who are those two?

18 MR. FERGUSON: Mr. Ferrino and Mr. Rodgers.

19 MR. WISE: That's the guy that ran it for a while?

20 MR. FERGUSON: Pardon?

21 MR. WISE: Is he the one who ran it for a while,
22 family business?

23 MR. FERGUSON: Yeah.

24 THE COURT: Were they deposed?

25 MR. FERGUSON: No.

1 THE COURT: I have some time next week. How quickly
2 could they get here?

3 MR. FERGUSON: I think they would be available next
4 week, Your Honor.

5 THE COURT: The substance of their testimony will
6 relate to, will it be cumulative to what we've heard like
7 used parts being put in new boxes.

8 MR. FERGUSON: Yes, sir.

9 THE COURT: What else are they going to testify or do
10 you think they'll testify to about the inventory?

11 MR. FERGUSON: About the things being sold for cash
12 and not being entered into the system.

13 THE COURT: That's called good business.

14 MR. FERGUSON: Pardon me?

15 THE COURT: I said that's called good business.

16 MR. FERGUSON: That's not what the IRS calls it.

17 THE COURT: I understand. That was meant
18 tongue-in-cheek, though. It's called being a
19 restaurateur. I don't know much about parts business.
20 The reason I'm asking these question is if, because Mr.
21 Wise has basically asserted that the statute of limitation
22 applies. There's a question, I am assuming if I were to
23 allow argument, Mr. Wise would basically suggest that
24 perhaps the plaintiff in this case maybe wasn't quite as
25 diligent in doing his due diligence when he bought this

1 business. I'm familiar that very often you will find an
2 old part in a new box, so that really doesn't surprise me
3 very much. I'm trying to figure out a way to minimize
4 expense and inconvenience to the parties. Do you have any
5 strong feelings about this?

6 MR. WISE: I don't have any strong feelings one way
7 or the other, other than if you're going to be in
8 Charleston next week I do have a strong feeling.

9 THE COURT: I'm scheduled to be here.

10 MR. WISE: In Laurens?

11 THE COURT: In Laurens next week. And we've got a
12 few things on the docket I think for Monday and Tuesday.
13 But aside from that my week is pretty flexible. But what
14 I don't want is for my memory to fade. I've taken good
15 notes but I really don't want my memory to fade between
16 now and three months from now or four months from now.

17 MR. WISE: Well, I was going to suggest that why
18 don't we just set a deadline for Friday of next week. If
19 we can arrange it, fine.

20 THE COURT: My calendar is fairly open. Can y'all
21 get together and see when we might be able to reconvene?
22 Let's take five minutes. Y'all talk, and I'll make it
23 work for you guys, if y'all can make it work.

24 (Whereupon, a short break was taken.)
25

October 3, 2017

THE COURT: Okay. We are going back on the record in this case again, 12-CP-30-149. We left the record open last week so that Mr. Ferguson could get the additional witnesses we needed to hear from. We ready to go everybody?

MR. FERGUSON: Yes, Your Honor.

THE COURT: Call your next witness.

MR. FERGUSON: Call Eric Rodgers.

ERIC RODGERS, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Ferguson:

Q Mr. Rodgers, did you ever work for Laurens Cycle Sales?

A Yes, sir.

Q When was that?

A 2008 until 2016, if I'm correct.

Q And when you first started working for Laurens Cycle Sales who was running it?

A Ms. Tumblin was running it herself. Ms. Ruth Tumblin was.

Q And was her daughter, Rhonda, working there?

A She was employed in part, yes sir.

Q What was she doing in parts?

1 A I don't remember her exact title, but she acted as
2 the parts manager.

3 Q Were there any other Tumblin relatives who worked
4 there?

5 A Her sister did some title work.

6 Q Is that Joanne?

7 A That's right.

8 Q All right. Did you at any time come to believe there
9 was a problem with the inventory of the business?

10 A Yes, sir.

11 Q All right. What caused your concern to be triggered?

12 A I was having, shortly after I arrived there at my
13 personal employment, I was going through orders as far as
14 what was being ordered into the Parts Department. And we
15 were ordering parts for, we were ordering parts and we
16 still had, supposedly still had those parts in inventory.
17 So it's like we were ordering stuff that we already had.
18 And at that time some of the parts that we were pulling
19 out were, they were in inventory but it was not a true new
20 part, it was a used part.

21 Q And was that in a new box?

22 A Yes.

23 Q Tell me about the saddlebag incident, the ATV
24 saddlebag?

25 A I don't remember the exact date, but it was earlier

1 in the morning after I had arrived at work. One of the
2 parts Associate's came to me and Rhonda was not at work
3 that day. So the Associate approached me and said he had
4 --

5 MR. WISE: Your Honor, I think what the Associate
6 supposedly said as being hearsay.

7 THE COURT: Sustained. I assume you had a
8 conversation with the Associate. What did you do as a
9 result of that conversation?

10 A The result of that conversation was I walked over to
11 the parts counter. I spoke with the consumer that was
12 there that was having the problem.

13 Q What was the consumer who was there, what was he
14 wanting?

15 MR. WISE: That would be hearsay, also, Your Honor.
16 What the consumer said.

17 THE COURT: It's not being offered for the truth of
18 the matter, Mr. Wise. Overruled. Go ahead.

19 Q Okay. What was he wanting?

20 A He was wanting a refund on the part that he had
21 purchased, but he did not have a receipt.

22 Q And what did you do in response to that?

23 A Well, I asked the customer about a receipt and he
24 said that he was not issued a receipt. That the person he
25 had spoken with --

1 MR. WISE: Your Honor, I don't, that is being offered
2 for the matter, truth of the matter asserted, unless they
3 are willing to stipulate the customer is lying.

4 MR. FERGUSON: Your Honor, it's impossible for him to
5 explain what he did without the factual context that
6 caused him to do it.

7 THE COURT: All right, noted, overruled. Go ahead.

8 Q Go ahead.

9 A I asked for a receipt and he claimed he did not have
10 a receipt. The parts person that he spoke with when he
11 purchased the said part had told him that if he gave him
12 cash he would not have to get a receipt. So I went into
13 the computer, the parts inventory, to check the current
14 inventory. Which at the time, my recollection, I'm going
15 to say it was three, and I went back and checked the parts
16 shelf and there was three in inventory, which, at the time
17 I returned back to the computer and the computer said that
18 the parts had been adjusted on the date that the customer
19 said that they'd purchased the parts.

20 Q How long previously had the customer purchased the
21 part?

22 A It was just several days.

23 Q Okay.

24 A And the part that he had also had our pricing sticker
25 on it from our shop. So it was obvious that it had come

1 from our shop.

2 Q So the computer said that you had three of those
3 parts and yet this fellow shows up with another one?

4 A Correct.

5 Q You say that the inventory had been adjusted on the
6 day it was purchased?

7 A Correct.

8 Q Would that had hidden the way this transaction was
9 processed?

10 A If the customer would have stolen the product, then I
11 should, my inventory should have shown four versus three,
12 which means I would have had something missing. It didn't
13 show I had anything missing but it didn't show a sales
14 transaction where it had been sold.

15 Q Did the customer describe the person who had waited
16 on him?

17 A Yes, sir.

18 Q And who was the person who waited on him?

19 A A tall, slender, blonde lady.

20 Q Would that description fit Rhonda?

21 A Yes.

22 Q Well, let me ask you this, what did you do with the
23 customer?

24 A I issued him a refund. I took all of the, you know,
25 computer work and I went to Ms. Ruth Tumblin's office at

1 the time she was still in the store and explained to her
2 what had gone on.

3 Q What was her response?

4 A She said, I will talk to Rhonda, but Rhonda's not
5 here.

6 Q Was that a unique event or were there other times
7 when you found old parts in new boxes?

8 A We continually found old parts in new boxes.

9 Q And did you, were you able to discuss that with
10 Rhonda who was, you say, acting as parts manager?

11 A I discussed it with her and Ms. Ruth at the same time
12 and the inventory that had been done upon my arrival was
13 conducted by Ms. Ruth, Rhonda, and Joanne.

14 Q What did, if anything, did Ruth tell you about the
15 inventory and its accuracy?

16 A She had told me that it was, that the inventory was
17 accurate and complete.

18 Q When you had a discussion with Rhonda about this
19 problem with the inventory, what did she tell you?

20 A She just told me she'd look into it and most of my
21 conversations were with Ruth Tumblin.

22 Q Did she ever get back to you with any information or
23 theory about what had happened to the parts?

24 A Not as far as any particular theory. It was just we
25 took care of the customer and we discarded the part.

1 Q With regard to the computer accounts of money that
2 had been received. When you discovered that a new part
3 was missing did you check to see if there was some record
4 of money having been received for that new part?

5 A As far as, I'm sorry. I'm not sure I understand the
6 question exactly.

7 Q Normally when a part is sold, would that have been
8 entered into the computer records for the company?

9 A Yes, there is a transaction. If you came into buy a
10 part there is an actual sales transaction that goes on.

11 Q When you discovered that one of these new boxes had
12 an old part in it, as part of trying to figure out what
13 happened to the new part, did you check to see if there
14 was a record of that part having been sold?

15 A That's correct.

16 Q And what did you find?

17 A In some of the cases there wasn't a record just
18 basically because of computer systems, we had changed
19 computer systems and the old system didn't necessarily
20 match up to the new system. And on occasion there were
21 transactions where a bike had been in service and had
22 received that particular part. But then there was no part
23 record showing it had been processed to that motorcycle or
24 ATV.

25 Q When the business moved to the new building, can you

1 tell me whether or not there was inventory done at that
2 time?

3 A Yes, there was a complete inventory done.

4 Q When you say, complete inventory, do you mean that
5 each box was opened and inspected to see if there was a
6 new part there?

7 A Yes, sir.

8 Q What did that inventory find?

9 A I don't remember the exact dollars, but the inventory
10 and the computer system were off. I mean, there was a big
11 discrepancy between the two.

12 Q Hundreds of dollars/thousands of dollars?

13 A Thousands and thousands of dollars.

14 Q After the move, did Ruth and her relatives, were they
15 involved in the running of the business?

16 A No, sir.

17 Q Did the parts problem continue after she and her
18 relatives ceased to be a part of the business?

19 A No.

20 Q Tell me what you know about Ruth's use of a company
21 credit card for personal expenses?

22 A When I first arrived at the store, again, as the
23 general manager, I was still trying to get my feet wet to
24 a degree in all the different departments. And I was
25 approached on several occasions by the business manager or

1 office manager, the person who is required to pay the
2 bills. And with credit card statements and they were for
3 credit cards that were issued to the store in Ruth
4 Tumblin's name for gas and other expenditures. And they
5 were over the limit and we were getting phone calls from
6 collection agencies.

7 Q Did you cancel any of those cards?

8 A Yes, sir.

9 Q Did you cancel all of them that you knew of?

10 A All the ones that I could, yes.

11 Q And did any others pop up after that?

12 A Occasionally, there were a couple. One in particular
13 that I remember that I dealt with for an extended period
14 of time was a Shell Gas credit card.

15 Q What sort of charges were you seeing on the Shell Gas
16 credit card?

17 A On the statement, it actually broke it down if you
18 got fuel or if you got goods. So goods to me would be
19 went inside and actually purchased something at the fuel
20 stop. And then there were fuel purchases that were made
21 within minutes of each other. And it was, it appeared to
22 be filling of multiple vehicles at one time.

23 Q Would there have been any reason that Ruth Tumblin,
24 as someone who was running the business, would have needed
25 to fill up multiple vehicles in a short period of time?

1 A No, sir. And that particular card was a Shell
2 station card. Where the old store was located was right
3 exactly behind an Exxon station. So anytime we got shop
4 fuel or fuel for the Service Department, we went to the
5 Exxon station.

6 Q And how big were these bogus charges?

7 A There were some that were as small as \$60 or \$70.00
8 dollars. And then there were multiples that were hundreds
9 of dollars. Again, it appeared that somebody had filled
10 up four or five vehicles within a matter of about twenty
11 minutes at \$50 or \$60.00 dollars a shot.

12 Q So in totality, are we talking about thousands of
13 dollars?

14 A Yes, sir.

15 Q And you say Ruth was the one who was authorized to
16 use that card, Ruth Tumblin?

17 A Yes, sir.

18 Q Did you ask her about the charges on the card?

19 A On a couple of occasions and she said she would take
20 care of it. One time she said she had lent the card out
21 to a relative.

22 Q Did she say it was Rhonda?

23 A She didn't actually name a relative, no sir.

24 MR. FERGUSON: Your witness.

25 CROSS-EXAMINATION

1 By Mr. Wise:

2 Q You started working at the Laurens Cycle Sales in the
3 early part of 2008?

4 A The fall of 2008.

5 Q Fall of 2008?

6 A Yes, sir.

7 Q All right. And that was after Mr. Cooper had bought
8 into the business?

9 A That is correct, I believe, yes sir.

10 Q Excuse me?

11 A I believe so, yes sir.

12 Q He actually brought you into the business?

13 A Well, actually, when I interviewed, I really
14 interviewed with Mr. Cooper and Ms. Tumblin.

15 Q Okay. So you knew Mr. Cooper owned the majority of
16 the business?

17 A I didn't know the exact state, no sir.

18 Q Did he tell you that?

19 A Sir?

20 Q Did he tell you that when he hired you?

21 A That?

22 Q That Mr. Cooper owned --

23 A -- the majority?

24 Q Yeah.

25 A I just knew that he owned a part.

1 Q He owned a part. All right. So did you ever carry
2 any of these concerns to Mr. Cooper?

3 A Yes, sir.

4 Q All right. And that was concerns about the credit
5 card?

6 A Yes, sir.

7 Q And concerns about the inventory?

8 A Yes, sir.

9 Q And that was done in 2008?

10 A Yes, sir.

11 Q All right. Now, later in 2009, excuse me. Did you
12 do an annual inventory at that business?

13 A It was done upon my arrival.

14 Q Okay.

15 A I think it was done by the Tumblin family. Which
16 from there, it was twelve months later when we--

17 Q -- twelve months later, you did it?

18 A Right.

19 Q So you did a full inventory in 2009?

20 A Yes, sir.

21 Q And I think you said that, was Ruth kind of out of it
22 by end of 2009?

23 A From the time we moved the building from one building
24 to the next is when she was no longer there.

25 Q Okay. So the end of 2009, inventory was okay?

1 A The inventory was not okay, but the inventory was
2 done. And that's when a lot of deficiencies were found.

3 Q So in 2010 the inventory was okay?

4 A Yes, sir.

5 Q Okay. So you did inventory in the end of 2009 and
6 you had some problems with it?

7 A Yes, sir.

8 Q All right. And you reported that to Mr. Cooper?

9 A Yes, sir.

10 Q All right. And then you did an inventory towards the
11 end of 2010, correct?

12 A Yes.

13 Q And then the inventory was I'd say, would it be
14 proper to say within acceptable errors?

15 A Yes, sir.

16 Q You don't have an inventory that's a hundred percent?

17 A It's hard to.

18 Q Virtually impossible?

19 A Yes, sir.

20 Q So you expect some errors?

21 A Yes, sir.

22 Q And 2010, the inventory was within what you would
23 expect to be an acceptable error?

24 A Reasonably.

25 Q Right. Okay. And I assume end of 2011, it was

1 probably even a little better?

2 A Yes.

3 Q All right. Now, so when you went to the, when you
4 went to Mr. Cooper about the credit card, what was his
5 reaction to that?

6 A He was upset, of course, because he didn't know about
7 it. And I don't remember exactly which cards because it's
8 been a while. But there were a couple that he offered to
9 actually call and he offered to call and talk to the
10 collection company.

11 Q Okay.

12 A There were several that I called.

13 Q Okay. So it would be, now, do you know if he took
14 the credit card from Ms. Tumblin in 2008?

15 A I don't know that.

16 Q Or 2009?

17 A No, sir.

18 Q Okay. And I assume in 2009, you didn't have the
19 problems with the calls?

20 A We were still getting a couple of calls just from,
21 you know, having to make payments --

22 Q Right.

23 A -- and the store was not in the best financial shape.

24 Q All right. And with a lot of vehicle dealerships in
25 2009?

1 A Yes.

2 Q All right. And what was your background before you
3 came to work there?

4 A I had been in the motorcycle-ATV business for
5 approximately sixteen, seventeen years.

6 Q And where had you worked?

7 A In Columbia.

8 Q And what was your job there?

9 A I was the finance manager. I was the sales manager.
10 I cut my teeth in sales, and I also run parts.

11 Q So you were well-versed with particularly the
12 motorcycle business?

13 A Yes, sir.

14 Q Is it any substantially different from an automobile
15 business?

16 A There's some differences, yes.

17 Q But pretty much the same with financing of vehicles
18 and keeping inventory and so forth?

19 A That part would be similar, yes.

20 Q All right. What is the dissimilarity?

21 A The automobile industry is a need. Most people need
22 a vehicle and the ATV business is a toy. It's a pleasure
23 item.

24 Q ATV and motorcycle business?

25 A Power sports business.

1 Q Right. They're not as much of a necessity?

2 A Correct.

3 Q Okay. All right. So by July 2nd of 2010, do you
4 think you had a pretty good grasp of the business?

5 A I would say yes.

6 Q You'd been there about two years then?

7 A Yes, sir.

8 Q All right. You'd been through at least two inventory
9 situations?

10 A Yes.

11 Q And you noticed they had improved?

12 A Yes.

13 Q And you were familiar with all the problems with
14 credit cards and so forth?

15 A Yes.

16 Q And you had relayed all that information by that date
17 to Mr. Cooper?

18 A Yeah.

19 Q Okay. Now, going back to the customer about the
20 receipt, how much was that receipt for, do you remember?

21 A The actual price of the unit, the part that was
22 purchased was \$49, I think it was like \$49.95, if I
23 remember correctly.

24 Q \$49.95?

25 A Yes, sir.

1 Q Okay.

2 MR. WISE: All right.

3 THE COURT: Anything on redirect?

4 MR. FERGUSON: Your Honor, that's our case. I would
5 like to hand up some things.

6 THE COURT: You can step down. Thanks for coming.

7 MR. FERGUSON: First of all, I'd like to hand up some
8 law on recoupment and its relationship with the statute of
9 limitations. I have an attorney's fee affidavit. And
10 finally, I'd like to call your attention to, in the
11 Agreement of Sale, which I believe is Plaintiff's Exhibit
12 number 2. 11(a) provides for attorney's fees.

13 THE COURT: Okay. I assume that Mr. Wise may very
14 well argue that the recoupment that you seek in this case
15 doesn't really grow out of the contract that your client
16 entered with Ms. Tumblin. And to the extent that any
17 inventory was missing, that that calculation was worked
18 into or should, one would assume that that calculation was
19 worked into the \$130 whatever thousand dollar--

20 MR. WISE: -- \$139,000.00, later reduced to \$110.

21 THE COURT: Right.

22 MR. WISE: And I think that reducing the \$139 to \$110
23 was for some taxes.

24 THE COURT: Okay.

25 MR. FERGUSON: Yeah. That was just for the taxes.

1 THE COURT: Mr. Wise, you want to, have you had a
2 chance to look at these?

3 MR. WISE: I haven't had a chance to look at them. I
4 would take disposition, Your Honor. I think the testimony
5 very, very clearly showed, particularly from the last
6 witness, that Mr. Cooper knew everything there was to know
7 about that business by July 2nd of 2010. The witness just
8 testified, Mr. Rodgers, that he'd gone through two
9 inventory processes. Probably one in 2008, probably
10 wasn't the best in the world. 2009, it had improved
11 dramatically within acceptable levels. The end of 2010,
12 it was within acceptable levels. So Mr. Cooper knew
13 everything he needed to know about any claim, at least by
14 July 2nd of 2010 when he signed the agreement with Ms.
15 Tumblin for \$139,000. Then they later reduced it down to
16 a \$110, even though we don't have a copy of it. All of
17 the parties have agreed that's the correct amount and been
18 acknowledged by everybody. So if he has anything in this
19 record that shows any loss after July 2nd of 2010, we
20 haven't seen it. And he, I think that's when the statute
21 of limitations has to proceed. He has to have something
22 within three years of the time he filed his counterclaim,
23 which he did not do. And I agree that his claim here
24 arises out of stuff beyond that agreement.

25 THE COURT: All right. Mr. Ferguson?

1 MR. FERGUSON: The fact that there was a modification
2 of the contract does not bar a recoupment challenge to
3 their request for the, by the defendant for relief. And
4 just, because they had a prior breach of contract, they
5 are not really entitled to argue a breach of contract by
6 Mr. Cooper, first of all. And secondly, under the rules
7 of equity, since they come before the Court with unclean
8 hands, they're not entitled to the Court's assistance. It
9 would just be a gross injustice for the defendants, having
10 cheated the defendant to the extent that they have in
11 breaching the contract, to get extra compensation over and
12 above what they have taken. And so we ask the Court to
13 look at the recoupment and also award attorney's fees and
14 costs.

15 THE COURT: Okay.

16 MR. WISE: I would just point out very quickly this
17 is an action of the law, not inequity.

18 THE COURT: Right. I will need copies of those
19 exhibits before I leave here. But let me take a look at
20 it and review some of the material that Mr. Ferguson has
21 provided to the Court and discuss this with my clerk and,
22 hopefully, I'll have y'all an order by tomorrow or
23 Thursday. All right. Thank y'all.

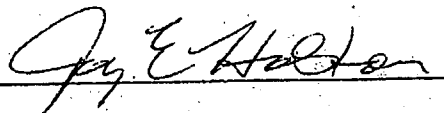
24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5)6 County of Newberry)
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on the dates of September 28th and October 3rd,
15 2017.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 January 15, 2018
20

21 
22

23 Joy E. Holston, Court Reporter

24 My Commission expires: May 2, 2026
25

Laurens Cycle Sales Inc.

