

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Charles B. Simmons, Jr.
Master in Equity

Case No. 2014-CP-23-4097

RECEIVED

APR 02 2018

SC Court of Appeals

First Citizens Bank and Trust Company, Inc.

Respondents

v.

Ronald D. Taylor and Ted D. Smith

Defendants

Ex Parte: Smith Family, LLC, WHS Properties, LLC, and Wanda H. Smith, Appellants.

RECORD ON APPEAL
VOLUME I

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellants

Other Counsel of Record:

Joey R. Floyd, Bar No. 68491
Chelsea J. Clark, Bar No. 102211
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Charles B. Simmons, Jr.
Master in Equity

Case No. 2014-CP-23-4097

First Citizens Bank and Trust Company, Inc.

Respondents

v.

Ronald D. Taylor and Ted D. Smith

Defendants

Of Whom Smith Family, LLC, WHS Properties, LLC,
And Wanda H. Smith are the Appellants.

RECORD ON APPEAL

TABLE OF CONTENTS

1. Summons and Complaint, filed 7/28/2014.....	1
2. Answer, filed 8/28/2014.....	12
3. Order Granting Plaintiff's Motion for Summary Judgment, filed 10/1/2015...15	
4. Order Denying Motion to Reconsider, filed 10/29/2015.....	21
5. Writ of Execution, 11/13/2015.....	24
6. Verified Petition for Supplemental Proceedings, filed 11/2/2016.....	26
7. Rule to Show Cause and Order of Reference, filed 11/10/2016.....	29
8. Hearing Transcript (in its entirety), dated 1/23/2017.....	33
9. Motion to Compel and Exhibits, filed 2/16/2017.....	53
10. Motion to Compel and Exhibits, filed 3/2/2017.....	84
11. Order on Motion to. Compel, filed 3/15/2017.....	95
12. Order on Plaintiff's Motion to Compel, filed 3/17/2017.....	98
13. Defendants' Motion to Quash, filed 5/2/2017.....	101
14. Plaintiffs Memorandum in Opposition of Motion to Quash and Exhibit, filed 5/16/2017	103
15. Order on Motion to Quash, filed 5/22/2017.....	113
16. Deposition Transcript of Ted Smith (in its entirety), dated 5/24/2017.....	116
17. Deposition Transcript of Wanda Smith (in its entirety), dated 5/24/2017.....	267
18. Consent Order, filed 6/1/2017.....	348
19. Motion to Join Additional Parties and Exhibit, filed 6/1/2017.....	351
20. Motion to Execute and Exhibit, filed 6/1/2017.....	359
21. Hearing Transcript (in its entirety), dated 6/23/2017.....	368
22. Memorandum in Support of Motion to Execute and Exhibits, filed 6/19/2017	403
23. Order, filed 7/5/2017.....	554
24. Defendant's Motion to Alter or Amend, filed 7/7/2017.....	564
25. Plaintiff's Motion to Compel, filed 7/15/2017.....	566
26. Order ruling on multiple motions, filed 8/7/2017.....	568
27. Motion for Supersedeas, filed 8/9/2017.....	574

28. Notice of Appeal, filed 8/16/2017.....	575
29. Order Regarding Supersedeas, filed 9/6/2017.....	578
30. Plaintiff's Motion to Compel and Exhibit, filed 10/5/2017.....	583
31. Order Regarding Modification of Supersedeas, filed 10/20/2017.....	597

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc.
Plaintiff(s)
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
Defendant(s)

CIVIL ACTION COVERSHEET

2014-CP - 23-4097

vs.

2014 JUL 28 PM 4 21

Ronald D. Taylor and Ted D. Smith

Defendant(s)

Submitted By: Joey R. Floyd

Address: Post Office Box 61110, Columbia, SC 29260-1110

SC Bar #: 68491

Telephone #: 803-252-7693

Fax #: 888-945-9333

Other:

E-mail: jfloyd@brunerpowell.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

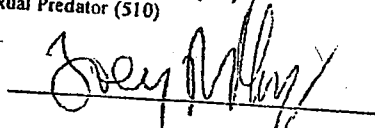
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: 

Date: July 23, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY.

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

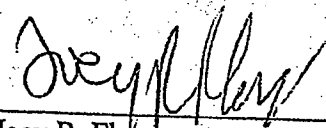
CIVIL ACTION NO.: 2014-CP-23- 4097

SUMMONS
(Non-Jury)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUL 28 PM 4 21

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Verified Complaint upon the undersigned subscriber at his offices at 1735 St. Julian Place, Suite 200, Columbia, South Carolina 29204, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.



Joey R. Floyd
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina 29260-1110
(803)252-7693
Attorneys for Plaintiff
First Citizens Bank and Trust Company, Inc.

July 23, 2014
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

VERIFIED COMPLAINT
(Non-Jury)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUL 28 PM 4 21

The Plaintiff, complaining of the above-named Defendants, would respectfully show unto the Court:

1. First Citizens Bank and Trust Company, Inc. ("FCB" or "Plaintiff") is a South Carolina corporation duly authorized to conduct business in South Carolina.
2. Defendant Ronald D. Taylor is, upon information and belief, a resident of Greenville County, South Carolina.
3. Defendant Ted D. Smith is, upon information and belief, a resident of Greenville County, South Carolina.
4. Jurisdiction and venue in this court are proper.
5. On, or about, May 22, 2003, Defendants executed a Promissory Note in favor of FCB in the amount of \$52,526.07. A copy of the Promissory Note is attached hereto as Exhibit A.

6. In accordance with the terms of the Promissory Note, Defendants were scheduled to make monthly interest only payments beginning June 22, 2008, with the principal being due November 22, 2008.

7. The Defendants made some payments towards the debt; however, the Defendants failed to make all payments in accordance with the terms of the promissory note.

FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS
(Breach of Contract – Promissory Note)

8. Plaintiff incorporates the foregoing allegations herein to the extent required by, but not inconsistent with, the following allegations.

9. Defendants executed the Promissory Note and agreed to pay Plaintiff in accordance with the terms of the Note.

10. Defendants defaulted on the Note and have failed to pay FCB the amount due in accordance with the terms and conditions of the Promissory Note.

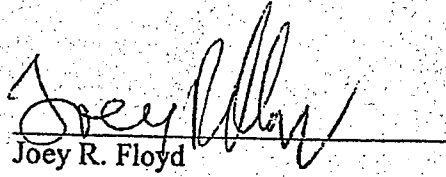
11. Defendants breached contractual duties owed to Plaintiff by failing to pay FCB in accordance with the terms of the Promissory Note.

12. FCB has been damaged and is entitled to recover from the Defendants the principal sum of \$66,263.49, plus interest thereon at the rate of 4.75% per annum, in accordance with the terms of the Note, costs, and attorneys' fees. A Verified Statement of Account is attached hereto as Exhibit B.

WHEREFORE, Plaintiff prays for judgment as follows:

A. As to the First Cause of Action against the Defendants, for judgment against the Defendants, in the amount of \$66,263.49, together with interest, plus accruing interest, attorneys' fees of not less than 15% of the amount owing on the Promissory Note and costs;

B. Plaintiff prays for such other and further relief as the Court may deem just and proper.



Joey R. Floyd
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200 (29204)
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693
Attorneys for the Plaintiff
First Citizens Bank and Trust Company, Inc.

Columbia, South Carolina
July 23, 2014

EXHIBIT A

First Citizens

COMMERCIAL NOTE

MAY 22, 2008

GREENVILLE, SC

LOAN PURPOSE

I agree that the primary use of the loan proceeds is SECURE COLLATERAL TO EXISTING LOAN
577991-865949
which is for Business or (if checked) ☐ Agriculture and not primarily personal, family, or household purposes.

CONDITION OF LOAN

You, First Citizens Bank and Trust Company, Inc. have loaned me \$ 52,526.07 (Principal) and I will comply with the provisions of this note which I have signed and I will comply with any other conditions to which we have agreed.

INTEREST

Interest is computed daily on the entire unpaid Principal balance and the scheduled payments are due precisely on the due dates. To the extent that payments are late or early, greater or less interest may be due over the life of the loan. Interest will be calculated on the basis of a 360 day year for the actual number of days elapsed. The per annum interest rate used in the calculation will be:

☐ Wall Street Journal Prime + % ☐ One (1) Month LIBOR + % ☐ Three (3) Month LIBOR + %

☐ If checked, my variable rate loan will have a minimum interest rate of % and a maximum interest rate of %.

Variable rate interest adjustments will be made based on the applicable rate index chosen. I recognize and acknowledge that you could make loans in certain situations below the applicable rate index. See additional variable rate provisions on reverse side of this Note. My rate will change as checked below:

First Citizens Prime changes will take effect ☒ daily or ☐ monthly on the first calendar day of the month following First Citizens Prime change. First Citizens Prime is an index used to price loans and is established by you at your discretion.

Wall Street Journal Prime changes will take effect ☐ daily based on the Prime Rate effective date as quoted in the "Money Rates" section of the Wall Street Journal or ☐ monthly on the first calendar day of the month based on the Prime Rate quoted in the "Money Rates" section of the Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

☐ One (1) Month and Three (3) Month LIBOR changes will take effect on the first calendar day of the month. The One (1) Month and Three (3) Month LIBOR indexes are the London Interbank Offered Rates quoted in the "Money Rates" section of the The Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change.

PAYMENT SCHEDULE

Principal due NOVEMBER 22, 2008 with interest payable in consecutive MONTHLY payments beginning JUNE 22, 2008.

LATE CHARGES

A late charge of the higher of \$50 or 0.5% will be assessed for any single payment loan not paid, renewed, modified or extended within 10 days of its due date. Loans having more than one payment will be assessed a late charge of the higher of \$50 or 5% of the unpaid balance of any payment not paid, renewed, or modified or extended within 10 days of the due date of the payment.

OTHER CHARGES

I agree to pay the following Prepaid Finance Charges and Other Charges: Origination Fee: N/A Processing Fee: \$150.00 Other Charges: \$1,361.00 At my request, Prepaid Finance Charges and Other Charges totaling \$1,511.00 have been added to the Principal Amount listed above.

PLEDGE OF COLLATERAL

I am giving you a security interest in collateral described in the additional security section on the reverse side and to any collateral described below:

3RD REAL ESTATE MORTGAGE ON A LOT ON ELM SHORN DRIVE, GREEN, SC
TAX MAP # 0534010101202 (3.773 ACRES).

3RD REAL ESTATE MORTGAGE ON A LOT ON ELM SHORN DRIVE, GREEN, SC
TAX MAP # 0534010100920 (3.6 ACRES).

FUTURE ADVANCES

☐ If checked, this is a future advance loan subject to the terms and conditions set forth in a Loan Agreement dated which terms and conditions are incorporated herein by reference.

PROMISE

To repay my loan, I promise to pay to the order of First Citizens Bank and Trust Company, Inc. the Principal shown above plus interest accrued on the unpaid balance of the Principal for the actual number of days outstanding, at the interest rate described above, all according to the Payment Schedule shown above plus insurance and any other charges to which we may have agreed. If I have agreed to pay periodic interest payments or payments of equal principal plus interest, as shown in the Payment Schedule above, I understand that actual payments billed to me may vary from those shown in the Payment Schedule. Such differences may be due to more than one month to the first payment or due to difference in the number of days in each month, etc. This interest rate shall continue after default and/or judgment and shall remain in effect until all sums owing hereunder are paid.

PREPAYMENT

If the term of the loan exceeds one year, the following prepayment penalty will apply to all business purpose loans. If within five (5) years from the date of this note, I make any prepayment in any twelve (12) month period beginning with the date of this note or anniversary thereof ("Loan Year") I shall pay you a prepayment fee of three (3%) in year one or year two, two (2%) in year three, and one (1%) in years four and five of the amount by which the sum of prepayments made in any Loan Year exceeds the scheduled payments under this note. Prepayment fees will be due and payable one month after the end of the Loan Year for partial prepayments and due at the time of prepayment when the account is prepaid in full.

CO-BORROWER LIABLE

If I sign this agreement with another Borrower, I will individually be bound for the full amount owed and agree to the granting of one or more extensions without notice or demand of any kind. I also agree to the release or substitution of any collateral which secures this note.

REVERSE SIDE

Additional terms and conditions contained on reverse are a material part of this note and agreement.

ORGANIZATIONAL BORROWER - NAME AND ADDRESS

TAX I.D. NO. BORROWER(S)

S.S. NO.

Signature RONALD D. TAYLOR
24 DEVONHALL WAY

Address TAYLORS, SC 29687

Signature TED D. SMITH
241 PHLAM ROAD

Address GREENVILLE, SC 29615

☐ See Signature Addendum for additional signatures of Borrower(s).

CONTINUED FROM FACE SIDE

ADDIT L TERMS AND PROVISIONS

I understand that the paragraph heading on both the front and reverse side of this agreement are for convenience only and that they will not limit any of the provisions of this agreement.

Additional Security (Collateral). The Security Interest includes all parts, insurance, accessories, and equipment I use with the Collateral, any proceeds and any products from the Collateral and return of unearned credit insurance premiums written in connection with this loan. Except for a Security Interest on my principal dwelling, The Security Interest under this agreement also secures the payment of any other existing or future debts of mine to you unless otherwise prohibited by law. I am not giving you a Security Interest in my principal dwelling, unless it is specifically listed as Collateral nor any household goods, unless they are being purchased with the proceeds of this contract and are also listed as Collateral on this contract. If my principal dwelling secures existing debt with you, I understand that it will not secure this loan unless my principal dwelling is specifically listed as Collateral on this contract. I am also giving you a Security Interest in any and all funds I have on deposit with you, except and excluding any funds which are in an individual Retirement Account.

Ownership. I am the owner of the Collateral and if there is a certificate of title to the Collateral, I will promptly deliver the certificate to you upon your request. There are no Security Interest or liens on the collateral other than yours and those which I have told you about in writing. I will not permit any Security Interest or liens other than yours to be on the Collateral at any time without your prior written consent.

Sale. I will not sell, lease or otherwise dispose of the Collateral without your prior written consent.

Inspection. You may inspect the Collateral at any reasonable time. Upon your request, I will exhibit the Collateral to you or I will furnish you a written statement showing the whereabouts of the Collateral.

Location and Use. I will keep the Collateral in the state of my residence, but if the Collateral is a motor vehicle, boat, or an airplane, I may use it outside my state of residence in the course of my normal and customary use of the Collateral. I will not use the Collateral in violation of any law or in a manner inconsistent with any insurance policy.

Taxes. I will pay all taxes, inspections and other fees payable on the Collateral or payable for the use and operation of the Collateral when they are due and payable.

Financing Statements. I authorize you at any time and from time to time to file any financing statements, continuation statements, in lieu of continuation statements, or amendments in the jurisdictions that you may deem necessary to perfect your security interests in the collateral. I also agree to notify you 30 days in advance if I, or the party granting the security interest, should either change my name, my state of organization, or my location. I will pay all filing fees and other fees and costs when such statements are filed or prior to a statement release.

Maintenance. I will keep the Collateral in good condition and repair and I will not permit anything to be done to the Collateral which would impair its use.

Failure to Pay Taxes, Costs and to Maintain Collateral and Placement of Other Liens on Collateral. If I fail to keep the Collateral in good condition and repair or if I fail to pay any taxes, impositions or other fees on the Collateral or if I fail to pay any cost and taxes for filing, financing, continuation and Security Interest filing statements or if any Security Interest or lien other than yours attaches or is on the Collateral, you may pay the same for my account and I will immediately pay to you any amounts so paid by you and all of your cost and expenses for so doing. Such amount will be covered by the Security Interest I have granted for you and will accrue interest at the Annual Percentage Rate until paid.

Insurance. I will keep the Collateral insured against such risks and in such amounts as you may require from time to time. I will provide you proof of such insurance coverage at all times with you named as the party to be paid in event of loss. I may furnish this coverage through an agent or company of my choice. However, this coverage must be acceptable to you. I will pay all premiums for this insurance when they are due and payable. If I fail to obtain the insurance or if I fail to pay the insurance premiums, you may obtain the insurance or pay the premiums. If you do this, I will immediately pay to you an amount equal to all monies you have advanced to obtain insurance and to pay insurance premiums. Any amounts advanced by you will earn interest at the then prevailing interest rate in accordance with the terms of this Note. Such amounts shall be covered by the Security Interest and amounts I have granted to you. However, if you decide not to obtain the insurance or pay the premiums, none of your rights and remedies against me will be prejudiced. All insurance proceeds under any insurance policy shall be payable to you to the extent of the monies I owe you. I will deliver to you the insurance policy or policies or a certificate of insurance. I assign you any returned or unearned insurance premiums which may be due upon cancellation of any insurance policy. I direct the insurance company policies pay to you all insurance proceeds and returned or unearned premiums. You are irrevocably appointed as my attorney-in-fact to endorse any draft or check which may be payable to me so as to collect any return or unearned premiums or insurance proceeds. All insurance proceeds and returned or unearned premiums received by you will be applied against the monies I owe you and any balance remaining will be paid to me.

Payments. Payments received by a teller in one of our branches on a business day before the close of business at that branch (generally 5:00 p.m.; 6:00 p.m. on Fridays at certain branches), will be considered received that day. Payments received after the close of business at that branch or anytime on a non-business day will be considered received on the next business day we are open. Please note that because we balance ATMs anytime between the hours of 12:00 noon and 2:00 p.m., a payment made through an ATM may be dated and credited one business day later than if the payment had been made in the lobby or at a drive-in window. If a payment is made through On-Line-Banking or Telephone Banking before 4:00 p.m. on a business day, we will consider that day to be the day of the payment. If a payment is to be mailed to a specific address furnished by the Bank, the payment will be considered received and credited to the account on the same business day received. If the payment is not mailed to the address furnished by the Bank, crediting of the payment may be delayed. Every day is a business day, except Saturdays, Sundays, and federal holidays. Some methods of payment may not be available on all products. You should check with a Bank representative if you have questions concerning available payment methods. If you make any payments on this Agreement by check, draft, or other item that is dishonored for any reason, you agree to pay the Bank's reasonable check charge as allowed by law. This charge will be in addition to any NSF or similar charge, which may be assessed against the account itself by the paying Bank.

Whole Balance Becomes Due (Default). If this note is payable on demand or has a Call Feature that has passed the specified calendar date, you may demand that this loan be paid in full immediately whether or not my payments are made on time. If I fail to make any scheduled payment when due, you may demand that this loan be paid in full immediately by more than 25% during the term of this loan (without your prior written approval and to which I agree to provide you a 30 day advance notice), or default under any provision of this note or any separate agreement, you may declare the note in default and demand that this loan be paid in full immediately. In addition, if you, in your sole discretion, feel the prospect of payment, performance, or realization of Collateral is significantly impaired, or if you should deem yourself insecure for any reason, this loan will immediately become due and payable.

No Waiver. It is further agreed that the acceptance after maturity of any payment shall not constitute a waiver of your rights to demand payment in full of any unpaid balance.

Remedies. Upon default, the rate of interest on the unpaid principal balance, insurance and other charges that we have agreed to pay shall be increased an additional 800 basis points (8%) above the stated contract rate on the face of this note. If I, or any guarantor, default, you may take possession of the collateral and at your request I will assist you by making it available. Even though you take the collateral, I may be obligated for payment as provided by law. You may peacefully take possession of the Collateral for the reasons above at any time, even though you may not have done so previously, until I pay all amounts owing to you covered by the Security Interest. If you should take possession of the Collateral and the Collateral should contain any personal property, I agree to contact you and arrange to pick up the property within twenty-four (24) hours of your taking possession of the Collateral. If I do not pick up the property within this time period I understand that you may keep it for me, at reasonable storage expense or dispose of as it as you see fit. Your failure to enforce or assert any of your rights under this agreement at any point in time shall not be considered waiver of the right to enforce these terms and conditions at any time in the future.

Financial Statements. I agree to provide signed financial statements and other financial information at such frequencies and in such detail as you may reasonably request.

Attorney's Fees. If you hire a lawyer to help collect this loan, I also agree to pay collection costs to include reasonable fees not to be less than 15% of the amount to be collected (unless otherwise prohibited by law).

Variable Rate Loans. If my loan has a variable rate feature, I agree to make no other inferences relating to any rate index that you may use. If my variable rate loan has a fixed or amortized payment amount, I understand and agree that if the selected variable rate index should exceed the fixed rate used for payment calculation purposes, you may, at your discretion, (a) increase the amount of periodic payments to have the loan fully amortize at the scheduled maturity, (b) extend the maturity and require additional periodic payments, (c) require the resulting increase to be paid at maturity, or (d) select or designate any combination of the foregoing.

Legal Matters. Any questions about this loan, Note or other agreements I make with you will be decided under South Carolina law. You and I agree that we will comply with all applicable laws, rulings and regulations and the terms of this contract will be interpreted in such manner as will comply with such laws, rulings and regulations.

R
JPS

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
First Citizens Bank and Trust Company,)
Inc.,)

Plaintiff,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants.)

IN THE COURT OF COMMON PLEAS

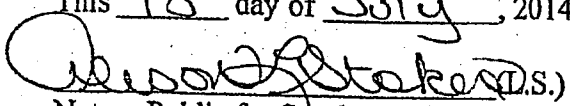
CIVIL ACTION NO.: 2014-CP-23- 4097

VERIFIED STATEMENT
(Non-Jury)

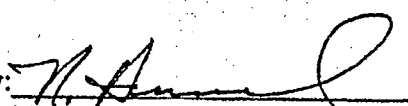
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 JUL 28 PM 4:21

PERSONALLY APPEARED BEFORE ME, Neekis Hammond, who being first duly sworn, deposes and says:

1. I am the Assistant Vice President for First Citizens Bank and Trust Company, Inc., the Plaintiff in the above-captioned case.
2. I have personal knowledge of the information contained in this verified statement.
3. The above-named Defendants are indebted to Plaintiff, as of June 26, 2014, in the amount of \$66,263.49, plus interest accruing subsequently thereon at the rate of \$6.93 per day (4.75% per annum, pursuant to the terms of the Promissory Note), attorneys' fees, expenses and costs.
4. Although duly demanded, no part of same has been paid by cash, discount, or otherwise, with all credits justly due having been given.

SWORN TO and subscribed before me
This 18 day of July, 2014

Notary Public for South Carolina
My Commission Expires: 11/24/23

FIRST CITIZENS BANK AND TRUST
COMPANY, INC.

