

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
The Honorable John C. Hayes, III
Case No. 2012-CP-29-498

Appellate Case No. 2017-002223

Mark Wilson.....Appellant,

v.

Keith Jayma.....Respondent.

RECORD ON APPEAL

Mark Wilson, Pro Se
2506 Kings Farm Way
Indian Trail, NC 28079
Appellant

W Keith Martens, Esquire
Hamilton Martens, LLC
P.O. Box 10940
Rock Hill, SC 29731

RECEIVED

NOV 05 2018

SC Court of Appeals

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In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
The Honorable John C. Hayes, III
Case No. 2012-CP-29-498

Appellate Case No. 2017-002223

Mark Wilson.....Appellant,

v.

Keith Jayma.....Respondent.

CERTIFICATE OF MAILING

I, Mark Wilson, Appellant, hereby certify that I have, this 2nd day of November, 2018, served a copy of the Record on Appeal upon W. Keith Martens, Esquire, attorney for Respondent, by mailing a copy thereof, postage prepaid, to the address indicated below:

W. Keith Martens, Esquire
Hamilton Martens, LLC
P.O. Box 10940
Rock Hill, SC 29731



Mark Wilson

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,
Plaintiff
vs
Keith Jayma and
Wilbur Streater, III,
Defendants

Case No. 2012-CP-29-00498

**CONSENT ORDER
FOR
DESIGNATION OF COMPLEX
LITIGATION AND ASSIGNMENT OF
JUDGE**

This matter is before me upon consent of the parties to have this case designated as complex litigation and for the appointment of The Honorable John C. Hayes, III of the Sixteenth Judicial Circuit to preside over any further handling of this case. Counsel have advised the Court that Judge Hayes has been consulted and has agreed to this appointment.

THEREFORE, by consent of the parties and Judge Hayes, this matter is designated as complex litigation and is assigned to Judge John C. Hayes, III for all future case management including any trial of this matter.

AND IT IS SO ORDERED.


J. ERNEST KINARD
Administrative Judge
Sixth Judicial Circuit

9/14, 2013
Comden, S.C.

FILED
CLERK
OF COURT
2013 SEP 18 AM 11:38
SIXTH JUDICIAL CIRCUIT
LANCASTER, SC

WE CONSENT:

David C. Cook *pro se designation*
David C. Cook
Cook Law Firm, LLC
PO Box 1449
Lancaster, SC 29721
(803) 285-4848
dcook@dcooklaw.com
Attorney for Plaintiff

Terry B. Millar
Terry B. Millar
Terry B. Millar, LLC
PO Box 10590
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Attorney for Defendant Jayma

Wilbur B. Streater III
Wilbur B. Streater, III
12207 Royal Castle Ct.
Charlotte NC 28277
cstreater@envoymortgage.com
Defendant pro se

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)
)
Plaintiff,)

Case No. 2012-CP-29-00498

v.)

CONSENT ORDER FOR
SUBSTITUTION OF COUNSEL

Keith Jayma and)
Wilbur Streater, III,)
)
Defendants.)

FILED
CLERK
COURT
2015 JUL 30 AM 11:44
LANCASTER, SC

This matter comes before me upon application of Terry B. Millar, Attorney for Defendant Keith Jayma, for an Order relieving him as counsel and substituting W. Keith Martens as Attorney for Keith Jayma from this point forward.

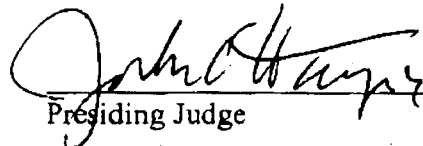
I find that this application should be granted, now therefore

IT IS ORDERED that:

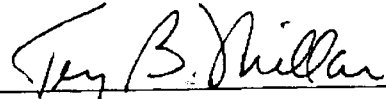
1. Terry B. Millar be, and hereby is, relieved as the Attorney for Defendant, Keith Jayma, and
2. W. Keith Martens be, and hereby is, substituted as the Attorney for Defendant, Keith Jayma, from this point forward.

AND IT IS SO ORDERED.

7/21, 2015

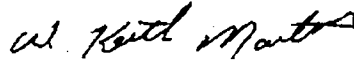

Presiding Judge

I SO MOVE:

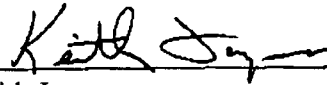


Terry B. Millar
Terry B. Millar, LLC
P.O. Box 10590
Rock Hill, SC 29731
(803) 324-3196

WE CONSENT:



W. Keith Martens
Hamilton Martens Ballou & Carroll, LLC
P.O. Box 10940
Rock Hill, SC 29731
(803) 329-7672



Keith Jayma

4840-7568-7972, v. 1

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)
)
Plaintiff,)
)
v.)
)
Keith Jayma,)
)
Defendants,)

C/A No. 2012-CP-29-498

ORDER GRANTING SUMMARY JUDGMENT

2017 SEP 27 AM 11:40
CLERK OF COURT
LANCASTER, SC

This case came before the court on August 15, 2017 for a hearing on Defendant Keith Jayma's motion for summary judgment, based upon expiration of the statute of limitations on each of Plaintiff's causes of action. For the reasons set forth below, I find and conclude that Plaintiff's entire complaint is time-barred and, therefore, GRANT summary judgment in favor of Defendant.