G/L Balance Sheet

PCSAS

December 31, 2007

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G/L Account	Description	Balance
ASSETS		
Cash, Contracts, and Marketable Securiti		
20000	Petty Cash Fund	\$380.00
20100	Cash on Hand	\$0.00
20200	Palmetto Bank-Main Account	(\$2,029.13)
20250	Provident Bank Insurance Account	\$1,296.44
20300	Palmetto Bank-Credit Life A & H	\$0.00
20325	Palmetto Bank-In Tire	\$0.00
20350	Palmetto Bank-Theft Insurance	\$0.00
20375	Palmetto Bank-GAP Insurance	\$0.00
20500	Contracts in Transit	\$61,923.74
20600	Marketable Securities	\$0.00
	Total Cash, Contracts, and Marketable Se	\$61,571.05
Receivables		
21000	Notes Receivables	\$55,714.25
21010	Advertising Co-op Receivable	\$1,813.66
21015	Notes Receivable Roy Crooms Ins	\$8,512.18
21020	Loan Receivable J S Farnsworth	\$16,602.20
21027	Loan Receivable James Owens	\$0.00
21030	Loan Receivable Charlie Fulmon	\$0.00
21031	Loan Receivable Mike Brown	\$1,101.56
21035	Loan Receivable Jake Payne	\$0.00
21050	Other Receivables	\$604.74
22000	Accounts Receivables	\$0.00
22050	Receivable Neal Meyer	\$18,300.00
22100	Allowance for Doubtful Accounts	\$0.00
22200	Factory Receivables MTC	\$3,285.00
22250	Factory Receivables ATV	\$13,077.00
22275	Factory Receivables PWC	\$753.00
22400	Warranty Receivables	(\$176.47)
22500	Finance Income Receivables	\$1,000.00
22600	Insurance Commissions Receivables	\$0.00
22650	Customer Receivables-Bad Checks	\$1,569.43
22700	Service Contracts Receivables	\$0.00
22900	Cash Sales - Clearing	\$6,056.66
	Total Receivables	\$128,213.21
Inventories		
23100	New Honda Motorcycle Inventory	\$339,388.03

Laurens Cycle Sales Inc.

G/L Balance Sheet

PCSAS

December 31, 2007

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G/L Account	Description	Balance
		(\$29,385.00)
23110	New Honda On-Road Motorcycle Inventory	\$26,635.00
23120	New Honda Off-Road Motorcycle Inventory	\$165,647.68
23200	New Honda ATV Inventory	\$67,521.41
23300	New Honda SCT Inventory	\$51,155.85
23400	New Honda PWC Inventory	\$0.00
23440	New Honda Other Pow ersports Inventory	\$0.00
23500	New Non-Honda Motorcycle Inventory	\$0.00
23510	New Non-Honda On-Road Motorcycle Inv	\$0.00
23520	New Non-Honda Off-Road Motorcycle Inv	\$0.00
23600	New Non-Honda ATV Inventory	\$0.00
23700	New Non-Honda Scooter Inventory	\$0.00
23810	New Non-Honda PWC Inventory	\$0.00
23820	New Non-Honda Other Powersports Inv	\$46,780.73
24000	New Honda Power Equipment Inventory	\$30.00
24010	New Honda Power Equipment Inventory	\$0.00
24020	New Non-Honda Pow er Equipment Inventory	\$14,774.00
24050	New Honda Marine Inventory	\$3,515.00
24100	New Other Products Inventory	\$0.00
24300	New Trailer Inventory	\$0.00
24500	Demonstrators & Training Units	\$38,332.72
25000	Used Motorcycles, ATV, Scooter Inventory	\$0.00
25010	Used MC,ATV,M/S,PWC Inv	\$0.00
25020	Used Other Pow ersports Products Inv	\$0.00
25200	Used Other Products Inventory	(\$75.00)
25500	Work In Process - Labor Inventory	\$0.00
25800	Sublet Repairs	\$56,386.11
26000	Parts Inventory - Pow ersports Products	\$0.00
26500	Parts Inventory - Other Products	\$0.00
26810	Apparel Inventory	\$0.00
26910	Tire Inventory	\$355,666.34
27000	Accessories Inventory - Pow ersports Prod	\$0.00
27500	Accessories Inventory - Other Products	\$0.00
27700	Gas, Oil, and Grease	(\$4,015.00)
27600	Other Inventories	\$1,132,357.87
	Total Inventories	
	Other Current Assets	
27840	Prepaid Expense-Sale Est. Taxes	\$0.00
27860	Prepaid Expenses-Federal Est. Taxes	\$0.00
27900	Other Current Assets	\$0.00

Laurens Cycle Sales Inc.

PCSAS

G/L Balance Sheet

December 31, 2007

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G/L Account	Description	Balance
	Total Other Current Assets	\$0.00
	Total Current Assets	\$1,322,142.13
	Property, Plant, and Equipment	
28000	Land	\$0.00
28100	Buildings and Improvements	\$0.00
28200	Accumulated Depreciation - Bldg. and Imp	\$0.00
28300	Service Machinery and Equipment	\$48,118.24
28400	Accumulated Depreciation - Service Mach	(\$48,687.05)
28500	Parts and Accessories Equipment	\$12,044.43
28600	Accumulated Depreciation - P & A Equipme	(\$12,044.43)
28700	Office Equipment and Fixtures	\$182,547.25
28800	Accumulated Depreciation - Office Equip	(\$159,467.63)
28900	Company Vehicles and Rental Units	\$41,666.00
29000	Accumulated Depreciation - Co Vehicles &	(\$41,666.00)
29100	Leasehold Improvement	\$0.00
29200	Accumulated Amortization - Leasehold Imp	\$0.00
29300	Other Property, Plant, and Equipment	\$3,335.00
29400	Accumulated Depreciation - Other Equipme	(\$3,335.00)
	Total Property, Plant, and Equipment	\$22,510.81
	Other Assets	
29700	Notes and Accts. Rec - Officers/Ow ners &	\$216,199.92
29800	Other Dealership Assets	\$0.00
29900	Other Non-Operating Assets	\$0.00
	Total Other Assets	\$216,199.92
	TOTAL ASSETS	\$1,560,852.86

Laurens Cycle Sales Inc.

PCSAS

G/L Balance Sheet

December 31, 2007

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G/L Account	Description	Balance
LIABILITIES		
Accounts Payable		
30000	Accounts Payable - Trade Creditors	\$89,631.39
30100	Accounts Payable - Factory	\$2,585.51
31000	Floor Plan Payable	\$25,769.20
32100	License and Registration Fees	\$9,837.99
32200	Customer Deposits	(\$4,266.36)
	Total Accounts Payable	\$123,557.73
Notes Payable		
32400	New Units Floored - Powersports	\$823,328.59
32450	Demo Units Floored	\$0.00
32500	Used Units Floored - Powersports	\$0.00
32600	Power Equipment Products Floored	\$22,552.00
32700	Notes Payable-Other Products Floored	\$0.00
32800	Marine Products Floored	\$15,005.00
32900	Current Portion of Long-Term Debt	\$0.00
	Total Notes Payable	\$860,885.59
Accrued Liabilities		
33000	Other Accounts Payable	\$0.00
33010	Payable Chip Cooper	\$0.00
33020	Payable David Bagwell	\$0.00
33100	Payroll Payable	\$0.00
33200	Sales Taxes Payable	\$10,483.50
33300	Payroll Taxes Payable	\$1,679.36
33400	Income Taxes Payable	\$0.00
33500	Real Estate Taxes Payable	\$0.00
33600	Other Taxes Payable	\$0.00
33900	Reserve for Service Contract Losses	\$0.00
33910	Accrued Liability-Extended Service Plans	\$0.00
33920	Accrued Liability-Pre-paid Maint Cont.	\$0.00
34100	Other Accrued Liabilities	\$0.00
	Total Accrued Liabilities	\$12,162.86
	Total Current Liabilities	\$996,606.18
Long-Term Liabilities		
35000	Long-Term Debt	\$0.00
35500	Mortgages Payable	\$0.00

Laurens Cycle Sales Inc.

G/L Balance Sheet

December 31, 2007

Printed On: 7/30/2008 4:31:59 PM

G/L Account	Description	Balance
	PCSAS	
	Total Long-Term Liabilities	<u>\$0.00</u>
	TOTAL LIABILITIES	<u>\$996,606.18</u>

Laurens Cycle Sales Inc.

PCSAS

G/L Balance Sheet

December 31, 2007

Printed On: 7/30/2008 4:31:59 PM

G/L Account	Description	Balance
OWNER'S EQUITY		
36000	Capital Stock	\$10,000.00
36100	Additional Paid-In Capital	\$0.00
36200	Treasury Stock	\$0.00
37000	Retained Earnings	~~7~~ \$655,097.85
37500	Dividend	\$0.00
38000	Invested Capital	\$0.00
39000	Draw ings	\$0.00
39900	Current Year's Profit of Loss	(\$100,851.17)
	TOTAL OWNER'S EQUITY	<u>\$564,246.68</u> ~~7~~
	TOTAL LIABILITY & OWNER'S EQUITY	<u>\$1,560,852.86</u>

~~7~~ STRONG REPRESENTATION

AGREEMENT OF SALE

COPY

WHEREAS Ruth F. Tumblin ("Tumblin") is the sole shareholder of Laurens Cycle Sales, Inc., ("LCS"), a South Carolina corporation; and,

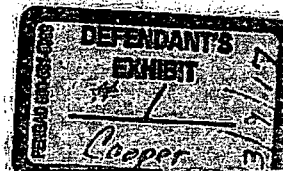
WHEREAS LCS currently has authorized shares of common stock of One Thousand (1,000) Shares and only One Hundred (100) issued and outstanding shares;

WHEREAS Tumblin desires to join with Lynn W. Cooper, III, and David Bagwell for the purpose of infusing new capital and fiscal management expertise into LCS; and,

WHEREAS Lynn W. Cooper, III, and David Bagwell are all of the members of HOL, LLC, ("HOL") a South Carolina limited liability company;

WITNESSETH that in consideration of the premises and the mutual covenants contained herein, this agreement is entered into effective June 23, 2008, between Tumblin and HOL.

1. Tumblin agrees to exercise her vote of shares in LCS in order to authorize the issuance of One Hundred Fifty (150) new shares of LCS to be sold to HOL.
2. HOL agrees to purchase said shares from LCS for the sum of Three Hundred Thousand (\$300,000.00) Dollars, payable as follows:
 - a. Approximately One Hundred Seventy Nine Thousand (\$179,000.00) Dollars to be paid on the effective date hereof to be used by LCS to bring its floor plan debt to American Honda Finance current;
 - b. Eighteen Thousand (\$18,000.00) Dollars paid on the effective date hereof to be used by LCS to redeem uncashed payroll checks now held by Tumblin;
 - c. Six Thousand (\$6,000.00) Dollars paid on the effective date hereof to be used by LCS to pay David Joiner the accrued back pay due to him;
 - d. the balance of approximately Ninety Seven Thousand (\$97,000.00) Dollars to be infused into LCS over the period of six (6) months after the effective date hereof.
3. HOL and Tumblin agree to vote their stock in LCS in order to hire Tumblin as General Manager of LCS at the rate of Sixty Six Thousand (\$66,000.00) Dollars per year for a



period of three years.

4. HOL and Tumblin agree to enter into the stock buy-out agreement attached hereto for the shares Tumblin now holds in LCS.
5. HOL and Tumblin agree that all of HOL's obligations hereunder are contingent on Honda's approval of HOL as a shareholder of LCS and renewal of the franchises now held by LCS.
6. HOL and Tumblin agree to vote their stock in LCS in order to enter into a lease of the current facility located at 109 Honeybee Dr.; Laurens, SC 29360 for the sum of Six Thousand Five Hundred (\$6,500.00) Dollars per month until such time as a new facility is built on US Highway 76 between Laurens, SC and Clinton, SC.
7. Tumblin agrees to put the current facility specified in 6. above on the market for sale in order to reduce her mortgage debt.
8. HOL agrees to help Tumblin with advice on restructuring her personal debts.
9. Tumblin and HOL agree to vote their shares in LCS to elect Lynn W. Cooper, III, Chairman of the Board and President of LCS, and David Bagwell as Secretary of LCS, both of whom shall serve without compensation until further action of the stockholders of LCS.
10. HOL and Tumblin agree to vote their stock in LCS in order to restrict the sale of shares of LCS in accordance with the provisions of the buy-out agreement attached hereto.
11. Miscellaneous Provisions:
 - a. Litigation: In any action to enforce the terms hereof, the successful party shall be entitled to recover reasonable attorney fees and costs of the action in addition to any other remedies or damages allowed at law or in equity.
 - b. Heirs, Successors and Assigns: This contract is binding upon the parties hereto, their respective heirs, successors and assigns and where appropriate, the singular shall include the plural and the use of one gender shall include the others.
 - c. Documentation: Each party hereto agrees to execute and deliver to the other party



R.I.1

or to such third party as may be deemed necessary by the other party or the other party's attorneys any and all such instruments, documents or papers as may be considered necessary or reasonable to fully effectuate the terms and intent hereof.

- d. Severability: Should any term, clause, section or paragraph of this document be finally determined by a Court of appropriate jurisdiction to be void and of no effect, then all other parts hereof shall remain of full force and effect.
- e. Waiver/Estoppel: The failure of either party to insist upon strict performance of any portion of this agreement at any given time shall not act as a waiver or relinquishment of that party's right to insist upon strict performance for any subsequent act or omission of any other party.

f. Time: Time is of the essence in the performance of any duties hereunder.

g. Amendment: This agreement constitutes the entire agreement of the parties and can be amended only in writing signed by all parties.

h. Survival: The terms hereof shall survive any closing or exchange of documents contemplated hereby.

i. Captions: The caption of any paragraph or section hereof is deemed to be merely superfluous and will be ignored in the interpretation of any of the provisions hereof.

j. Notices: All notices to the parties hereto either required by this agreement or given at the election of either party shall be in writing and may be delivered to the other parties personally or may be deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other parties at their mailing addresses provided on the signature page of this agreement or at such other address as may be furnished by a party to all the other parties in writing from time to time as that party's legal notice address.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.



Witnesses



 (LS)
Ruth F. Tumblin



HOL, LLC
(Company Seal)

By: Lynn W. Cooper, III, Manager

STATE OF SOUTH CAROLINA W. DANCASTER
COUNTY OF LAURENS) IN THE COURT OF COMMON PLEAS

2012 AUG 31 P 12: 58

Kathy L. Freeman, As Personal
representative of the Estate of
Jerry Dale Freeman,

LAURENS COUNTY
CLERK OF COURT
Plaintiff,) RESPONSE TO REQUESTS FOR ADMISSION

-vs-)

Laurens Cycle Sales, Inc., D/B/A Honda
of Laurens, Cooper Motor Sales, LLC,
Ruth F. Tumblin, U.S. Insurance Services,
Inc., and Assurant, Inc., D/B/A American
Reliable Insurance Company,

Defendants.)

Case No.: 2012-CP-30- 149

The Defendant, Ruth F. Tumblin, responds to the Plaintiff's Request for
Admission as follows:

1. When Defendant, Ruth F. Tumblin dealt with Jerry Dale Freeman to insure his
motorcycle, it was solely in her capacity as agent for the insurer and not as an agent for Laurens
Cycle Sales, Inc. or Cooper Motor Sales, LLC.

ANSWER: Yes.

2. Any failure of Defendant, Ruth F. Tumblin to make any premium payment to
an insurer regarding Jerry Dale Freeman was not on behalf of Laurens Cycle Sales, Inc. or
Cooper Motor Sales, LLC.

ANSWER: Yes.

3. Any application for insurance which Defendant, Ruth F. Tumblin took from
Jerry Dale Freeman was in her capacity as an agent for the insurer and not as an agent for

Laurens Cycles Sales, Inc., or Cooper Motor Sales, LLC.

ANSWER: Yes.

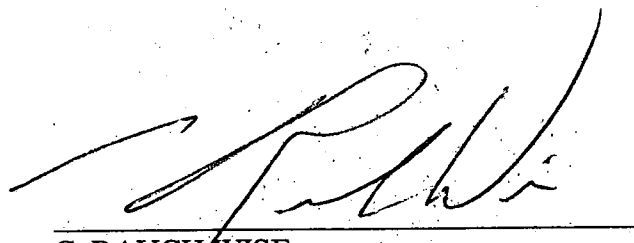
4. Any failure of Defendant, Ruth F. Tumblin to forward an application of insurance or premium payment to insurer on behalf of Jerry Dale Freeman was done solely in her capacity as agent for the insurer and not as an agent for Laurens Cycle Sales, Inc. or Cooper Motor Sales, LLC.

ANSWER: Yes.

5. Jerry Dale Freeman freely, knowingly and voluntarily rejected any insurance coverage which exceeded the minimum required of him by law, including insurance for injury to himself and damage to his motorcycle.

ANSWER: Yes.

#V
August 28, 2012



C. RAUCH/WISE
305 Main Street
Greenwood, South Carolina 29649
(864) 229-5010
Rauch@emeraldis.com
S.C. Bar N° 06188

Attorney for the Defendant Ruth F. Tumblin

THIS DOCUMENT HAS FIREMANT™ LINES IN THE PAPER - HOLD TO LIGHT TO VIEW

COX, FERGUSON & WHAM, LLC
ATTORNEYS TRUST ACCOUNT

(REG) 484-2325
P.O. BOX 286 107 E. LAURENS ST.
LAURENS, SC 29360

THE FARMER'S BANK
LAURENS, SC 29360

87-118532

51464

1/28/2014

PAY TO THE ORDER OF Philipot Law Firm & Kathy L. Freeman

\$ 5,750.00

Five Thousand Seven Hundred Fifty Only

DOLLARS

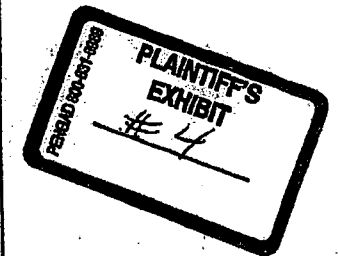
MEMO

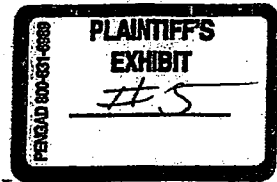
Full & Final Settlement of all Claims

J. R. Ferguson

⑈051464⑈ ⑈051201485⑈ 011118421⑈

⑈ SECURITY FEATURES INCLUDED. DETAILS ON BACK. ⑈





THE MONEY COOPER LOST BY TRUSTING RUTH TUMBLIN

Settlement of the Freeman case	\$ 5,750.00
Attorney fees for the Freeman case	\$ 13,650.00
Tax lien with penalty	\$ 23,371.93
Paid in capital Tumblin owed but did not pay	\$ 52,248.00
Loan to Tumblin	\$ 50,000.00
Missing parts	\$ 219,410.28
Cost to move business and upfit new location because of foreclosure against Tumblin	\$ 253,899.48
Bad debt write offs	
Men's Stuff	\$ 55,714.25
Steve Farnsworth	\$ 16,602.20
Neal Meyer	\$ 18,300.00
Travel trailer (never found)	\$ 6,800.00
TOTAL	\$ 703,118.14

498
Laurens Cycle Sales Inc
DBA
Destination Honda
23165 Highway 76 East
P. O. Box 688
Clinton, SC 29325
(864) 833-3699
Fax (864) 833-3983

August 31, 2012

Ruth Tumblin
100 Houser Circle, Apt 4A
Clinton, SC 29325

Dear Mrs. Ruth Tumblin,

Lynn W. Cooper III 'Chip' is requiring me to announce that I am reserving all of my rights concerning the issues of the lawsuit in addition to any human to human discussion regarding the business.

Sincerely,

Crystal Banks

Crystal Banks

ORIGINAL DOCUMENT HAS A MICROPRINTED BORDER - SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES

LAURENS CYCLE SALES INC. (864) 833-3699 23165 Highway 76 East, P.O. Box 688 Clinton, SC 29325		 1111 West Pansett St. Greer, S.C. 29650	028456 67-206/532
TO THE ORDER OF RUTH TUMBLIN		DATE 8/31/2012	
Two Thousand Five Hundred Dollars And No Cents		\$ *****\$2,500.00	
		DOLLARS	
Memo <i>"Laurens Cycle Sales, Inc. / All rights reserved"</i>			
11028456 10532020621 01133826			

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

COPY
BILL OF SALE AGREEMENT

WHEREAS Ruth F. Tumblin (hereinafter "Tumblin") contracted with Bagwell Contractors Inc. (hereinafter "Bagwell") for a very extensive remodeling of a house located at 11448 Hwy. 76 West; Laurens, SC (TMS 133-00-00-008) and said contract has been fully performed by Bagwell; and

WHEREAS there remains due and owing under the aforesaid contract to Bagwell by Tumblin the sum of \$346,118.58 (hereinafter the "Debt"), which amount has been past due since May, 2008;

KNOW ALL MEN BY THESE PRESENTS that Tumblin, in consideration of cancellation of the said Debt by Bagwell, the receipt and sufficiency of which is hereby acknowledged, do(es) hereby grant, sell, transfer and deliver unto HOL, LLC; its successors and assigns, all of the right, title, and interest of the undersigned in and to her outstanding shares of Laurens Cycle Sales, Inc., the same being One Hundred (100) shares (hereinafter the "Property").

Tumblin's Warranties and Representations. In consideration of and as an additional inducement to Bagwell to cancel the debt of Tumblin to Bagwell, Tumblin covenants, represents and warrants as follows:

1. Tumblin has good, marketable and insurable fee simple title to the Property.
2. Tumblin possesses the full and unrestricted right and power to sell the Property.
3. There is no action, suit, proceeding, judgment, bankruptcy, lien or execution pending or threatened against or affecting the Property or Tumblin which suit, action, judgment, bankruptcy, lien, execution, or proceeding, if adversely determined or continued, might have an adverse effect upon either of them.
4. Tumblin is in full compliance with all laws, rules, regulations and ordinances to which it is subject.
5. Tumblin is not in any dispute with any taxing authority, nor is Tumblin deficient in any tax payments owed by Tumblin to any taxing authority.

R.F. Tumblin



6. The provisions hereof shall survive delivery of this Bill of Sale Agreement and the closing.
7. Should a court of competent jurisdiction invalidate this sale for any reason, the Debt shall be reinstated in full as of May 31, 2008.
8. Tumblin will hold harmless, indemnify and defend Bagwell from any claims arising out of the business of Tumblin prior to the date hereof and from any claims which may be made in the future against the Property which is the subject of this Bill of Sale Agreement and arising out of the sale itself or duties or liabilities of Tumblin incurred or assumed prior to the date hereof.

In witness whereof, the undersigned have executed and delivered this Bill of Sale Agreement this 24 day of April, 2009

Susan M. Hodges

Ruth F. Tumblin (LS)
Ruth F. Tumblin

[Signature]

Bagwell Contractors, Inc.