By: 
Neekis Hammond
Its: Assistant Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust)
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants)

ANSWER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 AUG 28 PM 12 28

The Defendants, Ronald Taylor and Ted Smith, answering the Complaint of the Plaintiff, would allege and show unto this Honorable Court as follows:

1. Each and every allegation of the Complaint, not hereinafter specifically admitted, is denied.
2. That the allegations of paragraphs 1, 2, 3, 4 and 5 are admitted.
3. That the allegations of paragraph 6 are admitted.
4. That the allegations of paragraph 7 are admitted.
5. That the allegations of paragraphs 8, 9 and 10 are admitted.
6. The allegations of paragraphs 11 and 12 are denied.

FOR A SECOND DEFENSE

7. Each and every allegation hereinabove, not inconsistent herewith, is herein realleged by reference.
 8. That the Plaintiff's action is barred by the applicable statutes of limitations.
- WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants would pray that the action be dismissed, with costs.

RANDALL S. HILLER, P.A.


Randall S. Hiller (SCB# 2513)

P.O. Box 1716

Greenville, SC 29602

864-232-0026

864-242-4692 Fax

Attorney for Defendants

Greenville, South Carolina

August 2, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2014-CP-23-4097

First Citizens Bank and Trust)
Company, Inc.,)

Plaintiff)

v.)

Ronald D. Taylor and Ted D. Smith,)

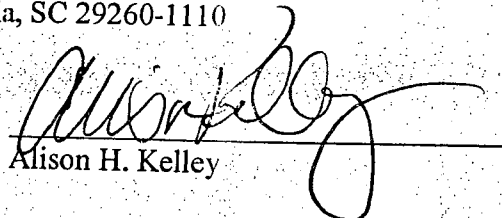
Defendants)

CERTIFICATE OF MAILING

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 28 PM 12 28

I hereby certify that I am an employee of the law firm RANDALL S. HILLER, P.A., counsel for the above captioned Defendants, and I have, this date written below served the within Plaintiff with Defendants' Answer relative to the above captioned by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110


Alison H. Kelley

August 27, 2014

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2304097

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

FILED-CLERK
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 OCT 6 PM 4:01

CHECK ONE:

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

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

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

Dated at Greenville, South Carolina, this 6th Day of October 2015.

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 1st Day of October 2015, and a copy mailed first class this, 6th Day of October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

Randall Scott Hiller 850 Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

ORDER

2015 OCT 1 PM 3 43

FILED-CLEINT. COURT
GREENVILLE
PAUL G. H.

WLB

PROCEDURAL HISTORY AND FACTS

The Plaintiff, First Citizens Bank and Trust Company, Inc. (referred to herein as "Plaintiff" or "First Citizens"), filed this lawsuit on July 28, 2014 against the above-named Defendants alleging a single cause of action, Breach of Contract. First Citizens alleged that the Defendants failed to make payments towards a Commercial Note ("the Note") that both Defendants executed on May 22, 2008. The Note was secured by a Mortgage and the Mortgage was filed of record with the Greenville County Register of Deeds on May 28, 2008 (Book 4959, Page 2301).

The Defendants' last payment towards the Commercial Note was on September 18, 2008. The Defendants do not contest the amount owed to Plaintiff. Instead, the Defendants contend that the Plaintiff's action is time-barred by the Statute of Limitations. In accordance with the terms of the of the Consent Order entered in this case, the Court decides this case on the briefs submitted by the parties. The parties' only dispute is whether or not the statute of limitations has expired on the Plaintiff's claim against the Defendants.

The Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim. As more particularly set forth herein, the Plaintiff's claim against the Defendants is governed by a twenty-year statute of limitations. Accordingly, the Plaintiff is entitled to a Judgment against the Defendants in this action in the amount prayed for in its Complaint and itemized in the Affidavit of Michael O'Hare, filed contemporaneously with the Plaintiff's Motion for Summary Judgment.

STANDARD

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "Once the moving party carries its initial burden, the 'opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'"" *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct. App. 2002) (citations omitted).

HOLDING

Defendants contend that the three-year statute of limitations (S.C. Code § 15-3-530(1)) applies to the Plaintiff's claim against the Defendants for the breach of a Commercial Note. S.C. Code § 15-3-530(1) states that an action shall be brought: "[w]ithin three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." (emphasis added). S.C. Code § 15-3-520 provides a twenty-year statute of limitations for "an action upon a bond or other contract in writing secured by a mortgage of real property." S.C. Code § 15-3-520(a) (1976). The Commercial Note signed by the Defendants on May 22, 2008, is a "contract in writing secured by a mortgage of real property." Therefore, the twenty-year limitations period applies in the instant case.

In the case before this Court, the Commercial Note was executed and secured contemporaneously with a mortgage. The note is "a contract in writing, secured by a mortgage of real property" and falls under the twenty-year statute of limitations, S.C. Code § 15-3-520. When the legislature reduced the limitations period of S.C. Code § 15-3-530 from six years to three years in 1988, it preserved the Section 15-3-520 exception: "Within three years: (1) an

action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." S.C. Code Ann. § 15-3-530. Therefore, the Plaintiff in this civil action had twenty years to file suit against the Defendants and is entitled to Judgment, as a matter of law, against the Defendants in this civil action in the amount of \$66,263.49, plus interest accruing thereon at the contract rate of 4.75% per annum pursuant to the terms of the Commercial Note (\$6.93/day from June 27, 2014) for a total amount, as of September 15, 2015 of \$69,347.34.¹ In addition, the Plaintiff is entitled to its attorney's fees and the costs of this action by the terms of the Commercial Note.

Before awarding attorneys fees, this Court must conduct a two-part analysis. First, this Court must verify that it can award attorneys' fees. Second, the Court must conduct an analysis in accordance with *Jackson v. Speed*, 486 S.E.2d 750, 326 S.C. 289 (S.C. 1997). In accordance with *American Federal Bank, FSB v. Number One Main Joint Venture*, 467 S.E.2d 439, 321 S.C. 169 (S.C. 1996) (citations omitted), "[A]ttorneys' fees are not recoverable unless authorized by contract or statute. In the case at hand, attorney's fees are recoverable in accordance with the terms of the Note.

In *Jackson*, the South Carolina Supreme court stated that the following should be considered when determining a reasonable attorney's fee:

[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Further, on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Jackson v. Speed* at 760 (internal citations omitted).

For the reasons set forth herein, \$5,000 in attorney's is reasonable, based upon the Court's consideration of the factors below.

The nature, extent and difficulty of the legal services rendered

This was a contested breach of contract action involving contract interpretation and a statutory analysis of the Statute of Limitations. This case was filed over one year ago and Plaintiff's Counsel has successfully navigated this case to a resolution. Plaintiff's counsel, Joey R. Floyd, has

¹ June 27, 2014 to September 15, 2015 = 445 days. Accrued interest, as of September 15, 2015: 445 days x 6.93 = \$3,083.85.

approximately fourteen years of experience as an attorney. Defendant's counsel, Randall S. Hiller, has over thirty years experience as an attorney.

The contingency of compensation

The contract between Plaintiff and the Defendants expressly provides for the Plaintiff to recover its attorneys' fees.

The time and labor necessarily devoted to the case

Plaintiff's counsel filed this action, narrowed the issues in dispute with Defendants' Counsel, reached an agreement with the Defendants' Counsel to allow this matter to be decided on briefs, drafted and filed a Memorandum in Support of its Motion for Summary Judgment and provided this Court with a proposed Order for consideration.

The fee customarily charged in the locality for similar legal services

A fee of 15% is not reasonable in light of the circumstances of this case and exceeds the amount necessary to collect in a case where the parties consent to no hearing and a decision pursuant to Summary Judgment.

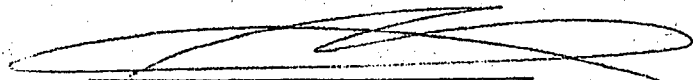
The beneficial results obtained

The Plaintiff's Counsel has achieved a beneficial result for his client in that the Plaintiff's Motion for Summary Judgment has been granted. In other words, the Plaintiff's Counsel has achieved the most beneficial result at this point in time.

ORDER OF JUDGMENT

It is therefore ORDERED that a Judgment be entered against the Defendants, Ronald D. Taylor and Ted D. Smith, in the following amounts: \$69,347.34 as the amount due, as of September 15, 2015, \$5,000 in attorneys' fees, \$495.89 in costs, for a total amount of \$74,843.23, with interest accruing thereon at the post-judgment interest rate.

IT IS SO ORDERED.



The Honorable Robin B. Stilwell
Circuit Court Judge for the Thirteenth Judicial Circuit

September 24, 2015

A Certified Copy
Paul B. Walden
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10/6/15

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-23-4097

CERTIFICATE OF SERVICE

I, Annie Rich, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on the 13th day of October, 2015, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following.

Pleadings/Documents Served:

Order of Judgment, signed by Judge Stilwell on 9/24/15 and filed on 10/6/15

Person(s) Served:

Randall S. Hiller, Esquire
Post Office Box 1716
Greenville, SC 29602

Annie Rich

COUNTY OF GREENVILLE

2015 OCT 21

CASE NO. 2014-CP-23-4097

First Citizens Bank and Trust

Plaintiff,

vs.

Ted Smith and Ron Taylor

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

Joey Floyd, Bar No. _____

Address:

P.O. Box 61110, Columbia, SC 29260

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Randall S. Hiller, Bar No. 2513

Address:

850 Wade Hampton Blvd., Greenville, SC

Phone: 232-0026 Fax 242-4692

E-mail: rsh@rshpa.org Other: ahk@rshpa.org

- ☒ 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: Reconsider

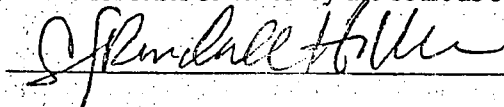
Estimated Time Needed: 15 min.

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

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



October 13, 2015

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

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

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

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

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

RECEIVED JUDGMENT IN A CIVIL CASE
DEC 03 2015 CASE NO: 2014CP2304097
SC Court of Appeals

First Citizens Bank And Trust Company Inc vs. Ronald D Taylor

2015 OCT 29 PM 3:14
COURT
CLERK
RECEIVED

HECK 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: _____

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

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

Dated at Greenville, South Carolina, this October 29, 2015.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the October 29, 2015, and a copy mailed first class this October 29, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Joey Randell Floyd Bruner, Powell, Wall & Mullins,
LLC P.O. Box 61110 Columbia, SC 29260

Randall Scott Hiller 850 Wade Hampton Blvd.
Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M
SCCA SCRPC Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust
Company, Inc.,

Plaintiff,

vs.

Ronald D. Taylor and Ted D. Smith.

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING
MOTION TO RECONSIDER**

Case No.: 2014-CP-23-4097

This matter comes before the Court pursuant to the Defendant's Motion to Reconsider the Court's previous Order of September 24, 2015. The Motion is respectfully denied. Notwithstanding assertions to the contrary, the Court relied upon only those documents, memoranda of law, affidavits, and pleadings which were provided by the respective parties. The ruling was made strictly within the provisions of Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.



ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT

October 26, 2015
Greenville, South Carolina

2015 OCT 29 PM 3 10
CLERK OF COURT
JUDICIAL CIRCUIT
THIRTEENTH

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company, Inc.,

Plaintiff,

v.

Ronald D. Taylor and Ted D. Smith,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) IN RE: EXECUTION AGAINST
) PROPERTY

)

) CIVIL ACTION NO.: 2014-CP-23-04097

)

) Date of Judgment: September 24, 2015

) Date Judgment Filed: October 1, 2015

)

) Amount Due:

) Judgment Amount: \$74,843.23

) Payments Made: \$0.00

) Interest: As accrued

)

TO: THE SHERIFF OF GREENVILLE COUNTY:

WHEREAS, judgment was rendered and entered in the referenced case on the date shown above in favor of Plaintiff against Defendants, Ronald D. Taylor and Ted D. Smith, in the amount set forth; and

WHEREAS, the judgment was docketed in your county on the date shown, or, if your county is other than that where the judgment was originally entered, a transcript thereof was entered in your county on the date indicated above; and

WHEREAS, the amount itemized is due and owing.

THEREFORE, the undersigned Attorneys for Plaintiff command you to satisfy the judgment out of personal property of the judgment debtors within your county; if sufficient personal property cannot be found, then you are to satisfy the judgment out of real property in your county belonging to the judgment debtors on the date the judgment was docketed in your county or from real property thereafter regardless of the person now claiming ownership or possession, and to duly return this Execution according to law to the Clerk of Court.

DATE: Nov. 13, 2015

ATTEST:

Paul B. Wickensimer (SEAL)
Clerk of Court for Greenville County

BRUNER, POWELL, WALL & MULLINS, LLC

Joey R. Floyd
Joey R. Floyd
1735 St. Julian Place, Ste 200
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803)252-7693
Attorneys for Plaintiff
First Citizens Bank and Trust Company, Inc.

Columbia, South Carolina
October 27, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust Company, Inc.,

Petitioner,

v.

Ronald D. Taylor and Ted D. Smith,

Respondents.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 2014-CP-23-04097

) **VERIFIED PETITION FOR**
) **SUPPLEMENTAL PROCEEDINGS**

PETITIONER WOULD RESPECTFULLY SHOW:

That heretofore Petitioner recovered and recorded judgment against Respondents, Ronald D. Taylor and Ted D. Smith ("Respondents"), as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated, Respondent having failed and refused to satisfy same:

JUDGMENT ENTERED: October 1, 2015
JUDGMENT ROLL #: 2014-CP-23-04097
AMOUNT DUE: \$74,843.23

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

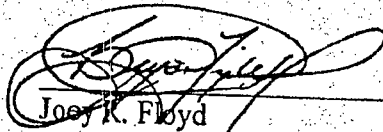
belonging to Respondents; or in which Respondents could claim any interest, solely or in conjunction with any person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

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

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

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

BRUNER, POWELL, WALL & MULLINS, LLC



Joey K. Floyd

Bryan M. J. Triplett

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803) 252-7693

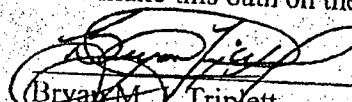
Attorneys for Petitioner

First Citizens Bank and Trust Company, Inc.

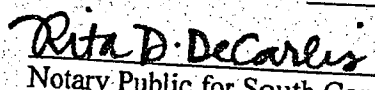
November 1, 2016

VERIFICATION

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


Bryan M. J. Triplett
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 1st DAY OF November, 2016


Notary Public for South Carolina
My Commission Expires: October 18, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-04097
	)	
First Citizens Bank and Trust Company, Inc.,	)	
	)	
Plaintiff,	)	
	)	RULE TO SHOW CAUSE AND ORDER
v.	)	OF REFERENCE
	)	
Ronald D. Taylor and Ted D. Smith,	)	
	)	
Defendants.	)	
	)	

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

ORDERED that **Ronald D. Taylor and Ted D. Smith, DO APPEAR** before **Greenville County Master in Equity, The Honorable Charles B. Simmons, Jr., at the Greenville County Courthouse 305 East North Street, Courtroom 5, Greenville, South Carolina, on the 12th day of December, 2016 at 10:00 AM**, to answer under oath concerning your assets; TO SHOW CAUSE why your property should not be applied towards satisfaction of the Judgment set out in the Petition; to SHOW CAUSE why a Receiver of Respondent's property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South Carolina Code Ann. (Law. Co-op. 1976).

The Master-in-Equity will entertain and rule upon all motions necessary to dispose of this matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of

the Petitioner's debt and has authority to enter a Final Order. Any appeal from the Master-in-Equity is directly to the Supreme Court.

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

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

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

security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One Hundred Dollars (\$100) in any single transaction from the past three (3) years to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.

12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

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

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al
Case Number: 2014CP2304097
Type: Order/Rule To Show Cause

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2016-11-10 09:12:41 page 4 of 4

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2014-CP-23-024097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff,)

vs.)

Ronald D. Taylor and Ted D. Smith,)

Defendants.)

TRANSCRIPT OF TESTIMONY

January 23, 2017

Greenville, South Carolina

B E F O R E:

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

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

Joey Floyd, Esquire
Attorney for the Plaintiff

Danette P. Hanks, CCR
Court Reporter

1 THE COURT: Ready to proceed?

2 MR. FLOYD: Yes, Your Honor.

3 THE COURT: Which one of these nice gentlemen do you
4 want to have up on the stand first?

5 MR. FLOYD: I'll let them play paper rock scissors.

6 THE COURT: All right. Y'all come around. I'm
7 assuming we're going to be kind of straight to the substance and
8 move this thing along.

9 Place your left hand on the bible and raise your right hand.
10 Do you swear to tell the truth, whole truth and nothing but the
11 truth?

12 MR. SMITH: I do.

13 THE COURT: If you'll come around and have a seat,
14 please, sir.

15 This is 2014-04097; First Citizens versus Taylor and Smith.
16 We're here today on supplemental proceedings in furtherance of a
17 debt collection or a judgment collection is probably the better
18 way to say it.

19 Sir, if you'd state your full name.

20 MR. SMITH: Ted D. Smith.

21 THE COURT: All right. And Mr. Smith, you understand
22 what we're doing here this morning; correct?

23 MR. SMITH: I do.

24 THE COURT: Okay. Your witness.

25 TED D. SMITH,

1 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. FLOYD:

4 Q. Mr. Smith, my name is Joey Floyd and I'm going to ask you
5 some questions today. It's my understanding that you've been
6 here before in one of these supplemental proceedings.

7 A. Three or four other times.

8 Q. Okay. So I'm going to start out with -- I'm just going to
9 go straight to the point and ask you some very pointed questions.
10 What are you doing these days?

11 A. I'm retired.

12 Q. Retired. All right. Are you drawing social security these
13 days?

14 A. I am.

15 Q. Are you living off of that?

16 A. Barely.

17 Q. Okay. Do you have any other sources of income at this time?

18 A. No, I do not.

19 Q. And how old are you?

20 A. Sixty-eight.

21 Q. All right. Where do you bank?

22 A. I don't have a banking account.

23 Q. No bank account?

24 A. No.

25 Q. Have you had a bank account?

1 A. Not since 2008.

2 Q. Are you married?

3 A. I am.

4 Q. Who are you married to?

5 A. Wanda H. Smith.

6 Q. Okay. Does Ms. Smith have a bank account?

7 A. She does.

8 Q. Where does she bank?

9 A. BB&T.

10 Q. Is that the only bank that she banks at?

11 A. She has a little LLC that has an account with UCB.

12 Q. UCB?

13 A. United Carolina, I guess that's what it's called.

14 Q. And where is that bank located?

15 A. Travelers Rest.

16 Q. Okay. Do you own any stocks?

17 A. I do not.

18 Q. Do you have a retirement account of any sort?

19 A. I do not.

20 Q. Do you own any mutual funds?

21 A. I do not.

22 Q. Any investment accounts?

23 A. None.

24 Q. Do you have any current -- let me back up. Do you have any

25 LLC's?

1 A. I do not.

2 Q. You've had a number of LLC's; right?

3 A. Over the -- from -- until 2008.

4 Q. Did everything kind of stop operating in 2008?

5 A. I believe that there may have been some that -- well, one
6 lingered over until last year. That was the LLC that held the
7 Denton property that we told you about that we deeded in lieu of
8 foreclosure to UCB last year. And then all the others were
9 closed out by 2009.

10 Q. So the Denton rental property you say was deed in lieu?

11 A. That's correct.

12 Q. That's in North Carolina. Is that Sunset Beach up there?

13 A. Not -- it's close to Davidson University; wherever that is.

14 Q. Okay. Charlotte?

15 A. Outside of Charlotte.

16 Q. All right. Have you ever had any rental property up in
17 Sunset Beach, North Carolina?

18 A. I have not.

19 Q. Have you transferred any property?

20 A. I have not.

21 Q. In the past five years?

22 A. The only one is the one I told you about, the deed in lieu
23 of foreclosure over at UCB.

24 Q. All right. Do you own any vehicles?

25 A. I do not.

1 Q. What did you drive here in today?
2 A. I drove one that's owned by my wife.
3 Q. What is that vehicle?
4 A. It's a 2005 Toyota 4Runner.
5 Q. Do you own any RV's?
6 A. I do not.
7 Q. Motorcycles?
8 A. None.
9 Q. Boats?
10 A. None.
11 Q. Who has the interest in the Little Caesars?
12 A. What interest?
13 Q. Carolina? Are you familiar with that? Are you Mr. Smith?
14 A. I am.
15 Q. Okay. Does anybody own a Little Caesars?
16 A. No.
17 Q. Is there any reason why that would be reflected on your tax
18 returns in 2015?
19 A. My wife had -- she loaned them some money that they paid off
20 sometime -- I guess they paid it off in 2015. That's probably
21 the reason it shows up there.
22 Q. Okay. So she loaned a company called Carolina?
23 A. That's correct.
24 Q. Did she own any part of Carolina?
25 A. No.

- 1 Q. But they paid off that loan?
- 2 A. They did.
- 3 Q. How much was that loan?
- 4 A. I think the final payoff was slightly above a hundred
5 thousand dollars.
- 6 Q. The property that you sold in 2015, are you familiar with
7 that property, that's reflected on your tax returns?
- 8 A. That was something that my wife had on Pelham Road, I guess,
9 is the only thing I can think of.
- 10 Q. It's now a QuikTrip. Does that sound ---
- 11 A. Yes.
- 12 Q. --- familiar?
- 13 A. That's correct.
- 14 Q. Where was that money, \$271,300.00, deposited?
- 15 A. I would assume it would have been deposited in her bank
16 account at UCB.
- 17 Q. What interest did you have in Grove Enterprises?
- 18 A. None.
- 19 Q. Were you involved in the management of Grove Enterprises?
- 20 A. No.
- 21 Q. Have you ever been involved in Smith Family?
- 22 A. I advise my wife from time to time.
- 23 Q. Were you ever a member of that LLC?
- 24 A. No.
- 25 Q. Would I find your name on any of the deeds associated with

1 that transaction that took place in 2015?