David Bagwell
David Bagwell, President

ACKNOWLEDGEMENT

**STATE OF SOUTH CAROLINA
COUNTY OF LAURENS**

I, W. Reid Cox, Jr., a notary public do hereby certify that RUTH F. TUMBLIN and DAVID BAGWELL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 24 day of April, 2009

[Signature]
Notary Public for SC

My commission expires: 8-18-2014

(SEAL)

Personal Expenses

10/31/2008	-\$409.40 Payroll deduction to pay back US Financial
11/3/2008	\$20.00 Cash taken out of drawer
11/3/2008	\$40.00 Cash taken out of drawer
11/5/2008	\$122.47 Draft from Duke Energy
11/10/2008	\$409.40 Draft from US Financial
11/30/2008	-\$409.40 Payroll deduction to pay back US Financial
12/3/2008	\$150.39 Draft from Duke Energy
12/31/2008	\$178.61 Draft from Duke Energy
12/10/2008	\$409.40 Draft from US Financial
12/31/2008	\$1,229.37 American Express-computers
12/31/2008	-\$409.40 Payroll deduction to pay back US Financial
1/6/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
1/6/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
1/13/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
1/20/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
1/27/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
1/31/2009	-\$1,229.37 Ruth paid for computers
1/8/2009	\$409.40 Draft from US Financial
1/28/2009	\$27.08 Draft from Primerica
1/16/2009	\$128.25 Draft from Federated Life
2/3/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
2/10/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
2/17/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
2/24/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
2/4/2009	\$199.39 Draft from Duke Energy
2/10/2009	\$409.40 Draft from US Financial
2/17/2009	\$128.25 Draft from Federated Life
3/2/2009	\$27.08 Draft from Primerica
3/3/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
3/10/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
3/17/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
3/24/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
3/4/2009	\$150.69 Draft from Duke Energy
3/10/2009	\$409.40 Draft from US Financial

Personal Expenses

3/16/2009	\$128.25 Draft from Federated Life
3/30/2009	\$27.08 Draft from Primerica
3/31/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
4/7/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
4/14/2009	-\$94.48 Payroll deduction to pay back US Financial & Primerica
4/21/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
4/28/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
4/30/2009	-\$22.53 received from Ruth for personal charge to American Express (dryer vent)-see Amex charge 5/31
4/3/2009	\$158.20 Draft from Duke Energy
4/8/2009	\$409.40 Draft from US Financial
4/16/2009	\$128.25 Draft from Federated Life
4/28/2009	\$27.08 Draft from Primerica
5/5/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
5/12/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
5/19/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
5/26/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
5/31/2009	\$22.53 American Express-dryer vent (Ruth paid back on 4/30)
5/5/2009	\$125.27 Draft from Duke Energy
5/18/2009	\$128.25 Draft from Federated Life
5/8/2009	\$409.40 Draft from US Financial
5/28/2009	\$27.08 Draft from Primerica
6/2/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
6/9/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
6/16/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
6/23/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
6/3/2009	\$164.17 Draft from Duke Energy
6/11/2009	\$409.40 Draft from US Financial
6/16/2009	\$128.25 Draft from Federated Life
6/29/2009	\$27.08 Draft from Primerica
7/2/2009	-\$1,355.68 Ruth paid for computers (see 11/2/09 for charge to Amex)
7/2/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
7/7/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
7/14/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
7/21/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life

Personal Expenses

7/28/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
7/7/2009	\$266.74 Draft from Duke Energy
7/8/2009	\$409.40 Draft from US Financial
7/16/2009	\$128.25 Draft from Federated Life
7/28/2009	\$27.08 Draft from Primerica
8/4/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
8/11/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
8/18/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
8/25/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
8/5/2009	\$387.21 Draft from Duke Energy
8/10/2009	\$409.40 Draft from US Financial
8/17/2009	\$128.25 Draft from Federated Life
8/28/2009	\$27.08 Draft from Primerica
8/31/2009	\$10,659.72 transfer from Roy Crooms account to Ruth personal (Life Insurance)
9/1/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
9/9/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
9/15/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
9/22/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
9/29/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
9/23/2009	-\$500.00 voided invoice from Business Card (originally posted as Ruth personal)
9/23/2009	\$640.93 Lawnmower given to Deno-needed to take out of inventory
9/2/2009	\$284.06 Draft from Duke Energy
9/10/2009	\$409.40 Draft from US Financial
9/16/2009	\$128.25 Draft from Federated Life
9/28/2009	\$27.08 Draft from Primerica
10/6/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
10/13/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
10/20/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
10/27/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
10/5/2009	\$216.05 Draft from Duke Energy
10/8/2009	\$409.40 Draft from US Financial
10/16/2009	\$128.25 Draft from Federated Life
10/28/2006	\$27.08 Draft from Primerica
11/2/2009	\$1,269.77 Amex-computers for Ruth

Personal Expenses

11/3/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
11/10/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
11/17/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
11/4/2009	\$97.39 Draft from Duke Energy
11/10/2009	\$409.40 Draft from US Financial
11/24/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
12/1/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
12/8/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
12/15/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
12/22/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
12/29/2009	-\$130.33 Payroll deduction to pay back US Financial, Primerica & Federated Life
12/2/2009	\$112.47 Draft from Duke Energy
12/9/2009	\$409.40 Draft from US Financial
12/28/2009	\$70.99 Draft from Primerica
1/5/2010	\$154.44 Draft from Duke Energy
1/8/2010	\$409.40 Draft from US Financial
1/28/2010	\$70.99 Draft from Primerica
1/5/2010	-\$110.86 Payroll deduction to pay back US Financial, Primerica & Federated Life
1/12/2010	-\$110.86 Payroll deduction to pay back US Financial, Primerica & Federated Life
1/19/2010	-\$110.86 Payroll deduction to pay back US Financial, Primerica & Federated Life
1/26/2010	-\$110.86 Payroll deduction to pay back US Financial, Primerica & Federated Life
2/2/2010	-\$110.86 Payroll deduction to pay back US Financial, Primerica & Federated Life
2/9/2010	-\$110.86 Payroll deduction to pay back US Financial, Primerica & Federated Life
	-\$10,659.72 see 8/31/09 transfer Roy Crooms Life Ins. (Ruth personal)
2/3/2010	\$168.46 Draft from Duke Energy
2/10/2010	\$409.40 Draft from US Financial

\$8,977.50

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

SETTLEMENT AGREEMENT

This agreement is effective as of 7/2, 2010

WHEREAS Ruth F. Tumblin ("Tumblin") has entered into an Agreement of Sale with HOL, LLC ("HOL") effectively dated June 23, 2008; and,

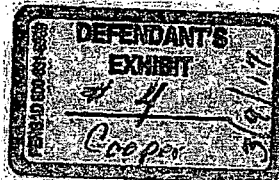
WHEREAS a number of circumstances underlying the original agreement have changed and the parties desire to enter into a new agreement settling all rights, responsibilities, and differences between them, including but not limited to items purchased by HOL from Tumblin and removed from the original store location at 109 Honeybee Dr.; Laurens, SC 29360;

WITNESSETH that for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged by both parties hereto, the parties agree as follows:

1. HOL will pay to Tumblin the sum of \$136,000.00 with interest at the rate of 5.5% in monthly installments of principal and interest of \$2,675.62, commencing July 15, 2010, and each month thereafter until paid in full, all principal and accrued interest due in full on April 15, 2015, unless sooner paid.
2. HOL will have the right to prepay any sums due hereunder in advance without penalty, and any payment made will apply first to the then accrued interest and then to principal; provided that prepayment of any sums may reduce the principal but will not reduce the monthly payments due hereunder as long as there is still a principal balance remaining after any such prepayment.
3. HOL will execute and deliver to Tumblin a standard promissory note evidencing this agreement, which note will be guaranteed by Lynn W. Cooper, III, individually.
4. Each party hereby releases, acquits, and forever discharges the other from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, in law or equity, which I now have or which may hereafter accrue to me on account of, in relation to, or in any way growing out of any act or omission by the other prior to the date hereof, specifically including but not limited to the contract between the parties dated effectively June 23, 2008 and the sale of any personal property or fixtures from Tumblin to HOL.
5. Each party represents to the other that he or she is not now under duress of any kind; that no promise or inducement not contained herein has been made to me; that I have had full opportunity to consult with an attorney or financial counselor of my choosing concerning this matter; and that the terms of this Release are contractual and not a mere recital.
6. Litigation: In any action to enforce the terms hereof, the successful party shall be entitled to recover reasonable attorney fees and costs of the action in addition to any other remedies or damages allowed at law or in equity.

Heirs, Successors and Assigns: This contract is binding upon the parties hereto, their respective heirs, successors and assigns and where appropriate, the singular shall include the plural and the use of one gender shall include the others.

Documentation: Each party hereto agrees to execute and deliver to the other party or to



such third party as may be deemed necessary by the other party or the other party's attorneys any and all such instruments, documents or papers as may be considered necessary or reasonable to fully effectuate the terms and intent hereof.

Severability: Should any term, clause, section or paragraph of this document be finally determined by a Court of appropriate jurisdiction to be void and of no effect, then all other parts hereof shall remain of full force and effect.

Waiver/Estoppel: The failure of either party to insist upon strict performance of any portion of this agreement at any given time shall not act as a waiver or relinquishment of that party's right to insist upon strict performance for any subsequent act or omission of any other party.

Amendment: This agreement constitutes the entire agreement of the parties and can be amended only in writing signed by all parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

Witnesses:

Dawn M. Roberts

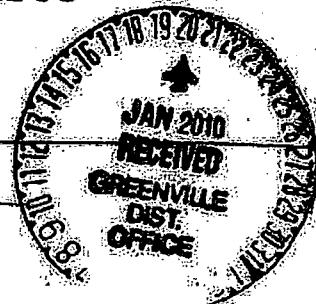
Ruth F. Tumblin (LS)
Ruth F. Tumblin

Dawn M. Roberts

WBL LLC
By: Lynn W. Cooper, III, sole member



INSTALLMENT AGREEMENT WITH THE SC
DEPARTMENT OF REVENUE



NAME: LAURENS CYCLE SALES, INC.

DATE: 1/20/10

ADDRESS: PO BOX 688

CLINTON, SC 29325

FILE NUMBER(S) _____

FEL/SSN: 57-0710716

Where as LAURENS CYCLE SALES, INC.
DBA HONDA OF LAURENS is indebted to the SC Department of Revenue for taxes,
penalties, interest and costs in the amount of \$ _____ and agrees to the
following:

1 A payment schedule consisting of a down payment of \$ 1950.00 which
will be made at the time of signing this agreement. 30 Monthly payments of
\$ _____ are due by the 26th of each month beginning
2-26-10 and continuing each month until the balance is paid in full.

2 Penalties and interest will continue to accrue on the outstanding balance due and
will be added to the final payment.

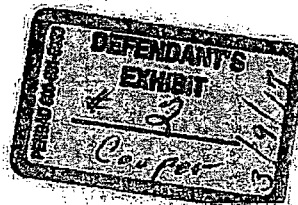
3 Each payment and all tax returns due during the term of this agreement will be
timely filed and paid at the Greenville, SC (Taxpayer Service Center)
to the attention of CRAIG McMillan

4 Liens (which negatively impact credit scores) will be filed in connection with any
and all liabilities.

5 Each payment and the tax due on all tax returns filed during the period of this
agreement will be made by Cash, Cashiers Check or Money order and delivered
on or before their due date at Greenville, SC

6 An installment payment agreement fee of \$45.00 will be charged and added to
your liability.

7 During the installment period, all Federal and State tax refunds will be seized and
applied to the outstanding debt. This does not substitute for payment(s) nor does
this allow for a payment reduction.



Default - Waiver of rights and consequences

- 1 If I do not comply with all provisions of this agreement, I understand that this agreement will be declared in default and thus voided.
- 2 In the event of default, I agree to immediately surrender my retail sales license and any other licenses issued by the SC Department of Revenue. I also agree to waive my rights to the ninety day appeal period as required under 12-60-1310 of the SC Code of Laws.
- 3 I understand that failure on my part to voluntarily surrender my licenses will result in immediate revocation of the license.

Under penalties of perjury, I declare that I have examined this agreement and to the best of my knowledge and belief, it is true, correct and complete.

LAUREUS CYCLE SALES INC

Taxpayer Name

57-0710716

FBI/SS#

HONDA OF LAUREUS

DBA Name

[Signature]

Signature of Responsible Person

[Signature]

Signature of Responsible Person

WNN W. COOPER III

Print Signature

[Signature]

Print Signature

OWNER

Title

[Signature]

Title

247-04-3188

Social Security Number

[Signature]

Social Security Number

707 CALVERT AVENUE

Home Address

[Signature]

Home Address

CUNTO, SC 29325

City, State, Zip Code

[Signature]

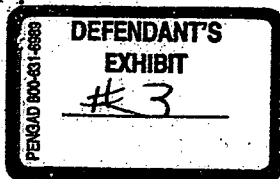
City, State, Zip Code

(w) 804-833-1741

Telephone Number

[Signature]

Telephone Number



STOCK BUY-SELL AGREEMENT

COPY

This agreement is entered into between Ruth F. Tumblin ("Tumblin") and HOL, LLC, ("HOL") a South Carolina limited liability company (individually and collectively the "Shareholders") and Laurens Cycle Sales, Inc., ("LCS") a South Carolina corporation (the "Company") effective as of June 23, 2008.

RECITALS:

A. The Shareholders (defined below) each own those shares of the Company's common stock indicated on Schedule A; and

B. As Tumblin is approaching retirement from LCS, the Shareholders wish to provide a market for the shares now owned by Tumblin; and

C. The Shareholders wish to restrict ownership of the Stock to the present Shareholders and to persons with whom they may comfortably and easily deal; and

D. The Shareholders believe that they shall be able to deal easily and comfortably with each other and that it is in their best interests and in the Company's best interests that all corporate activities be controlled by persons who deal comfortably with each other; and

E. The Shareholders and the Company, to accomplish these objectives, wish to arrange for certain restrictions on the Transfer (defined below) of the Shareholders' shares of the Stock to persons other than the parties to this Agreement.

AGREEMENTS:

SECTION 1

Stock Transfers

1.1. **Stock Transfers Are Generally Restricted.** The parties do not want shares of the Stock to be made generally available to persons other than the present Shareholders. Therefore, the parties agree that no Shareholder shall Encumber (defined below), Transfer, or permit to be Encumbered or Transferred all or any portion of his, her, or its shares of the Stock, whether now or hereafter acquired, except in accordance with the terms of this Agreement. Any attempted

Encumbrance or Transfer of any shares of the Stock not in accordance with the terms of this Agreement shall not be valid and shall not be reflected on The Company's books.

1.2. Encumbrances Not Permitted. A Shareholder may not Encumber any or all of his, her, or its shares of the Stock in connection with any debt.

1.3. Voluntary Lifetime Transfer with Bona Fide Offer, Purchase Option. A Shareholder may make a Voluntary Lifetime Transfer (defined below) only pursuant to a Bona Fide Offer (defined below). Any Shareholder who receives and wishes to accept any Bona Fide Offer must promptly send a notice to the other shareholders and be deemed to have offered to sell to the other shareholders his, her, or its shares of the Stock otherwise to be Transferred, at the Agreement Price (defined below) and on the Agreement Terms (defined below). Such notice shall include a statement of the details of the proposed Transfer, the name, address (both home and office), and business or occupation of the person to whom such Transfer would be made, the price to be paid and the terms and conditions of such payment, and any other facts that are or would reasonably be deemed material to the proposed Transfer.

1.3.1. The other shareholders shall have thirty (30) days from such notice in which to elect to buy all or any of the Offered Stock (defined below).

1.3.2. If the other shareholders shall not elect to buy all of the Offered Stock within the option period, such Voluntary Lifetime Transfer may be completed. If a Voluntary Lifetime Transfer is not consummated within thirty (30) days after the expiration of the option period, the provisions of this Agreement shall again apply to such Offered Stock as if no such Voluntary Lifetime Transfer had been contemplated and no notice had been given. A Voluntary Lifetime Transfer is consummated when The Company has been given notice that legal title to the shares of the Stock has been Transferred, subject to recordation on its books.

1.4. Involuntary Lifetime Transfers, Purchase Option. Any Shareholder who has any information that would reasonably lead him, her, or it to expect that an Involuntary Lifetime

Transfer (defined below) is foreseeable must promptly send a notice to other shareholders and be deemed to have offered to sell to the other shareholders his, her, or its shares of the Stock otherwise to be Transferred, at the Agreement Price (defined below) and on the Agreement Terms (defined below). Such notice shall include a statement of the type of proposed Transfer, the name, address (both home and office), and business or occupation of the person to whom such shares of the Stock would be Transferred, and any other facts that are or would reasonably be deemed material to the proposed Transfer.

1.4.1. The other shareholders shall have sixty (60) days from such notice in which to elect to buy all, but not less than all, of the Offered Stock (defined below).

1.4.2. If the other shareholders do not agree to buy all of the Offered Stock within the option period, such Involuntary Lifetime Transfer may be completed. If an Involuntary Lifetime Transfer is not consummated within thirty (30) days after the expiration of the option period, the provisions of this Agreement shall again apply to such Offered Stock as if no such Involuntary Lifetime Transfer had been contemplated and no notice had been given. An Involuntary Lifetime Transfer is consummated when The Company has been given notice that legal title to the shares of the Stock has been Transferred, subject to recordation on its books.

1.5. Termination of Employment, Purchase Option. It is agreed that should Tumblin at any time cease to be an Employee-Shareholder as a result of voluntary termination of employment, termination of employment by the mutual consent of her and The Company, termination of employment by The Company for Adequate Cause (defined below), or because she is a Disabled Shareholder (defined below), shall be deemed to have offered to sell all of her shares of the Stock to the other shareholders for the Agreement Price and on the Agreement Terms. Such offer shall be deemed made on the date on which Tumblin ceased to be an Employee Shareholder.

1.5.1. The other shareholders shall have sixty (60) days from such offer in which

to elect to buy all, but not less than all, of the Offered Stock. If the other shareholders shall decline to buy all of the Offered Stock, then the Offered Stock may be retained by the Shareholder, but such shares shall remain subject to all provisions of this Agreement, other than this subsection 1.5.

1.5.2. Nothing in this Agreement imposes any obligation on The Company to employ any Shareholder.

1.6. **Right to Require Shareholder to Sell Stock.** HOL may require Tumblin to sell to it all of Tumblin's shares of the Stock, at the Agreement Price and on the Agreement Terms.

1.6.1. HOL may exercise its rights under this subsection 1. by written notice given to Tumblin. Such notice shall be valid only if accompanied by delivery to The Company's secretary of the cash and/or promissory notes required to buy such shares of the Stock.

1.6.2. Tumblin shall, within thirty (30) days of the notice required under this subsection 1.6, deliver to The Company's secretary certificates representing her shares of the Stock duly endorsed and free and clear of all liens, claims, or encumbrances, with evidence of payment of any applicable transfer taxes and fees. The Company's secretary shall give such Shareholder the purchase price, as provided in the section entitled "Agreement Terms," and shall reissue such shares in the name of HOL.

SECTION 2

Agreement Price

The Agreement Price shall be the fair market value of the shares of the Offered Stock on the date of any deemed offer, as determined under this section 2.

2.1. **How Computed.** The Agreement Price shall be the fair market value of the shares of the Offered Stock as determined by the independent certified public accountant ("CPA") regularly employed by The Company or, if The Company has no regularly employed CPA, a CPA selected by The Company for this purpose. This valuation shall be determined under the same methods as would be used for determining the estate tax value of the Offered Stock if the

Offering Shareholder (defined below) had died on the date the offer was deemed made, ignoring any alternate valuation date (under Section 2032 of the Code (defined below)) or special use valuation (under Code Section 2032A). The Company shall provide such data as the CPA deems necessary or useful to make such determination of the fair market value of the Offered Stock.

2.2. Cost of Determination The fees and reimbursed expenses charged by the CPA in the valuation under this section 2 shall be borne solely by The Company.

SECTION 3

Agreement Terms

3.1. Type of Payment. The buyers shall pay the Agreement Price in cash or by good check.

3.2. The Closing. The purchase of the Offered Stock pursuant to this Agreement shall take place at a closing, held at 2:00 P.M. on the thirtieth (30th) day after the date on which the buyer becomes obligated to buy the Offered Stock, at The Company's primary place of business, or at any other place to which the parties agree.

3.2.1. At the closing, The buyer shall pay for the Offered Stock and the Offering Shareholder shall deliver certificates representing all of the shares of the Offered Stock, duly endorsed, free and clear of all Encumbrances, and with evidence of payment of all necessary transfer taxes and fees.

3.2.2. If the Offering Shareholder does not deliver the certificates at the closing, then:

A. The buyer shall deposit the purchase price by check with the Escrow Agent (defined below);

B. The Escrow Agent shall deposit such funds with any bank on the date of the closing or the next regular business day, to be paid to the Offering Shareholder as soon as is reasonably practicable, less an appropriate fee to the buyer (not to exceed five hundred dollars (\$500.00) to pay for the additional

administrative costs; and

C. The Company shall adjust its transfer books to reflect that these shares of the Stock have been Transferred.

3.2.3. Each Shareholder appoints The Company, through its secretary or such other officer as its board of directors may designate, as the Offering Shareholder's agent and attorney-in-fact to execute and deliver all documents needed to convey the Offering Shareholder's shares of the Stock, if such Offering Shareholder is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Shareholder's disability or death, and continues for as long as this Agreement is in effect.

3.3. **Termination of Employment.** Notwithstanding the foregoing terms of this section 3, in the case of voluntary termination of employment by Tumblin or termination for cause by The Company, the buyer shall pay the Agreement Price in forty (40) equal quarter-annual payments of principal and interest. The first payment shall be made at the closing for the sale of the Offered Stock, and all subsequent payments shall include interest compounded annually at the applicable federal rate established under Section 1274(d) of the Code (defined below) on the date of the closing added to each installment after the first installment. The buyer shall prepare and give the Offering Shareholder an unsecured negotiable promissory note as evidence of this debt, permitting the buyer to prepay all or any part of the principal balance of the note at any time without penalty or premium.

3.3.1. **The Closing.** The purchase of the Offered Stock pursuant to this Agreement shall take place at a closing, held at 1:00 P.M. on the thirtieth (30th) day after the date on which the buyer becomes obligated to buy the Offered Stock, at The Company's primary place of business, or at any other place to which the parties agree.

3.3.2. At the closing, The buyer shall pay for the Offered Stock and the Offering Shareholder shall deliver certificates representing all of the shares of the Offered Stock, duly endorsed, free and clear of all Encumbrances, and with evidence of payment of all

necessary transfer taxes and fees.

3.3.3. If the Offering Shareholder does not deliver the certificates at the closing, then:

A. The buyer shall deposit the purchase price by check or by check and note, as is appropriate under this section 3, with the Escrow Agent (defined below);

B. The Escrow Agent shall deposit such funds with any bank on the date of the closing or the next regular business day, to be paid to the Offering Shareholder as soon as is reasonably practicable, less an appropriate fee to the buyer, (not to exceed five hundred dollars (\$500.00) to pay for the additional administrative costs; and

C. The Company shall adjust its transfer books to reflect that these shares of the Stock have been Transferred.

3.3.4. Each Shareholder appoints The Company, through its secretary or such other officer as its board of directors may designate, as the Offering Shareholder's agent and attorney-in-fact to execute and deliver all documents needed to convey the Offering Shareholder's shares of the Stock, if such Offering Shareholder is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Shareholder's disability or death, and continues for as long as this Agreement is in effect.

SECTION 4

Endorsement of Shares

4.1. **Endorsement.** Each Shareholder shall deliver to The Company's secretary, promptly after the date the Shareholder becomes a party to this Agreement, all of his, her, or its certificates of the Stock, and The Company's secretary shall endorse them as follows: Sale, assignment, transfer, pledge, or other disposition of the shares of Stock represented by this certificate is restricted by the provisions of an Agreement dated _____, 2008,

among the Shareholders of Laurens Cycle Sales, Inc. and Laurens Cycle Sales, Inc..

4.2. **Return of Shares.** After this endorsement has been placed on the certificates, The Company's secretary shall return them to the Shareholders.

4.3. **New Stock.** All certificates for shares of the Stock issued to any Shareholder while this Agreement is in effect must also bear this endorsement.

SECTION 5

Terminating the Agreement

5.1. **When Agreement Ends.** This Agreement shall end when The Company is dissolved, put into receivership, or becomes bankrupt.

5.2. **Return of Certificates.** When this Agreement ends, the Shareholders may return their certificates for shares of the Stock to The Company's secretary, who shall issue new certificates for an equal number of shares, without the restrictive endorsement required by this Agreement.

SECTION 6

Continuation of Restrictions

This Agreement shall continue to apply to shares of the Stock Transferred by any Shareholder, and any other Shareholder may require as a condition of such a Transfer that the transferee execute an Agreement substantially identical in form to this one (which may be accomplished by a certificate of acceptance and adoption of this Agreement), to which all of the transferee's shares of the Stock shall be subject, and which Agreement shall be treated as a part of this Agreement.

SECTION 7

Attorney's Representations

The parties all acknowledge that The Company's counsel, W. Reid Cox, Jr., prepared this Agreement on behalf of and in the course of this attorney's representation of The Company, and that:

- (1) THE PARTIES HAVE BEEN ADVISED BY MS. ESQUIRE THAT A CONFLICT EXISTS AMONG THEIR INDIVIDUAL INTERESTS; AND
- (2) THE PARTIES HAVE BEEN ADVISED BY MR. COX TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- (3) THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- (4) THE PARTIES HAVE RECEIVED NO REPRESENTATIONS FROM MR. COX ABOUT THE TAX CONSEQUENCES OF THIS AGREEMENT; AND
- (5) THE PARTIES HAVE BEEN ADVISED BY MR. COX THAT THIS AGREEMENT MAY HAVE TAX CONSEQUENCES; AND
- (6) THE PARTIES HAVE BEEN ADVISED BY MR. COX TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL; AND
- (7) THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL.

SECTION 8

Restrictions Against Competition, Solicitation, Servicing, and Revealing Confidential Data

8.1. Covenant Not to Compete. As a material inducement to sign this Agreement, each Shareholder agrees that as long as he, she or it is an Employee-Shareholder, he, she or it shall not Compete (defined below) with The Company and, further, that he, she or it shall not Compete (defined below) with The Company during the six (6)-month period beginning on the closing date for the sale of his or her shares of the Stock under this Agreement.

8.2. Covenant Not to Solicit or Service. The parties recognize that The Company has spent significant amounts of time and money developing a list of its Customers (defined below), which list is not available to the general public, and that this list contains other information about the customers not available to the general public, and that the Shareholders shall be privileged to

this list. The parties also acknowledge that many of the Customers on this list do not have an advertised place of business, that The Company's competitors could not recreate this list without substantial efforts, and that The Company's business would be irreparably and greatly damaged by the use of this information other than for its benefit. Therefore, as a material inducement to signing this Agreement, each Shareholder agrees that he, she or it shall not solicit or do business with, or attempt to solicit or do business with, any of The Company's Customers except on The Company's behalf while he, she or it is an employee-shareholder and during the six (6)-month period beginning on the closing date for the sale of his or her shares of the Stock pursuant to this Agreement.

8.3. Covenant Not to Violate Corporate Confidences. The Shareholders shall have access to and shall become aware of confidential information and trade secrets including Customer data, files, and business techniques not generally available to the public. This confidential information has been compiled by The Company at great expense and over a great amount of time. The parties acknowledge that this confidential information gives The Company a competitive advantage over other businesses in its field of endeavor and that The Company's business shall be greatly and irreparably damaged by the release or use of this confidential information outside of its own business. Therefore, as a material inducement to signing this Agreement, each Shareholder agrees that he, she or it shall not, while he, she or it is a Shareholder and during the five (5)-year period beginning on the closing date for the sale of his or her shares of the Stock under this Agreement, disclose or divulge this confidential information to anyone or use this confidential information in any manner to Compete with The Company. A partial list of this confidential information may be included as a schedule to the original of this Agreement maintained by The Company's secretary, and all parties agree and acknowledge that this list, as amended from time to time, is true and accurate, but that it is not necessarily a complete list of such information, and that the restrictions in this section shall apply to all such information and not merely to the information listed on such schedule.

8.4. Enforcement. The Company may enforce the provisions of this section by suit for damages, injunction, or both.

8.4.1. The Company would be irreparably injured by the breach of any provision of this section, and money damages alone would not be an appropriate measure of the harm to The Company from such continuing breach. Therefore, equitable relief, including specific performance of these provisions by injunction, would be an appropriate remedy for the breach of these provisions.

8.4.2. Money damages shall be appropriate with respect to any past breach of any provision of this section 8. Therefore, in case of any breach of this section, the breaching party shall render a full and complete accounting of the gross receipts, expenses, and net profits that have resulted from such breach and shall be liable for money damages equal to twenty-five percent (25%) of the gross amount derived by such breaching party from all transactions in breach of this section, such amount representing the amount of profit The Company could have derived from its own transaction of such business.

8.4.3. Should a court of competent jurisdiction determine that equitable relief is not available to remedy the continuous breach of any or all of the provisions of this section 8, an amount of liquidated damages shall be paid to The Company by the breaching party equal to twenty-five percent (25%) of the gross amount derived by such breaching party from all transactions in breach of this section, such amount representing the amount of profit The Company could have derived from its own transaction of such business.

SECTION 9

Definitions

9.1. "Adequate Cause." "Adequate Cause" for terminating a Shareholder's status as an Employee-Shareholder is limited to conviction of or a plea of guilty to a felony or a misdemeanor, dishonesty, any other criminal conduct against The Company, a continued breach

of the Employee-Shareholder's duties and obligations arising under an employment contract with The Company or of any written policy, rule, or regulation of The Company, for a period of at least five (5) days following his or her receipt of written notice from any officer of The Company specifying such breach.

9.2. "Agreement." The "Agreement" is this contract and all modifications or amendments thereto.

9.3. "Agreement Price." The "Agreement Price" is the price at which, pursuant to the terms of this Agreement, a Shareholder must offer to sell all or any of his, her, or its shares of the Stock.

9.4. "Agreement Terms." The "Agreement Terms" are the terms and conditions under which the sale of a Shareholder's shares of the Stock is conducted, including (but not limited to) the form of consideration to be paid, the time of the closing, and the steps to be taken at the closing.

9.5. "Bona Fide Offer." A "Bona Fide Offer" is an offer in writing, signed by the offeror, who must be financially capable of carrying out the terms of the offer, in form legally enforceable against the offeror, and binding the offeror to buy the Offered Stock.

9.6. "Compete." "To Compete" and "to Compete with The Company" both mean to engage in the same or any similar business as The Company in any manner whatsoever, including competing as a proprietor, partner, investor, Shareholder, director, officer, employee, consultant, independent contractor, or otherwise, within a geographic area within five (5) miles of any facility in which The Company has a contract at the time that such Shareholder first ceased to be an Employee Shareholder.

9.7. "Customer." A "Customer" of The Company is any person for whom it has performed or attempted to perform services or sold or attempted to sell any product or service, whether or not for compensation, and regardless of the date of such rendition, sale, or attempted rendition or sale. A partial list of The Company's Customers may be included as a schedule to the

original of this Agreement maintained by The Company's secretary, and all parties agree and acknowledge that this list, as amended from time to time, is true and accurate but that it is not necessarily a complete list of the Customers and that the restrictions in this section shall apply to all of the Customers and not merely to those listed on such schedule.

9.8. "Days." Any reference in this Agreement to "days" means all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

9.9. "Disabled Shareholder." A Shareholder is a "Disabled Shareholder" if the Shareholder:

9.9.1. Is under a legal decree of incompetency (the date of such decree being deemed to be the date on which such disability occurred);

9.9.2. Submits any claim for disability insurance benefits or for early distribution of any amounts from a qualified pension or profit-sharing plan maintained by The Company on account of more than fifty percent (50%) disability (the date of the earliest of such claims shall be the date on which such disability shall be deemed to have occurred); or

9.9.3. Is subject to a medical determination that the Shareholder, because of a medically determinable disease, injury, or other mental or physical disability, is unable to perform substantially all of his or her regular duties, and that such disability is determined or reasonably expected to last at least twelve (12) months, based on then-available medical information.

A. A medical determination of disability shall exist upon the receipt by The Company of the written opinion of a physician who has examined the Shareholder whose disability is in question.

B. If The Company disagrees with the opinion of such physician (the "First Physician"), it may engage at its own expense another physician (the "Second

Physician") to examine the Shareholder whose disability is in question. The Second Physician shall confer with the First Physician and, if they together agree in writing that the Shareholder is or is not disabled, their written opinion shall be conclusive as to such disability. If the First and Second Physicians do not agree, they shall choose a third consulting physician (the expense of which shall be borne by The Company), and the written opinion of a majority of these three (3) physicians shall be conclusive as to such disability. The date of any written opinion that is conclusive as to such disability is the date on which such disability, if that is the conclusion, will be deemed to have occurred.

C. Each Shareholder hereby consents to such examination, to furnish any medical information requested by any examining physician, and to waive any applicable physician-patient privilege that may arise because of such examination. All physicians except the First Physician selected hereunder must be board-certified in the specialty most closely related to the nature of the disability alleged to exist.

9.10. "Employee-Shareholder." An "Employee-Shareholder" is a Shareholder who is also an officer, employee, or director (or some combination thereof) of The Company.

9.11. "Encumber" or "Encumbrance." "To Encumber" includes to pledge, hypothecate, or otherwise secure any type of debt or obligation with shares of the Stock, whether incurred voluntarily or involuntarily, and in any manner whatsoever. An "Encumbrance" includes any type of security or surety interest created by such Encumbering.

9.12. "Escrow Agent." An "Escrow Agent" is any attorney or certified public accountant regularly employed by The Company, or any other person acceptable to all Shareholders, who shall hold checks and certificates of the Stock to effect a purchase or sale pursuant to this Agreement.

9.13. "Offered Stock." The "Offered Stock" is all of the shares of the Stock that are deemed to have been offered for sale to the other Shareholders or to The Company, pursuant to this Agreement.

9.14. "Personal Representative." A Shareholder's "Personal Representative" includes any administrator, executor, trustee, or other personal representative who is vested with the responsibility for administering the disposition of any Stock on account of a deceased Shareholder's death, and equally any individual who holds such Stock as a legatee, distributee, or successor in interest, or trustee where no executor, administrator, or similar fiduciary is appointed or where any appointed executor, administrator, or fiduciary does not have control over any of the deceased Shareholder's shares of the Stock.

9.15. "Stock." The "Stock" is the ten thousand (10,000) issued and outstanding shares of The Company's common stock and any additional shares of the stock of The Company, whether common or preferred, voting or nonvoting, issued or sold by The Company to any person, including (but not limited to) shares issued as a stock dividend, stock split, reverse stock split, recapitalization, or reorganization of any type. All such additional shares of the Stock shall be issued bearing the restrictive endorsement required by this Agreement.

9.16. "Shareholders." The "Shareholders" include all owners of shares of the Stock (other than any shares of the Stock held as treasury stock by The Company), each of whom is a "Shareholder." The initial Shareholders are the parties named in the introductory paragraph of this Agreement.

9.17. "Transfer," Etc. A "Transfer" is any sale, pledge, Encumbrance, gift, bequest, or other transfer of any shares of the Stock, whether or not for value and whether or not made to another party to this Agreement.

9.17.1. An "Involuntary Lifetime Transfer" is any Transfer made on account of a court order or otherwise by operation of law, including any Transfer incident to any

divorce or marital property settlement or any Transfer pursuant to applicable community property, quasi-community property or similar state law.

9.17.2. A "Voluntary Lifetime Transfer" is any Transfer made during a Shareholder's lifetime that is not an Involuntary Lifetime Transfer.

9.17.3. Unless the context indicates otherwise, "Transfer" includes both Voluntary and Involuntary Lifetime Transfers.

9.17.4. A Transfer made to a trust that is wholly revocable by the Transferor shall not be a Transfer for purposes of this Agreement, but any subsequent Transfer by the trustee of such trust shall be deemed to have been made by the trust's grantor.

SECTION 10

Miscellaneous

10.1. **Binding Agreement.** This Agreement is binding on and enforceable by and against the parties, their successors, legal representatives, and assigns.

10.2. **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of [state].

10.3. **Severability.** No part of this Agreement shall be affected if any other part of it is held invalid or unenforceable.

10.4. **Notices.** All notices required or permitted to be given under this Agreement must be given in writing, and shall be deemed given when personally delivered or, if earlier, when received after mailing by U.S. registered or certified mail, postage prepaid, with return receipt requested. Notice to any Shareholder is valid if sent to him, her, or it at such Shareholder's address as it appears on Schedule "B" attached hereto or at such other address as may be furnished to The Company at any later date.

10.5. **Voting.** On the date of the closing with respect to the sale of any shares of the Stock, the Shareholder who offered (or who has been deemed automatically to have offered) such shares of the Stock for sale shall cease to have the right to vote such shares.

10.6. **Specific Performance.** The parties agree that the Stock is unique and that failure to perform the obligations under this Agreement shall result in irreparable damage to the other parties and that specific performance of these obligations may be obtained by a suit in equity.

10.7. **Waiver.** Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

10.8. **Copies.** More than one (1) copy of this Agreement may be executed, and all parties agree and acknowledge that each executed copy shall be a duplicate original.

10.9. **Gender and Number.** Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa.

Agreed to by each of the undersigned on the date first noted above.

Witnesses:

Cynthia E. Banks

Ruth F. Tumblin (LS)
Ruth F. Tumblin

Cynthia E. Banks

HOL, LLC
(Company Seal)
[Signature]
By: Lynn W. Cooper III

Cynthia E. Banks

LAURENS CYCLE SALES, INC.
Ruth F. Tumblin
By: Ruth F. Tumblin, President

SCHEDULE "A"

SHAREHOLDER

SHARES HELD

Ruth F. Tumblin

100

HOL, LLC

150

SCHEDULE "B"

ADDRESSES

Ruth F. Tumblin

Ruth F. Tumblin

Laurens Cycle Sales, Inc.

Ruth F. Tumblin

HOL, LLC

PO Box 688
Clinton, SC 29325

SCHEDULE "B"

ADDRESSES

Ruth F. Tumblin

Laurens Cycle Sales, Inc.

HOL, LLC

PO Box 688
Clinton, SC 29325

Estate of Ruth Tumblin
Amount due calculations

Loan amount:	\$110,000.00
Interest rate:	5.5%
Payments:	1,800.00
Balance due February 23, 2012	85,796.68
Payment August 2012	2,500.00
Balance due:	83,296.68
Interest due since February 23, 2012 to August 23, 2012	2,359.40
Interest August 31, 2012 to September 27, 2017 (61 months)	<u>23,288.36</u>
Balance due:	\$108,944.44

Amortization Schedule

The monthly payment for a \$110,000.00 loan at 5.50% annual interest rate will be \$1,797.17 per payment. This amount should be paid to the lender, bank or lending institution for 6 years. The loan amortization table below shows your monthly payment divided into two portions. One portion is put towards interest (**interest paid**), while the other portion goes towards principal (**principal paid**). As you can see, initially a larger amount is applied towards interest and as the loan matures the portion applied towards the outstanding principal balance gets larger and larger.

Please note that if you are calculating a mortgage loan, property taxes, property insurance and private mortgage insurance is neglected in the calculation, they will increase the amount of your regular periodic payments.

period:	date:	interest paid:	principal paid:	remaining balance:
1	09/23/2010	\$504.17	\$1,293.00	\$108,707.00
2	10/23/2010	\$498.24	\$1,298.93	\$107,408.07
3	11/23/2010	\$492.29	\$1,304.88	\$106,103.19
4	12/23/2010	\$486.31	\$1,310.86	\$104,792.33

Loan amortization schedule for year 1 (2010):

You will spend \$1,981.01 on interest and \$5,207.67 on principal.

period:	date:	interest paid:	principal paid:	remaining balance:
5	01/23/2011	\$480.30	\$1,316.87	\$103,475.46
6	02/23/2011	\$474.26	\$1,322.91	\$102,152.55
7	03/23/2011	\$468.20	\$1,328.97	\$100,823.58
8	04/23/2011	\$462.11	\$1,335.06	\$99,488.52
9	05/23/2011	\$455.99	\$1,341.18	\$98,147.34
10	06/23/2011	\$449.84	\$1,347.33	\$96,800.01
11	07/23/2011	\$443.67	\$1,353.50	\$95,446.51
12	08/23/2011	\$437.46	\$1,359.71	\$94,086.80
13	09/23/2011	\$431.23	\$1,365.94	\$92,720.86
14	10/23/2011	\$424.97	\$1,372.20	\$91,348.66
15	11/23/2011	\$418.68	\$1,378.49	\$89,970.17
16	12/23/2011	\$412.36	\$1,384.81	\$88,585.36

Loan amortization schedule for year 2 (2011):

You will spend \$5,359.07 on interest and \$16,206.97 on principal.

period:	date:	interest paid:	principal paid:	remaining balance:
17	01/23/2012	\$406.02	\$1,391.15	\$87,194.21
18	02/23/2012	\$399.64	\$1,397.53	\$85,796.68
19	03/23/2012	\$393.23	\$1,403.94	\$84,392.74
20	04/23/2012	\$386.80	\$1,410.37	\$82,982.37
21	05/23/2012	\$380.34	\$1,416.83	\$81,565.54
22	06/23/2012	\$373.84	\$1,423.33	\$80,142.21
23	07/23/2012	\$367.32	\$1,429.85	\$78,712.36
24	08/23/2012	\$360.76	\$1,436.41	\$77,275.95
25	09/23/2012	\$354.18	\$1,442.99	\$75,832.96
26	10/23/2012	\$347.57	\$1,449.60	\$74,383.36
27	11/23/2012	\$340.92	\$1,456.25	\$72,927.11
28	12/23/2012	\$334.25	\$1,462.92	\$71,464.19

Loan amortization schedule for year 3 (2012):

You will spend \$4,444.87 on interest and \$17,121.17 on principal.

period:	date:	interest paid:	principal paid:	remaining balance:
29	01/23/2013	\$327.54	\$1,469.63	\$69,994.56

30	02/23/2013	\$320.81	\$1,476.36	\$68,518.20
31	03/23/2013	\$314.04	\$1,483.13	\$67,035.07
32	04/23/2013	\$307.24	\$1,489.93	\$65,545.14
33	05/23/2013	\$300.42	\$1,496.75	\$64,048.39
34	06/23/2013	\$293.56	\$1,503.61	\$62,544.78
35	07/23/2013	\$286.66	\$1,510.51	\$61,034.27
36	08/23/2013	\$279.74	\$1,517.43	\$59,516.84
37	09/23/2013	\$272.79	\$1,524.38	\$57,992.46
38	10/23/2013	\$265.80	\$1,531.37	\$56,461.09
39	11/23/2013	\$258.78	\$1,538.39	\$54,922.70
40	12/23/2013	\$251.73	\$1,545.44	\$53,377.26

Loan amortization schedule for year 4 (2013):

You will spend \$3,479.11 on interest and \$18,086.93 on principal.

period:	date:	interest paid:	principal paid:	remaining balance:
41	01/23/2014	\$244.65	\$1,552.52	\$51,824.74
42	02/23/2014	\$237.53	\$1,559.64	\$50,265.10
43	03/23/2014	\$230.38	\$1,566.79	\$48,698.31
44	04/23/2014	\$223.20	\$1,573.97	\$47,124.34
45	05/23/2014	\$215.99	\$1,581.18	\$45,543.16
46	06/23/2014	\$208.74	\$1,588.43	\$43,954.73
47	07/23/2014	\$201.46	\$1,595.71	\$42,359.02
48	08/23/2014	\$194.15	\$1,603.02	\$40,756.00
49	09/23/2014	\$186.80	\$1,610.37	\$39,145.63
50	10/23/2014	\$179.42	\$1,617.75	\$37,527.88
51	11/23/2014	\$172.00	\$1,625.17	\$35,902.71
52	12/23/2014	\$164.55	\$1,632.62	\$34,270.09

Loan amortization schedule for year 5 (2014):

You will spend \$2,458.87 on interest and \$19,107.17 on principal.

period:	date:	interest paid:	principal paid:	remaining balance:
53	01/23/2015	\$157.07	\$1,640.10	\$32,629.99
54	02/23/2015	\$149.55	\$1,647.62	\$30,982.37
55	03/23/2015	\$142.00	\$1,655.17	\$29,327.20
56	04/23/2015	\$134.42	\$1,662.75	\$27,664.45
57	05/23/2015	\$126.80	\$1,670.37	\$25,994.08
58	06/23/2015	\$119.14	\$1,678.03	\$24,316.05
59	07/23/2015	\$111.45	\$1,685.72	\$22,630.33
60	08/23/2015	\$103.72	\$1,693.45	\$20,936.88
61	09/23/2015	\$95.96	\$1,701.21	\$19,235.67
62	10/23/2015	\$88.16	\$1,709.01	\$17,526.66
63	11/23/2015	\$80.33	\$1,716.84	\$15,809.82
64	12/23/2015	\$72.46	\$1,724.71	\$14,085.11

Loan amortization schedule for year 6 (2015):

You will spend \$1,381.06 on interest and \$20,184.98 on principal.

period:	date:	interest paid:	principal paid:	remaining balance:
65	01/23/2016	\$64.56	\$1,732.61	\$12,352.50
66	02/23/2016	\$56.62	\$1,740.55	\$10,611.95
67	03/23/2016	\$48.64	\$1,748.53	\$8,863.42
68	04/23/2016	\$40.62	\$1,756.55	\$7,106.87
69	05/23/2016	\$32.57	\$1,764.60	\$5,342.27
70	06/23/2016	\$24.49	\$1,772.68	\$3,569.59
71	07/23/2016	\$16.36	\$1,780.81	\$1,788.78
72	08/23/2016	\$8.20	\$1,788.78	\$0.00

Loan amortization schedule for year 7 (2016):
You will spend \$292.06 on interest and \$14,085.11 on principal.