2 A. I don't know. I do have -- what do you call it? The right
3 to sign for somebody, it's called a -- what is it called? I
4 can't think of ---

5 THE COURT: Power of Attorney?

6 A. Power of Attorney; yes.

7 Q. So you have Power of Attorney for your wife?

8 A. I do.

9 Q. Okay. This was identified as a gain for both of you on your
10 tax returns there; right?

11 A. No. It should be just in her column alone, because that was
12 her LLC, Smith Family LLC, that did that transaction.

13 Q. And when was Smith Family formed?

14 A. I would say she -- 2010, maybe.

15 Q. Did you have any investment capital to start that company?

16 A. None.

17 Q. Where did the money come from to start that company?

18 A. She had another piece of property that she sold in 2012.

19 Q. Were you involved with that other piece of property?

20 A. No. It was in -- that belonged to her and her father.

21 Q. Do you know Grove Enterprises? Have you ever heard of that?

22 A. I know who he is; yes.

23 Q. Who is that?

24 A. He has the AFC Urgent Care Centers.

25 Q. Was he involved in this transaction?

1 A. He was in a partnership with her on that piece of property.
2 Q. Okay. Did he get half of this money?
3 A. He did.
4 Q. He got half of two hundred seventy-one thousand three
5 hundred?
6 A. No. He got that amount, as well.
7 Q. Oh, so there was a split?
8 A. Yes.
9 Q. So two times that much money?
10 A. Yes.
11 Q. Okay. And you say you assume that that was deposited into
12 the BB&T?
13 A. No. UCB.
14 Q. UCB. How many accounts does she have at UCB?
15 A. One.
16 Q. I'm sorry?
17 A. One.
18 Q. One account? Are all of your social security deposit checks
19 deposited into that UCB account, as well?
20 A. It is.
21 Q. Direct deposit?
22 A. Yes.
23 Q. How about WAHS Properties LLC?
24 A. It's basically silent now. There's nothing going on in
25 that.

1 Q. Was that your LLC?
2 A. No. That was her.
3 Q. That was her LLC?
4 A. That's her initials.
5 Q. So at the Denton Center you received about sixty thousand
6 three hundred and twenty dollars in rents?
7 A. I did not receive them. The bank took them.
8 Q. Okay. That was my question. Did the bank take all of the
9 rents?
10 A. It was in a lockbox from 2008 on.
11 Q. Okay. Are there any other LLC's that you own any interest
12 in that own real property?
13 A. No.
14 Q. Did your -- did Smith Family -- what is the name of that
15 company, Smith ---
16 A. It's Smith Family LLC.
17 Q. Smith Family LLC. Did Smith Family LLC purchase any other
18 property after the sales transaction in 2015?
19 A. No.
20 Q. It simply deposited that money into a bank account, to the
21 best of your knowledge?
22 A. That's correct.
23 Q. Did you attend that closing?
24 A. I think I did.
25 Q. Did your wife attend that closing?

1 A. I'm sure she must have.

2 Q. Can you remember as you sit here today?

3 A. I'm pretty sure that we were both there.

4 Q. Who formed Smith Family LLC?

5 A. The attorney?

6 Q. Yes?

7 A. John Kehl.

8 Q. Did you direct that formation or have anything to do with
9 it?

10 A. I'm not sure exactly what all my involvement in that. She
11 needed to form it to have a place to do her business out of.

12 Q. Have you ever owned any interest in Smith Family LLC?

13 A. None whatsoever.

14 Q. You reported about fourteen thousand dollars worth of rental
15 income on your tax returns as income. Was that money deposited
16 into the UCB bank account, as well?

17 A. I'm not sure where that -- what are you looking at?

18 Q. Your tax return. Would you like to see it?

19 A. On rental ...

20 MR. FLOYD: May I approach, Your Honor?

21 THE COURT: Certainly.

22 Q. This appears to be Denton Center for the rents received for
23 sixty thousand dollars and it has a list of what you paid
24 associated with all that; then it shows an income of \$14,567.00
25 after all expenses have been paid.

1 A. The bank took that.

2 Q. Okay. What bank was this? UCB?

3 A. UCB.

4 Q. Okay. So who was paying rent on the Denton Center? Was it,
5 multiple tenants?

6 A. I think that by the end there was probably -- Lowes Food is
7 the only one that's there now.

8 Q. Okay. So UCB should have all the paperwork on ---

9 A. Yes.

10 Q. --- rents and that sort of stuff?

11 A. You can also check with the property manager. He's the one
12 that actually received all the rent and took it to UCB.

13 Q. Who is the property manager?

14 A. His name is John McManus, Reagan Realty.

15 Q. Is Mr. McManus out of Georgia?

16 A. No. Stone Avenue here in Greenville.

17 Q. And what was the name of his company; I'm sorry?

18 A. Reagan Realty.

19 Q. Reagan Realty. Do you have any other assets?

20 A. I do not.

21 Q. Do you own the home that you live in?

22 A. My wife owns it.

23 Q. When did she buy it?

24 A. 2004.

25 Q. Did you contribute any funds to that?

1 A. No.

2 Q. All right. Are there any other accounts; bank accounts,
3 financial accounts that we haven't talked about today?

4 A. None.

5 Q. Are there any other LLC's that you're tying up loose ends
6 on?

7 A. I think Denton did away with -- that was the final one.

8 Q. If you come across any other information, will you let me
9 know?

10 A. I will.

11 Q. Have you filed your 2016 tax returns?

12 A. No.

13 Q. You're compiling all the paperwork; is that what you're
14 doing?

15 A. I haven't started yet.

16 Q. You plan to though; right?

17 A. Oh, yeah.

18 Q. Who's got the paperwork for Smith Family LLC? Does your
19 wife have that information?

20 A. Yes.

21 Q. And does she live with you?

22 A. Yes.

23 Q. And your address is?

24 A. 2221 Altamont Road, Greenville.

25 Q. And she has all the paperwork for Smith Family LLC?

1 A. Yes.

2 Q. Is there anyone else who would have paperwork for Smith
3 Family LLC?

4 A. I don't know of anybody else that could.

5 Q. Who is the accountant for Smith Family LLC?

6 A. Same one that did that, Elliott Davis.

7 Q. Here in Greenville?

8 A. Yes.

9 Q. Do you have a guy or a lady at Elliott Davis here in
10 Greenville?

11 A. Yes.

12 Q. Who is that?

13 A. Drew Rogers.

14 Q. Okay.

15 MR. FLOYD: I'd like to keep it open to do a little
16 more discovery, but that's all the questions that I have of this
17 witness at this time.

18 THE COURT: All right. Thank you, sir. You can step
19 down. Do you want any testimony from the other gentleman?

20 MR. FLOYD: I would, yes, sir.

21 THE COURT: Sir, if you'll come around, please, sir.

22 MR. TAYLOR: Can we take a restroom break?

23 THE COURT: Yes, sir. Go quickly, if you will. It's
24 out the door to the right and then take a right and it's on the
25 left.

1 (OFF THE RECORD)

2 THE COURT: All right. Come on around if you will. I
3 appreciate you coming in. If you'll place your left hand on the
4 bible and raise your right hand. Do you swear to tell the truth,
5 whole truth and nothing but the truth?

6 MR. TAYLOR: I do.

7 THE COURT: Thank you. Come around and have a seat,
8 please, sir. If you'll state your full name.

9 MR. TAYLOR: Ronald D. Taylor, Sr.

10 RONALD D. TAYLOR, SR.,

11 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. FLOYD:

14 Q. Mr. Taylor, how old are you?

15 A. Seventy-one.

16 Q. Are you currently undergoing some sort of treatments?

17 A. I am. I have multiple myeloma cancer.

18 Q. And are you currently undergoing treatment right now?

19 A. Yes. Chemotherapy.

20 Q. All right. Mr. Taylor, do you have any bank accounts?

21 A. No, I don't.

22 Q. When is the last time you had a bank account?

23 A. I can't tell you for sure. It would have been prior to --
24 2008 or prior.

25 Q. Do you own any vehicles?

1 A. No.

2 Q. Did you drive here today in somebody else's car?

3 A. My wife's car.

4 Q. Do you own any land?

5 A. No.

6 Q. When was the last time you had an interest in real property;

7 land?

8 A. Well, the last property that was owned in the company was

9 that Denton Center property would be the last and only thing I've

10 had since 2008, I guess. That's the one that was deeded in lieu

11 to Palmetto Bank.

12 Q. Did you receive any rents?

13 A. No. Those rents were all sent to the bank.

14 Q. So all the money went straight to the bank, to UCB?

15 A. That's correct.

16 Q. What was the name of the LLC?

17 A. Denton Center LLC.

18 Q. Who were the members?

19 A. Ted Smith and Ron Taylor.

20 Q. Have you been involved in any real estate transactions in

21 the past five years?

22 A. The past what?

23 Q. Five years?

24 A. No.

25 Q. And that is to say whether you were a member of an LLC, ^{an}

1 indirect owner or something like that?

2 A. No.

3 Q. Do you have any retirement accounts?

4 A. No.

5 Q. 401k's?

6 A. No.

7 Q. IRA's?

8 A. No.

9 Q. Investment accounts of any sort?

10 A. No.

11 Q. Have you set up any trust funds or anything like that for

12 anybody?

13 A. No.

14 Q. Are you living off of social security these days?

15 A. I am.

16 Q. Are you a member of any LLC currently?

17 A. No.

18 Q. Are you a shareholder in any company?

19 A. No.

20 Q. Do you own any stocks?

21 A. No.

22 Q. Do you own any assets that I haven't asked you about this

23 morning?

24 A. No.

25 Q. Boats? Do you own a boat?

1 A. No.

2 Q. Motorcycles?

3 A. None of those.

4 Q. RV's; that sort of stuff?

5 A. (Negative nod.)

6 Q. Thank you for your time. I appreciate you coming in.

7 THE COURT: All right. Anything else, Mr. Floyd, at
8 this point?

9 MR. FLOYD: That's it, Judge. Thank you for your time.

10 THE COURT: All right. This appears to be a no-asset
11 case, if you would ---

12 MR. FLOYD: I want to investigate this transaction, but
13 beyond that, I understand.

14 THE COURT: If you'll just submit, via email, an Order
15 to my court reporter.

16 Gentlemen, any questions from either one of you?

17 All right. I appreciate y'all coming in. Thank you.

18 MR. FLOYD: What sort of Order, Judge, would you like?

19 THE COURT: Just a no-asset Order.

20 MR. FLOYD: Okay. Are you going to give me some time
21 to investigate this?

22 THE COURT: How much time do you need?

23 MR. FLOYD: Sixty days?

24 THE COURT: Okay. That's fine.

25 MR. FLOYD: All right.

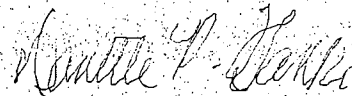
1 THE COURT: All right. Thank you.
2
3

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

1 The undersigned, Danette P. Hanks, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 23rd day
8 of January, 2017.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11
12 February 1, 2017
13

14 

Danette P. Hanks, CCR

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

C/A No.:2014-CP-23-04097

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO COMPEL TED D. SMITH TO
PRODUCE DOCUMENTS AND TO
COMPEL RESPONSES TO SUBPOENAS
(RULES 26, 37, 45 AND 69, SCRCP)**

TO: RANDALL S. HILLER, ATTORNEY FOR THE DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 26, 37, 45 and 69 of the South Carolina Rules of Civil Procedure, the Petitioner, First Citizens Bank and Trust Company, Inc., by and through its undersigned Counsel will move before the Honorable Charles B. Simmons, Jr. on the 10th day following service hereof or as soon thereafter as Counsel can be heard, for an Order to: (1) compel Ted D. Smith to produce complete copies of his 2013, 2014 and 2015 federal and state tax returns, including all schedules to the tax returns, in accordance with the Rule to Show Cause and (2) compelling Smith Family, LLC, United Community Bank and Elliott Davis Decosimo, LLC ("Elliott Davis") to respond to the Subpoenas (documents-only) that were issued to these same non-parties. A copy of the documents-only Subpoenas are attached hereto as Exhibit A. A copy of the written objection asserted by Smith Family, LLC is attached hereto as Exhibit B. A copy of the written objections asserted by Elliott Davis is attached hereto as Exhibit C. A copy of Petitioner's Counsel's response to Elliott Davis's initial objection is attached hereto as Exhibit D.

The Respondent Ted D. Smith has failed to produce a full copy of his 2013, 2014 and 2015 federal tax returns¹ and has failed to produce his state tax returns. To date, the Respondent has failed to produce any state tax returns. As such, the Petitioner seeks a full copy of the Respondent Ted D. Smith's tax returns from 2013, 2014 and 2015.

The Petitioner holds a Judgment against Ted D. Smith and the Petitioner is seeking to obtain discovery of tax returns and banking records for "Smith Family, LLC" – an LLC in which Ted D. Smith has asserted is owned by his wife. Ted D. Smith has also testified that he has no bank account; but, he is depositing money in to his wife's bank account at United Community Bank. In accordance with Rules 26, 69 and 45 the Petitioner is seeking discovery on any assets that the Respondent Ted D. Smith may hold/have an interest in, such that the asset(s) may be subject to execution. Upon information and belief, the Petitioner should be able to review the banking records at United Community Bank since Mr. Smith has testified that he deposits money in United Community Bank on a monthly basis in his wife's account(s). In order to conduct discovery, the Petitioner seeks an Order from this Court to inspect the United Community Bank banking records.

The subpoena directed to Elliott Davis Decosimo, LLC is limited in time and scope. Notwithstanding that fact, Elliott Davis Decosimo, LLC has raised an objection to the subpoena based on an IRS statutory code (I.R.C. 7216(b)(1)). Upon information and belief, the Code of Federal Regulations permits Elliott Davis to respond to the Subpoenas (26 CFR 301.7216-2). As such, Petitioner seeks an Order directing Elliott Davis to produce copies of the documents requested in the subpoena.

¹ While the Rule to Show Cause requires 5 years of tax returns, the Petitioner is only seeking the three years of tax returns in this Motion to Compel.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned counsel certifies that prior to filing this motion, I attempted, in good faith, to resolve the matter contained in this motion prior to filing this motion.

Respectfully submitted,

s/Joey R. Floyd

Joey R. Floyd

Bruner Powell Wall & Mullins, LLC

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803) 252-7693

Attorneys for Petitioner

First Citizens Bank and Trust Company, Inc.

February 16, 2017

EXHIBIT A

BRUNER, POWELL, WALL & MULLINS, LLC

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

WARREN C. POWELL, JR., P.A. **
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: jfloyd@brunerpowell.com

February 2, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
DELIVERY RESTRICTED TO ADDRESSEE

United Community Bank
C/o CT Corporation System
2 Office Park Ct, Suite 103
Columbia, SC 29223

Re: **First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith**
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119

To Whom It May Concern

Enclosed herewith you will find a Subpoena (documents only) to **UNITED COMMUNITY BANK** in connection with the above-referenced matter. Please feel free to relay to United Community Bank that the documents responsive to this subpoena can be produced in electronic format. United Community Bank's representatives are free to call me if there are any questions regarding the documents requested in the subpoena. If the copying costs exceed \$20.00, please call me before making copies so that I can obtain authorization.

With my kindest regards, I am

Sincerely,



Joey R. Floyd

jrf:hos

Enclosure

Cc: Ted D. Smith (Via U.S. Mail w/copy of Enclosure)
Ronald D. Taylor (Via U.S. Mail w/copy of Enclosure)

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE
First Citizens Bank and Trust Company, Inc.,
Plaintiff

SUBPOENA IN A CIVIL CASE

v.
Ronald D. Taylor and Ted D. Smith,
Case Number: 2014-CP-23-04097
Judgment in Greenville County

TO:
United Community Bank
c/o CT Corporation System
2 Office Park Ct, Suite 103
Columbia, SC 29223

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below. (list documents or objects):

See attached Exhibit A.

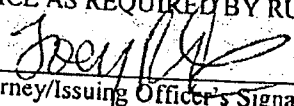
PLACE Bruner Powell Wall & Mullins, LLC 1735 St. Julian Place, Suite 200 Columbia, SC 29260	DATE AND TIME February 17, 2017, 10:00 a.m.
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

	2/17/17	Joey N. Floyd
Attorney/Issuing Officer's Signature	Date	Print Name
Indicate if Attorney for Plaintiff or Defendant		
Attorney's Address and Telephone Number :		
1735 St. Julian Place, Post Office Box 61110 Columbia, SC 29206		
(803) 252-7693		

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and
Telephone Number :

Date

Print Name

PROOF OF SERVICE

SERVED:	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
PLACE:		
SERVED ON		MANNER OF SERVICE:
SERVED BY:		TITLE:

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(5)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT A

1. A copy of all account opening documents for all accounts owned in whole or in part by Wanda H. Smith and/or Ted D. Smith from 2012 to present date, including but not limited to signature cards.
2. A copy of all account opening documents for any accounts for an entity(ies) owned in whole or in part by Wanda H. Smith and/or Ted D. Smith from 2012 to present date, including but not limited to signature cards.
3. A copy of the current bank statement for every account owned in whole or in part by Wanda H. Smith and/or Ted D. Smith since 2012, or the last bank statement if the account(s) has been closed.
4. A copy of the current bank statement for every account owned in whole or in part by any entity(ies) owned in whole or in part by Wanda H. Smith and/or Ted D. Smith since 2012, or the last bank statement if the account(s) has been closed.
5. A copy of all documents provided to United Community Bank by Wanda H. Smith and/or Ted D. Smith from 2012 to present.
6. A copy of any operating agreements, bylaws or other corporate documents in your possession for any LLC or corporation in which Wanda H. Smith or Ted D. Smith have any interest in whatsoever.
7. A copy of any documents in your possession which evidences or shows the interest owned in any entity (including, but not limited to, LLCs and corporations) by Wanda H. Smith and Ted D. Smith.
8. A copy of all emails between Wanda H. Smith and any person(s) at United Community Bank.
9. A copy of all emails between Ted D. Smith and any person(s) at United Community Bank.

Katie Gjennestad
 Bruner, Powell, Wall & Mullins, LLC
 1735 St Julian Place, Suite 200
 Columbia, SC 29204

U.S. Postal Service	
CERTIFIED MAIL® RECEIPT	
<i>Domestic Mail Only</i>	
For delivery information, visit our website at www.usps.com	
9236 0969 0099 9790 1407 3032 05	
Certified Mail Fee \$ 3.35	Restricted Delivery Requested
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$ 1.45	
☐ Return Receipt (electronic) \$ 4.95	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	Postmark Here
☐ Adult Signature Restricted Delivery \$	
Postage \$ 6.7	Code: KG - 82545.119
Total Postage and Fees \$ 10.42	
Sent To Street, Apt. No., or PO Box No. City, State, Zip+4 c/o CT Corporation System United Community Bank 2 Office Park Court, Suite 103 Columbia, SC 29223	
PS Form 3800, 12/2011 In Use Reverse for Instructions	

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



NEOPOST
 02/02/2017
US POSTAGE \$010.42
 ZIP 29204
 041M11278-5

c/o CT Corporation System
 United Community Bank
 2 Office Park Court, Suite 103
 Columbia, SC 29223

ELB CERENWAT L M L E L B 0202 1407 0104 2.24 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

WARREN C. POWELL, JR., P.A. **
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

** Also Admitted in District of Columbia

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

February 2, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
DELIVERY RESTRICTED TO ADRESSEE

John Marshall Mosser, Reg. Agent
Elliott Davis Decosimo, LLC
200 East Broad Street, Suite 500
Greenville, SC 29601

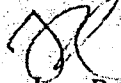
Re: **First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith**
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119

Dear Mr. Mosser:

Enclosed herewith you will find a Subpoena (documents only) in connection with the above-referenced matter. You are free to email your documents to me or drop a copy in the mail to me. I will be more than glad to accept electronic copies of the documents on a flash drive. Feel free to call me if you have any questions regarding the documents requested in the subpoena.

With my kindest regards, I am

Sincerely,


Joey R. Floyd

jrf:hos

Enclosure

Cc: Ted D. Smith (Via U.S. Mail w/copy of Enclosure)
Ronald D. Taylor (Via U.S. Mail w/copy of Enclosure)

ELECTRONICALLY FILED - 2017 Feb 16 12:24 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

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

First Citizens Bank and Trust Company, Inc.,
Plaintiff

SUBPOENA IN A CIVIL CASE

v.

Case Number: 2014-CP-23-04097

Ronald D. Taylor and Ted D. Smith,

Judgment in Greenville County

TO:

John Marshall Mosser, Reg. Agent

Elliott Davis Decosimo, LLC

200 East Broad Street, Suite 500

Greenville, SC 29601

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See attached Exhibit A.

PLACE

Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, SC 29260

DATE AND TIME

February 17, 2017, 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

1735 St. Julian Place, Post Office Box 61110 Columbia, SC 29206

(803) 252-7693

Date

Print Name

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and
Telephone Number :

Date

Print Name

PROOF OF SERVICE

SERVED:	DATE	FEEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
PLACE:		
SERVED ON	MANNER OF SERVICE:	
SERVED BY:	TITLE:	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties In Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT A

1. A copy of all tax returns, including all schedules and attachments, for Wanda H. Smith and Ted D. Smith from 2012 to present date.
2. A copy of all K1 forms for Wanda H. Smith and Ted D. Smith from 2012 to present.
3. A copy of all tax returns, including all schedules and attachments, for any LLC in which Wanda H. Smith or Ted D. Smith have any interest in whatsoever.
4. A copy of any operating agreements, bylaws or other corporate documents in your possession for any LLC or corporation in which Wanda H. Smith or Ted D. Smith have any interest in whatsoever.
5. A copy of any documents in your possession which evidences or shows the interest owned in any entity (including, but not limited to, LLCs and corporations) by Wanda H. Smith and Ted D. Smith.
6. A copy of all emails between Wanda H. Smith and any person(s) at Elliott Davis Decosimo, LLC.
7. A copy of all emails between Ted D. Smith and any person(s) at Elliott Davis Decosimo, LLC.