Loan payoff summary

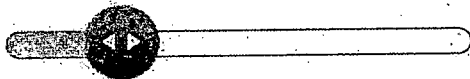
Loan details:		Loan payoff details:	
Loan amount:	\$110,000.00	Monthly payment:	\$1,797.17
Annual interest rate:	5.50%	Loan start date:	08/23/2010
Loan length:	6 years	Loan payoff date:	08/23/2016
Pay periodicity:	monthly	Interest paid:	\$19,396.05

On a \$110,000.00 loan you will spend \$129,396.05.
From this \$19,396.05 goes towards interest and \$110,000.00 will be applied to the principal.

© 2009 - 2017 www.amortization-schedule.info

Pay off your
mortgage faster with
a shorter term

Select remaining balance



\$225,000

Calculate New Payment

lendingtree

Terms & Conditions apply N/A 08/1/16

STATE OF SOUTH CAROLINA

LYNN W. LANCASTER

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

2012 JUL 24 P 4: 20

Kathy L. Freeman,
As Personal Representative of the
Estate of Jerry Dale Freeman,

Plaintiff,

vs.

Laurens Cycle Sales, Inc., D/B/A Honda of
Laurens, Cooper Motor Sales, LLC,
Ruth F. Tumblin, U. S. Insurance Services,
Inc., and Assurant, Inc., D/B/A American
Reliable Insurance Company,

Defendants.

LAURENS COUNTY
CLERK OF COURT

AMENDED SUMMONS
(BREACH OF CONTRACT/NON-JURY)

And/Or in the Alternative
(INEFFECTIVE OFFER OF
UNDERINSURED MOTORIST
INSURANCE/NON-JURY)

C/A NO.: 2012-CP-30-148

149

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his/her office at 115 Broadus Avenue, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to appear and defend by filing an Answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the attached Complaint.

PHILPOT LAW FIRM, PA

BY:

SAPT
Eric H. Philpot, SC Bar No. 14137
Attorney for Plaintiff
115 Broadus Avenue
Greenville, SC 29601
(864) 242-1366

Greenville, South Carolina

July 23, 2012

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

LYNN W. LANCASTER IN THE COURT OF COMMON PLEAS

2012 JUL 24 P 4: 20

Kathy L. Freeman,
As Personal Representative of the
Estate of Jerry Dale Freeman,

Plaintiff,

LAURENS COUNTY
CLERK OF COURT

AMENDED
COMPLAINT

(BREACH OF CONTRACT/NON-JURY)

And/Or in the Alternative

vs.

(INEFFECTIVE OFFER OF UNDERINSURED
MOTORIST INSURANCE/NON-JURY)

Laurens Cycle Sales, Inc., D/B/A Honda of
Laurens, Cooper Motor Sales, LLC,
Ruth F. Tumblin, U. S. Insurance Services,
Inc., and Assurant, Inc., D/B/A American
Reliable Insurance Company,

Defendants.

C/A NO.: 2012-CP-30-148

149

The Plaintiff, complaining of the Defendants herein, would respectfully show unto this court:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiff is the duly appointed Personal Representative of the Estate of Jerry Dale Freeman and is a citizen and resident of Laurens County.

2. The Plaintiff, as Personal Representative of the Estate of Jerry Dale Freeman, accordingly, is entitled to recover compensatory damages for the survival claim of Jerry Dale Freeman in an amount to be proven at trial.

3. Upon information and belief, the Defendant, Laurens Cycle Sales, Inc., D/B/A Honda of Laurens ("Laurens Cycle Sales"), is and at all times mentioned, a corporation duly organized, existing, and doing business under and by virtue of the laws of the state of South Carolina, engaged in, among other services, the selling, financing, and procuring insurance for

motor vehicles sold on the premises, and otherwise, with its principal business office located in Laurens County, State of South Carolina.

4. Upon information and belief, the Defendant, Cooper Motor Sales, LLC ("Cooper"), is an automobile dealer located in the city and County of Laurens, State of South Carolina and, upon information and belief, now owns Defendant Laurens Cycle Sales.

5. Upon information and belief, the Defendant, U.S. Insurance Services, Inc., ("U.S. insurance"), is a Corporation organized under the laws of one of the States of the United States and transacts business in the State of South Carolina, County of Laurens, as a leading producer of motorcycle insurance through local insurance agents who are licensed to sell its base products, the primary product being insurance with American Reliable Insurance Company, which is a division of Assurant, Inc.

6. Upon information and belief, the Defendant, Assurant, Inc., D/B/A American Reliable Insurance Company ("ARIC"), is a corporation organized under the laws of one of the States of the United States and transacts business in the State of South Carolina, County of Laurens, among other things offering motorcycle insurance coverage through local agents.

7. Upon information and belief, the Defendant, Ruth F. Tumblin, ("Tumblin"), at all times mentioned, was the duly appointed, qualified, and acting agent of the Defendants, Laurens Cycle Sales AND U.S. Insurance.

8. Henceforth, any reference to or act of Tumblin shall include and be a reference to her capacity as agent for Laurens Cycle Sales, as well as U.S. Insurance, and she is deemed to have been acting in that dual agent capacity as regards to all factual allegations herein.

9. On or about August 7, 2009, Plaintiff's decedent went to the premises of Laurens Cycle Sales for the purpose of procuring insurance coverage for his 1994 Harley Davidson motorcycle. Laurens Cycle Sales, by and through its above-named agent, Tumblin, took an application from Plaintiff's decedent and represented that it placed his insurance coverage with American Reliable Insurance Company. A Premium Service Agreement was entered into

whereby Plaintiff's decedent would pay a yearly premium of \$598.00 made in 8 premium payments that would be made directly to Laurens Cycle Sales and/or its agent Tumblin, who would forward the premium to American Reliable Insurance Company. Tumblin, personally, and as agent for Laurens Cycle Sales, promised Plaintiff's decedent that she would place the insurance policy on the motorcycle, in consideration of Plaintiff's decedent undertaking to make the aforementioned payments to Laurens Cycle Sales, which Plaintiff's decedent did.

10. Further, as part of the application for insurance, Plaintiff's decedent was asked to complete a "Selection Rejection" form regarding underinsured motorist insurance coverage (UIM). Finally, upon review by the Plaintiff's representatives, it has come to light that said insurance application form failed to make an effective offer of UIM as it did not list any premium amounts associated with the various levels of UIM that were available.

11. On or about 12/3/09, while driving the above mentioned motorcycle, Plaintiff's decedent became involved in a collision which resulted in his death. The investigating officer reported the facts of the accident to Tumblin and made inquiry regarding insurance coverage on the subject motorcycle. At that time he was advised by Tumblin that although Plaintiff's decedent had made the appropriate premium payments, Tumblin, as agent of Laurens Cycle Sales, failed to forward the premium payments and/or the Application for Insurance and/or forwarded an incomplete application, and as a result the policy had lapsed. Consequently the Plaintiff and Plaintiff's decedent were deprived of all opportunities and benefits that would have been afforded to them had the insurance coverage been procured, to include the opportunity to demand policy reformation to include UIM coverage based on the ineffective offer of the same.

12. Laurens Cycle Sales, by and through its agent, having entered into an agreement with Plaintiff's decedent on August 7, 2009, and promising, for valuable consideration, to take

out an insurance policy on the 1994 Harley Davidson motorcycle owned by Plaintiff's decedent, became legally bound to Plaintiff's decedent, to carry out the promise to afford him insurance protection on the motorcycle. Defendants Laurens Cycle Sales, Tumblin and U. S. Insurance breached the contract by failing to forward payments and/or a fully completed Application for Insurance, which resulted in the policy of insurance lapsing, and is, therefore, indebted to the Plaintiff for all resulting losses flowing from this breach.

FOR A SECOND CAUSE OF ACTION

13. For a second cause of action Plaintiff adopts the above allegations contained in Paragraphs 1 through 12 of the First Cause of Action of this complaint and further alleges that:

14. Tumblin, in taking Plaintiff's decedent's application and premium, was acting as an agent of Laurens Cycle Sales and U. S. Insurance, and was acting in the scope and course of her employment in filling out the forms and accepting payment for the insurance policy, and making her promise to take out the policy as stated in Paragraph 6 of the First Cause of Action. As principal, Defendants Laurens Cycle Sales and U. S. Insurance are legally obligated to pay Plaintiff for the damages caused by the facts and circumstances as set forth in the First Cause of Action.

15. Tumblin, individually and as agent for Laurens Cycle Sales and U. S. Insurance, breached the promise to Plaintiff's decedent made August 7, 2009 to take out the insurance policy on the subject motorcycle and forward premium payments and/or to forward an Application for Insurance, and/or a completely executed application, to insure the policy did not lapse, and is therefore, together with Laurens Cycle Sales, obligated to pay Plaintiff for the damages caused thereby.

FOR A THIRD CAUSE OF ACTION

(Survival Action)

16. For a third cause of action Plaintiff adopts the above allegations contained in Paragraphs 1 through 15 of the First and Second Causes of Action of this complaint and further alleges that:

17. The negligent act of the Defendants, individually and/or through its/their agent, as outlined in the foregoing paragraphs, were the proximate cause of the damages, as stated herein, and sustained by Plaintiff's decedent, Jerry Dale Freeman, and his Estate and its beneficiaries .

18. The Plaintiff is informed and believes that she is entitled to a judgment against the Defendants in a sum sufficient to compensate the Estate and its beneficiaries for their actual damages, for the costs of this action, and for such other and further relief as the court may deem just and proper.

19. Plaintiff prays for the court to review the facts and circumstances of this cause of action to determine an amount which would justly and fairly compensate the Plaintiff.

FOR A FOURTH CAUSE OF ACTION

(Estoppel)

20. For a fourth cause of action Plaintiff adopts the above allegations contained in Paragraphs 1 through 19 of the First, Second and Third Causes of Action of this Complaint and further alleges that:

21. For purposes of this cause of action it is alleged that at all times material to the allegations herein, ARIC, through the actions of its agents U.S. Fire and Tumblin, provided insurance to Plaintiff's decedent under policy number US 041121-00 for his motorcycle.

22. ARIC had provided Plaintiff's decedent with coverage for an extended period of time prior to the specific policy in question, had several previous Applications for Insurance on file with all Plaintiff's decedent's relevant information needed to process and provide ongoing insurance coverage, said information being the same as contained in the subject Application for Insurance allegedly not properly forwarded, and/or not completely executed, in the subject instance, and had for several years been accepting premium payments from Plaintiff's decedent.

23. Plaintiff contends that for the reasons alleged in this cause of action, in combination with all allegations of this Complaint, ARIC should be estopped from claiming that coverage under policy number US 041121-00 lapsed.

FOR A FIFTH CAUSE OF ACTION/AND/OR IN THE ALTERNATIVE

(Ineffective offer of Underinsured Motorist Coverage)

General allegations

24. For a fifth cause of action Plaintiff adopts the above allegations contained in Paragraphs 1 through 23 of the First, Second, Third and Fourth Causes of Action of this Complaint and further alleges that:

25. For purposes of this cause of action it is alleged that at all times material to the allegations herein, ARIC, through the actions of its agents U. S. Insurancee and Tumblin, provided insurance to Plaintiff's decedent under policy number US 041121-00 for his motorcycle.

26. At all times material to the allegations herein, ARIC provided liability insurance to Plaintiff's decedent under said policy with liability limits of \$25,000 per person and \$50,000 per accident. The ARIC policy purports not to provide underinsured motorist (UIM) coverage.

27. ARIC, through its agents, Defendants U.S. Insurance, Laurens Cycle Sales and Tumblin, directed Plaintiff's decedent to sign a form which purports to reject UIM coverage and directed and/or saw that this was forwarded to ARIC.

28. Plaintiff's decedent has a cause of action against Jimmy Hudson arising out of the aforementioned motor vehicle accident which resulted in his death and has received the policy limits under a Nationwide liability policy in exchange for a Covenant Not To Execute in the amount of \$25,000. Said amount is inadequate payment to Plaintiff's decedent because his damages exceeded the policy limits of the Nationwide policy.

REFORMATION OF THE ARIC POLICY

29. Plaintiff adopts all allegations contained in paragraphs 1 through 28 of this Complaint and further alleges that:

30. Upon information and belief, when issuing policy number US 041121-00, ARIC's agents did not make a meaningful offer of UIM coverage because the form utilized was insufficient

and the offer was not made in a commercially reasonable manner as required by South Carolina law.

31. This Court should reform the ARIC policy of insurance provided to Plaintiff's decedent with UIM coverage under the policy with limits equal to the liability coverage in the policy.

WHEREFORE, the Plaintiff prays for judgment against Defendants as follows:

1. For a finding that ARIC policy number US 041121-00, the subject policy, did not or should not be deemed to have lapsed and was in force and effect on the date of the wreck in which Plaintiff's decedent was killed;

2. For an order reforming ARIC policy number US 041121-00 to include UIM coverage in the same limits as the liability coverage;

3. For the costs and expenses of this action: and

4. For such other relief as this Court may deem just and equitable.

PHILPOT LAW FIRM, PA

BY: Eric H. Philpot
Eric H. Philpot SC Bar No. 14137
Attorney for Plaintiff
115 Broadus Avenue
Greenville, SC 29601
(864) 242-1366

Greenville, South Carolina

July 23, 2012

STATE OF SOUTH CAROLINA W. LANCASTER IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS
2012 AUG 10 P 12:02

Kathy L. Freeman,
AS Personal Representative of the
Estate of Jerry Dale Freeman
Plaintiff

vs.

Laurens Cycle Sales, Inc., D/B/A
Honda of Laurens, Cooper Motor
Sales, LLC, Ruth F. Tumblin, U.S.
Insurance Services, Inc., and
Assurant, Inc. D/B/A American
Reliable Insurance Company,

Defendants

ANSWER TO AMENDED COMPLAINT
AND
CROSS-COMPLAINT

2012-CP-30-149

Laurens Cycle Sales, Inc., d/b/a
Honda of Laurens and Cooper Motor
Sales, LLC,

Cross-Plaintiffs

vs.

Ruth F. Tumblin, U.S. Insurance
Services, Inc., and Assurant, Inc.,
D/B/A American Reliable Insurance
Company,

Cross-Defendants

In response to the Complaint herein, the Defendants Laurens
Cycle Sales, Inc., d/b/a Honda of Laurens and Cooper Motor Sales,
LLC (hereinafter "the named defendants") would show:

FOR AN ANSWER

1. Any allegation not admitted or qualified is denied,
including Paragraphs 13, 16, 20, 24 and 29.
2. Paragraph 1 is admitted on information and belief.
3. Paragraph 2 is denied as to recovery entitlement.

4. Paragraph 3 is admitted.

5. Paragraph 4 is denied. Cooper Motor Sales, LLC is an improper party in this lawsuit, and the named defendants move that it be dismissed.

6. Paragraph 5 is admitted on information and belief.

7. Paragraph 6 is admitted on information and belief.

8. It is admitted that Ruth Tumblin worked for Laurens Cycle Sales and was an agent for U.S. Insurance.

9. It is admitted that during the relevant period Ruth Tumblin was the majority owner of Laurens Cycle Sales, Inc. and that she sold insurance as an agent for U.S. Insurance. The named defendants object to the balance of Paragraph 8 as improperly pleading a conclusion of law.

JR7
P.2
10. As to Paragraph 9, it is admitted that Plaintiff's decedent went to Laurens Cycle Sales and spoke with Ruth Tumblin about obtaining insurance from Reliable Insurance Company and that she sold him coverage. Upon information and belief, Ms. Tumblin promised that she would see that coverage was provided, and Mr. Freeman was obligated to make payments to U.S. Insurance Services, Inc. for the coverage. To the extent that Ms. Tumblin may be found to have acted as an agent of the named defendants in the sale of insurance, she violated the terms of her employment and exceeded the scope of her authority by any misdeeds in the establishment of insurance coverage.

11. It is admitted that Plaintiff's decedent was asked to complete a Selection Rejection form regarding underinsured motorist coverage. The named defendants object to the balance of Paragraph

10 as improperly pleading conclusions of law. The named defendants would also show that the decedent clearly intended to select the minimum coverage required by law and was therefore ineligible for underinsured coverage.

12. It is admitted that on or about 12/3/09 Plaintiff's decedent sustained a fatal injury while driving his motorcycle. Defendants are unable to confirm or deny conversations to which they were not a part and consequently deny them. It is denied on information and belief that defendant Tumblin claimed that any omission on her part was in her capacity as an agent for Laurens Cycle Sales. The named defendants would also show that the decedent had completed his purchase of insurance by giving completed documents to defendant Tumblin (See attached Exhibit A). However, he was sent a Notice of Cancellation or Refusal to Renew by U.S. Insurance Services in September of 2009 (Exhibit B), and he then willfully and recklessly ignored this notice contrary to his contractual and equitable obligations. His prior breach of the insurance contract was the intervening proximate cause of his loss, and he is the author of his own injury.

13. The named defendants object to Paragraph 12 as improperly pleading conclusions of law and move that it be stricken.

14. Paragraphs 14 and 15 are admitted as to Defendant U.S. Insurance and its agent Ruth Tumblin. The misdeeds alleged by defendant Tumblin would have breached her contract with Laurens Cycle Sales and would have exceeded the scope of her employment. The named defendants object to the improperly pled conclusions of law pertaining to them and move that they be stricken.

15. Paragraphs 17, 18, and 19 are denied as to the named defendants.

16. Paragraph 21 is admitted.

17. Paragraph 22 is admitted on information and belief.

18. Paragraph 23 is admitted as to the acts and omissions of the other defendants.

19. Paragraph 25 and 26 are admitted.

20. Paragraph 27 is denied as to direction by the named defendants. Upon information and belief, the form in question was filled out by the decedent and correctly reflected his informed and voluntary choice of coverage.

21. Paragraph 28 is admitted as to the liability of Jimmy Hudson and denied as to liability of the named defendants for any inadequacy of Plaintiff's settlement. Plaintiff claims that her damages exceed the amount of her settlement, yet she did not attempt to collect from Jimmy Hudson, the true cause of her loss, beyond policy limits and did not consult with the Defendants before increasing their alleged liability with an inadequate settlement. Plaintiff should be barred from benefitting from this wrong against the named defendants.

22. As to Paragraphs 30 and 31, the Court should make such findings against ARIC as may be warranted by the evidence. Decedent's rejection of underinsured motorist coverage is shown by Exhibit C attached hereto. The named defendants deny any liability for any acts or omissions of ARIC and those acting on its behalf.

23. The named defendants did not write the alleged policy or its application form and are not the insurers under the policy;

JR7
P.4

therefore, they are not responsible for any defects in the application form and do not have the authority to reform the policy.

24. The named defendants deny that the policy lapsed prior to decedent's having received notice of an omission correctable by him, because the insurer's agent had received a complete application and a premium payment and decedent received a notice of impending cancellation, which he ignored. Whether the policy lapsed or was in force is also irrelevant because the decedent chose only liability coverage and did not insure himself against the harm for which he seeks payment. He was not eligible to obtain underinsured coverage on himself because of his coverage choices, so the potential cost of such coverage, which was disclosed to him, is irrelevant.

JR7
P5
25. The Plaintiff did not suffer loss from any acts or omissions by the named defendants, but any damages for which the named defendants may become liable because of defendant Tumblin's acts or omissions should be in proportion to their participation in the causation of Plaintiff's actual loss. The Plaintiff is entitled to only one recovery for the alleged breach of contract.

26. The named defendants deny any contractual liability and liability for damages resulting from Plaintiff's claims.

FOR A CROSS-CLAIM

27. The preceding allegations are incorporated herein by reference.

28. Jurisdiction and venue are proper with this Court.

29. At all times relevant to this action defendant Tumblin was an agent for U.S. Insurance Services, Inc. and Assurant, Inc., D/B/A American Reliable Insurance Company.

30. If Cross-Defendant Tumblin failed to secure insurance for Plaintiff's decedent after he properly filled out an application and paid his premium and thereby created liability for the named defendants, this would breach her duties to Laurens Cycle Sales, Inc. and would be outside the scope her agency with Laurens Cycle Sales, Inc.

31. As a result of Cross-Defendant Tumblin's alleged breach of her contractual duties, Cross-Plaintiffs through no fault of their own have become defendants in this lawsuit.

32. Defendant Tumblin as agent for ARIC and Assurant allegedly received a premium from Plaintiff's decedent and a completed application of insurance and promised the decedent insurance coverage on his motorcycle. ARIC should therefore provide coverage of the type and in the amount which the Court may find to be applicable without contribution from Cross-Plaintiffs.

33. If Cross-Plaintiffs becomes liable to Plaintiff for damages because of the acts or omissions of Cross-Defendant Tumblin and her Cross-Defendant insurer principals (the other defendants), Cross-Defendants should be required to indemnify and hold Cross-Plaintiffs harmless, or, in the alternative, such damages should be divided in proportion to whose acts and omissions caused Plaintiff's loss. Cross-Plaintiffs are entitled to have Cross-Defendants pay their costs and attorney fees.

JR7
P.6

WHEREFORE, the named Defendants/Cross-Plaintiffs pray the Court to inquire into the matters herein, to dismiss Cooper Motor Sales, LLC as a party, to dismiss the Amended Complaint herein against them or to strike conclusions of law from the Amended Complaint, and to render a fair verdict which does not punish them for the wrongdoing of others but instead indemnifies them for the wrongs of others or divides any judgment according to the degree of responsibility for the loss. The named defendants are also entitled to reimbursement for their costs and attorney fees.

JR7
P.7

COX & FERGUSON
Attorneys for Laurens Cycle Sales, Inc.
And Cooper Motor Company, LLC

By:

John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987

107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

August 10, 2012

Exhibit A

Policy number: 55469433-0

Policyholder: JERRY D FREEMAN

Policy period: Aug 12, 2009 - Feb 12, 2010

Page 1 of 1

This information will complete your purchase of insurance

Please review the items listed below and **return the requested information to my office** as soon as possible. Your insurance premium is based on the information you provided on the application. If we do not receive the items requested, your insurance premium may change.

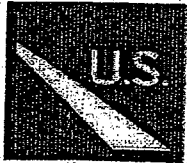
Sign and return

- ☐ Your application
- ☐ Coverage options requiring a signature

A copy of the documents listed below must be received by August 28, 2009.

Return to: RUTH F TUMBLIN
LAURENS CYCLE SALES
PO BOX 449
LAURENS, SC 29360
Fax: 864-683-3130

Exhibit B



Insurance
Services

Agent:

LAURENS CYCLE SALES
PO BOX 449
LAURENS, SC 29360

Insured:

JERRY D FREEMAN
1033 BOYD RD
LAURENS, SC 29360

NOTICE OF CANCELLATION OR REFUSAL TO RENEW (South Carolina)

Policy Type: Motorcycle/ATV

Effective Date: 08/07/2009

Policy Number	Agent	Cancellation or Termination will take effect at (Date) (Hour Standard Time)	Date of Notice
USM 041121-00	LAURENS CYCLE SALES	11/16/2009 12:01 AM Standard Time	09/17/2009

THIS NOTICE MAILED TO:

(X) CANCELLATION OF EXISTING POLICY

YOU ARE HEREBY NOTIFIED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ABOVE NUMBERED POLICY AND IN ACCORDANCE WITH THE LAW, THAT YOUR INSURANCE WILL CEASE AT AND FROM THE HOUR AND DATE INDICATED ABOVE. IF PREMIUM HAS BEEN PAID, PREMIUM ADJUSTMENT WILL BE MADE AS SOON AS PRACTICABLE.

() NON-RENEWAL OF PRESENT POLICY

YOU ARE HEREBY NOTIFIED, IN ACCORDANCE WITH THE LAW, THAT THE ABOVE NUMBERED POLICY WILL EXPIRE EFFECTIVE AT AND FROM THE HOUR AND DATE INDICATED ABOVE AND THE POLICY WILL NOT BE RENEWED.

THIS ACTION HAS BEEN TAKEN FOR THE FOLLOWING SPECIFIC REASON OR REASONS:

We have been unable to obtain required information necessary to complete your application for insurance. Please contact your agent for assistance or replacement coverage.

INFORMATION REGARDING YOUR RIGHT TO A REVIEW

WITHIN THIRTY DAYS OF RECEIVING THIS NOTICE, YOU OR YOUR ATTORNEY MAY REQUEST IN WRITING THAT THE DIRECTOR REVIEW THIS ACTION TO DETERMINE WHETHER THE INSURER HAS COMPLIED WITH SOUTH CAROLINA LAWS IN CANCELLING OR NON-RENEWING YOUR POLICY. IF THIS INSURER HAS FAILED TO COMPLY WITH THE CANCELLATION OR NON-RENEWAL LAWS, THE DIRECTOR MAY REQUIRE THAT YOUR POLICY BE REINSTATED. HOWEVER, THE DIRECTOR IS PROHIBITED FROM MAKING UNDERWRITING JUDGEMENTS. IF THIS INSURER HAS COMPLIED WITH THE CANCELLATION OR NON-RENEWAL LAWS, THE DIRECTOR DOES NOT HAVE THE AUTHORITY TO OVERTURN THIS ACTION. YOUR REQUEST FOR REVIEW SHOULD BE ADDRESSED TO THE CHIEF INSURANCE COMMISSIONER, SC INSURANCE DEPARTMENT, PO BOX 100105, COLUMBIA, SC 29202-3105. PHONE#(800) 768-3467

THE SOUTH CAROLINA DEPARTMENT OF INSURANCE PROVIDES A BUYER'S GUIDE REGARDING PROPERTY INSURANCE SHOPPING AND AVAILABILITY AS WELL AS INFORMATION ON OTHER INSURANCE. YOU MAY CONTACT THE SOUTH CAROLINA DEPARTMENT OF INSURANCE AT CAPITOL CENTER, 120 MAIN STREET, SUITE 1000, COLUMBIA, SC 29201 - PO BOX 100105, COLUMBIA, SOUTH CAROLINA 29202-3105; PHONE: (803) 737-6180 - FAX: (803) 737-6205.

PLEASE CONTACT YOUR AGENT FOR THE POSSIBLE AVAILABILITY OF OTHER INSURANCE WHICH MAY BE OBTAINED THROUGH THE AGENCY.

LIENHOLDER: FOUNDERS FCU 607 N MAIN ST LANCASTER, SC 29720-2137

Company Name: AMERICAN RELIABLE INS. CO.

Address: PO Box 47000 □ Jacksonville FL □ 32247 □ 1-800-874-1738

By:

(Authorized Signature)

Auto

Exhibit C

III. Offer of underinsured motorist coverage

Limits of Coverage	Amounts of Increased Premium
\$25,000/\$50,000/\$25,000	\$24.00
\$50,000/\$100,000/\$25,000	n/a
\$50,000/\$100,000/\$50,000	n/a
\$100,000/\$300,000/\$50,000	n/a
\$100,000/\$300,000/\$100,000	n/a
\$250,000/\$500,000/\$100,000	n/a
//	n/a
//	n/a
//	n/a

To obtain the underinsured motorist premium amounts for adding or removing vehicles, please contact us.

Do you wish to purchase underinsured motorist coverage? Yes _____ No ✓

If your answer is "no," then you must sign here.

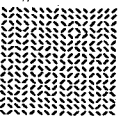
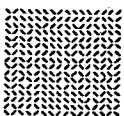
Your Signature

X Jerry D. Freeman 8-12-09

If your answer is "yes," then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits.

I select _____ / _____ / _____ split limits; or

I select _____ Combined Single Limit



599

Auto

IV. Applicant's acknowledgment

By my signature, I acknowledge that I have read -- or I have had read to me -- the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or Print Your Name: JERRY D FREEMAN
Your Address: 1033 BOYD ROAD
LAURENS, SC 29360

Your Signature

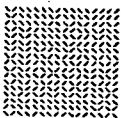
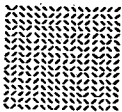
X

Jerry D. Freeman

Form 2006 SC (11/07)

Today's Date

8-12-09



699

LYNN W) LANCASTER

IN THE COURT OF COMMON PLEAS
2012 AUG 28 P 12:43

LAURENS COUNTY
CLERK OF COURT

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Complaint.

2. The Defendant admits the allegations of Paragraph Twenty-Eight and Twenty-Nine of the Cross-Complaint.

3. The Defendant denies the allegations of Paragraph Thirty of the Cross-Complaint.

4. The Defendant denies the allegations of Paragraph Thirty-One of the Cross-Complaint.

5. The Defendant admits so much of Paragraph Thirty-Two of the Cross-Complaint as alleges that she was the agent of ARIC and Assurant and did receive a premium from the Plaintiff's decedent for the insurance on his motorcycle. The Defendant denies for lack of information to form a belief as to whether or not she did receive an application for the insurance.

6. The Defendant admits ARIC should provide coverage of the type and amount which the Court may find to be applicable without contribution from the Cross-Plaintiffs.

7. The Defendant denies the allegations of Paragraph Thirty-Three of the Cross-Complaint.

FOR A SECOND DEFENSE BY WAY OF COUNTERCLAIM

8. The Defendant is a citizen and resident of the County of Laurens, State of South Carolina.

9. The Defendant Laurens Cycle Sales, Inc., d/b/a Honda of Laurens is a corporation organized and existing under the laws of the State of South Carolina and doing business in the County of Laurens, State of South Carolina.

10. The Defendant Lynn W. Cooper, III is a citizen and resident of the County of Laurens, State of South Carolina.

11. By an agreement dated June 23, 2008, and subsequently modified on July 2, 2010, The Defendant Honda of Laurens did agree to pay to the Defendant Ruth F. Tumblin the sum of One Hundred Thirty-Six Thousand (\$136,000.00) Dollars. This was to be paid at the rate of Two Thousand Six Hundred Seventy Five and 62/100 (\$2,675.62) Dollars per month until paid in full. This agreement was subsequently modified on August 23, 2010, by which the Defendant Honda of Laurens would pay to the Defendant Ruth Tumblin the balance of One Hundred Ten Thousand One Hundred Seventy Three and 50/100 (\$110,173.50) Dollars at the rate of One Thousand Eight Hundred (\$1,800.00) Dollars per month commencing on September 15, 2011.

12. The Defendant Honda of Laurens did make the payments in accordance with this agreement through January of 2012. There is a balance due and owing on the indebtedness of One Hundred Three Thousand Six Hundred Thirty-Eight and 67/100 (\$103,638.67) Dollars plus accumulated interest since that date.

13. The Defendant Honda of Laurens has refused to make payments in accordance with the agreement notwithstanding demand by the Defendant Ruth F. Tumblin.

14. The performance of Honda of Laurens was guaranteed by the Defendant Lyn W. Cooper, III.

15. The Defendant Ruth F. Tumblin therefore requests judgement against Honda of Laurens and Lyn W. Cooper, III, in the amount of One Hundred Three Thousand Six Hundred Thirty-Eight and 67/100 (\$103,638.67) Dollars plus interests and reasonable attorney's fees in accordance with the agreement of the parties.

WHEREFORE, the Defendant Ruth F. Tumblin having fully answered the allegations of the Cross-Complaint, prays for the order of the Court as follows:

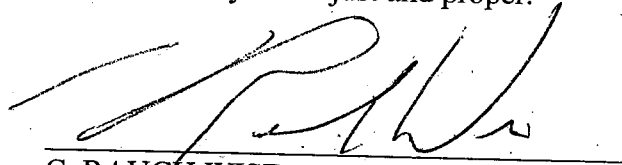
1. Dismissing the Cross-Complaint.

2. Entering judgement against the Defendant Honda of Laurens and Lyn W.

Cooper, III in the amount of One Hundred Three Thousand Six Hundred Thirty-Eight and 67/100 (\$103,638.67) Dollars plus interests and reasonable attorney's fees.

3. For such other and further relief as the Court may deem just and proper.

August 24, 2012



C. RAUCH WISE

305 Main Street

Greenwood, South Carolina 29649

(864) 229-5010

Rauch@emerald.is.com

S.C. Bar N° 06188

Attorney for the Defendant Ruth F. Tumblin

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Kathy L. Freeman,
As Personal Representative of the
Estate of Jerry Dale Freeman,

Plaintiff

vs.

Laurens Cycle Sales, Inc., D/B/A
Honda of Laurens, Cooper Motor
Sales, LLC, Rhonda Tumblin as
Personal Representative of the
Estate of Ruth F. Tumblin, U.S.
Insurance Services, Inc., and
Assurant, Inc., D/B/A American
Reliable Insurance Company,

Defendants

ANSWER TO SECOND
AMENDED COMPLAINT
AND
CROSS-COMPLAINT

2012-CP-30-149

Laurens Cycle Sales, Inc., d/b/a
Honda of Laurens and Cooper Motor
Sales, LLC,

Cross-Plaintiffs

vs.

Rhonda Tumblin as Personal
Representative of the Estate of
Ruth F. Tumblin, U.S. Insurance
Services, Inc., and Assurant, Inc.,
D/B/A American Reliable Insurance
Company,

Cross-Defendants

LAURENS COUNTY
CLERK OF COURT

2013 DEC -4 A 11:38

LYNN W. LANCASTER

In response to the Second Amended Complaint herein, the Defendants Laurens Cycle Sales, Inc., d/b/a Honda of Laurens, and Cooper Motor Sales, LLC (hereinafter "the named defendants") would show:

FOR AN ANSWER

1. Any allegation not admitted or qualified is denied, including Paragraphs 13, 16, 20, 24 and 29.
2. Paragraph 1 is admitted on information and belief.
3. Paragraph 2 is denied as to recovery entitlement.
4. Paragraph 3 is admitted, except as to the allegation of the corporation's involvement with selling, financing and procuring insurance.
5. Paragraph 4 is denied. Cooper Motor Sales, LLC, which is non-existent, is an improper party in this lawsuit, and the named defendants move that it be dismissed.
6. Paragraph 5 is admitted on information and belief.
7. Paragraph 6 is admitted on information and belief.
8. Paragraph 7 is admitted, except that Defendant Tumblin was not the agent of the named defendants for the sale of insurance.
9. It is denied that Ruth Tumblin was an agent for the named defendants in the sale of insurance. It is admitted that she was an agent for U.S. Insurance in the sale of insurance.
10. As to Paragraph 9, it is admitted that Plaintiff's decedent went to the premises of Laurens Cycle Sales and spoke with Ruth Tumblin about obtaining insurance from Reliable Insurance Company and that she sold him coverage. Upon information and belief, Ms. Tumblin promised that she would see that coverage was provided, and Mr. Freeman was obligated to make payments to U.S. Insurance Services, Inc. for the coverage. To the extent that Ms. Tumblin may be found to have acted as an agent of the named defendants in the sale of insurance, she violated the terms of her

JR7
P.2

employment and exceeded the scope of her authority by any misdeeds or negligence in the establishment of insurance coverage.

11. It is admitted that Plaintiff's decedent was asked to complete a Selection Rejection form regarding underinsured motorist coverage. The named defendants would also show that the decedent clearly intended to select the minimum coverage required by law and was therefore ineligible for underinsured coverage. It is denied that the offer of UIM coverage was ineffective.

12. It is admitted that on or about 12/3/09 Plaintiff's decedent sustained a fatal injury while driving his motorcycle. Defendants are unable to confirm or deny conversations to which they were not a part and consequently deny them. It is denied on information and belief that defendant Tumblin claimed that any omission on her part was in her capacity as an agent for Laurens Cycle Sales, as may be seen from her attached Response to Requests for Admission (Exhibit A). The named defendants would also show that the decedent had completed his purchase of insurance by giving a completed application to Defendant Tumblin. However, he was sent a Notice of Cancellation or Refusal to Renew by U.S. Insurance Services in September of 2009 (Exhibit B), and he then willfully and recklessly ignored this notice contrary to his contractual and equitable obligations. His prior breach of the insurance contract was the intervening proximate cause of his loss, and he is the author of his own injury. The named defendants object to that portion of Paragraph 11 which improperly pleads conclusions of law and hearsay and move that it be stricken.

13. The named defendants object to Paragraph 12 as improperly pleading conclusions of law and move that it be stricken. They further deny any privity of contract with or contractual obligation to the Plaintiff's decedent.

14. Paragraphs 14 and 15 are admitted as to Defendant U.S. Insurance and its agent Ruth Tumblin and denied as to the named defendants. The misdeeds alleged by defendant Tumblin would have breached her contract with Laurens Cycle Sales and would have exceeded the scope of her employment. The named defendants, who deny any liability to Plaintiff, object to the improperly pled conclusions of law pertaining to them and move that they be stricken.

15. Paragraphs 17, 18, and 19 are denied as to the named defendants.

16. As to Paragraph 21, there was initially insurance coverage; but it expired when Plaintiff's decedent failed to respond to the insurer's notice of cancellation.

17. Paragraph 22 is admitted on information and belief.

18. The named defendants deny Paragraph 23.

19. Paragraph 25 and 26 are admitted except to the extent that the negligence of Plaintiff's decedent in ignoring the notice of cancellation became an intervening or concurring proximate cause of his loss. Any implication that Defendant Tumblin was acting as an agent for the named defendants is denied.

20. Paragraph 27 is denied as to direction by the named defendants. Upon information and belief, the form in question was

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P-4

filled out by the decedent, correctly reflected his informed and voluntary choice of coverage and was properly forwarded to ARIC.

21. Paragraph 28 is admitted as to the liability of Jimmy Hudson and denied as to liability of the named defendants for any inadequacy of Plaintiff's settlement. Plaintiff claims that her damages exceed the amount of her settlement, yet she did not attempt to collect from Jimmy Hudson, the true cause of her loss, beyond policy limits and did not consult with the Defendants before increasing their alleged liability with an inadequate settlement. Plaintiff should be barred from benefitting from this wrong against the named defendants.

22. As to Paragraphs 30 and 31, the Court should make such findings against ARIC as may be warranted by the evidence. The named defendants deny any liability for any acts or omissions of ARIC and those acting on its behalf, and they deny that the form used was insufficient and that the offer of UIM coverage was not made in a commercially reasonable manner.

23. The named defendants did not write the alleged policy or its application form and are not the insurers under the policy; therefore, they are not responsible for any defects in the application form and do not have the authority to reform the policy.

24. The named defendants deny that the policy lapsed prior to decedent's having received notice of an omission correctable by him, because the insurer's agent had received a complete application and a premium payment and decedent received a notice of impending cancellation, which he ignored. Whether the policy lapsed or was in force is also irrelevant because the decedent chose only

liability coverage and did not insure himself against the harm for which he seeks payment. He was not eligible to obtain underinsured coverage on himself because of his coverage choices, so the potential cost of such coverage, which was sufficiently disclosed to him, is irrelevant.

25. The Plaintiff did not suffer loss from any acts or omissions by the named defendants, but any damages for which the named defendants may become liable because of defendant Tumblin's acts or omissions should be in proportion to their participation in the causation of Plaintiff's actual loss. The Plaintiff is entitled to only one recovery for the alleged breach of contract.

26. The named defendants deny any contractual liability and liability for damages resulting from Plaintiff's claims.

FOR A CROSS-CLAIM

27. The preceding allegations are incorporated herein by reference.

28. Jurisdiction and venue are proper with this Court.

29. At all times relevant to this action defendant Tumblin was an agent for U.S. Insurance Services, Inc. and Assurant, Inc., D/B/A American Reliable Insurance Company. She was not acting as an agent for the named defendants in her sale of insurance.

30. If Cross-Defendant Tumblin (here represented by her Personal Representative Rhonda Tumblin) failed to secure insurance for Plaintiff's decedent after he properly filled out an application and paid his premium and thereby created liability for the named defendants, this would breach her duties to Laurens Cycle Sales,

JR7
P.6

Inc. and would be outside the scope her agency with Laurens Cycle Sales, Inc.

31. As a result of Cross-Defendant Tumblin's alleged breach of her contractual duties, Cross-Plaintiffs through no fault of their own have become defendants in this lawsuit.

32. Defendant Tumblin as agent for ARIC and Assurant allegedly received a premium from Plaintiff's decedent and a completed application of insurance and promised the decedent insurance coverage on his motorcycle. ARIC should therefore provide coverage of the type and in the amount which the Court may find to be applicable without contribution from Cross-Plaintiffs.

33. If Cross-Plaintiffs becomes liable to Plaintiff for damages because of the acts or omissions of Cross-Defendant Tumblin and her Cross-Defendant insurer principals (the other defendants), Cross-Defendants should be required to indemnify and hold Cross-Plaintiffs harmless, or, in the alternative, such damages should be divided in proportion to whose acts and omissions caused Plaintiff's loss. Cross-Plaintiffs are entitled to have Cross-Defendants pay their costs and attorney fees.

WHEREFORE, the named Defendants/Cross-Plaintiffs pray the Court to inquire into the matters herein, to dismiss Cooper Motor Sales, LLC as a party, to dismiss the Amended Complaint herein against them or to strike conclusions of law and other improperly pled matter from the Amended Complaint, and to render a fair verdict which does not punish them for the wrongdoing of others but instead indemnifies them for the wrongs of others or in the alternative divides any

judgment according to the degree of responsibility for the loss.
The named defendants are also entitled to reimbursement for their
costs and attorney fees.

COX, FERGUSON & Wham, LLC
Attorneys for Laurens Cycle Sales, Inc.
And Cooper Motor Company, LLC

By: John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987
107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

JR7
P.8

December 4, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Kathy L. Freeman, As Personal)
representative of the Estate of)
Jerry Dale Freeman,)
Plaintiff,)

RESPONSE TO REQUESTS FOR ADMISSION

-vs-)

Laurens Cycle Sales, Inc., D/B/A Honda)
of Laurens, Cooper Motor Sales, LLC,)
Ruth F. Tumblin, U.S. Insurance Services,)
Inc., and Assurant, Inc., D/B/A American)
Reliable Insurance Company,)
Defendants.)

Case No.: 2012-CP-30- 149

The Defendant, Ruth F. Tumblin, responds to the Plaintiff's Request for Admission as follows:

1. When Defendant, Ruth F. Tumblin dealt with Jerry Dale Freeman to insure his motorcycle, it was solely in her capacity as agent for the insurer and not as an agent for Laurens Cycle Sales, Inc. or Cooper Motor Sales, LLC.

ANSWER: Yes.

2. Any failure of Defendant, Ruth F. Tumblin to make any premium payment to an insurer regarding Jerry Dale Freeman was not on behalf of Laurens Cycle Sales, Inc. or Cooper Motor Sales, LLC.

ANSWER: Yes.

3. Any application for insurance which Defendant, Ruth F. Tumblin took from Jerry Dale Freeman was in her capacity as an agent for the insurer and not as an agent for

Laurens Cycles Sales, Inc., or Cooper Motor Sales, LLC.

ANSWER: Yes.

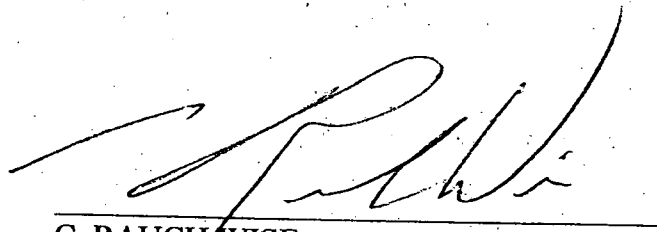
4. Any failure of Defendant, Ruth F. Tumblin to forward an application of insurance or premium payment to insurer on behalf of Jerry Dale Freeman was done solely in her capacity as agent for the insurer and not as an agent for Laurens Cycle Sales, Inc. or Cooper Motor Sales, LLC.

ANSWER: Yes.

5. Jerry Dale Freeman freely, knowingly and voluntarily rejected any insurance coverage which exceeded the minimum required of him by law, including insurance for injury to himself and damage to his motorcycle.

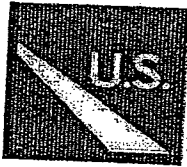
ANSWER: Yes.

#V
August 28, 2012



C. RAUCH/WISE
305 Main Street
Greenwood, South Carolina 29649
(864) 229-5010
Rauch@emeraldis.com
S.C. Bar N° 06188

Attorney for the Defendant Ruth F. Tumblin



**Insurance
Services**

Exhibit B

Agent:
LAURENS CYCLE SALES
PO BOX 449
LAURENS, SC 29360

Insured:
JERRY D FREEMAN
1033 BOYD RD
LAURENS, SC 29360

NOTICE OF CANCELLATION OR REFUSAL TO RENEW (South Carolina)

Policy Type: Motorcycle/ATV

Effective Date: 08/07/2009

Policy Number	Agent	Cancellation or Termination will take effect at (Date) (Hour Standard Time)	Date of Notice
USM 041121-00	LAURENS CYCLE SALES	11/16/2009 12:01 AM Standard Time	09/17/2009

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(X) CANCELLATION OF EXISTING POLICY

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() NON-RENEWAL OF PRESENT POLICY

YOU ARE HEREBY NOTIFIED, IN ACCORDANCE WITH THE LAW, THAT THE ABOVE NUMBERED POLICY WILL EXPIRE EFFECTIVE AT AND FROM THE HOUR AND DATE INDICATED ABOVE AND THE POLICY WILL NOT BE RENEWED.