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

9236 0969 0099 9790 1407 3030 94

Certified Mail Fee \$ 3.35		Restricted Delivery Requested	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)			
☐ Return Receipt (hardcopy)	\$ 1.45		
☐ Return Receipt (electronic)	\$ 4.95		
☐ Certified Mail Restricted Delivery	\$		
☐ Adult Signature Required	\$		
☐ Adult Signature Restricted Delivery	\$		
Postage \$ 0.67			
Total Postage and Fees \$ 10.42			

Sent To: **John Marshall Mosser, Reg. Agent**
Elliot Davis Decosimo, LLC
 Street, Apt. No.,
 or PO Box No. **200 East Broad Street, Suite 500**
 City, State, Zip+4 **Greenville, SC 29601**

PS Form 3800, 7/1/2013 PSN 7520-01-000-9000 Reverse for Instructions

Code: XG-82545-1/19

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
 OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



Katie Gjennestad
 Bruner, Powell, Wall & Mullins, LLC
 1735 St Julian Place, Suite 200
 Columbia, SC 29204

NEOPOST
 02/02/2017
US POSTAGE \$010.42
 ZIP 29201
 0414111278

John Marshall Mosser, Reg. Agent
 Elliot Davis Decosimo, LLC
 200 East Broad Street, Suite 500
 Greenville, SC 29601

ELECTRONICALLY FILED FEB 2 2017 2:24 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

BRUNER, POWELL, WALL & MULLINS, LLC

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

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

WARREN C. POWELL, JR., P.A. **
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: jfloyd@brunerpowell.com

February 2, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
DELIVERY RESTRICTED TO ADDRESSEE

Wanda H. Smith, Reg. Agent
Smith Family, LLC
2221 Altamont Rd.
Greenville, SC 29609

Re: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119

Dear Ms. Smith:

Enclosed herewith you will find a Subpoena (documents only) in connection with the above-referenced matter. You are free to email your documents to me or drop a copy in the mail to me. Feel free to call me if you have any questions regarding the documents requested in the subpoena.

With my kindest regards, I am

Sincerely,

Joey R. Floyd

jrf:hos

Enclosure

Cc: Ted D. Smith (Via U.S. Mail w/copy of Enclosure)
Ronald D. Taylor (Via U.S. Mail w/copy of Enclosure)

ELECTRONICALLY FILED - 2017 Feb 16 12:24 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

First Citizens Bank and Trust Company, Inc.,
Plaintiff

SUBPOENA IN A CIVIL CASE

V.

Case Number: 2014-CP-23-04097

Ronald D. Taylor and Ted D. Smith,

Judgment In Greenville County

TO:
Wanda H. Smith, Reg. Agent
Smith Family, LLC
2221 Altamont Road
Greenville, SC 29609☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects): A copy of all corporate documents relating to Smith Family, LLC, including but not limited to the Articles of Organization, operating agreement(s) and any amendments thereto, all contracts entered into between Smith Family, LLC and any other person/entity from 2012 to present date and all documents relating to the sale of approximately 1.23 acres of real property to Quiktrip Corporation on, or about, October 23, 2015.

PLACE

Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, SC 29260

DATE AND TIME

February 17, 2017, 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

1735 St. Julian Place, Post Office Box 61110 Columbia, SC 29206

(803) 252-7693

Date

Print Name

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and
Telephone Number :

Date

Print Name

PROOF OF SERVICE

SERVED:	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
PLACE:		
SERVED ON		MANNER OF SERVICE:
SERVED BY:		TITLE:

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Katie Gjennestad
 Bruner, Powell, Wall & Mullins, LLC
 1735 St Julian Place, Suite 200
 Columbia, SC 29204

U.S. Postal Service™	
CERTIFIED MAIL® RECEIPT	
<i>Domestic Mail Only</i>	
For delivery information, visit our website at www.usps.com ®	
9236 0969 0099 9790 1407 3031 62	
Certified Mail® \$3.35	Restricted Delivery Requested Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$1.45	
☐ Return Receipt (electronic) \$4.95	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	Code: KG - 82545 119
☐ Adult Signature Restricted Delivery \$	
Postage \$0.46	
Total Postage and Fees \$10.21	
Sent To: Wanda H. Smith, Reg. Agent Smith Family, LLC 2221 Altamont Road Greenville, SC 29609 Street, Apt. No., or P.O. Box No. City, State, Zip+4	
PS Form 3800, April 2015 See Reverse for Instructions	

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



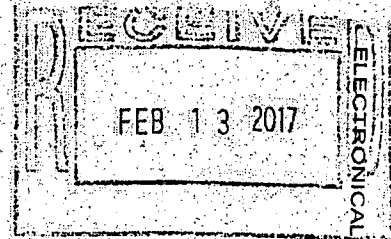
NEOPOST FIRST CLASS
 02/02/2017
US POSTAGE \$010.20
 ZIP 29204
 041M1127855

Wanda H. Smith, Reg. Agent
 Smith Family, LLC
 2221 Altamont Road
 Greenville, SC 29609

ELECTRONICALLY FILED 02/02/2017 15:08:58 12:24 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

EXHIBIT B

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609



RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

February 8, 2017

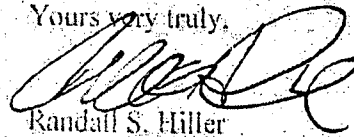
Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110

Re: *Civil Action No.: 2014-CP-23-4097*
Subpoenas issued to Smith Family, LLC, United Community Bank and Elliot
Davis Decosimo, LLC

Dear Mr. Floyd:

Please be advised that on behalf of Smith Family, LLC we hereby object to the production and inspection of the documents contained within the above referenced subpoenas.

Yours very truly,



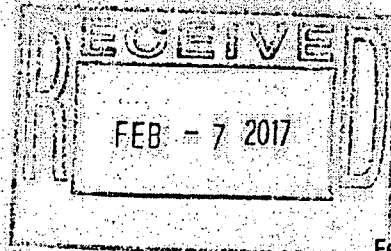
Randall S. Hiller

RSH/ak

Enclosures.

Cc: *Smith Family, LLC*
United Community Bank
Elliot Davis Decosimo, LLC

EXHIBIT C



February 6, 2017

Joey R. Floyd, Esq.
Bruner Powell Law Firm
1735 St. Julian Place, Suite 200
Columbia, SC 29204
(Via US Mail)

RE: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor and Ted D. Smith
CA No. 2014-CP-23-04097
Subpoena to Elliott Davis Decosimo, LLC

Dear Mr. Floyd:

I am writing as counsel for Elliott Davis Decosimo, LLC (hereinafter "Elliott Davis"). We received a copy of your subpoena in the above-referenced case, and thank you for taking the time to speak with me earlier today. For the sake of formality, I am writing to advise you of issues which Elliott Davis faces in attempting to respond to your request. To that end, please accept this letter as Elliott Davis' objection to the subpoena pursuant to Rule 45, SCRPC on the following grounds.

The subpoena appears to be unnecessarily burdensome, in that it seeks documents from a non-party that in the first instance should be sought and obtained by the parties to this litigation or those under their control directly. The time, resources, and expense of searching for and producing such material, to the extent that it may exist, would result in an undue burden and expense to Elliott Davis, which is not a party to this action, has no interest in the matter, and should not bear the cost of gathering and producing documents. We would request that any order compelling the production of documents provide that the requesting party shall pay to Elliott Davis all reasonable fees and expenses incurred in gathering, copying, and producing responsive documents in accordance with Rule 45. If the Court issues an order on the issues that follow, I believe that we will be able to work through these issues with you.

The subpoena requests, among other records, "[a]ll federal and state tax returns for Wanda H. Smith and Ted D. Smith", "[a] copy of all K1 forms for Wanda H. Smith and Ted D. Smith", as well as "a copy of all documents...(including but not limited to, LLCs and corporations) [owned] by Wanda H. Smith and Ted D. Smith". The subpoena does not identify such additional companies. To the extent that it fails to do so, the subpoena appears to be unduly broad and burdensome in scope. As we discussed, if any of these individuals or businesses are clients of Elliott Davis, the Internal Revenue Code provides that a tax preparer may disclose its client's tax records (including financial information upon which a tax return may be prepared) only pursuant to a court order or other code provision. See I.R.C. § 7216(b)(1). Violation of this code provision carries criminal penalties for the tax preparer. To our knowledge, no



South Carolina court has ruled that a subpoena constitutes a court order sufficient to permit production in contravention of the prohibition of the code provision. Elliott Davis is concerned it could violate the code provision cited above and subject itself to liability if it produces any records sought by the subpoena without consent from its client(s).

I am not aware that any of the individuals who are identified, or companies whose information is sought by virtue of any business dealings with, or investment by, Mr. and Mrs. Smith, in the subpoena are represented by counsel. Please let me know if that is incorrect, and I will be glad to provide them with the appropriate consent forms for consideration, as the form of such consent is also proscribed by statute. At present, we have not received consent from any party to release such information to you; therefore, Elliott Davis will not produce any documents until it is presented with either a formal order of the court instructing it to do so or written permission of all parties being impacted.

There may be other objections that Elliott Davis may recognize if it is ordered to review the materials and consider the matter further. Elliott Davis reserves the right to raise any such objections at a future time.

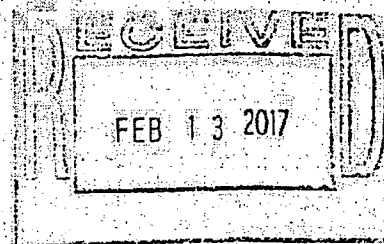
As discussed, after you have had a chance to review the applicable code, please give me a call to discuss this matter further at your convenience, and I look forward to working with you to resolve these issues.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "John Marshall Mosser".

John Marshall Mosser
General Counsel

cc: file



February 10, 2017

Joey R. Floyd, Esq.
Bruner Powell Law Firm
1735 St. Julian Place, Suite 200
Columbia, SC 29204
(Via US Mail)

RE: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor and Ted D. Smith
CA No. 2014-CP-23-04097
Subpoena to Elliott Davis Decosimo, LLC

Dear Mr. Floyd:

I am in receipt of your letter of 8 February in which you assert that unspecified exceptions in 26 CFR 301.7216-2(f-g) permit Elliott Davis to provide information responsive to your subpoena without client consent. Respectfully, to reiterate the position that I outlined on our call, while subsection 7216-2 contains an extensive list of permitted exceptions, subpoenas issued pursuant to Rule 45 of the state or federal rules are not among the enumerated. Additionally, since many types of subpoenas are specifically listed in the rule (i.e. US Congress, Federal agency, and grand jury subpoenas), the subsection's lack of any exception for civil subpoenas is conspicuous. Given this absence, I would direct your attention back to Section 7216(a), which prescribes a criminal penalty for any accountant who knowingly or recklessly discloses tax return information for any purpose other than preparing a tax return. As we discussed, I concur with your position that subsection 7216-2(f)(1) does permit disclosure pursuant to a state court order.

Elliott Davis is not a party to this case, has no stake in the outcome, and certainly has no desire to become entwined in any discovery dispute between the parties; however, it remains our position that either the consent of the taxpayer or a state court order is a required predicate to an accountant's disclosure of protected information, in contravention of the IRC rule. It is obviously not our purpose to unnecessarily burden the court with a hearing on a motion to compel, just as burdening the court would not be your purpose if information in your possession was protected under the attorney-client privilege. Instead, in both professions, such an objection is compulsory.

As I indicated that I would, I have spoken with Mr. Hiller, who continues to represent Mr. Smith, and have inquired as to whether Mr. Smith would be willing to provide consent. Mr. Smith has declined to provide such consent.



While the IRC prohibition is controlling, to fully respond to your letter regarding the substance of your subpoena, I confess confusion as to the assertion in your letter that the subpoena is "very limited in time and scope." Items 1-2 of the subpoena request 5 years of information, and items 3-7 contain no time limitation whatever. For example, the subpoena seeks, without any limitations, much less a reasonable one, all emails between Wanda Smith or Ted Smith and any person at Elliott Davis. Further, you are incorrect that responding involves "simply a matter of copying the [client] files". Given the commonality of the name "Smith", I am informed that the electronic search, for the email servers alone, would be expected to take approximately 24 hours to run its course. Additionally, the computerized search would be expected to produce thousands (if not tens of thousands) of non-responsive documents, which will likely contain protected information belonging to other clients of the firm. Consequently, a manual review to remove or redact unrelated clients' information would be required. Based on the information I have received thus far, such a review would require many hours of professionals' time in the middle of tax season, which is the busiest time of year for any CPA firm.

As I mentioned in our discussion, Elliott Davis is certainly willing to produce information within the bounds of the federal and state rules. However, it is significantly outside of the limitations of Rule 45(d)(1)(D), SCRPC to request that a non-party expend many personnel-hours manually culling all of the ESI that would be returned in these overbroad requests, particularly without reasonable compensation for personnel time. To the extent that you cannot obtain the information that you seek in discovery between the parties and the court orders Elliott Davis to produce any information, we would request that the court also order that the firm be paid reasonable compensation for our time. I would submit to you that the prevailing jurisprudence is that third parties should not be obligated to subsidize civil litigation in which they have no involvement or stake in the outcome. To the extent that your subpoena was drawn more broadly than you intended, and, as is suggested in your letter, you simply sought to request that Elliott Davis make a copy of any client file that we may possess, this would be a request of an entirely different order of magnitude.

If the court issues an order that resolves the IRC prohibition, I anticipate that we would be able to reach a reasonable resolution of the remaining issues.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "J. Mosser".

John Marshall Mosser
General Counsel

cc: file; Randy Hiller, Esq.

EXHIBIT D

BRUNER, POWELL, WALL & MULLINS, LLC

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

WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

** Also Admitted in District of Columbia

February 8, 2017

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

VIA E-Mail (johnmarshall.mosser@elliotttdavis.com) and U.S. Mail

John Marshall Mosser, Reg. Agent
Elliott Davis Decosimo, LLC
200 East Broad Street, Suite 500
Greenville, SC 29601

**Re: First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119**

Dear Mr. Mosser:

I am in receipt of your letter dated February 6, 2017, wherein, among other things, you suggest that Elliott Davis Decosimo, LLC ("Elliott Davis") is prohibited from disclosing taxpayer information. I kindly ask that you review 26 CFR 301.7216-2 (Permissible disclosures or uses without consent of the taxpayer). I believe that sections (f) and (g) permit disclosure in response to a Subpoena. I would ask that you review this regulation and reconsider Elliott Davis' position on the requested documents.

In response to your suggestion that the subpoena is overly broad or burdensome, I would ask that you/Drew Rogers conduct a preliminary review of your file(s) relating to Ted D. Smith and Wanda H. Smith. Mr. Smith testified that Drew Rogers is the accountant at Elliott Davis who handles their tax returns – In light of Mr. Rogers' knowledge/involvement, I am confident that he will be able to pull these documents together in short order (likely in less time than you and I have spent writing letters regarding the subpoena). The subpoena is very limited in time and scope. In that regard, I believe that a preliminary review of Elliott Davis' files will alleviate your concerns. With regards to reasonable compensation, I believe that Elliott Davis' response to the Subpoena is simply a matter of copying the file(s) that Elliott Davis has in its paper files or downloading the information to a DVD/flash drive. I am perfectly fine with a DVD/flash drive with a copy of Elliott Davis' files if Elliott Davis maintains its files in electronic format. I am not aware of any privileges that would exist; so, a simple download of this information on a DVD or a flash drive will suffice if your files are kept in electronic format. In the alternative, if you have paper files for Ted D. Smith and Wanda H. Smith, I will be glad to send a third party copying service to your office to retrieve and return the files to your office. Under either scenario, the costs associated with the document production should be minimal; but, I am happy to continue this conversation with you if Elliott Davis is willing to produce the responsive documents.

Letter to John Marshall Mosser, Esquire

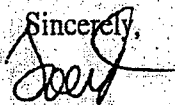
Page 2 of 2

February 8, 2017

Again, I would ask that you review the above-referenced regulation and let me know if you intend to maintain that Elliott Davis will not produce documents responsive to the Subpoena. I look forward to hearing from you soon.

With my kindest regards, I am

Sincerely,



Joey R. Floyd

jrf:hos

Cc: First Citizens Bank and Trust Company, Inc. (Via Email Only)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

C/A No.:2014-CP-23-04097

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO COMPEL WANDA H. SMITH
TO SIT FOR HER DEPOSITION AND
PROVIDE DEPOSITION TESTIMONY
(RULES 26, 30 37, 45 AND 69, SCRCP)**

TO: RANDALL S. HILLER, ATTORNEY FOR THE DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 26, 37, 45 and 69 of the South Carolina Rules of Civil Procedure, the Petitioner, First Citizens Bank and Trust Company, Inc., by and through its undersigned Counsel will move before the Honorable Charles B. Simmons, Jr. on the 10th day following service hereof or as soon thereafter as Counsel can be heard, for an Order directing Wanda H. Smith to attend and provide her deposition testimony. A copy of the Subpoena to Mrs. Smith and Notice of Deposition are attached hereto as Exhibit A. A copy of the Affidavit of Service of the aforementioned documents is attached hereto as Exhibit B. On February 27, 2017, Counsel for Petitioner received the letter attached hereto as Exhibit C from Counsel for Wanda H. Smith and Smith Family, LLC, wherein said Counsel advised Petitioner's Counsel that Mrs. Smith would not appear for her deposition.

The Petitioner holds a Judgment against Ted D. Smith and the Petitioner is conducting post-Judgment discovery in accordance with Rule 69 of the South Carolina Rules of Civil Procedure. Ted D. Smith has testified that he has no bank account; but, he is depositing money in to his wife's bank account at United Community Bank. Ted D. Smith has also failed to produce full copies of his tax returns and he files a joint tax return with his wife, Wanda H.

Smith. In accordance with Rules 26, 30, 69 and 45 the Petitioner is seeking to take the deposition of Wanda H. Smith to search for assets that the Respondent Ted D. Smith may hold/have an interest in, such that the asset(s) may be subject to execution. In accordance with Rule 69 of the South Carolina Rules of Civil Procedure, the Petitioner is authorized to take the deposition of Wanda H. Smith, review the bank records of Wanda H. Smith at United Community Bank and review the full/complete tax returns of Ted D. Smith. Rule 69 of the SCRCPP clearly contemplates a creditor being authorized to conduct discovery, which provides as follows: "In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery." As such, Rule 69 enables the Petitioner to examine Wanda H. Smith, if Petitioner should so desire.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned counsel certifies that prior to filing this motion, I attempted, in good faith, to resolve the matter contained in this motion on February 28, 2017, prior to filing this motion. Counsel for Mrs. Smith affirmed on February 28, 2017 that Mrs. Smith would not appear for her deposition on March 1, 2017. The petitioner seeks attorneys' fees and costs associated with filing this motion, along with any costs incurred by Petitioner, as a result of the cancellation, since there is no basis for Wanda H. Smith or the Respondents to object to Petitioner taking the deposition of Wanda H. Smith

s/Joey R. Floyd
 Joey R. Floyd
 Bruner Powell Wall & Mullins, LLC
 P.O. Box 61110
 Columbia, South Carolina 29260-1110
 (803) 252-7693
Attorneys for Petitioner
First Citizens Bank and Trust Company, Inc.

March 2, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE
First Citizens Bank and Trust Company, Inc.,
Plaintiff

SUBPOENA IN A CIVIL CASE

v.

Case Number: 2014-CP-23-04097

Ronald D. Taylor and Ted D. Smith,

Judgment In Greenville County

TO:
Wanda H. Smith
2221 Altamont Road
Greenville, SC 29609

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

Kenison Dudley & Crawford, LLC
704 E. McBee Avenue, Suite 600
Greenville, SC 29601

March 1, 2017, 9:30 a.m.

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant

Date

Print Name

Attorney's Address and Telephone Number :

1735 St. Julian Place, Post Office Box 61110 Columbia, SC 29206
(803) 252-7693

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and
Telephone Number :

PROOF OF SERVICE

SERVED:	DATE	FEEs AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
PLACE:		
SERVED ON	MANNER OF SERVICE:	
SERVED BY:	TITLE:	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

(I) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(II) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(III) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

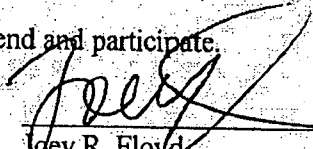
IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

C/A No.:2014-CP-23-04097

**NOTICE OF DEPOSITION
OF WANDA H. SMITH**

TO: Ronald D. Taylor – Pro Se and Ted D. Smith – Pro Se

YOU WILL PLEASE TAKE NOTICE that the Petitioner, First Citizens Bank and Trust Company, Inc., by and through its Counsel, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the deposition of Wanda H. Smith, at Kenison Dudley and Crawford, LLC, 704 E. McBee Avenue, Greenville, SC 29601 on March 1, 2017, commencing at 9:30 a.m., upon oral examination before a Notary Public for South Carolina or some other officer authorized by law to administer oaths. The oral examination shall continue from time to time and day to day until completed, including any adjournments thereof. You are hereby notified, of said examination on oral deposition, and you are further invited to attend and participate.


Jody R. Floyd

Bruner Powell Wall & Mullins, LLC
Post Office Box 61110 (29260)
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29204
(803) 252-7693
Attorneys for the Petitioner

February 16, 2017
Columbia, SC

EXHIBIT B

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2014-CP-23-04097 Court Date: 3/1/2017 9:30 am

Plaintiff:

FIRST CITIZENS BANK AND TRUST COMPANY, INC.

vs.

Defendant:

RONALD D. TAYLORS AND TED D. SMITH

For:

Joey Floyd
 Bruner Powell
 PO Box 61110
 Columbia, SC 29260

Received by A Woman's Touch, LLC to be served on Wanda H. Smith, 2221 Altamont Road, Greenville, Greenville County, SC 29609.

I, Florence Burns, being duly sworn, depose and say that on the 18th day of February, 2017 at 3:07 pm, I:

SUBSTITUTE served by delivering a true copy of the LETTER DATED 02/16/2017, SUBPOENA IN A CIVIL CASE, NOTICE OF DEPOSITION OF WANDA H. SMITH, CERTIFICATE OF SERVICE and WITNESS CHECK 36283 IN THE AMOUNT OF \$36.00 with the date and hour of service endorsed thereon by me, to: Ted Smith as husband at the address of: 2221 Altamont Road, Greenville, Greenville County, SC 29609, the within named person's usual place of Abode, who resides therein, who is fifteen (15) years of age or older and informed said person of the contents therein, in compliance with state statutes.

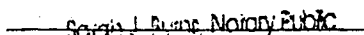
Description of Person Served: Age: 66, Sex: m, Race/Skin Color: white, Height: 5'11", Weight: 170, Hair: brown, Glasses: n

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

Subscribed and Sworn to before me on the 19th day of February, 2017 by the affiant who is personally known to me.