THIS ACTION HAS BEEN TAKEN FOR THE FOLLOWING SPECIFIC REASON OR REASONS:

We have been unable to obtain required information necessary to complete your application for insurance. Please contact your agent for assistance or replacement coverage.

INFORMATION REGARDING YOUR RIGHT TO A REVIEW

WITHIN THIRTY DAYS OF RECEIVING THIS NOTICE, YOU OR YOUR ATTORNEY MAY REQUEST IN WRITING THAT THE DIRECTOR REVIEW THIS ACTION TO DETERMINE WHETHER THE INSURER HAS COMPLIED WITH SOUTH CAROLINA LAWS IN CANCELLING OR NON-RENEWING YOUR POLICY. IF THIS INSURER HAS FAILED TO COMPLY WITH THE CANCELLATION OR NON-RENEWAL LAWS, THE DIRECTOR MAY REQUIRE THAT YOUR POLICY BE REINSTATED. HOWEVER, THE DIRECTOR IS PROHIBITED FROM MAKING UNDERWRITING JUDGEMENTS. IF THIS INSURER HAS COMPLIED WITH THE CANCELLATION OR NON-RENEWAL LAWS, THE DIRECTOR DOES NOT HAVE THE AUTHORITY TO OVERTURN THIS ACTION. YOUR REQUEST FOR REVIEW SHOULD BE ADDRESSED TO THE CHIEF INSURANCE COMMISSIONER, SC INSURANCE DEPARTMENT, PO BOX 100105, COLUMBIA, SC 29202-3105. PHONE#(800) 768-3467

THE SOUTH CAROLINA DEPARTMENT OF INSURANCE PROVIDES A BUYER'S GUIDE REGARDING PROPERTY INSURANCE SHOPPING AND AVAILABILITY AS WELL AS INFORMATION ON OTHER INSURANCE. YOU MAY CONTACT THE SOUTH CAROLINA DEPARTMENT OF INSURANCE AT CAPITOL CENTER, 120 MAIN STREET, SUITE 1000, COLUMBIA, SC 29201 - PO BOX 100105, COLUMBIA, SOUTH CAROLINA 29202-3105; PHONE: (803) 737-6180 - FAX: (803) 737-6205.

PLEASE CONTACT YOUR AGENT FOR THE POSSIBLE AVAILABILITY OF OTHER INSURANCE WHICH MAY BE OBTAINED THROUGH THE AGENCY.

LIENHOLDER: FOUNDERS FCU 607 N MAIN ST LANCASTER, SC 29720-2137

Company Name: AMERICAN RELIABLE INS. CO.

Address: PO Box 47000 □ Jacksonville FL □ 32247 □ 1-800-874-1738

By:

[Signature]

(Authorized Signature)

LYNN W. LANCASTER
STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

2014 OCT -8 P 12:08
Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)
Cross-Defendant)

MOTION TO AMEND

2012-CP-30-149

TO: RAUCH WISE, ATTORNEY FOR THE CROSS-DEFENDANT

YOU WILL PLEASE TAKE NOTICE that ten days hence, or as soon thereafter as the undersigned can be heard, he will move the Court under Rule 15, SCRCF to allow him to amend or supplement the Cross-Complaint herein in accordance with the attached Amended Cross-Complaint. The amendment is made necessary by new information which has come to light about prejudicial misconduct of the Cross-Defendant. Justice requires the allowance of the amendment, and any prejudice to Cross-Defendant resulting from the amendment (which prejudice is denied) is far less than that which would result to the Cross-Plaintiff if the amendment is not granted. The undersigned attempted to obtain the consent of opposing counsel, but this was not granted so judicial intervention is necessary.

COX, FERGUSON & WHAM, LLC
Attorneys for the Cross-Plaintiff

By: _____

John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987

107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

October 8, 2014

STATE OF SOUTH CAROLINA-)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Laurens Cycle Sales, Inc., P/O 108)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)

Cross-Defendant)

SUMMONS AND NOTICE

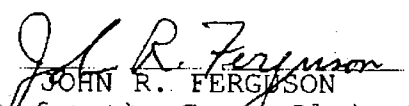
2012-CP-30-149

TO THE CROSS-DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Cross-Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Cross-Complaint on the Cross-Plaintiff(s) or the undersigned attorney at his offices within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Cross-Complaint within the time aforesaid, the Cross-Plaintiff(s) in this action will apply to the Court for the relief demanded in the Amended Cross-Complaint by way of default judgement.

TO: INFANTS UNDER FOURTEEN YEARS OF AGE, INCOMPETENTS, INSANE PERSONS, AND GENERAL OR TESTAMENTARY GUARDIANS OR THE COMMITTEE WITH WHOM ANY SUCH PERSON SHALL RESIDE:

You are further summoned and notified to apply for appointment of a Guardian ad Litem to represent the above noticed persons within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment may be made by the Cross-Plaintiff(s) herein.


JOHN R. FERGUSON
Attorney for the Cross-Plaintiff
S.C. Bar No. 1987
107 E. Laurens St. - PO Box 286
Laurens, S. C. 29360-01286
Phone: (864) 984-2126

October 8, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

2014 OCT -8 P 12:08
Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)
Cross-Defendant)

AMENDED CROSS-COMPLAINT

2012-CP-30-149

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P.1
This action began with Laurens Cycle Sales, Inc., d/b/a Honda of Laurens, Cooper Motor Sales, LLC and Ruth F. Tumblin as defendants. During the pendency of the action, Defendant Tumblin died and her estate was substituted as a party. The Plaintiff's case then settled leaving only the above-named parties in the action. To make the pleadings less confusing, Cross-Plaintiffs will continue with that designation and will refer to Ruth Tumblin and her Estate as Cross-Defendant. Cross-Plaintiffs would show:

FOR A FIRST CAUSE OF ACTION (Breach of Contract)

1. The parties, except for Cooper Motor Sales, LLC, are residents of Laurens County, and jurisdiction and venue are proper with this Court. Cooper Motor Sales, LLC is a non-existent entity.

2. At all times relevant to this action defendant Tumblin was an agent for U.S. Insurance Services, Inc. and Assurant, Inc., D/B/A American Reliable Insurance Company.

3. Prior to the sale of her business, Cross-Defendant Tumblin failed to secure insurance for Larry Dale Freeman after he properly filled out an application and paid his premium and thereby created liability for Cross-Plaintiff, Laurens Cycle Sales, Inc.

4. As a result of Cross-Defendant Tumblin's breach of her duty to Cross-Plaintiff, Cross-Plaintiff through no fault of its

own became liable to the Jerry Dale Freeman Estate for her omissions and incurred substantial costs and attorney fees defending and then settling an action by the Freeman Estate.

5. Cross-Plaintiff's liability to the Freeman Estate for damages was solely because of the acts or omissions of Cross-Defendant Tumblin, and she did not disclose this liability as she was required to do before selling her business to Laurens Cycle Sales, Inc. Cross-Defendant should be required to reimburse, indemnify and hold Cross-Plaintiffs harmless. Cross-Plaintiffs are entitled to have Cross-Defendant pay costs and attorney fees.

6. In addition to this, Ruth F. Tumblin violated the parties' contract as follows:

- a) She overstated the parts inventory by \$ 219,410.25;
- b) She grossly misrepresented the viability of the business;
- c) She did not disclose that she was behind in paying the mortgage on the business's building and was facing foreclosure, which resulted in moving costs and costs in converting a warehouse into an acceptable retail space;
- d) She failed to disclose that she had made uncollectible personal loans from the business to James Farnsworth for \$ 16,602; to Neil Meyer for \$ 18,300 and to Bill Graham and his business for \$ 55,000;
- e) She failed to disclose that she had entrusted a \$ 6800 travel trailer to Bill Graham which was never returned and did not have the necessary title documentation to get it back;
- f) She did not disclose that the business owed \$ 23,371.93 in back taxes; and
- g) She did not disclose the legal and administrative costs which would be necessary to resolve her mismanagement of the business.

7. She had a duty to disclose the omitted information, because it was material to the parties' agreement; and Cross-

GR7
P.2

Plaintiff would likely not have bought the business if Cross-Defendant had not made numerous misrepresentations and concealments.

8. Cross-Plaintiff has been injured by Cross-Defendants' breach of the parties' contract and is entitled to rescission with return of all its consideration, consequential damages, reimbursement for the cost of settling the Freeman claim and the costs of this action, including a reasonable fee for its attorney.

FOR A SECOND CAUSE OF ACTION (Fraud in the Inducement)

9. The preceding allegations are incorporated herein by reference.

10. As stated above, Cross-Defendant made numerous materially false representations and actively concealed material information she was obligated to provide Cross-Plaintiff to induce Cross-Plaintiff to buy her Honda dealership.

11. She knew or should have known the falsity of her misrepresentations and the false impression created by her intentional omissions to speak where she had the duty to do so.

12. Cross-Defendant intentionally deceived Cross-Plaintiff or acted with reckless disregard of the truth or falsity of her representations and the impressions created by her omissions to disclose material information.

13. Cross-Defendant intended that Cross-Plaintiff rely on her misrepresentations and concealment of material information; and Cross-Plaintiff, which relied on Cross-Defendant's honesty and was ignorant of Cross-Defendant's fraudulent misrepresentations and concealment of material information, rightfully did so rely.

14. Cross-Plaintiff has been injured as a proximate and consequent result of Cross-Defendant's fraud in the inducement and is entitled to rescission of the parties' contract and consequential damages or actual, consequential and punitive damages plus the costs of this action.

FOR A THIRD CAUSE OF ACTION (Breach of Contract Accompanied by Fraudulent Acts)

15. The preceding allegations are incorporated herein by reference.

16. Cross-Defendant breached the parties' contract.

17. This breach was accompanied by fraudulent acts.

18. Cross-Plaintiff has been injured by Cross-Defendant's breach of contract accompanied by fraudulent acts and is entitled to rescission of the contract and consequential damages or to actual, consequential and punitive damages if the contract is not rescinded plus the costs of this action.

WHEREFORE, the Cross-Plaintiff prays the Court to grant it rescission of the parties' contract and consequential damages or actual, consequential and punitive damages plus the costs of this action, including a reasonable fee for its attorney.

JR7
P.4

COX, FERGUSON & WHAM, LLC
Attorneys for Cross-Plaintiffs

By:

John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987

107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

October 8, 2014

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Laurens Cycle Sales, Inc., d/b/a Honda
of Laurens, Cooper Motor Sales, LLC,

Cross-Plaintiffs,

vs

The Estate of Ruth F. Tumblin,

Cross-Defendant.

IN THE COURT OF COMMON PLEAS

ORDER

2012-CP-30- 149

LAURENS COUNTY
CLERK OF COURT

2015 MAY 11 A 11:11

LYNN W. LANCASTER

This matter came before me upon the Motion of the Plaintiff Laurens Cycle Sales, Inc., d/b/a Honda of Laurens and Cooper Motor Sales, LLC to amend the Answer and Cross-Complaint previously filed in this matter.

This matter originally involved a suit brought by Kathy L. Freeman as personal representative of the estate of Jerry Dale Freeman against the Plaintiffs and Defendants in this action. The Defendant Ruth F. Tumblin, by her Answer of August 24, 2012, filed a Counterclaim against Laurens Cycle Sales, Inc., d/b/a Honda of Laurens and Lynn W. Cooper, individually. The Amended Cross-Complaint alleges cause of action for breach of contract, fraud in the inducement, and breach of contract accompaniment by fraudulent acts. At the hearing in this matter, the Court raised the issue whether the fraud actions would survive the death of Ruth F. Tumblin.

The Court finds that this case was controlled by *Ferguson vs. Charleston Lincoln Mercury*, 349 S.C. 558 564 S.E2d 94 (2002) and *Brailsford vs Brailsford*, 380 S.C. 443, 669 S.E.2d 342 (2008). Both of these cases clearly hold that the survival statute in South Carolina found in S.C. Code § 15-5-90 does not permit the survival for a cause of action for fraud or an action that while

not called fraud would involve the same elements as fraud. Based upon these holdings, the Court finds that the Plaintiff is prohibited from amending the Cross-Complaint to include any action other than breach of contract.

The Defendant, the estate of Ruth F. Tumblin, also objected to amending the Complaint due to the timelessness of the amendment and several statute of limitation issues. Issues concerning the statute of limitations should not be resolved on the Motion to Amend the Complaint but only after the development of the facts in this matter. Therefore, the Order permitting the amending of the Complaint on the cause of action for breach of contract is without prejudice to the estate of Ruth F. Tumblin to raise whatever defenses she may deem to be appropriate in her Answer.

The Defendant Ruth F. Tumblin will have thirty (30) days from the date of this Order to file an Answer to the Amended Cross-Complaint.

IT IS SO ORDERED.

5-7, 2015

S/
~~Honorable R. Lawton McIntosh~~
Presiding Judge, Eighth Judicial Circuit

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

Laurens Cycle Sales, Inc., d/b/a
Honda of Laurens and Cooper Motor
Sales, LLC,)

Cross-Plaintiffs,)

vs)

The Estate of Ruth F. Tumblin,)

Cross-Defendants.)

LYNN W. LANCASTER

IN THE COURT OF COMMON PLEAS

2016 MAY 26 P 12:28

ANSWER TO AMENDED
CROSS-COMPLAINT

Case No. 2012-CP-30- 149

LAURENS COUNTY
CLERK OF COURT

The Defendant, the Estate of Ruth F. Tumblin, answering the allegations of the Cross-Complaint would respectfully allege and show unto the Court as follows:

AS TO THE FIRST CAUSE OF ACTION (Breach of Contract)

1. The Defendant admits the allegations of Paragraphs One and Two of the Amended Cross-Complaint.
2. The Defendant admits so much of the allegations of Paragraph Three as alleges that prior to the sale of the business, Ruth Tumblin, deceased, did fail to secure insurance for Larry Dale Freeman, but denies that this created any liability for the Cross-Plaintiff Laurens Cycle Sales, Inc.
3. The Defendant denies the allegations of Paragraph Four of the Amended Cross-Complaint.
4. The Defendant denies the allegations of Paragraph Five and Six of the Amended Cross-Complaint.
5. The Defendant admits that Ruth F. Tumblin had an obligation to disclose

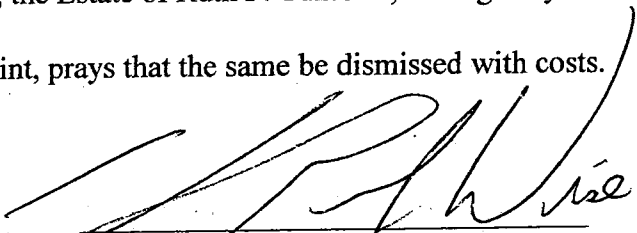
all material matters to the Plaintiff but denies that she failed to disclose any material matters.

6. The Defendant denies the allegations of Paragraph Eight of the Amended Cross-Complaint.

AS FOR A SECOND DEFENSE

7. The Defendant alleges and would show to the Court that all allegations contained in Paragraphs Five, Six, Seven, and Eight are barred by the Statute of Limitations in that the Plaintiff filed no action within three years of the date of the contract.

WHEREFORE, the Defendant, the Estate of Ruth F. Tumblin, having fully answered the allegations of the Cross-Complaint, prays that the same be dismissed with costs.



C. RAUCH WISE

Attorney at Law

305 Main Street

Greenwood, South Carolina 29649

(864) 229-5010

rauchwise@gmail.com

S.C. Bar N^o 06188

Attorney for the Defendant Ruth F. Tumblin

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)

Cross-Defendant)

AMENDED CROSS-COMPLAINT

2012-CP-30-149

This action began with Laurens Cycle Sales, Inc., d/b/a Honda of Laurens, Cooper Motor Sales, LLC and Ruth F. Tumblin as defendants. During the pendency of the action, Defendant Tumblin died and her estate was substituted as a party. The Plaintiff's case then settled leaving only the above named parties in the action. To make the pleadings less confusing, Cross-Plaintiffs will continue with that designation and will refer to the Estate of Ruth Tumblin as Cross-Defendant. Cross-Plaintiffs should show

FOR A FIRST CAUSE OF ACTION

1. The parties, except for Cooper Motor Sales, LLC, are residents of Laurens County, and jurisdiction and venue are proper with this Court. Cooper Motor Sales, LLC is a non-existent entity.

2. At all times relevant to this action defendant Tumblin was an agent for U.S. Insurance Services, Inc. and Assurant, Inc., D/B/A American Reliable Insurance Company.

3. Prior to the sale of her business, Cross-Defendant Tumblin failed to secure insurance for Larry Dale Freeman after he properly filled out an application and paid his premium and thereby created liability for Cross-Plaintiff, Laurens Cycle Sales, Inc.

4. As a result of Cross-Defendant Tumblin's breach of her duty to Cross-Plaintiff, Cross-Plaintiff through no fault of its own became liable to the Jerry Dale Freeman Estate for her omissions and incurred substantial costs and attorney fees defending and then settling an action by the Freeman Estate.

5. Cross-Plaintiff's liability to the Freeman Estate for damages was solely because of the acts or omissions of Cross-Defendant Tumblin, and she did not disclose this liability as she was required to do before selling her business to Laurens Cycle Sales, Inc. Cross-Defendant should be required to reimburse, indemnify and hold Cross-Plaintiffs harmless. Cross-Plaintiffs are entitled to have Cross-Defendant pay costs and attorney fees.

FOR A SECOND CAUSE OF ACTION

6. The preceding allegations are incorporated herein by reference.

7. Ruth F. Tumblin violated the parties' contract as follows:

- JR7
P.2
- a) She overstated the parts inventory by \$ 219,410.25;
 - b) She grossly misrepresented the viability of the business;
 - c) She did not disclose that she was behind in paying the mortgage on the business's building and was facing foreclosure, which resulted in moving costs and costs in converting a warehouse into an acceptable retail space;
 - d) She failed to disclose that she had made uncollectible personal loans from the business to James Farnsworth for \$ 16,602; to Neil Meyer for \$ 18,300 and to Bill Graham and his business for \$ 55,000;
 - e) She failed to disclose that she had entrusted a \$ 6800 travel trailer to Bill Graham which was never returned and did not have the necessary title documentation to get it back;
 - f) She did not disclose that the business owed \$ 23,371.93 in back taxes; and

g) She did not disclose the legal and administrative costs which would be necessary to resolve her mismanagement of the business.

8. She had a duty to disclose the omitted information, because it was material to the parties' agreement; and Cross-Plaintiff would likely not have bought the business if Cross-Defendant had not made numerous misrepresentations and concealments.

9. Cross-Plaintiff has been injured by Cross-Defendant's breach of the parties' contract and is entitled to the costs of this action, including a reasonable fee for its attorney.

10. Because of Cross-Defendant's prior breach of the parties' contract, Cross-Defendants are not entitled to any contractual damages; or, in the alternative, any damages to which they may be entitled should be set off against the damages owed by them to Cross-Plaintiff.

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P.3

WHEREFORE, the Cross-Plaintiffs pray for an order of this Court granting them damages sufficient to compensate them for the Cross-Defendant's wrongs against them, including reimbursement for the cost of settling the Freeman claim, breach of contract damages, and consequential damages, and to dismiss any claim Cross-Defendant may advance for contractual damages or, in the alternative, to set off any such claim against the amount owed by Cross-Plaintiffs to Cross-Defendant. Cross-Plaintiffs are also entitled to their costs, including a reasonable fee for their attorney.

COX, FERGUSON & WHAM, LLC
Attorneys for the Cross-Plaintiffs

By: _____

John R. Ferguson

John R. Ferguson

S.C. Bar No. 1987

107 E. Laurens St. - P.O. Box 286

Laurens, S.C. 29360

(864) 984-2126

May 4, 2017

JR7
P.4

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)

Cross-Defendant)

MOTION TO AMEND

2012-CP-30-149

The undersigned attorney for the Cross-Plaintiff hereby moves the Court pursuant to Rule 15, SCRCP, to allow him to amend his pleadings as shown by the attached Second Amended Cross-Complaint. The amendment is necessary to ensure that justice is done and upon information and belief, will not prejudice Cross-Defendant.

COX, FERGUSON & WHAM, LLC
Attorneys for the Cross-Plaintiff

By: John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987
107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

May 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)
Cross-Defendant)

AMENDED
SUMMONS AND NOTICE

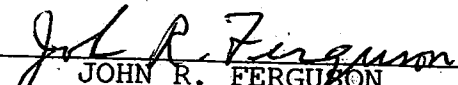
2012-CP-30-149

TO THE CROSS-DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Cross-Complaint in this action, a copy of which has herewith served upon you, and to serve a copy of your Answer to the said Amended Cross-Complaint on the Cross-Plaintiff(s) or the undersigned attorney at his offices within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Cross-Complaint within the time aforesaid, the Cross-Plaintiff(s) in this action will apply to the Court for the relief demanded in the Amended Cross-Complaint by way of default judgement.

TO: INFANTS UNDER FOURTEEN YEARS OF AGE, INCOMPETENTS, INSANE PERSONS, AND GENERAL OR TESTAMENTARY GUARDIANS OR THE COMMITTEE WITH WHOM ANY SUCH PERSON SHALL RESIDE:

You are further summoned and notified to apply for appointment of a Guardian ad Litem to represent the above noticed persons within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment may be made by the Cross-Plaintiff(s) herein.


JOHN R. FERGUSON
Attorney for the Cross-Plaintiff
S.C. Bar No. 1987
107 E. Laurens St. - PO Box 286
Laurens, S. C. 29360-01286
Phone: (864) 984-2126

May 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)
Cross-Defendant)

SECOND
AMENDED CROSS-COMPLAINT

2012-CP-30-149

This action began with Laurens Cycle Sales, Inc., d/b/a Honda of Laurens, Cooper Motor Sales, LLC and Ruth F. Tumblin as defendants. During the pendency of the action, Defendant Tumblin died and her estate was substituted as a party. The Plaintiff's case then settled leaving only the above-named parties in the action. To make the pleadings less confusing, Cross-Plaintiffs will continue with that designation and will refer to the Estate of Ruth Tumblin as Cross-Defendant. Cross-Plaintiffs would show:

FOR A FIRST CAUSE OF ACTION

1. The parties, except for Cooper Motor Sales, LLC, are residents of Laurens County, and jurisdiction and venue are proper with this Court. Cooper Motor Sales, LLC is a non-existent entity.
2. At all times relevant to this action Cross-Defendant Ruth Tumblin was an agent for U.S. Insurance Services, Inc. and Assurant, Inc., D/B/A American Reliable Insurance Company.
3. Prior to the sale of her business, Cross-Defendant Tumblin failed to secure insurance for Larry Dale Freeman after he properly filled out an application and paid his premium and thereby created liability for Cross-Plaintiff, Laurens Cycle Sales, Inc.