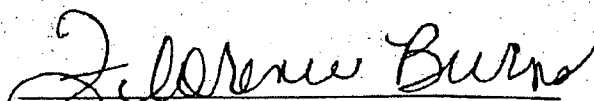

 NOTARY PUBLIC

My Commission expires:


 Sarah L. Burns, Notary Public

State of South Carolina

My Commission Expires 9/9/2021 Copyright © 2017 Database Services, Inc. - Process Server's Toolbox V7.1h


 Florence Burns
 Process Server

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

Our Job Serial Number: AWT-2017000084
 Ref: 8-2545.119

EXHIBIT C

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

February 22, 2017

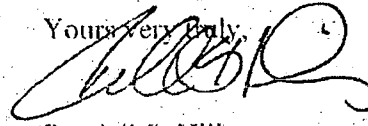
Joey R. Floyd, Esq.
P.O. Box 61110
Columbia, SC 29260-1110

Re: Wanda H. Smith

Dear Joey:

Please be advised that on behalf of Mrs. Smith she will not be attending the deposition pursuant to the deposition notice dated February 16, 2017 on the grounds that no action is pending which would justify the issuance of a subpoena or notice of deposition and the statutory basis for supplemental proceeding does not authorize discovery pursuant to the Rules of Civil Procedure.

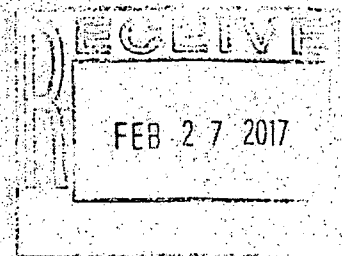
Yours very truly,



Randall S. Hiller

RSH/ak

Cc: Wanda H. Smith



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc.,)
)

Petitioner,)
)

-vs-)
)

Ronald D. Taylor and Ted D. Smith)
)

Respondents.)
)

**ORDER ON MOTION TO COMPEL AS
 TO SUBPOENA TO
 ELLIOTT DAVIS DECOSIMO, LLC**
 C.A. No. 2014-CP-23-04097

On March 14, 2017, and by consent of all attorneys, the Court informally heard the Petitioner's Motion to Compel compliance with a subpoena for accounting records directed toward Elliott Davis Decosimo LLC. Present via telephonic conference were attorneys for the parties as well as Steven E. Farrar of Smith Moore Leatherwood LLP as attorney for Elliott Davis Decosimo LLC ("Elliott Davis").

Elliott Davis advised the Court that under its interpretation of the Internal Revenue Code, in order to produce client tax documents, that it needed either consent of the client or a court order instructing it to do so. Based on counsel presentations and with the consent of the parties during the informal hearing, the Court orders as follows:

- (1) Elliott Davis shall identify and produce the tax returns, tax return work papers, and any supporting documents included in client's tax files pertaining to Wanda H. Smith and Ted D. Smith for the tax years ending 2012 to the most current year for which it prepared a return for them.
- (2) These documents will be produced to both parties within thirty (30) business days of the date of this Order.

(3) The Court leaves open the right of Petitioner to seek additional documents related to specific email addresses of Wanda H. Smith and/or Ted D. Smith. These specific email addresses shall be provided to Elliott Davis and after Elliott Davis has 15 days to assess the extent of documents responsive to an email address search and either reach an agreement for production with counsel for Petitioner or seek additional instruction from the Court if necessary.

(4) Upon a preliminary analysis of the search results for the specific email address Petitioner and Elliott Davis will attempt to reach a reasonable agreement for reimbursement of Elliott Davis' costs of locating and reviewing the same. The Court does not rule on whether or not Elliott Davis is entitled to any reimbursement for its expenses at this time but expressly grants permission to Elliott Davis to seek reimbursement should it be unable to resolve that issue with Petitioner.

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al
Case Number: 2014CP2304097
Type: Master/Order/Other

And It Is So Ordered!

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

Electronically signed on 2017-03-15 16:02:27 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

C/A No.:2014-CP-23-04097

**ORDER ON PLAINTIFF'S NOTICE OF
MOTION AND MOTION TO (1) COMPEL
SMITH FAMILY, LLC TO PRODUCE
DOCUMENTS, (2) COMPEL WANDA
SMITH'S DEPOSITION AND (3) COMPEL
TED D. SMITH TO PRODUCE TAX
RETURNS**

On March 14, 2017, the Court, with consent all of attorneys, informally heard the Petitioner's Motions to Compel filed on February 16, 2017 and March 2, 2017. Present via telephonic conference were attorneys for the parties, as well as Steven E. Farrar of Smith Moore Leatherwood LLP as attorney for Elliott Davis Decosimo LLC ("Elliott Davis").¹

Based on counsel presentations and with the consent of the parties during the informal hearing, the Court orders as follows:

(1) Smith Family, LLC will produce the documents responsive to Petitioner's Subpoena within thirty (30) days of this Order.

(2) Wanda Smith will make herself available and sit for her deposition by Petitioner's Counsel. Petitioner's Counsel may, in his discretion, wait until after Smith Family, LLC produces its documents responsive to the Subpoena directed to Smith Family, LLC and after Elliott Davis produces the documents it is to produce in accordance with this Court's Order.

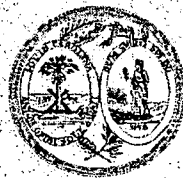
(3) To the extent that Elliott Davis produces all of Ted D. Smith's tax returns (federal and State, along with all schedules and attachments to the tax returns) from 2012 – present date,

¹ The issues involving Elliott Davis Decosimo, LLC will be/have been addressed in a separate Order issued by this Court.

Ted D. Smith shall be relieved of his obligation to produce his tax returns to the Petitioner as it would be duplicative. To the extent Petitioner's Counsel believes that all tax returns of Ted D. Smith from 2012-present date have not been produced after Elliott Davis produces its tax files, Petitioner's Counsel may, if he should so desire, file a motion to seek further relief from this Court.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE FOLLOWS



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al
Case Number: 2014CP2304097
Type: Master/Order/Other

And It Is So Ordered!

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

Electronically signed on 2017-03-17 13:53:59 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. NO.: 2014-CP-23-4097
First Citizens Bank and Trust	)	
Company, Inc.,	)	
	)	
Plaintiff	)	
	)	
v.	)	MOTION TO QUASH
	)	
Ronald D. Taylor and Ted D. Smith,	)	
	)	
Defendants	)	
	)	

TO: JOEY FLOYD, ESQ., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Ted D. Smith, by and through his undersigned counsel, and on behalf of the WHS Properties, LLC, Smith Family, LLC and Wanda Smith, will move before the presiding Judge for the Court Of Common Pleas, Greenville, South Carolina, at such time and place as his Honor may designate for an Order, pursuant to Rule 26(c) and Rule 45(c), of the South Carolina Rules of Civil Procedure, requesting:

1. The subpoenas issued to United Community Bank dated April 21, 2017 be quashed on the grounds that the requested documents are protected matter, subject the non-parties herein to an undue burden, the matter is confidential and for such other reasons as may be addressed at a hearing thereon.

RANDALL S. HILLER, P.A.

S/Randall S. Hiller
 Randall S. Hiller (SCB#2513)
 850 Wade Hampton Blvd.
 Greenville, SC 29609
 864-232-0026
 864-242-4692 Fax

May 2, 2017

CERTIFICATE

I hereby certify that either a good faith effort was made to resolve the matter contained within this motion or an effort would serve no useful purpose or could not be timely held.

S/ Randall S. Hiller

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust)
Company, Inc.,)

Plaintiff,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants.)

IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

Civil Action No.:2014-CP-23-04097

**MEMORANDUM IN OPPOSITION TO
MOTION TO QUASH**

The Plaintiff, First Citizens Bank and Trust Company, Inc ("Plaintiff" or "First Citizens"), by and through its undersigned attorneys, submits this memorandum of law in opposition to Defendant Ted D. Smith's ("Defendant" or "Smith") Motion to Quash First Citizen's subpoena issued to United Community Bank on April 21, 2017 (the "Subpoena"). A copy of the subpoena is attached hereto as **Exhibit A**. First Citizen's Subpoena seeks limited records relating to financial accounts held by Wanda H. Smith, Smith Family, LLC and WHS Properties, LLC. For the reasons set forth below, Plaintiff's motion should be DENIED.

Rules 26(b) and 69 of the South Carolina Rules of Civil Procedure permit a broad range of discovery. See Rules 26(b) and 69, SCRCP. "The rules of discovery were designed to promote full examination of all relevant facts and issues..." *Kramer v. Karmer*, 323 S.C. 312, 472 S.E.2d 215 (Ct. App. 1996). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." *City of Columbia v. ACLU*, 323 S.C. 384, 475 S.E.747, 749 (1996).

The Subpoena seeks information which is undoubtedly "relevant to the subject matter involved in the pending action." See *id.* First Citizens holds a judgment against Smith and is

actively attempting to collect on its judgment. Smith has testified under oath that he has no bank account (Hearing Transcript, 1/23/17, Page 3, lines 21-24). However, First Citizens, through previous subpoenas, discovered that Smith has connections to four (4) bank accounts held by a person or entity with whom Smith has a close relation. One account is held by Smith's wife and the other three are accounts belonging to entities with which Smith has some affiliation. The subject Subpoena requests limited bank records relating to these accounts. Without question, Smith has unfettered access to the accounts at issue. Given that Smith has a significant amount of control over each of the accounts, First Citizens has requested records to determine whether Smith is using these accounts to hinder First Citizens from collecting on its judgment. The information sought through the Subpoena is clearly discoverable.

The reasons provided by Smith in support of the Motion to Quash are unavailing. Although Smith's motion claims that the documents requested are "protected matter" and "confidential," there are no reasons provided as to why these documents are "protected matter" or "confidential." In fact, South Carolina's discovery "rules do not differentiate between information that is private or intimate and that to which no privacy interests attach... Thus, the [r]ules often allow extensive intrusion into the affairs of both litigants and third parties." *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241 439 S.E.2d 852, 852-853 (1994). The Plaintiff is not aware of any privilege that would preclude the production of these documents by a third party. The documents are certainly not protected under the two most common privileges—the attorney client privilege and the work-product doctrine.

Smith also alleges that the requested documents "subject the non-parties to an undue burden." This argument is equally unavailing. No burden has been placed on the non-parties to which Smith refers—Wanda Smith and the various entities that are the purported owners of the

bank accounts. The subpoena was issued to United Community Bank. The holders of the accounts will play no role in gathering and producing the requested documents nor will they have to pay for their production. There is no burden placed on Smith or the entities since United Community Bank will produce the documents. Notably, United Community Bank has not objected nor has it moved to quash the Subpoena. In fact, Plaintiff has already paid for a previous document production by United Community Bank.

Furthermore, the information requested by First Citizens is deliberately narrow to ensure that only relevant information is provided. The subpoena is not a "broad-brush" or "wide-sweeping" subpoena. Instead, the subpoena is deliberately focused on what Plaintiff believes to be the relevant information at this time. At most, the subpoena seeks copies of account transactions for a period of thirteen (13) months. This is not a situation where First Citizens is engaged in a "fishing expedition" in hopes that it stumbles across relevant information. Rather, First Citizens believes the documents sought contain relevant information. The judgment debtor, Ted Smith, is involved/associated with each of the accounts in which First Citizens is seeking documents through this Subpoena. The Subpoena is sufficiently tailored such that it protects the account holders' rights while also allowing the discovery of information which First Citizens is entitled to under the law. For these reasons, Smith's Motion to Quash should be denied.

Respectfully submitted

Columbia, SC

May 16, 2017

s/ Joey R. Floyd
 Joey R. Floyd
 Robert C. Osborne III
 Bruner Powell Wall & Mullins, LLC
 1735 St. Julian Place, Ste 200
 P.O. Box 61110
 Columbia, SC 29260-1110
 Attorneys for Plaintiff
 First Citizens Bank and Trust Company, Inc.

EXHIBIT A

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

WARREN C. POWELL, JR., P.A. **

HENRY P. WALL

E. WADE MULLINS III, P.A.

BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.

JOEY R. FLOYD, P.A.

BENJAMIN C. BRUNER, P.A.

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON

CAITLIN C. HEYWARD

ROBERT C. OSBORNE III

BRYAN M.J. TRIPLETT

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: jfloyd@brunerpowell.com

April 21, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
DELIVERY RESTRICTED TO ADDRESSEE

United Community Bank
c/o CT Corporation System
2 Office Park Ct, Suite 103
Columbia, SC 29223

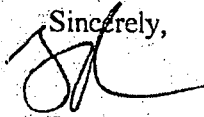
Re: **First Citizens Bank and Trust Company, Inc. v. Ronald D. Taylor
and Ted D. Smith**
Civil Action No. 2014-CP-23-4097
Our File No.: 8-2545.119

To Whom It May Concern:

Enclosed herewith you will find a **Subpoena (documents only)** in connection with the above-referenced matter. You are free to email your documents to me or drop a copy in the mail to me. I will be more than glad to accept electronic copies of the documents on a flash drive (or a copy of the documents transmitted to me by email). Feel free to call me if you have any questions regarding the documents requested in the subpoena.

With my kindest regards, I am

Sincerely,



Joey R. Floyd

jrf:hos
Enclosure

Cc: Randall S. Hiller, Esquire (Via U.S. Mail w/copy of Enclosure)
Ronald D. Taylor (Via U.S. Mail w/copy of Enclosure)

ELECTRONICALLY FILED - 2017 May 16 4:02 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

First Citizens Bank and Trust Company, Inc.,
Plaintiff

SUBPOENA IN A CIVIL CASE

v.

Case Number: 2014-CP-23-04097

Ronald D. Taylor and Ted D. Smith,

Judgment in Greenville County

TO:

United Community Bank
c/o CT Corporation System
2 Office Park Ct, Suite 103
Columbia, SC 29223

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case:

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See attached Exhibit A.

PLACE

Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, SC 29260

DATE AND TIME

May 5, 2017, 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

Attorney/Issuing Officer's Signature

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

1735 St. Julian Place, Post Office Box 61110 Columbia, SC 29206
(803) 252-7693

Date

Print Name

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and
Telephone Number :

Date

Print Name

PROOF OF SERVICE

SERVED:	DATE	FEE AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
PLACE:		
SERVED ON	MANNER OF SERVICE:	
SERVED BY:	TITLE:	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT A

Account No.: 44214197

1. A copy of the initial deposit or source of the initial deposit into account number 44214197.
2. A copy of all transactions on account number 44214197 since the date the account was opened, 10/27/15.

Account No.: 41114310

3. A copy of the initial deposit or source of the initial deposit into account number 41114310.
4. A copy of all transactions, including copies of checks from January 1, 2016 – December 31, 2016 on account number 41114310.
5. A copy of all transactions on account number 41114310 for October and November 2015.

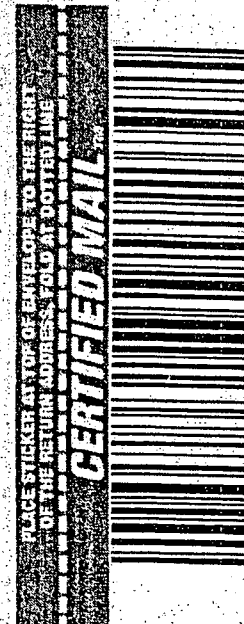
Account No.: 41104994

6. A copy of all transactions, including copies of checks from January 1, 2016 – December 31, 2016 on account number 41104994.
7. A copy of all transactions on account number 41104994 for October and November 2015.

Account No.: 42048346

8. A copy of the initial deposit or source of the initial deposit into account number 42048346.
9. A copy of all transactions, including copies of checks from January 1, 2016 – December 31, 2016 on account number 42048346.
10. A copy of all transactions on account number 42048346 for October and November 2015.
11. A copy of the final statement for account number 42048346 when all, or substantially all, of the funds were withdrawn.

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
Domestic Mail Only	
For Delivery Information, Visit usps.com/mail/certified	
7236 0967 0099 1790 1408 1240 94	
Certified Mail \$3.35	Restricted Delivery Requested
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$1.45	
☒ Return Receipt (electronic) \$4.95	
☒ Certified Mail Restricted Delivery	
☐ Adult Signature Required	Postmark Here
☐ Adult Signature Restricted Delivery	
Postage \$6.67	Code KG-82545.119
Total Postage and Fees \$10.42	
Sent To c/o CT Corporation Bank United Community Bank Street, Apt. No., 2 Office Park Ct. Suite 103 or PO Box No. Columbia, SC 29223 City, State, Zip+4	
4/21/2017 2:57:20 PM	
PS Form 3800, April 2015 See Reverse for Instructions	



ELECTRONICALLY DELIVERED 04/21/2017 4:08:16 PM GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

Katie Gjennestad
 Bruner, Powell, Wall & Mullins, LLC
 1735 St Julian Place, Suite 200
 Columbia, SC 29204

RESTRICTED
DELIVERY

c/o CT Corporation Bank
 United Community Bank
 2 Office Park Ct. Suite 103
 Columbia, SC 29223

NEOPOST FIRST CLASS
 04/21/2017
 US POSTAGE \$010.40
 ZIP 29204
 041M1127675

RESTRICTED
DELIVERY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

COUNTY OF GREENVILLE)

C/A No.:2014-CP-23-04097

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

**ORDER ON MOTION TO QUASH FILED
ON BEHALF OF TED D. SMITH, WHS
PROPERTIES, LLC, SMITH FAMILY, LLC
AND WANDA SMITH**

On May 18, 2017, this Court heard a Motion to Quash filed by Ted D. Smith, WHS Properties, LLC, Smith Family, LLC and Wanda Smith (referred to herein as "the movants"). The movants were seeking an Order to quash a documents-only subpoena issued by First Citizens Bank and Trust Company, Inc. dated April 21, 2017 ("the subpoena"). The subpoena was directed to United Community Bank and the subpoena was seeking specific documents in the possession of United Community Bank. Counsel for Petitioner, Joey R. Floyd, and Counsel for the movants, Randall S. Hiller, appeared and argued their respective positions.

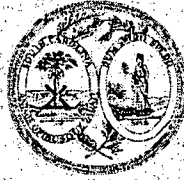
Based on the documents previously produced by United Community Bank and provided to this Court during the hearing on May 18, 2017, it appears that Mr. Smith has some connection to each of the bank accounts identified in the subpoena. Counsel for movants suggested in his motion that the documents being sought in the subpoena are protected matter, subject non-parties to an undue burden and are confidential. The documents requested by the subpoena are not protected or confidential. Moreover, the documents are in the possession of United Community Bank. United Community Bank has not made an appearance in this matter and United

Community Bank has not objected to producing the documents. This Court is unaware of any undue burden placed on non-parties.

As such, based on the memorandum submitted by Counsel for First Citizens, the documents provided to this Court during the hearing on May 18, 2017 and the arguments of Counsel, it is hereby ordered that United Community Bank produce the records requested in the subpoena on, or before 5:00 p.m. on May 23, 2017.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE FOLLOWS



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al
Case Number: 2014CP2304097
Type: Master/Order/Other

And It Is So Ordered!

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

Electronically signed on 2017-05-22 13:36:30 page 3 of 3

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE BEFORE THE MASTER IN EQUITY

3 FIRST CITIZENS BANK and TRUST
4 COMPANY, INC.,

5 Petitioner,

6 vs.

7 C.A. NO. 2014-CP-23-04097

8 RONALD D. TAYLOR and TED D. SMITH,

9 Respondents.

10 D E P O S I T I O N

11 WITNESS: TED D. SMITH

12 DATE: May 24, 2017

13 TIME: 11:55 a.m.

14 LOCATION: Randall S. Hiller, P.A.
850-B Wade Hampton Boulevard
Greenville, South Carolina 29609

15 TAKEN BY: Attorney for the Petitioner

16 REPORTED BY: Colette Cantoni,
17 Court Reporter

18
19 COMPUSCRIPTS, INC.

20 Court Reporters & Legal Videographers

21 www.compuscripts.com

22 1.888.988.0086

23
24
25
CERTIFIED COPY

APPEARANCES:

ATTORNEYS FOR PETITIONER
FIRST CITIZENS BANK AND TRUST COMPANY, INC.:

BRUNER POWELL WALL & MULLINS, LLC

BY: JOEY R. FLOYD, ESQUIRE

1735 St. Julian Place, Suite 200

Columbia, South Carolina 29204

803-252-7693

803-254-5719-Fax

jffloyd@brunerpowell.com

ATTORNEYS FOR RESPONDENT TED D. SMITH and
THE WITNESS WANDA H. SMITH:

RANDALL S. HILLER, P.A.

BY: RANDALL S. HILLER, ESQUIRE

850-B Wade Hampton Boulevard

Greenville, South Carolina 29609

864-232-0026

864-242-4692-Fax

rsh@rshpa.org

(INDEX AT REAR OF TRANSCRIPT)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(The deponent does not waive the
right to read and sign the deposition
transcript)

TED D. SMITH, being first duly
sworn, testified as follows:

EXAMINATION

BY MR. FLOYD:

Q. Mr. Smith, just to go back a little
in time. Could you tell me how old you are?

A. I am 69.

Q. Sixty-nine. And your education?

A. I have a management degree, an MBA,
and an accounting degree.

Q. Okay. When would you have finished
up all of your schooling? Did you go
consecutively?

A. No. I actually went to school from
'66 to '68. I dropped out until '71. I
graduated in '73, did the MBA directly after
that at Georgia.

And then I went back and finished

4
1 the accounting curriculum -- let's see -- it
2 was about six or seven years ago.