4. As a result of Cross-Defendant Tumblin's breach of her duty to Cross-Plaintiff, Cross-Plaintiff through no fault of its own became liable to the Jerry Dale Freeman Estate for her omissions and incurred substantial costs and attorney fees defending and then settling an action by the Freeman Estate.

5. Cross-Plaintiff's liability to the Freeman Estate for damages was solely because of the acts or omissions of Cross-Defendant Tumblin, and she did not disclose this liability as she was required to do before selling her business to Laurens Cycle Sales, Inc. Cross-Defendant should be required to reimburse, indemnify and hold Cross-Plaintiffs harmless. Cross-Plaintiffs are entitled to have Cross-Defendant pay costs and attorney fees.

FOR A SECOND CAUSE OF ACTION

6. The preceding allegations are incorporated herein by reference.

7. Ruth F. Tumblin materially violated the parties' contract in many ways, including as follows:

- JR7
P-2
- a) She overstated the parts inventory by \$ 219,410.25;
 - b) She grossly misrepresented the viability of the business;
 - c) She did not disclose that she was behind in paying the mortgage on the business's building and was facing foreclosure, which resulted in moving costs and costs in converting a warehouse into an acceptable retail space;
 - d) She failed to disclose that she had made uncollectible personal loans from the business to James Farnsworth for \$ 16,602; to Neil Meyer for \$ 18,300 and to Bill Graham and his business for \$ 55,000;
 - e) She failed to disclose that she had entrusted a \$ 6800 travel trailer to Bill Graham which was never returned and did not have the necessary title documentation to get it back;
 - f) She did not disclose that the business owed \$ 23,371.93 in back taxes; and

g) She did not disclose the legal and administrative costs which would be necessary to resolve her mismanagement of the business.

8. She had a duty to disclose the omitted information, because it was material to the parties' agreement; and Cross-Plaintiff would likely not have bought the business if Cross-Defendant had not made numerous misrepresentations and concealments.

9. Cross-Plaintiff has been injured by Cross-Defendant's breach of the parties' contract and is entitled to the costs of this action, including a reasonable fee for its attorney.

10. Because of Cross-Defendant's prior breach of the parties' contract, Cross-Defendants are not entitled to any contractual damages; or, in the alternative, Cross-Plaintiff is entitled to recoup any damages from Cross-Defendant arising from Cross-Defendant's breach of the parties' contract.

JR7
P.3

WHEREFORE, the Cross-Plaintiffs pray for an order of this Court granting them damages sufficient to compensate them for the Cross-Defendant's wrongs against them, including reimbursement for the cost of settling the Freeman claim, breach of contract damages, and consequential damages, and to dismiss any claim Cross-Defendant may advance for contractual damages or, in the alternative, to allow Cross-Plaintiff to recoup from Cross-Defendant Cross-Plaintiff's actual and consequential damages arising from Cross-Defendant's breach of the parties' contract. Cross-Plaintiffs are also entitled to their costs, including a reasonable fee for their attorney.

COX, FERGUSON & WHAM, LLC
Attorneys for the Cross-Plaintiffs

By: John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987
107 E. Laurens St.- P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

May 16, 2017

JR7
P-4

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

2017 MAY 17 A 10:51

Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)

Cross-Defendant)

LAURENS COUNTY
CLERK OF COURT

CERTIFICATE OF SERVICE

2012-CP-30-149

The undersigned certifies that she is an employee at Cox Ferguson and Wham LLC and that on the 16 day of May, 2017 she served the Motion to Amend, Amended Summons and Notice and Second Amended Cross-Complaint herein by depositing a copy of it in the United States Mail, postage prepaid and addressed to:

C. Rauch Wise, Esq.
Attorney at Law
305 Main Street
Greenwood, SC 29646.

Delorah A Ball

May 16, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	
Laurens Cycles Sales, Inc., dba Honda	)	
of Laurens and Cooper Motor Sales, LLC,	)	
	)	
Cross-Plaintiffs,	)	Answer to Second Amended Complaint
	)	
Vs.	)	2012-CP-30-149
The Estate of Ruth F. Tumblin	)	
	)	
Cross- Defendant.	)	

The Cross-Defendant, The Estate of Ruth F. Tumblin, answering the allegations of the Second Amended Cross-Complaint alleged and will show to the Court as follows:

AS TO THE FIRST CAUSE OF ACTION

1. The Defendant admits the allegations of paragraphs 1, 2 and 3 of the Second Amended Cross Complaint.
2. The Cross-Defendant denies the allegations of paragraphs 4 and 5 of the Second Amended Cross Complain.

AS TO THE SECOND CAUSE OF ACTION

3. The Defendant admits so much of the previous allegations as have been previously admitted and denies so much of the previous allegations as have been previously denied.
4. The Cross-Defendant, Ruth F Tumblin, denies the allegations of paragraphs 6, 7, 8, 9, and 10 of the Second Amended Cross-Complaint.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION (Statue of Limitations)

19. The allegations contained in paragraphs 6 through 10 of the Second Cause of Action are barred by a statute of limitations in that such allegations were not raised for more than

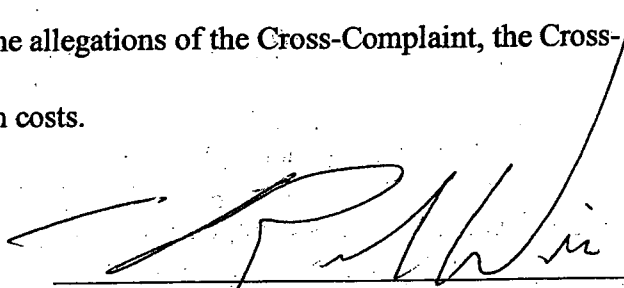
three years after the Cross-Plaintiff knew or should have known of the alleged breach of contract.

FOR A THIRD DEFENSE TO THE SECOND CAUSE OF ACTION

20. The allegations in paragraph 6 through 10 of the Second Cause of Action are barred pursuant to Rule 13 of the South Carolina Rules of Civil Procedure in that such allegations are part of a compulsory counter-claim which was not filed in the original pleadings of this matter.

WHEREFORE, having fully answered the allegations of the Cross-Complaint, the Cross-Defendant prays that the same be dismissed with costs.

September 26, 2017

A handwritten signature in black ink, appearing to read 'C. Rauch Wise', is written over a horizontal line.

C. RAUCH WISE
305 Main Street
Greenwood, SC 29646
Phone: (864) 229-5010
Fax: (864) 229-2665

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-30-149

LAURENS CYCLE SALES, INC. D/B/A
HONDA OF LAURENS AND COOPER
MOTOR SALES, LLC.

ESTATE OF RUTH TUMBLIN

Plaintiff(S)

Defendant(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

This matter came before the Court for a bench trial on September 29, 2017 and continued on October 3, 2017. John Ferguson, Esq. appeared on behalf of the Cross Plaintiff Laurens Cycle Sales (hereinafter "Plaintiff"), and C. Rauch Wise, Esq. appeared on behalf of Cross Defendant Ruth Tumblin Estate (hereinafter "Defendant"). Having considered the relevant testimony and evidence, passed upon the credibility of the witnesses, and reflected upon the applicable law, the Court finds as follows.

1. Plaintiff's action for breach of contract against Defendant is barred by the three (3) year statute of limitations governing contract disputes. See Section 15-3-530. The contract of sale was executed by the parties on June 23, 2008. Plaintiff knew, or reasonably should have known through the exercise of due diligence, of the issues with the inventory, bad debt, and general business irregularities by July 2, 2010 at the latest. Although Plaintiff's initial cross complaint against Defendant was filed on March 27, 2012, this pleading only sought indemnification for the suit involving Jerry Dale Freeman. Plaintiff's amended complaint was filed on October 8, 2014, and the Court, by way of a form order dated February 3, 2015, allowed the amendment subject to Defendant's statute of limitations objection. Accordingly, those causes of action which related to Defendant's breach of the original June 23, 2008 agreement were filed outside the applicable three (3) year statute of limitations.

2017 OCT -5 PM 2:17
 LAURENS COUNTY
 CLERK OF COURT
 LYNN W. LANCASTER
 Lynn W. Lancaster
 Laurens County CCCP & GS

2. However, Plaintiff's action for indemnification in the Jerry Dale Freeman litigation was timely, and the evidence clearly demonstrates that the attorney's fees, costs, and settlement paid by Plaintiff were caused solely by the actions of Defendant during the time she owned and worked for Laurens Cycle Sales. Therefore, the Court awards Plaintiff \$5,750.00, representing Plaintiff's cost to settle the Freeman litigation, plus \$13,650.00, representing Plaintiff's attorneys fees and costs in defending the Freeman litigation, for a total verdict to Plaintiff of \$19,400.00. *See generally Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971).
3. The Court also finds for Defendant in Defendant's action against Plaintiff for breach of the settlement agreement dated July 2, 2010 and accompanying note. After accounting for payments and accrued interest, the Court awards Defendant \$108,944.44.
4. Plaintiff requested that, if the Court should conclude that Plaintiff's breach of contract action was filed outside the statute of limitations, the Court permit recoupment of Plaintiff's damages for breach of the June 23, 2008 agreement against any award to Defendant for breach of the July 2, 2010 settlement agreement. The Court finds that, by its explicit terms, the July 2, 2010 settlement agreement arose out of and was the direct product of the June 23, 2008 sales agreement. Put simply, the July 2, 2010 settlement agreement was intended to be the final mechanism by which any interest Defendant possessed in the business was terminated. As previously explained and because of the running of the statute of limitations, Plaintiff is not entitled to a separate and independent recovery for the inventory, bad debt, and general business irregularities Plaintiff complains of in his breach of contract action; however, Plaintiff is entitled to recoup the damages awarded to Defendant since both Plaintiff's and Defendant's damages flow from same transaction which gave rise to both parties' causes of action. Put another way, Defendant clearly misrepresented the assets and liabilities at the time of the June 23, 2008 agreement, and the Court finds Plaintiff's recoupment to be proper because the July 2, 2010 agreement which forms the basis for Defendant's award flowed directly from the initial June 23, 2008 sale of a partial interest in the business. The Court further finds that the amount of damages suffered by Plaintiff due to Defendant's breach well exceeds the \$108,944.44 awarded to Defendant. Accordingly, the award to Defendant shall be subject to recoupment and reduced to zero.
5. Finally, because Defendant was technically the prevailing party in seeking enforcement of the July 2, 2010 settlement agreement, the Court denies Plaintiff's motion to award attorney's fees per paragraph 6 of said agreement.
6. Accordingly, the Court orders and awards a net verdict to Plaintiff in the sum of \$19,400.00.

It is so ordered.



ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

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)
Laurens Cycle Sales	Estate of Ruth Tumblin	\$19,400.00
		\$
		\$
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.

[Signature]
Circuit Court Judge

2159
Judge Code

Oct. 4, 2017
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John Ferguson, Esq.

Rauch Wise, Esq.

ATTORNEY(S) FOR THE APPELLANT(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Joy Holston

A TRUE COPY OF ORIGINAL

[Signature]
Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCLP & GS

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Laurens cycle Sales, Inc., d/b/a Honda of Laurens,
Cooper Motor Sales, LLC,
☐ Plaintiff

v.

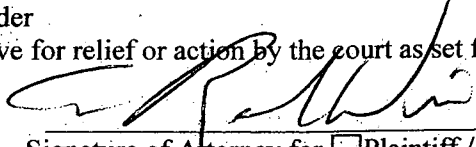
The Estate Of Ruth F Tumblin,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-30-149

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John R. Ferguson, Bar No. Address: 107 E Laurens St., Laurens, SC 29360-2903 phone: 864-984-2126 fax: e-mail: other:	Defendant's Attorney: C. Rauch Wise, Bar No. Address: 305 Main Street, Greenwood, SC 29646 phone: 864-229-5010 fax: 864-229-2665 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 Date submitted: 10/13/17	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

LYNN W. LANCASTER
2017 OCT 17 AM 11:13
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LAURENS)

Laurens Cycle Sales, Inc. D/B/A)
 Honda of Laurens and Cooper)
 Motor Sales, LLC)

Plaintiff,)

Motion to Alter or Amend Judgment

-vs-)

Case No. 2012-CP-30-149

Estate of Ruth Tumblin,)

Defendant.)

The Defendant, the Estate of Ruth Tumblin, hereby moves the Court pursuant to Rule 69 of the South Carolina Rules of Civil Procedure to Alter or Amend the Judgment entered in the matter, based upon the following:

1. The Court erred in finding that the Plaintiff was entitled to recoupment when the court failed to consider the contract to pay Ruth Tumblin did not arise out of the same contract as the alleged recoupment. The testimony at the trial demonstrated that the payment to Mrs. Tumblin was independent of the sale of Laurens Cycle Sales, Inc. to Honda of Laurens, LLC. At the time the Note was signed, Mrs. Tumblin had sold all of her stock in Laurens Cycle Sales and was merely an employee of the Company. The record establishes that Mrs. Tumblin sold her remaining interest in the company to David Bagwell. As original agreement to pay Mrs. Tumblin \$139,000.00 was not related to the purchase of the business; but was rather a form of severance pay to terminate the employment of Mrs. Tumblin, the transaction was independent of the original contract. As this South Carolina Supreme Court has said "Recoupment, therefore, is the

LYNN W. LANCASTER
 2012 OCT 17 AM 11:13
 CLERK OF COURT
 LAURENS COUNTY

right of the defendant to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, or because he has violated some duty imposed upon him by law in the making or performance of that contract. The delinquency or deficiency which will justify the reduction of the plaintiff's claim must arise out of the same transaction, and not out of a different transaction." *Mullins Hosp. v. Squires*, 233 S.C. 186, 197, 104 S.E.2d 161, 166 (1958) overruled on other grounds by *McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

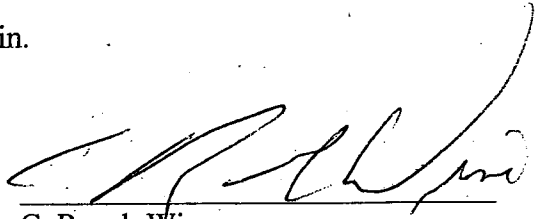
In *Francisco v. Francisco*, 120 Mont. 468, 474, 191 P.2d 317, 320-21 (1948) the Court held that recoupment was not proper as it did not arise out of the same transaction. The Court said "It is apparent from the foregoing citations that a plea of recoupment must arise out of the same contract or transaction which constitutes the basis of plaintiff's claim. Here no such showing can be made. The defendant's claim in this case is based upon and grows out of work and labor performed for plaintiff and money lent to plaintiff on different dates and occasions than the time of the signing of the note upon which plaintiff sues." Likewise in this case, the agreement to purchase the business was separate and distinct from the agreement to pay Mrs. Tumblin to retire from the business. There could be no recoupment when the Plaintiffs knew of the alleged damages when they agree to pay Mrs. Tumblin to retire. The transactions are two separate and very distinct transactions.

2. The Court failed to consider or discuss that at the time of the July 2, 2010 agreement to pay Ruth Tumblin \$139,000.00, Honda of Laurens, LLC and Lynn Cooper knew of all the losses that they claim had been incurred due to nay misrepresentation of the business by Mrs. Tumblin. The Plaintiff never documented or testified to any loss after July 2, 2010. In addition,

payments on the revised contract of \$110,000 were made on a regular basis until January of 2012. The actions of agreeing to pay Mrs. Tumblin the final sum of \$110,000.00 and making payments on the agreement, shows a waiver as a matter of law by the plaintiffs on any and all prior claims, even if such claims could be part of the original sales agreement.

For the foregoing reason, the Defendant requests that this that Court rehear this matter and enter a judgment in favor of the Estate of Ruth Tumblin.

October 13, 2017



C. Rauch Wise
305 Main St.
Greenwood, SC 29646
(864) 229-5010
rauchwise@gamil.com
S. C. Bar № 06188
Attorney for Estate of Ruth Tumblin

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Laurens Cycle Sales, Inc., d/b/a)
Honda of Laurens and Cooper Motor)
Sales, LLC,)

Cross-Plaintiffs)

vs.)

The Estate of Ruth F. Tumblin,)

Cross-Defendant)

RETURN TO MOTION
TO ALTER OR AMEND JUDGMENT

2012-CP-30-149

In response to Defendant's Motion to Alter or Amend Judgment the Plaintiff would show:

1. It is of no moment that Plaintiff had ^{before that} one contract with Ruth Tumblin in this transaction. Her duties remained the same. The evidence showed that from the beginning it was the intent of the parties that Lynn Cooper II, d/b/a Honda of Laurens, LLC would be the sole owner of Laurens Cycle Sales. The various agreements, including the final buy out of Ms. Tumblin's interest (including her right to continued employment), were to implement that single goal.

2. The Court correctly found in its # 4 that the July 2, 2010 agreement "arose out of and was the direct product of the June 23, 2008 sales agreement. Put simply, the July 2, 2010 settlement agreement was intended to be the final mechanism by which any interest Defendant possessed in the business was terminated.... [B]oth Plaintiffs' and Defendant's damages flow from the same transaction which gave rise to both parties' causes of action.... Defendant clearly misrepresented the assets and liabilities at the time of the July 2, 2010 agreement which forms the basis for Defendant's award flowed directly from the initial June 23, 2008 sale of a partial interest in the business."

LYNN W. LANCASTER
2017 OCT 18 AM 11:45
LAURENS COUNTY
CLERK OF COURT

3. Ruth Tumblin had a duty of good faith and fair dealing that she violated from the beginning and thereby damaged the Plaintiff. The damage is not limited to any one contract in the series, so recoupment applies to the entire transaction.

4. By any measure Ruth Tumblin breached her contracts with Plaintiff before this action began. Her prior breach prevents her Estate from being able to sue on the contracts, especially where the prior breach is so severe as to amount to a failure of consideration.

5. The dealings between Plaintiffs and Defendant were part of one contemplated transaction to transfer all of Ruth Tumblin's interest in Laurens Cycle Sales to HOL, LLC. The use of several documents to accomplish this in stages does not alter the fact that the parties saw it as a single process. Part of the original agreement was for Ms. Tumblin to continue temporarily participating in the running of the business, so the original contract was not completed at the time of sale and the subsequent agreements were supplementary to the original transaction and were contemplated by it. HOL, LLC also continued dealing with Ms. Tumblin as part of a plan to protect its original investment from pre-existing problems like the bad debts, the foreclosure and the tax lien, which existed at the time of the original agreement but were not disclosed.

6. Defendant is in error in alleging that all the damage was known before the July 2, 2010 contract. The Freeman lawsuit arose in 2012, and Chip Cooper testified that they are still discovering problems they did not know existed, especially after the accounting system was changed last January.

7. To the extent that HOL, LLC knew of losses related to Ruth Tumblin's misstatements prior to July 2, 2010, any agreement to pay her thereafter could not amount to an unalterable waiver. There was no consideration given by Tumblin to modify her existing obligations, so Plaintiffs had the right to change their minds

JR7
P.2

about whether to enforce those obligations. Defendant cannot bind Plaintiffs to a contract Defendant is not willing to abide by; there must be mutuality of obligation.

8. As a matter of public policy, the Law should favor a litigant who as an act of grace refrains from going after a contractual malefactor in recognition that she, like him, has substantial health problems.

9. Defendant does not come before the Court with Clean Hands.

The Plaintiff reserves the right to add to and modify these grounds.

COX, FERGUSON & WHAM, LLC
Attorneys for the Plaintiff

By: _____

John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987

107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

October 18, 2017

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-30-149

LAURENS CYCLE SALES, INC. D/B/A
HONDA OF LAURENS AND COOPER
MOTOR SALES, LLC.

ESTATE OF RUTH TUMBLIN

Plaintiff(S)

Defendant(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

LYNN W. LANCASTER
2017 OCT 31 AM 10:27
LAURENS COUNTY
CLERK OF COURT

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

This matter comes before the Court on Cross Defendant Ruth Tumblin Estate's Motion to Alter or Amend the Court's order of October 4, 2017. The Court finds that a hearing would not aid the Court in deciding any issue raised in Defendant's Motion or Plaintiff's Return.

Having fully considered the Motion and Return, reconsidered the testimony and applicable law, and fully reviewed the Court's prior order, the Court denies Defendant's Motion and reaffirms the order of October 4, 2017.

It is so ordered.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

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.

John Ferguson 2159 Oct. 27, 2017
Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

John Ferguson, Esq.

Rauch Wise, Esq.

ATTORNEY(S) FOR THE APPELLANT(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None (no hearing held on motion for reconsideration)

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr. , Circuit Court Judge

Case No. 2012-CP-30-149

Laurens Cycle Sales, Inc. D/b/a Honda of Laurens and Cooper Motor Sales, LLC . . . Respondent,

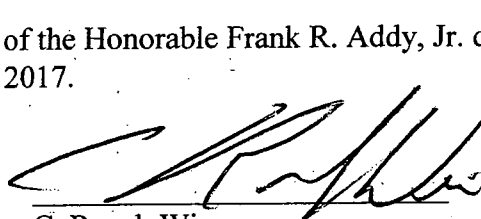
vs.

Estate of Ruth Tumblin Appellant.

NOTICE OF INTENT TO APPEAL

Estate of Ruth Tumblin appeals the ruling of the Honorable Frank R. Addy, Jr. dated October 4, 2017, and the Order dated October 27, 2017.

November 20th, 2017



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

OTHER COUNSEL OF RECORD

John R. Ferguson
Cox Ferguson & Wham LLC
P.O. Box 286
Laurens, SC 29360-01286

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr. , Circuit Court Judge

Appellate Case No. 2017-002434

Laurens Cycle Sales, Inc. D/b/a Honda of Laurens and Cooper Motor
Sales, LLC Respondent,

vs.

Estate of Ruth Tumblin Appellant.

CERTIFICATE OF COUNSEL

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

July 2nd, 2018



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 00188

Attorney for Appellant

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JUL 18 2018
SC Court of Appeals