3 Q. Okay. You're a CPA?

4 A. No.

5 Q. Just an accountant degree?

6 A. Degree, yes.

7 Q. An accounting degree?

8 A. Yes. I've never practiced, except
9 my own stuff.

10 Q. Your own stuff. It helps.

11 You took a break in '68. Were you
12 invited to go over to the Pacific?

13 A. No. I escaped that. I did have to
14 go in Service, but I escaped.

15 Q. So were you drafted in '68?

16 A. No. I joined.

17 Q. You joined, and then where did you
18 go?

19 A. I had to.

20 Q. Sure.

21 A. Basic training, AIT at Leonard Wood
22 and --

23 Q. That's where you did the basic and
24 AIT?

25 A. Yes.

1 Q. That's Kansas?

2 A. "Ft. Lost-in-the-Woods, Misery."

3 Q. Got it. Missouri?

4 A. Yes.

5 Q. And then from '68 to '71 you served?

6 A. No. I was in for six months, and
7 then I had to do six years of Reserve training.

8 Q. Okay. Six years. So you worked,
9 you had a job --

10 A. Yes.

11 Q. -- and did the Reserve stuff?

12 A. Well, I was in school part of the
13 time.

14 Q. Part of the time. What was your job
15 experience going on at that time? What were
16 you doing?

17 A. Well, the first job out of MBA
18 was -- I went to work for Goldsmith Real Estate
19 Company. I stayed there about a year. And
20 then I went to First Federal -- no, no. Then I
21 went to Cameron Brown, a mortgage banking
22 operation. I was there for a little over a
23 year.

24 And some of my friends that I had
25 gone to Clemson with were at First Federal, and

6
1 they asked me to come to First Federal. So I
2 went over there for five years. And then I
3 started in the building business after that.
4 And I've been in --

5 Q. When did you start building?

6 A. '80.

7 Q. 1980?

8 A. Yes.

9 Q. Okay. And both of those, or all of
10 your degrees came from Clemson, right?

11 A. No. Georgia.

12 Q. Georgia?

13 A. And Clemson. MBA, Georgia.

14 Q. The MBA Georgia. Did you do that
15 online?

16 A. No.

17 Q. You went to Athens and did that?

18 A. Yes.

19 Q. And in the 2009 time frame?

20 A. I just went back to Clemson and
21 finished up the curriculum for the accounting
22 program.

23 Q. So you went to Georgia early on?

24 I'm sorry.

25 A. Yes.

1 Q. Way back when?

2 A. Yes.

3 Q. '68?

4 A. I was in Georgia from '73 to '74.

5 Q. Okay. Then you finished up in
6 Clemson. When did you finish those degrees? I
7 didn't follow that.

8 A. I finished the undergraduate
9 management degree in '71. I finished the MBA
10 -- no. No. I'm sorry. I finished the
11 undergraduate in '73. I finished the MBA in
12 '74. And I went back somewhere around 2009 or
13 2010 and did the -- finished up the curriculum
14 for the accounting program.

15 When I finished undergraduate at
16 Clemson, they had asked me to stay on and do
17 the accounting degree, but I chose to go to
18 Georgia because they had a real estate
19 department.

20 Q. That's right. And that's after the
21 Recession? I mean, would we both agree that
22 2008 would be the Recession time frame,
23 2008/2009?

24 A. For sure.

25 Q. Not a good time to be a builder,

8

1 right?

2

A. I was not a builder anymore.

3

Q. Why weren't you a builder?

4

A. We lost everything in 2008.

5

Q. You were still a builder in 2007 up
6 until 2008, right?

7

A. We basically closed shop the first
8 quarter of 2008.

9

Q. That would be March of 2008 --

10

A. Something like that.

11

Q. -- is kind of whenever you closed
12 the doors?

13

A. We didn't totally close the doors.
14 I had to maintain a little bit of -- because I
15 had so many employees, I had to keep up with
16 their insurance program --

17

Q. Financial records and that sort of
18 stuff?

19

A. Yes.

20

Q. Closing it down, winding up --

21

A. I had no employees after March of
22 2008.

23

Q. You had to still wind up the affairs
24 and that stuff --

25

A. Yes.

1 Q. -- I guess is what you're saying,
2 right?

3 A. Yes.

4 Q. And what was the main company that
5 you were running at that time?

6 A. We had Poinsett Homes, Poinsett
7 Development, and Poinsett Holdings.

8 Q. Were those the three primary
9 companies that you were running at the time?

10 A. Yes.

11 Q. And I have looked online, and it
12 appears to me that you have, or someone over
13 the course of time, has set up a number of
14 LLCs.

15 A. Yes, we did.

16 Q. Do you know how many that you would
17 have set up over the years?

18 A. Fifteen to 20. But at the end of
19 the year they were all rolled up into Poinsett
20 Holdings.

21 Q. She is going to mark that as Exhibit
22 Number 4.

23 (Whereupon, Petitioner's Exhibit
24 Number 4 was marked for identification.)

25 BY MR. FLOYD:

10

1 Q. I will represent to you that this is
2 information that I pulled off of the South
3 Carolina Secretary of State, and it appears to
4 be about four and a half pages of various
5 companies, LLCs, and such, that reflected a Ted
6 D. Smith as the registered agent. Okay?

7 A. Um-hum. Yes.

8 Q. If you will, will you help me go
9 through these, and just look at the first page.
10 And if any of those you do not recognize, then
11 you tell me. Otherwise I am going to assume it
12 is yours.

13 I'm not going to ask you about every
14 one of them --

15 A. The first two are not mine.

16 Q. Not you?

17 A. No.

18 Q. A different Ted Smith?

19 A. That's right.

20 Q. Are the rest of them on the first
21 page yours?

22 A. Yes.

23 Q. Okay.

24 (Witness reviewing.)

25 A. All the ones on the second page are

1 mine. All the third page are mine. All those
2 on that page are mine.

3 Q. The fourth page?

4 A. Yes.

5 (Witness reviewing.)

6 A. And all the others are mine as well
7 on the fifth -- on the last page.

8 Q. Were these all companies that you
9 started?

10 A. Well, they're not all companies.
11 Half of them are homeowners' associations for
12 subdivisions that we developed. So that's
13 really not a business.

14 Q. Homeowners' association, if I see
15 that in the name, that would reflect that,
16 right?

17 A. That's right.

18 Q. It is still a corporation, right?

19 A. Yes.

20 Q. Did you have partners?

21 A. In most all of it -- most everything
22 here a partnership between Ron Taylor and
23 myself. There are a few that individually are
24 me by myself.

25 Q. Tell me specifically which ones were

12

1 you by yourself.

2

(Witness reviewing.)

3

A. Rhino Realty Fund is me by myself.

4

Smith Development Corporation was me by myself.

5

I don't know what this Smith Properties of

6

Greenville, L.P. is. I don't --

7

Q. You just don't remember that one?

8

A. I don't recognize that one.

9

Q. Okay. We'll put a circle by that

10

one, I'll question that one. Okay.

11

A. Smith-Ridgeway Tire was myself.

12

Smith & Steele Builders was me and a guy named

13

John Steele.

14

Sold Out, Incorporated was me by

15

myself.

16

And Taylors Pointe Limited

17

Partnership of South Carolina was me by myself.

18

Q. The other ones you would have had a

19

partner?

20

A. Yes.

21

Q. Most likely, Mr. Taylor?

22

A. That's correct.

23

Q. Were there ever any other members or

24

other partners that you would have had besides

25

Mr. Taylor?

1 A. Just only when I said Smith & Steele
2 Builders was John Steele and myself.

3 Q. That was the only one?

4 A. Yes.

5 Q. I don't understand the realty funds.
6 Could you explain. I see a number of these
7 identified as realty funds.

8 A. Those were just different pieces of
9 property, individual pieces of properties we
10 owned at some time, and they were put into a
11 realty fund and then they were all rolled up
12 and taxed -- the returns were done as Poinsett
13 Holdings, LLC.

14 Q. So this is what I have in my mind,
15 and you tell me if I'm correct. You would go
16 buy, say, 100 acres of tract of land, put it in
17 this LLC's name, build the homes, develop it,
18 sell it out, and that was a stand-alone entity?

19 A. Actually, all of those Poinsett
20 Realty Funds that you see here were stand-alone
21 commercial pieces of property, were not
22 subdivision property. None of the subdivision
23 properties that -- I don't see any of them
24 listed -- they were all -- well, wait a minute.
25 They would have been in Poinsett Development in

14

1 this entity right here on the second page
2 (indicating).

3

Q. Okay, so Poinsett Development LLC
4 would have been the company that would have
5 purchased property, developed, and then built
6 homes?

7

A. No. They sold lots to Poinsett
8 Homes, and Poinsett Homes built the houses.

9

Q. So you had the development company,
10 the builder --

11

A. Yes.

12

Q. -- then it would be sold to the
13 customer or the homeowners?

14

A. That's correct.

15

Q. So these Poinsett Realty Funds that
16 I see on here were actual commercial buildings
17 that you purchased?

18

A. Or vacant property.

19

Q. Commercial properties of some sort?

20

A. Yes.

21

Q. And they were later disposed of,
22 sold, or developed?

23

A. We lost them all.

24

Q. You lost them all?

25

A. Yes. Yeah.

1 Q. But that was kind of -- why I see
2 the Realty Fund stuff, that was kind of the
3 purpose of those realty funds?

4 A. Yes.

5 Q. And we talked a little earlier about
6 Rhino Realty Fund --

7 A. Yes.

8 Q. -- with your wife.

9 A. Yes. Um-hum.

10 Q. And you formed that LLC, didn't you?

11 A. I did.

12 Q. Okay. And eventually its name
13 changed to WHS Prpoerties, LLC, right?

14 A. That's correct.

15 Q. So that was your LLC?

16 A. To begin with.

17 Q. Did you sell it to your wife?

18 A. No.

19 The story on that is we had the
20 piece of property, it was about 60 percent
21 complete, the loan was fully funded. And I was
22 broke. And I went to Palmetto Bank and I gave
23 them a choice, I said, you can either let my
24 wife assume the loan and finish it with her
25 money or you can take it back.

16

1 So, she took over. And we changed
2 it to WHS Properties because it was hers, then.

3 Q. I gathered, from my deposition of
4 her, that she is not involved in the day-to-day
5 affairs of these LLCs; is that true?

6 A. That's true.

7 Q. I also gathered that you are
8 primarily responsible for all day-to-day
9 activities?

10 A. I take care of everything for her.

11 Q. Okay. All right. She also was not
12 familiar with a company called 2707 Pelham
13 Road, LLC.

14 A. She should have been. She just
15 doesn't remember it because we didn't do
16 anything in 2707.

17 2707 was formed to be a partnership
18 between Smith Family, LLC and Groves
19 Enterprises, and they were going to do a little
20 strip center, with Tim Groves, AFC Urgent Care
21 being the anchor tenant. And before that was
22 done, Kwik Trip came knocking on the door and
23 said, don't do that, we want that piece of
24 property. And so they made an attractive
25 offer, and so 2707 was basically dissolved and

1 never existed.

2 Q. But you were involved with 2707,
3 right?

4 A. No.

5 Q. You formed it, didn't you?

6 A. No. Uh-uh. Wanda would have been
7 the partner there, as Smith Family.

8 Q. Did you sign the corporation, or the
9 articles of articles of organization for 2707
10 Pelham Road?

11 A. I have no ideas.

12 Q. Was there any operating agreement
13 formed?

14 A. That information would be available
15 from John Kehl.

16 Q. Okay. Do you know as you sit here
17 today whether or not you formed 2707 Pelham
18 Road?

19 A. I don't know why I would have.

20 Q. Would you have gotten your wife to
21 form that LLC?

22 A. Yes.

23 Q. Was there any sort of investment
24 that was used to form 2707 Pelham Road or was
25 it simply just moved --

18

1 A. Boiling Springs at Pelham Road
2 property.

3 Q. That was the collateral, that was
4 the asset that it owned?

5 A. Yes.

6 Q. Was there any cash that traded hands
7 for that property to go into 2707 Pelham Road?

8 A. I couldn't say.

9 Q. Did you hold a position with 2707
10 Pelham Road, LLC?

11 A. I believe that they were going to
12 make me the manager.

13 Q. Did Groves Enterprises provide any
14 money to Smith Family, LLC?

15 A. Yes.

16 Q. How much?

17 A. 200, I think. I don't remember
18 exactly.

19 Q. Did Groves family get any money when
20 the property was sold, or Groves Enterprises,
21 did Groves Enterprises get any money when the
22 property was sold to Kwik Trip?

23 A. They got half of it.

24 Q. All right. Do you know where the
25 money was deposited from the sale of that

1 property?

2 A. His share or our share?

3 Q. Both.

4 A. Wanda's share went to UCB.

5 Q. Do you know if the entire amount
6 went to UCB?

7 A. As far as I know, yes.

8 Q. The whole \$600,000?

9 A. Um-hum. Yes.

10 Q. And then what did you do with the
11 remainder of that money?

12 A. What remainder?

13 Q. What did you do with that money
14 after it was deposited?

15 A. She made the three investments that
16 you showed her on this sheet, right here
17 (indicating), plus --

18 Q. Let's go --

19 A. -- a good bit of it was used to keep
20 us alive.

21 Q. I think I've confused you. So, that
22 Kwik Trip sale that I'm talking about didn't
23 happen until 2015, right?

24 A. That's correct.

25 Q. But those transactions that are

20

1 referenced on that page, Exhibit 2, are
2 actually in 2012, and the last one is --

3 A. She made those -- she sold in
4 2012 -- in 2012 she sold Four Market Point to
5 H&N Properties, I think was their name.

6 Q. What property --

7 A. And that's where she got the money
8 to do this stuff with (indicating).

9 Q. What LLC owned that property that
10 you just referenced?

11 A. WHS Properties.

12 Q. Okay. Was that the property that
13 she took over in 2008?

14 A. '8. 2008.

15 Q. You said the loan was fully funded?

16 A. Yes.

17 Q. So you had tenants lined up to go
18 into that space, right?

19 A. That's the unfortunate part.

20 Q. You did not have any tenants?

21 A. I had one tenant there that was
22 occupying 1,600 square feet out of almost
23 17,000.

24 Q. And when you say the loan was fully
25 funded, that loan was used to finish the

1 project?

2 A. Just to build what was there up
3 until the changeover from WHS to -- from Rhino
4 to WHS.

5 Q. Okay. And then you say her money
6 was used?

7 A. Yes.

8 Q. Where did her money come from?

9 A. She sold a house on old White Horse
10 Road that reduced 925,000 --

11 Q. Wait a second. That's in 2012,
12 right?

13 A. No. That's 2007.

14 Q. Okay. Well, I see where you've
15 referenced here, on February 3 -- on Exhibit
16 2 --

17 A. That's not --

18 Q. That's a different property?

19 A. Yes, that's a different property.

20 Q. Okay. So did she own a property on
21 White Horse Road or did some other LLC own a
22 property on White Horse Road?

23 A. She owned personally the house that
24 was at 9701 Old White Horse Road.

25 Q. How much did she sell that property

22

1 for?

2

A. 925,000.

3

Q. Where did she get the money to buy
4 that house?

5

A. Well, that house was bought in
6 1979 --

7

Q. When you bought it?

8

A. No. When she --

9

Q. When you-all were married?

10

A. Yes.

11

Q. It was titled in her name, right?

12

A. It was in her name, yes.

13

Q. Okay. I understand.

14

And you maintain she maintained
15 ownership of that property over the years?

16

A. Yes.

17

Q. You heard her testify about her
18 earnings over the years?

19

A. Yes.

20

Q. From what I gather, she has not
21 worked outside of the home since 1990; is that
22 right?

23

A. The only activity is what she's done
24 since she's formed WHS Properties in 2008. I
25 think you would have to consider that.

1 Q. So you would maintain she resumed
2 work back in the workforce back in 2008 after
3 an 18-year absence, right?

4 A. Part -- limited. I helped -- I've
5 always kept all the books for her, so she just
6 had to make the decisions that she was willing
7 to do it or not willing to do it.

8 Q. You're talking 2008 forward, right?

9 A. Yes.

10 Q. But between 1990 and 2008 she had no
11 job, no income earning, work?

12 A. No. No. Well, wait a minute. I
13 take that back. She had earnings off of a
14 stock that she had.

15 Q. And that stock was purchased by you,
16 money that you --

17 A. That stock was basically given to
18 her by her father.

19 Q. Do you have any records of it?

20 A. Not really. This was way back -- I
21 can't tell you how far back. But I was upside
22 down in a shopping center, and her father came
23 and basically bailed me out. And then it was
24 sold. And part of the deal was that he decided
25 that he would -- it was sold for stock in a

24

1 real estate investment trust. And his decision
2 was to give her that stock.

3

Q. Okay. So it was a gift?

4

A. Yes.

5

Q. Okay. Do you know how much it was?

6

A. I can tell you what happened to it.

7

Q. How much was it? You don't know how
8 much it was?

9

A. It was 100,000 shares.

10

And when WHS was formed, WHS
11 actually had two properties. Four Market Point
12 and Hartsville Crossing.

13

Q. Well, WHS Properties was really just
14 a name change, right, from Rhino Realty Fund --

15

A. Well, it was an ownership change.

16

Q. Okay. Did you sign any documents to
17 reflect the ownership change?

18

A. Yes.

19

Q. Okay. Where are those documents?

20

A. I have no idea. They're somewhere.

21

Q. Do you think you can find them?

22

A. I don't know.

23

Q. Okay. What did you sign?

24

A. An assignment of all of my interest
25 to her.

1 Q. For how much?

2 A. Basically, \$1 and other
3 consideration. I was either going to have
4 another foreclosure or she had to come in and
5 finish it with the money that she had from the
6 stock and the house sale.

7 Q. So at that point in time didn't you
8 have a tremendous number of other foreclosures
9 that had come down on you?

10 A. Oh, yes.

11 Q. Okay. And you owed a substantial
12 amount of money to a substantial number of
13 banks?

14 A. That's correct.

15 Q. Okay. So another judgment at that
16 point in time wouldn't have affected you
17 necessarily, right, because there were already
18 other judgments --

19 A. That's correct, yes.

20 Q. -- coming or entered against you?

21 A. Yes. Well, there's -- I couldn't
22 tell you how many there are, but a lot. A lot
23 of people have chosen not to do anything.

24 Q. Right. Well, I'm just saying, at
25 that point in time there were a lot of

26

1 judgments either pending or they were coming
2 that you knew about because of the amounts --

3 A. We would have -- I would have
4 thought that eventually they would hit, yes.

5 Q. Right. At the time that you struck
6 this deal to convert Rhino Realty Fund I to WHS
7 Properties, LLC? You knew you owed a lot of
8 money, is what I'm trying to say --

9 A. Sure.

10 Q. -- to a lot of different banks?

11 A. That's true.

12 Q. And you knew that there were
13 foreclosures that were coming, they probably
14 were already happening at that point in time?

15 A. No.

16 Q. The foreclosures had not started?

17 A. No.

18 Q. Were you still trying to be in the
19 salvage mode to try to save some things, if you
20 could?

21 A. We were trying to salvage the whole
22 company.

23 Q. Yes. All right. But there was just
24 a name change, right? That's what it started
25 as Rhino Fund --

1 A. Name and ownership.

2 Q. You maintain that it was an
3 ownership change?

4 A. It was.

5 Q. Okay.. I got it. I understand.
6 And you're going to try to find
7 those documents?

8 A. If I can.

9 Q. Okay. Who would have done that?

10 A. What?

11 Q. Did you have a lawyer do that?

12 A. No.

13 Q. Okay. Would you have done that
14 yourself?

15 A. I think I did that myself. I think.

16 I'd have to go back and check with
17 David Rowe at Elliott Davis. He's aware of all
18 of this that took place, and how it took place.
19 And they may have the records, I don't know.

20 Q. Okay. Well, if you can find it, I'd
21 like to see it.

22 A. Okay.

23 Q. I'd like to see the transfer of
24 that. What you say is your entire membership
25 interest?

28

1

A. Yes.

2

Q. You were the single member of that
3 Rhino Fund I, right?

4

A. That's correct. But it wasn't a
5 very good deal for her. If you'll check our
6 2012 tax returns, you'll see that her sale of
7 that property was not a taxable event. All she
8 did is get her money back.

9

Q. Okay. All right. And how much
10 money was that?

11

A. A million dollars.

12

Q. Okay. All right. Was that where
13 you-all were living at the time, at the White
14 Horse Road property?

15

A. No.

16

Q. You just had an extra house --

17

A. Yes.

18

Q. -- you-all were renting?

19

A. No. She just didn't want to sell
20 it.

21

Q. Or she was renting it?

22

A. No. She didn't -- it was just
23 sitting there.

24

Q. You were living somewhere else at
25 the time?

1 A. Yes.

2 Q. Okay. Was it because that was
3 you-all's first home or --

4 A. Where she raised her kids.

5 Q. Okay. Some sentimental value
6 attached to it? I understand.

7 A. Yes.

8 Q. All right. So was it your idea to
9 form Smith Family, LLC?

10 A. I don't know whose idea it was. She
11 was going to take the money that she had
12 received from that sale and try to buy other
13 properties to make money on, and she had to do
14 it in some kind of entity, so Smith Family just
15 was formed. I don't know who came up with the
16 idea.

17 Q. Okay. Well, I gathered that she
18 relies on you to do most of this stuff, based
19 on her deposition; is that true?

20 A. That's true.

21 Q. So you don't know as you sit here
22 today who decided to do an operating agreement
23 of Smith Family, LLC?

24 A. I'm pretty sure that John Kehl did
25 the paperwork, and then she came in and signed

30

1 it.

2

Q. Okay. Was John Kehl at Love
3 Thornton?

4

A. He was at one time. I don't know
5 where he was at that particular point. I'm not
6 sure.

7

Q. So he was at Love, Thornton, Arnold
8 & Thomason?

9

A. He was there, until they closed.

10

Q. All right. You're familiar with the
11 operating agreement here, as Plaintiff's
12 Exhibit Number 1?

13

A. I have seen it, yes.

14

Q. Do you see what's identified on
15 Exhibit B as \$1,000?

16

A. Yes.

17

Q. Where did that \$1,000 come from?

18

A. It would have come from her sale of
19 WHS Properties, I would assume.

20

Q. Do you know as you sit here today?

21

A. What?

22

Q. Where the thousand dollars -- was it
23 actually \$1,000 that was invested into Smith

24

Family, LLC?

25

A. I couldn't tell you.

1 Q. Okay. Are you related to the Little
2 Caesar's Pizza people, Karalina --

3 A. No.

4 Q. -- in any way?

5 A. No.

6 Q. Is it just a friend of yours that
7 wanted to borrow some money?

8 A. No. Actually, he wanted to change
9 his store location on White Horse Road, and she
10 went out there and bought a piece of property
11 so that he could buy half of it and build a new
12 Little Caesar's building on it.

13 Q. Was he a friend of yours?

14 A. I guess you would call him a friend
15 of mine. I did the first store, Little
16 Caesar's, when they came to Greenville in the
17 early eighties.

18 Q. You owned it or you built it or --

19 A. We owned that property for a few
20 years, and then it was sold.

21 Q. Did you own the business as well?

22 A. Oh, no.

23 Q. You just developed the land for it?

24 A. Just developed the land for it.

25 Q. And did you get them to sign a note

32

1 of some sort?

2

A. I did.

3

Q. Who did they promise to pay? Do you

4

know who?

5

A. Smith Family, LLC.

6

Q. It was Smith Family, LLC?

7

A. Yes. Um-hum.

8

Q. Did you make the financial decision

9

to let them borrow the money?

10

A. I don't know exactly who made the

11

decision. It was the only way that it was

12

going to happen. Because they didn't have

13

enough money to close on their lot.

14

Q. They needed more money?

15

A. Yes.

16

Q. I gathered from her deposition that

17

she doesn't know anything about the financials;

18

am I correct?

19

A. No, she does not.

20

Q. Am I correct in that?

21

A. That's correct.

22

Q. Do you know all the financial stuff

23

relating to these LLCs --

24

A. I do.

25

Q. -- and all that sort of stuff?

1 In fact, she didn't even know that
2 there were bank accounts at United Community
3 Bank, correct?

4 A. Well --

5 Q. Isn't that what she said?

6 A. That's what she said.

7 Q. Okay. And did you prepare what is
8 shown in front of you as Exhibit Number 2?

9 A. I think I did.

10 Q. Okay. This is what you have
11 reflected as activity of Smith Family, LLC --

12 A. That's correct.

13 Q. -- 2012 to present?

14 A. That's correct.

15 Q. What was the source money? Was the
16 source money, you said, from WHS Prpoerties,
17 LLC --

18 A. That's correct.

19 Q. -- that was used to form or used
20 with Smith Family, LLC; is that right?

21 A. That's correct.

22 Q. And then Smith Family, LLC renovated
23 a home --

24 A. A condo, yes.

25 Q. -- in 2012?

34

1 A. Yes. Um-hum.

2

3 Q. And then eventually the Pelham Road
4 property was purchased?

4

5 A. That's correct.

5

6 Q. And this partnership that you
7 mentioned in this was with Groves
8 Enterprises --

8

9 A. That's correct.

9

10 Q. -- that was the intent?

10

11 Tell me about the church issue
12 related to the Kwik Trip property. Tell me
13 about the interaction with the church. And I
14 don't understand -- I've seen some e-mails
15 about that. I don't understand. So could you
16 explain that to me.

16

17 A. When 2707 was a possibility, Smith
18 Family was trying to buy an additional strip
19 from the church to do a little bit larger
20 center than what could be put on the 1.23
21 acres. And the church, they drug it out as far
22 as anybody can drag something out. It would
23 never happen, it would never happen. And
24 finally, a decision was about to be made that
25 the center would be reduced and just built on
the Smith Family property alone. And that's

1 when the church came up with this Kwik Trip
2 idea.

3 Q. The church presented the Kwik Trip
4 idea?

5 A. That's correct.

6 Q. They wanted a gas station there
7 instead of a shopping center?

8 A. Well, financially, it was far, far,
9 far better for them to have the Kwik Trip there
10 than to have the strip center.

11 Q. Explain that to me. I don't
12 understand.

13 A. Well, the property that Smith Family
14 was trying to acquire was a \$75,000 piece of
15 property. And they sold the same property,
16 plus a little bit more to Kwik Trip for
17 340,000.

18 Q. Okay. Was Smith Family obligated to
19 build something for the church as well, some
20 shell of a building or something like that?

21 A. It's been trying to happen, but it's
22 been slow go. With the church you never get a
23 signature on anything.

24 Q. So tell me about that deal with the
25 church. Is Smith Family obligated to build

36

1 something for the church?

2

A. Not right this minute they're not.

3

But we're hoping to sign the contract. She is

4

sometime in the next little bit, as soon as the

5

church decides to let it happen.

6

Q. Tell me the deals of that

7

transaction.

8

A. What do you want to know?

9

Q. Is it another piece of property that

10

Smith Family, LLC owns?

11

A. The church owns it.

12

Q. The church owns the property. Is it

13

adjacent to the church?

14

A. Yes.

15

Q. What does the church want to do?

16

A. They want to eventually end up

17

having a 5,000-plus square foot assembly area.

18

Q. Is Smith Family, LLC obligated to

19

contribute some amount of money to that

20

project?

21

A. Eventually they will.

22

Q. What are the terms of that

23

arrangement, and why?

24

A. Why? Well, it'll be just another

25

investment for Smith Family and an opportunity

1 to try to make some money.

2 Q. Okay. What is the nature of the
3 building that will be built on the church's
4 property?

5 A. The nature?

6 Q. Is it a commercial piece of property
7 to have multi-tenant facility or --

8 A. It is zoned -- it's going to be a
9 two-level building with the church on top and
10 Smith Family on the lower.

11 Q. Okay. And will the bottom portion
12 of it be leased out to various tenants?

13 A. The intent is to sell it.

14 Q. The intent is to sell the bottom
15 floor?

16 A. Yes.

17 Q. As condos? As a condo?

18 A. Yes, that's correct.

19 Q. What sort of square footage is that?

20 A. It's just a little over 5,000.

21 Q. Downstairs? 5,000 square feet
22 upstairs?

23 A. Yes.

24 Q. So the idea would be to create some
25 partnership between the church and Smith

38

1 Family, LLC?

2

A. Well, it's not going to be handled
3 that way. It's going to be handled to an
4 investment agreement, if they ever produce it.

5

Q. What are Smith Family, LLC's
6 obligations relating to that?

7

A. To build it. To get it built.

8

Q. Smith Family will be obligated to
9 build it on the property --

10

A. No. Hire somebody to build it.

11

Q. Who is the property owned by?

12

A. It's owned by the church.

13

Q. Okay. And will it remain owned by
14 the church, the property?

15

A. Well, not after it's -- not after it
16 goes through the condominium process.

17

Q. You probably know more about that
18 than I do.

19

It would be a joint ownership
20 between the first floor owner and the second
21 floor owner at that point in time?

22

A. Well, the church will own the top,
23 Smith Family will own the bottom.

24

Q. Who will own the dirt?

25

A. That will be in the association.

1 Q. That would be the common area --

2 A. Yes.

3 Q. -- the parking areas? Okay.

4 A. Yes.

5 Q. How big is that property? How many
6 acres?

7 A. .46 or something like that. I don't
8 remember. It's close to a half an acre, I
9 guess.

10 Q. Do you have a prospective purchaser
11 lined up?

12 A. Hopefully.

13 Q. Who is it?

14 A. Groves Enterprises.

15 Q. Okay. That's where Groves wants to
16 put in an AFC Urgent Care company?

17 A. That's correct.

18 Q. Is Groves involved with that
19 partnership?

20 A. No.

21 Q. You're just kind of brokering the
22 deal, bringing it to AFC, is that --

23 A. I don't know if "brokerage" is a
24 correct statement.

25 Q. The center cog in the wheel? I

40

1 don't know.

2 A. Maybe.

3 Q. Okay. You presented them with this
4 option for them to buy it, and they said
5 they're interested if you can get it built?

6 A. That's correct.

7 Q. Okay. All right. Are there any
8 other dealings with the church that you have
9 got going on?

10 A. No.

11 Q. But as we sit here today, that
12 structure has not been built, right?

13 A. That's correct.

14 Q. And based on my review of the
15 e-mails and such, I believe that you were the
16 only person involved in that entire transaction
17 relating to Kwik Trip and the dealings with the
18 church and all that sort of stuff, right?

19 A. I don't -- well, I --

20 Q. Were you the face of Smith Family,
21 LLC?

22 A. I was organizing it for Smith
23 Family.

24 Q. Okay. Did your wife ever attend any
25 meetings?

1 A. Yes.

2 Q. Who did she go to a meeting with?

3 A. Well, she met with Tim Groves about
4 the property.

5 Q. Where? One time?

6 A. Yeah, one time -- probably just one
7 time. Maybe twice.

8 Q. Did she ever meet with anybody from
9 Kwik Trip?

10 A. No.

11 Q. Did she ever meet with any of the
12 brokers, real estate brokers?

13 A. No.

14 Q. Did she ever meet with anybody from
15 Kwik Trip?

16 A. No.

17 Q. You handled all of that yourself?

18 A. Well, there wasn't anything much to
19 handle, other than hand the contract to her to
20 sign.

21 Q. For Kwik Trip?

22 A. Yes.

23 Q. So there weren't any negotiations
24 involved with Kwik Trip? No approvals
25 necessary from the county?

42

1 A. Well, Kwik Trip had to do all of
2 that. We weren't involved in it. All it was a
3 contract to be signed, and that was it.

4 Q. Did you send any e-mails relating to
5 that transaction?

6 A. I have no idea.

7 Q. Okay. So you maintain it was as
8 simple as somebody presented you with a
9 contract, you took it home and got her to sign
10 it, and you brought it back?

11 A. It wasn't quite that simple. They
12 approached and wanted to know what it would
13 take to stop the strip center from going in,
14 and they were told, and they agreed to it, and
15 they sent a contract.

16 Q. Okay. And you took it home, and
17 your wife signed it?

18 A. Yes.

19 Q. Okay. I have had a chance to review
20 some of your tax returns that Elliott Davis has
21 produced. And I noticed a number of carryover
22 losses.

23 A. Yes.

24 Q. Explain those to me.

25 A. Smith -- I mean Poinsett Homes,

1 Poinsett Development, Poinsett Holdings.

2 Q. Millions of dollars of losses --

3 A. Yes.

4 Q. -- that you'll carry forward for a
5 number of years, right?

6 A. I think so.

7 Q. As of 2012, roughly 2.7, \$2,700,000;
8 does that sound right?

9 A. Well, it's going to go down a little
10 bit because of Denton Center. Denton Center
11 was taken over by the bank, and that will cause
12 us to lose part of that carryover.

13 Q. Why?

14 A. Forgiveness of debt is the same
15 thing as income.

16 Q. How much of that are they forgiving?

17 A. \$400,000.

18 Q. So they don't write you a check --

19 A. Right.

20 Q. -- they agree not to pursue you
21 for --

22 A. Right, they agreed not to pursue.

23 Q. Was it just you?

24 A. No. It's myself and Ron Taylor.

25 Q. Okay. What's Cresof, or Cresof

44

1 Hartsville Loan, LLC?

2

3 A. That was the Hartsville Crossing
4 loan that was on the shopping center where --
5 the story on that, it goes back to WHS
6 Properties. WHS Properties had two things,
7 they have Four Market Point and they had taken
8 over Hartsville Crossing.

8

9 Hartsville Crossing was where -- I
10 don't know if you remember a company called
11 Goody's. Goody's was the anchor tenant, 25,000
12 square feet, out of -- they're just over 30,000
13 feet.

13

14 And Wanda and her dad each put up
15 \$500,000 apiece in an attempt -- they were
16 going to hold it -- it was under contract to a
17 third party.

17

18 We needed money in Poinsett Homes,
19 and so they put up \$500,000 apiece, and we
20 assigned our interest in that center to them,
21 thinking that we were going to have a closing.
22 And the Goody's filed bankruptcy. The third
23 party contract dropped out because it was still
24 in due diligence. And the million dollars was
25 lost.

25

Q. Who took the property? Did the bank

1 take the property back or what?

2 A. Yes.

3 Q. Okay. Do you know why these LLCs
4 aren't taxed as partnerships?

5 A. Which one?

6 Q. WHS Properties, LLC, Upstate
7 Centers, LLC, and Cresof Hartsville Loan, LLC.

8 A. They are -- say that again now.

9 Q. I show you this page from the tax
10 return, it's from your 2012 tax return.

11 A. You do know that if it's a single
12 member LLC you don't have to file a separate
13 filing and you don't have to do a K-1 or
14 anything like that, if it's a single member.

15 Q. But do you see how it's identified
16 here (indicating), P for partnership, S for
17 S corporation? Do you see that?

18 A. Yes.

19 Q. Why are these identified as
20 partnerships?

21 (Witness reviewing.)

22 A. You'd have to ask Drew Rogers that
23 question. I have no idea.

24 Q. You say they are not partnerships?

25 A. No, they're not.

46

1 Q. Are you aware of any sort of
2 retirement savings contribution, in 2014
3 (handing)?

4 (Witness reviewing.)

5 A. You'd have to ask Drew Rogers. I
6 don't know of any.

7 Q. You don't have any sort of
8 retirement savings or any of those accounts?

9 A. No, none at all.

10 Q. We talked about this, I think, from
11 2014, the Karalina, Little Caesar's?

12 A. Yes.

13 Q. That was a loan?

14 A. Yes.

15 Q. And you have a copy of the
16 promissory note that they signed?

17 A. I do.

18 Q. And you can get that to me?

19 A. Yes.

20 Q. Okay. How much did they borrow?

21 A. 120,000, I believe is the original
22 amount.

23 Q. Okay. And do you see here again in
24 2014 WHS is once again identified as a
25 partnership? Do you see that?

1 A. It's an LLC. I don't know why you
2 put LLC on the end of the name and then run
3 over to the other column and put a P, I think
4 that's...

5 Q. This one I was asking about earlier
6 as being railroad retirement benefits. Are you
7 familiar with that?

8 (Witness reviewing.)

9 A. That's my Social Security income.

10 Q. You don't know what that railroad
11 retirement stuff is?

12 A. I don't know why that's stuck on
13 there.

14 Q. I didn't know either. It made no
15 sense to me. All right.

16 So you're familiar with the accounts
17 at United Community Bank, right?

18 A. I am.

19 Q. Your wife, however, was not familiar
20 with them?

21 A. That's correct.

22 Q. And is it true that you run these
23 accounts?

24 A. I keep up with them, yes.

25 Q. You keep up with them? The

48

1 statements come?

2

A. Yes.

3

Q. And you control them, and you look
4 at them and review them and that sort of stuff,
5 right?

6

A. Just to make sure that her money is
7 protected.

8

Q. Where is your Social Security
9 interest or Social Security check deposited?

10

A. Well, since you made such a big deal
11 of it, the last time we talked, I've opened up
12 my own account and have it put into my account
13 now.

14

Q. Okay. So where was it going?

15

A. It was going into WHS Properties.

16

Q. Okay.

17

A. Which should have been closed, but
18 it was convenient not to.

19

Q. So you had it going into WHS
20 Properties, LLC?

21

A. That's correct.

22

Q. And now, you've testified that you
23 don't have any bank accounts?

24

A. I do now.

25

Q. Okay. Now you have a bank account?

1 A. I opened one up just for the purpose
2 of getting my Social Security check deposited
3 now.

4 Q. After I asked you those questions?

5 A. That's correct.

6 Q. Okay. Before that you did not
7 have -- you said you did not have a bank
8 account?

9 A. I did not. No, I did not.

10 Q. But is it true that you used the
11 bank accounts at United Community Bank as your
12 personal bank accounts?

13 A. I had my check deposited in it and I
14 paid our bills out of it.

15 Q. Your personal bills, right?

16 A. Yes.

17 Q. And your pleasure stuff, you would
18 do that as well, right?

19 A. Well --

20 Q. For example --

21 A. -- I mean, that's just a checking
22 account. I mean, as far as accounting-wise, it
23 was all separated out, and it would be, like, a
24 disbursement or something, and then the
25 accountant would not certainly write all that

50

1 stuff off as expenses, it would be just our
2 personal expenses.

3 Q. Sure. But you were using it to go
4 to the grocery store?

5 A. Yes.

6 Q. And you would be using it to buy
7 iTunes stuff, right?

8 A. Yes.

9 Q. Netflix?

10 A. Yes.

11 Q. And you went to the national
12 championship game this year, right? Did you go
13 down to Tampa?

14 A. I did. We drove.

15 Q. And you went to the national
16 championship game?

17 A. Yes.

18 Q. Where did you get the tickets from?

19 A. My brother.

20 Q. How much were they?

21 A. I don't recall right offhand. I
22 think you'll probably -- they were pretty
23 expensive. I can't remember exactly what he
24 charged for them.

25 Q. A thousand bucks each or something

1 like that?

2 A. No.

3 Q. Six hundred dollars?

4 A. It probably was more like 5.

5 Q. Five hundred bucks? Did you write
6 him a check for those tickets?

7 A. I think he did get a check, yes.

8 Q. And what's your brother's name?

9 A. Jim Smith.

10 Q. Jim Smith. Okay.

11 So do you use Smith Family, LLC bank
12 account and WHS Properties, LLC, whatever you
13 need to buy, you use those like they're your
14 own accounts, don't you?

15 A. Well, I use them to pay our bills.

16 Q. Bi-Lo, Publix?

17 A. Whatever we need.

18 Q. For your personal effects?

19 A. Yes.

20 Q. The accountant can separate it for
21 business expenses and what is and what's not?

22 A. Yes.

23 Q. But you are the one who is using
24 these accounts, right?

25 A. Primarily.

52

1 Q. Does anybody else got access to
2 these?

3 A. Oh, Wanda does.

4 Q. But she doesn't even know where
5 these are, right? That's what she said, right?

6 A. That's what she said.

7 Q. Okay. Do you know Swindell Law,
8 PLLC? Do you know who that is? Colin Swindell
9 maybe? Swindle? Colin Swindell? Does that
10 ring a bell for you?

11 A. Not right offhand, no.

12 Q. Okay. Do you know if they closed
13 the loan for the Kwik Trip property?

14 A. I don't know who it was. It was a
15 Charlotte firm.

16 Q. On Trade Street, did you go up there
17 for the closing? Is that --

18 A. Absolutely not.

19 Q. You did not drive up there?

20 A. No.

21 Q. Did you sign --

22 A. Everything was done by --

23 Q. e-mail and FedEx?

24 A. Yes. Yes.

25 Q. I'm handing you what will be marked

1 as Exhibit Number 5.

2 (Whereupon, Petitioner's Exhibit
3 Number 5 was marked for identification.)

4 BY MR. FLOYD:

5 Q. I will represent to you that these
6 are documents that I received in response to
7 the first Subpoena to UCB, United Community
8 Bank?

9 MR. HILLER: Could we go off the
10 record for a moment.

11 (Recess in the proceedings.)

12 BY MR. FLOYD:

13 Q. Have you had a chance to look at the
14 document that I just handed you?

15 A. Yes.

16 Q. Have you had a chance to flip
17 through it, Mr. Smith?

18 A. Yes.

19 Q. Are you familiar with these bank
20 accounts?

21 A. I am.

22 Q. And you have seen these before,
23 right?

24 A. Seen?

25 Q. These bank accounts and these bank

54

1 account statements that have been produced?

2

A. I guess I have.

3

Q. Let's look at the first one, which
4 is going to be -- I will help you with these
5 pages, to try to move this thing along.

6

It appears to me that the first
7 account in this package that I have provided to
8 you is in the name of Wanda Smith, right?

9

A. That's correct.

10

Q. Okay. And you're identified on here
11 as well as a signer, right (indicating)?

12

A. As a signer.

13

Q. And this account was opened, it
14 appears to me, on 10/27/15?

15

A. Yes.

16

Q. Does that date stand out in your
17 mind for any reason?

18

A. It looks like that's the check that
19 she got from Kwik Trip closing.

20

Q. Does that appear to you to be the
21 amount of money that the Smith Family, LLC
22 property --

23

A. Yes.

24

Q. -- the profit from that sale?

25

A. Yes. Um-hum.

1 Q. And it was the deposited --

2 A. I wouldn't say that's the profit.
3 That's the amount of the check.

4 Q. The distribution --

5 A. Yes.

6 Q. -- or -- from the sales proceeds?

7 A. Yes.

8 Q. And that money went into this
9 account, right?

10 A. That's correct.

11 Q. And you have the ability to sign on
12 this account, correct?

13 A. I did.

14 Q. And, in fact, you have the ability
15 to do anything that your wife could do on this
16 account, right? You can write checks?

17 A. Well, I wouldn't do anything without
18 discussing it with her.

19 Q. As far as the bank is concerned, you
20 have the ability to do anything that she could
21 otherwise do?

22 A. Yes, I guess that's true.

23 Q. You could write a check for
24 anything? You could transfer money? You don't
25 have to ask permission of anybody, as far as

56

1 the bank goes --

2 A. That's correct. As far as the bank
3 goes, that's true.

4 Q. -- you could do it?

5 In fact, you've moved some money
6 around here, right --

7 A. Yes.

8 Q. -- that we see here on the next
9 page, following this account opening, and the
10 account number was 44214197, right?

11 A. Yes.

12 Q. And it appears to me there are some
13 transactions there. Is this account still
14 open?

15 A. Yes.

16 Q. How much is in this account?

17 A. It's probably got 380 or so right
18 now.

19 Q. And you have access to write checks
20 and pay your bills out of that account, right?

21 A. I don't write -- well, wait a
22 minute. Which one are you talking about?

23 You're talking about the savings account?

24 Q. Yes.

25 A. I don't write any checks out of the

1 savings account.

2 Q. Sorry. You move money out of the
3 savings account into checking accounts as you
4 need it, right?

5 A. Right, to pay our bills.

6 Q. To pay your bills?

7 A. Yes.

8 Q. And you pay the bills out of the
9 Smith Family, LLC account?

10 A. Some of them.

11 Q. And you pay some of them out of the
12 WHS Properties account?

13 A. Not anymore. That's closed.

14 Q. So the WHS Prpoerties, LLC bank
15 account has been closed?

16 A. That's correct.

17 Q. Before you closed that account, WHS
18 Prpoerties, LLC, you also used that account to
19 pay various bills, personal expenses, and such?

20 A. That's correct.

21 Q. And you also used the Smith Family,
22 LLC to pay for your personal expenses as well?

23 A. The family expenses, yes.

24 Q. Right. Restaurants, groceries for
25 your personal use, not necessarily

58

1 business-related expenses, right? The
2 accountant would take that --

3 A. Yes.

4 Q. -- and say, that's not a business
5 expense?

6 A. That's correct.

7 Q. Netflix and that sort of stuff,
8 right?

9 A. We don't have any income other than
10 Social Security. And it's impossible to live
11 on Social Security. So we have to drain that
12 savings account down so much a month in order
13 to live.

14 Q. Okay. And do you consider this
15 money to be yours --

16 A. No.

17 Q. -- in the savings account?

18 You maintain that it's your wife's
19 account?

20 A. It absolutely is.

21 Q. Okay. But you use it to live off
22 of, right?

23 A. I pay our family bills out of it.

24 Q. And you retain the benefit of that
25 money, right, because you use it to pay your

1 bills, right?

2 A. Well, they're as much her bills as
3 they are mine.

4 Q. But you retain the benefit of that
5 money? You can use that money to pay your
6 bills, right?

7 A. According to -- yeah, I guess so,
8 but --

9 Q. So this is the account --

10 A. -- it's pretty hard to separate
11 what's mine and what's hers on bills. It's
12 just, you know --

13 Q. But she doesn't write checks and
14 stuff out of United Community Bank, does she?

15 A. No.

16 Q. You do all of that?

17 A. That's because I take care of all
18 the accounts. It's like we told you earlier.

19 Q. You handle all the finances?

20 A. Yes.

21 Q. So all of these transactions we see
22 at United Community Bank is all you?

23 A. I take care of all of her bills.

24 Q. And your bills, too?

25 A. And mine.

60

1 Q. Right. WHS Prpoerties, LLC, do you
2 see this one?

3 A. What?

4 Q. This account here (indicating) as
5 we're flipping through them?

6 A. Yes.

7 Q. Account 41104994?

8 A. Yes.

9 Q. Is this the account that has been
10 closed?

11 A. That is correct.

12 Q. So there is no money left in this
13 account?

14 A. No.

15 Q. Is WHS Properties LLC operating?

16 A. No.

17 Q. So these are some of the expenses
18 that I see on here, it's a Publix, a Bi-Lo, a
19 Walgreens --

20 A. That's paying personal expenses.

21 Q. -- United Community Bank 19, right?

22 A. Yes.

23 Q. And this is 4994. So what I see in
24 the bank statement here from Smith Family,
25 LLC -- excuse me -- from Wanda Smith, I see

1 transfers of money from the savings account
2 that's in Wanda Smith --

3 A. Yes.

4 Q. -- and Ted D. Smith and then Ted --

5 A. As signer.

6 Q. -- well, Ted Smith authorized
7 signer; do you see that?

8 A. Yes. We've been over -- how many
9 times are we going to go over this?

10 Q. Sure. But I see transfers of money,
11 4,000, 5- -- 4,400, 3,000. You're moving money
12 over to these accounts, right?

13 A. To pay the bills.

14 Q. To pay these bills and such, right?

15 A. That's correct.

16 Q. Okay. And I think we talked about
17 the source of -- let's talk about Smith Family,
18 LLC.

19 A. Okay.

20 Q. The source of this money here for
21 account number -- actually, we'll call it
22 United Community Bank, page 13, it is a Smith
23 Family, LLC account, right?

24 A. Yes.

25 Q. You are reflected on this account,

62

1 Ted D. Smith, right?

2 A. As a signer.

3 Q. But there is nothing under your name
4 here that says "Signer," right?

5 A. Well, it is.

6 Q. Well, is there anything on this page
7 that says "Signer"? You are equally situated
8 with your wife in this account?

9 A. No, I'm not. She owns that account,
10 and I'm only a signer.

11 Q. Okay. But is your name here?

12 A. It's there because I am authorized
13 to sign.

14 Q. Okay.

15 A. She owns the account.

16 Q. And actually, this was opened in 2/8
17 of '12, right?

18 A. Yes.

19 Q. And there is a deposit of \$587,000
20 in it, right?

21 A. Um-hum. Yes.

22 Q. And that money came from WHS
23 Prpoerties, LLC, right?

24 A. The sale of Four Market Point.

25 Q. But it came from WHS Prpoerties,

1 LLC, right?

2 A. That's correct.

3 Q. But you're on it?

4 A. As a signer.

5 Q. Okay. Do you want to tell me why
6 you didn't tell me that you have an account,
7 this account, whenever I first examined you?

8 A. I don't have it. I don't have -- I
9 have no ownership in any account. That's still
10 the same as it was then.

11 Q. But you're on this account, right?

12 A. As a signer.

13 Q. Okay.

14 A. I am not an owner of the account.

15 Q. So this is Smith Family's Bank
16 account statement, United Community Bank 15.

17 A. Okay.

18 Q. And we're seeing some transfers in
19 from the savings account, right?

20 A. Yes.

21 Q. We talked about United Community
22 Bank 17. That's the WHS Properties, right?

23 A. Yes.

24 Q. And this is where we see all of
25 those expenses, personal expenses, right?

64

1 A. Yes.

2

Q. And it looks like you-all were
3 buying tires on here as well, right? Tires
4 Incorporated?

5

A. There's any possibility of things
6 that we bought.

7

Q. New Clock? Amazon? Ann Taylor down
8 in Tampa, Florida, I'm assuming that was where
9 your wife was shopping, right?

10

A. Yes.

11

Q. Not you?

12

A. That's right. I don't think they
13 have anything in Ann Taylor that I would wear.

14

Q. I don't think they do.

15

Walgreens, Container Store?

16

A. Where -- we've already discussed
17 this. Why are we going over these line by
18 line?

19

Q. I'm just asking you.

20

A. I told you that we paid our personal
21 expenses out of it.

22

Q. Okay. Fair enough.

23

A. And that's about all you can say.

24

Q. All right. And that's how you
25 contend you're doing that sort of thing, right?

1 A. That's how -- the only way we have
2 to live.

3 Q. This looks like another WHS
4 Prpoerties, LLC account here at United
5 Community Bank. It's from United Community
6 Bank page 29, 42048346. Do you see that?

7 A. I see it, but I don't know what it
8 is.

9 Q. There was an initial deposit of
10 225,000 -- do you see that -- in 2010?

11 A. I don't know. I don't know what
12 this is. Where is the backup? Is there any
13 activity?

14 Q. That's what I wanted to ask you
15 about. I think I have some more information
16 about this. But do you know where the source
17 of that money came from?

18 A. The only thing I could think of is
19 the sale of the lot to Bob Johns on White Horse
20 Road -- no, that can't be that.

21 I don't know. I don't know.

22 Q. Do you derive any income from Smith
23 Family, LLC or WHS Prpoerties, LLC?

24 A. No.

25 Q. But it does pay for all of your

66

1 bills and covers your personal expenses, right?

2 A. It keeps a roof over my head.

3 Q. It keeps the roof over your head.

4 All right.

5 MR. FLOYD: Why don't we take a
6 break here, and we'll all go get some
7 lunch and we will resume.

8 (Off-the-record discussion.)

9 BY MR. FLOYD:

10 Q. Just by way of me telling you this,
11 and just so I can make sure that you know this.
12 During the break, don't talk to Mr. Hiller
13 about your deposition. You can talk to him
14 about football, Clemson, weather, and that sort
15 of stuff. But don't talk about anything
16 related to the documents you have seen, the
17 examination that I have conducted this morning,
18 or Ms. Smith, nothing related to this case,
19 otherwise I will be able to ask you questions
20 about that.

21 A. Okay.

22 Q. And I would prefer to avoid all of
23 that.

24 A. We won't discuss it.

25 Q. Just don't discuss this case.

1 A. We won't discuss it.

2 (Whereupon, a luncheon recess was
3 taken from 1:01 p.m. to 1:40 p.m.)

4 EXAMINATION

5 BY MR. FLOYD: (Continued.)

6 Q. I'm going to hand you what I'm going
7 to mark as Exhibit Number 6.

8 (Whereupon Petitioner's Exhibit
9 Number 6 was marked for identification.)

10 BY MR. FLOYD:

11 Q. Take a moment to flip through it,
12 Mr. Smith, and we'll talk about it.

13 (Witness reviewing.)

14 A. Okay.

15 Q. Are you generally familiar with
16 these documents?

17 A. I would think I have seen most of
18 them before.

19 Q. Okay. I'll represent to you these
20 are all documents that I got from the Register
21 of Deeds Office here in Greenville County.

22 The last page -- let's start
23 there -- do you recognize that document?

24 A. This survey?

25 Q. Yes, sir.

68

1 A. Yes.

2 Q. What is that? What's it showing?

3 A. It's Pelham at Boiling Springs.

4 Q. Is that the property that I see
5 there identified as parcel C, the property that
6 was sold to Kwik Trip?

7 A. It is.

8 Q. Is that a road running through the
9 middle of it? Is that a power line?

10 A. Are you talking about this right
11 here (indicating)?

12 Q. Yes, sir. The dash lines.

13 A. That's a --

14 Q. Sewer? Is that what it says?

15 A. No. It's -- well --

16 Q. It appears to be a sanitary sewer
17 line; is that correct?

18 A. Yes, it is a sewer line.

19 Q. Okay. And then if I come towards
20 the parcel C, then I see another dash line
21 pointing to parcel D?

22 A. Okay.

23 Q. Is that a road there?

24 A. That was the old road-bed when
25 Boiling Springs used to cut and go this way and

1 come out here, before they redid the
2 intersection right here (indicating).

3 Q. So is that a closed road now? That
4 road is no longer there?

5 A. That road is no longer there.

6 Q. Where is the church in relation to
7 this property?

8 A. Right there (indicating).

9 Q. When you say "right there," you mean
10 just below that north arrow on this page?

11 A. Yes, right there (indicating).

12 Q. And that strip of land that was sold
13 to Kwik Trip, where would that be located?

14 Rough proximity.

15 A. It's somewhere right in here
16 (indicating).

17 Q. Would it be the parcel D?

18 A. No. Parcel D is actually on this
19 piece of property (indicating).

20 Q. That was the property the Smith
21 Family owned?

22 A. When they deeded back this road --
23 when they abandoned this road, they deeded this
24 side of that line to this parcel and this side
25 to the church parcel (indicating).

70

1 Q. I follow. Okay. And Grace
2 Community Church owns property on both sides of
3 what appears to be a driveway going into Grace
4 Community Church?

5 A. I would assume that's the way it is.
6 They've redone that now. I don't know how it
7 looks now.

8 Q. And the property that was purchased
9 from the church would have been on the Grace
10 Community Church side of that line, they just
11 needed to add a little more property?

12 A. That's correct.

13 Q. Okay. All right.

14 So the way I've arranged these
15 documents is, if you put the plat down, you
16 flip over one page -- don't go all the way to
17 the front, just flip over a couple of pages, I
18 believe the first deed that you will come
19 across is the deed from Stan McAllister to
20 Smith Family, LLC.

21 Do you see that?

22 (Witness reviewing.)

23 A. Yes.

24 Q. It appears that it was transferred
25 to Smith Family on August 1, 2012?

1 A. Um-hum.

2 MR. HILLER: Yes or no?

3 THE WITNESS: Yes. Yes. Yes.

4 BY MR. FLOYD:

5 Q. I'm sorry. Thank you.

6 Was there a mortgage taken on this
7 property?

8 A. No.

9 Q. Smith Family, LLC paid cash for it,
10 right?

11 A. That's correct.

12 Q. Where did Smith Family, LLC get the
13 money from; do you know?

14 A. The sale of WHS Properties, Four
15 Market Point.

16 Q. So WHS Properties LLC funded Smith
17 Family, LLC, right?

18 A. That's correct.

19 Q. Okay. So then if we flip over to
20 the next deed, it appears that Smith Family,
21 LLC transferred title of this property to 2707
22 Pelham Road, LLC on July 22, 2014; is that
23 right?

24 A. Okay. That's right.

25 Q. That's when the deed was filed there

72

1 at the top, right?

2 A. Yes.

3 Q. Who owns 2707 Pelham Road, LLC?

4 A. Smith Family, LLC and Groves
5 Enterprises.

6 Q. Was there an operating agreement for
7 2707 Pelham Road, LLC?

8 A. There was.

9 Q. Okay. Can you get me a copy of
10 that.

11 A. I may still have it. Since this
12 never took place, most of that -- I don't know
13 whether we kept any of that stuff or not,
14 because -- do you have the deed where 2707
15 deeds it back to Smith Family and Groves
16 Enterprises?

17 Q. I'm just asking you right now about
18 the operating agreement. Who prepared it for
19 you?

20 A. John Kehl.

21 Q. Okay. Would he have that?

22 A. I'm sure he would have it in his
23 files.

24 Q. Can you get that for me?

25 A. Sure.

1 Q. So Smith Family, LLC was a
2 50 percent member --

3 A. That's correct.

4 Q. -- in 2707 Pelham Road?

5 A. Yes.

6 Q. Did Groves Enterprises, Inc. pay
7 Smith Family money to be a one-half member?

8 A. I told you that earlier.

9 Q. I forgot. I'm sorry.

10 A. I thought it was about 200,000.

11 Q. Where would that money have been
12 deposited?

13 A. I have no idea.

14 Q. Where would you have put that money?

15 A. I don't know. I can't tell you
16 right now. I would have to search bank records
17 to figure out where it went.

18 Q. Would that transaction have taken
19 place in July '14?

20 A. He didn't pay it all at one time. I
21 remember that, the way it was set up, that he
22 paid X number of dollars when this was done and
23 he paid X number of dollars later, but I don't
24 have those dates.

25 Q. Was there some sort of documentation

74

1 about this transaction?

2

A. I'll just have to see. I don't
3 know. I would assume there is.

4

Q. So tell me what you can remember
5 about the transaction. You say he paid some
6 down?

7

A. I can't tell you how much or when,
8 but I know it came in segments.

9

Q. Two payments?

10

A. I think it was two.

11

Q. So would you have transferred --
12 would Smith Family, LLC have transferred this
13 property, 2707 Pelham, without him paying all
14 of the money?

15

A. They did.

16

Q. So at the time the transfer was
17 made, Groves Enterprises still owed money --

18

A. That's correct.

19

Q. -- to Smith Family, LLC?

20

A. That's correct.

21

Q. So there would be some other payment
22 from Groves Enterprises to Smith Family, LLC
23 after this transaction?

24

A. That's correct.

25

Q. All right. Keep flipping towards

1 the front. And you see it was transferred --
2 I'm sorry. Go back to that one. The
3 consideration, do you know what consideration
4 is?

5 A. Yes.

6 Q. What is that?

7 A. It's what you give to the property
8 you're buying.

9 Q. So this was \$1 -- do you see that --
10 for Smith Family to 2707 Pelham?

11 A. Um-hum. Yes, I see that.

12 Q. So the affidavit that's attached to
13 the back, do you see that?

14 A. Yes.

15 Q. The transfer was less than \$100; do
16 you see that? It was \$1; is that what it is
17 stating?

18 A. Okay.

19 Q. It refers to this item number one on
20 this (indicating).

21 (Witness reviewing.)

22 A. Okay.

23 Q. And it is exempt from the deed
24 recording fee.

25 A. Okay.

76

1 Q. But actually, Groves Enterprises,
2 Inc. paid a substantial amount of money for a
3 one-half membership interest in 2707, is what
4 you're saying?

5 A. That's what I'm saying.

6 Q. All right. If you will keep
7 flipping forward.

8 A. Okay. Is this not the same thing?

9 Q. Do you see where it says "2707
10 Pelham Road"?

11 A. I do.

12 Q. "Transferring the property to Smith
13 Family, LLC and Grove Park Enterprises" {sic}?

14 A. Okay. Yes. I see it.

15 Q. Excuse me. Groves Enterprises?

16 A. Yes.

17 Q. And we're talking about the same
18 property here, right?

19 A. Yes.

20 Q. And this transaction looks like it
21 took place in February 16, 2015?

22 A. That's correct.

23 Q. Do you know when the judgment was
24 entered against you with First Citizens?

25 A. Can you tell me how this relates to

1 this that I'm looking at? I don't understand.

2 Q. I'm asking, do you remember when the
3 judgment --

4 A. No.

5 Q. All right. And you actually signed
6 this affidavit, didn't you, on the back of this
7 deed?

8 (Witness reviewing.)

9 Q. You're going back too far.
10 (Indicating)?

11 A. Yes.

12 Q. Not notarized, but it is signed by
13 you, right?

14 A. That's correct.

15 Q. And you identified yourself as a
16 manager, correct?

17 A. I was of 2707.

18 Q. Okay. And then the next two deeds
19 are the deeds from Smith Family to Groves
20 Enterprises -- excuse me -- from Smith Family
21 to Kwik Trip and from Groves Enterprises to
22 Kwik Trip, right?

23 A. Okay.

24 Q. Is that right?

25 A. It looks correct to me.

78

1 Q. And that shows us how the property
2 was transferred to Kwik Trip, right?

3 A. It looks that way to me.

4 Q. Okay. Do you have any ownership
5 interest in Groves Enterprises, Inc.?

6 A. No.

7 Q. Do you have any tangential ownership
8 interest to Groves Enterprises, Inc., whether
9 through some other LLC or through some other
10 person?

11 A. None, zero, nada.

12 Q. Okay. Are you related to the Groves
13 Enterprises?

14 A. No.

15 Q. Okay.

16 (Whereupon, Petitioner's Exhibit
17 Number 7 was marked for identification.)

18 BY MR. FLOYD:

19 Q. I'm handing you what's been marked
20 as Exhibit 7. I will represent to you that
21 that was straight off the Secretary of State's
22 website. Do you see that?

23 A. Yes. I see it.

24 Q. Do you see the name change that took
25 place on Rhino Fund down there?

1 A. Yes.

2 Q. And what date was that?

3 A. 9/21/2006.

4 Q. Any other corporate changes on there
5 recognized by the Secretary of State?

6 (Witness reviewing.)

7 A. It looks like there was an amendment
8 in 2008, but I don't know what it is.

9 Q. Would that have been whenever the
10 registered agent was changed.

11 A. I would say that that must be --
12 that's about the same time when Wanda took
13 ownership.

14 Q. And you were the registered agent
15 prior to that, right?

16 A. That's correct.

17 Q. I believe I established this with
18 Ms. Smith as well, but you, for all intents and
19 purposes, are the tax partner for these LLCs,
20 right, these LLCs being Smith Family and WHS
21 Properties, LLC?

22 A. I'm not a partner in anything. I
23 just manage her books.

24 Q. Okay. Does she ever provide
25 anything to the accountants at Elliott Davis?

80

1 A. Usually I provide all the financial
2 data.

3 Q. Because you have all of the
4 information, right?

5 A. That's correct.

6 Q. And, in fact, you're the one who
7 dealt pretty much exclusively with Elliott
8 Davis over the years, right?

9 A. That's correct.

10 Q. Are you aware of your wife ever
11 going to a meeting at Elliott Davis?

12 A. I'm sure over the years she probably
13 has.

14 Q. Can you specifically recall any as
15 you sit here today?

16 A. No.

17 Q. Is 2707 Pelham Road, LLC still
18 active?

19 A. It never was active.

20 Q. It never did anything?

21 A. No.

22 Q. No K-1s ever filed and such?

23 A. Nothing. Nothing.

24 Q. Okay. I'm going to hand you what --
25 actually, I'm going to use this as the Exhibit

1 8.

2 (Whereupon, Petitioner's Exhibit
3 Number 8 was marked for identification.)

4 BY MR. FLOYD:

5 Q. The documents that I have just
6 handed to you, Mr. Smith, are Bates labeled
7 United Community Bank 32 through United
8 Community Bank 106. I will represent to you
9 that these are documents that I received this
10 week from United Community Bank.

11 A. Okay.

12 Q. I have some questions for you. If
13 you will, please turn to United Community Bank
14 42.

15 MR. HILLER: Tell him where the
16 numbers are.

17 BY MR. FLOYD:

18 Q. Do you see the numbers?

19 MR. HILLER: They're Bates stamped
20 down on the bottom.

21 THE WITNESS: Forty-two?

22 BY MR. FLOYD:

23 Q. Yes, sir. That's it.

24 A. Okay.

25 Q. Up at the top of that page it

82

1 appears to me to be a deposit slip, and it also
2 appears to me to be a check. Do you see those
3 two items? The first one being a deposit slip
4 for Smith Family, LLC that shows the total
5 deposit?

6 A. Yes.

7 Q. And how much is that for?

8 A. 587,666.41.

9 Q. And I also see right below that the
10 check from WHS Prpoerties, LLC in that same
11 amount, right?

12 A. Yes.

13 Q. So this appears to be the funds that
14 WHS Prpoerties, LLC used to start or invest in
15 Smith Family, LLC, right?

16 A. I would assume that's correct.

17 Q. And down at the bottom I see \$6,000,
18 or \$6,500 in cash that you wrote. Do you see
19 that?

20 A. Yes.

21 Q. What was that for?

22 (Witness reviewing.)

23 A. I have no idea.

24 Q. But you got that cash? Do you see
25 that?

1 A. Well, I'm sure I didn't get that
2 cash. I'm sure it went to pay for something,
3 but I just don't know what.

4 Q. But you pulled that money out right
5 there, right?

6 A. It says I did.

7 Q. In fact, it shows the cash-out
8 ticket, right, \$6,500 on 2/8/12? Do you see
9 that right beside it (indicating)?

10 A. Yes.

11 Q. As you sit here today, you don't
12 know what that is for?

13 A. No, I have no idea.

14 Q. All right. Who is Panagakos Asphalt
15 Paving?

16 A. It's an asphalt paving company in
17 Greenville.

18 Q. What would he have been paying?

19 A. He paved 6404-A&B White Horse Road.

20 Q. He paved what now?

21 A. He paved the parking lot at 6404-A&B
22 White Horse Road.

23 Q. He paved it?

24 A. He paved it.

25 Q. Why is he paying you money, on the

84

1 next page, \$382.92 -- or Joey Phillips, who is
2 Joey Phillips?

3 A. Where is that?

4 Q. Right here, this was produced,
5 (indicating) right here.

6 (Witness reviewing.)

7 Q. Do you know what that is about?

8 A. No.

9 Q. Have they ever paid you any money?

10 A. Not that I'm aware of.

11 Q. Next, if you will flip over to
12 United Community Bank 61.

13 A. Okay.

14 Q. Number 61, page 61. Do you see
15 that?

16 A. Oh, I'm on 51. Okay.

17 Q. This appears to be a statement dated
18 2/21/16. Do you see that?

19 A. I do.

20 Q. It appears to be a business checking
21 account for Smith Family, LLC; do you see that?

22 A. Okay. Yes.

23 Q. Down at the bottom, a wire transfer
24 is reflected on here that shows an outgoing
25 wire (indicating) to International Co.,