Relevant Facts

Wilson and Jayma began a business relationship in April 2005, when Jayma and a friend¹ made a \$32,000 loan to Wilson. The loan was evidenced by a written promissory note, and was secured by a mortgage covering 63+/- acre parcel of land that was owned by Wilson and located in Lancaster County, South Carolina (the "Disputed Tract").

In approximately August 2005, Wilson and Jayma continued their business relationship, when they formed a partnership to construct and sell a million-dollar speculative home in Union County, North Carolina. By the terms of their unwritten agreement, Wilson would serve as

¹ Jayma's friend, Wilbur Streeter, III, was originally named a defendant in this action. Streeter has since been dismissed.

Det #1
P. 10.

general contractor, overseeing construction of the "spec" home, while Jayma would secure financing for the project.

At some point during construction, Wilson proposed that Jayma could borrow additional funds for the project, using the Disputed Tract as collateral. Wilson offered to transfer a portion of the Disputed Tract² to Jayma, so that Jayma could obtain a second loan to help fund construction of the "spec" house.

In November 2005, Wilson signed a deed, prepared by Jayma's attorney, which transferred the entire Disputed Tract to Jayma. At his deposition, Wilson admitted that he did not read the deed before signing it, and also acknowledged that, when Wilson signed the deed, it did not include a detailed property description. In his complaint, Wilson alleges that the deed to the Disputed Tract was obtained through fraud and is, therefore, invalid.

Construction of the "spec" home took longer, and cost more, than originally projected. By the time the home was completed in 2007, Wilson and Jayma had exhausted their original construction loan, as well as the additional money that Jayma had borrowed against the Disputed Tract. Wilson and Jayma were openly antagonistic toward one another, and were communicating only through written correspondence and email.

On March 6, 2008, Wilson sent a lengthy fax to Jayma, accusing Jayma of various wrongs. Among other things, Wilson accused Jayma of committing fraud, forgery and misappropriation of partnership assets. With respect to Wilson's conveyance of the Disputed Tract, Wilson wrote:

I signed over, with no legal representation and to an attorney that you have used many times, not 25 acres but my entire 63 acres, with absolutely no money changing hands. . . I've been deceived, defrauded, tricked and shammed. . .

² There is a factual dispute as to whether Wilson offered to transfer the entire Disputed Tract, or only 25 acres. For purposes of this motion, and construing all facts in a light most favorable to Wilson, the court will presume that Wilson did not offer the entirety of the Disputed Tract to Jayma.

On September 12, 2008, an attorney representing Wilson sent Jayma a certified letter, accusing Jayma of violating his fiduciary duties to Wilson in several specifics. Again, the lawyer's letter accused Jayma of misappropriating partnership funds and mentioned the deed to the Disputed Tract, contending that the deed improperly conveyed "63 acres of land . . . rather than the intended 25 acres." The lawyer's letter threatened litigation if Jayma did not immediately provide "a proper accounting . . . and re-convey[] [the Disputed Tract to] Mr. Wilson." Jayma did not respond to the lawyer's letter.

Summary Judgment Standard

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." McAlhany v. Carter, 415 S.C. 54, 60, 781 S.E.2d 105, 110 (2015). Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Rule 56(c) S.C. R. Civ. P.; Bowen v. Lee Process Sys. Co., 342 S.C. 232, 536 S.E.2d 86 (Ct. App. 2000). A party seeking summary judgment has the burden of clearly establishing, with use of the record properly before the court, the absence of a triable issue of fact. Stanford Fire Ins. Co. v. Marine Contracting and Towing, 301 S.C. 418, 392 S.E.2d 460 (1990). Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party must come forward with facts showing there is a genuine issue for trial in order to avoid summary judgment. Baughman v. American Tel., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from that evidence in a light most favorable to the non-

moving party. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

Analysis

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). They "embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Id. (citing 51 AM. JUR. 2D, Limitation of Actions § 18, at 603 (1970)). One purpose of a statute of limitations "is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights." Id. (quoting McKinney v. CSX Transp., Inc., 298 S.C. 47, 378 S.E.2d 69 (Ct. App. 1989)). Another purpose is to protect "potential defendants from protracted fear of litigation." Id.

In this instance, the single issue before the court is whether Wilson's claims, as asserted in this action, are time-barred as a matter of law. The determination of this issue hinges on two considerations. First, because the parties disagree as to the applicable statute of limitations, the court must determine what limitation period applies. Second, the court must determine whether there is any factual dispute as to whether Wilson filed his complaint within the applicable period of limitations.

A. Plaintiff's claims are subject to a three-year statute of limitations.

As an initial matter, I find and conclude that each of Wilson's claims is governed by the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530 (Law. Co-op. 2005). That statute requires that "an action upon a contract, obligation or liability, express or implied" must be commenced within three years following accrual of the claim. Wilson's complaint is

based entirely upon the alleged acts or omissions of Jayma as a partner in the men's business venture, and includes specific causes of action for breach of fiduciary duty and fraud. Our Court of Appeals has held that each of those causes of action is subject to a three-year statute of limitations. Mazloom v. Mazloom, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009)(breach of fiduciary duty); Turner v. Millman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009)(fraud).

In opposition to Jayma's motion, Wilson argues that his claims are not subject to the three-year statute of limitations of § 15-3-530. Instead, Wilson argues that his claims are subject either to the twenty-year statute of limitations of § 15-3-520 (actions upon a sealed instrument, bond or other contract in writing secured by a mortgage of real property) or to the ten-year statute of limitations set forth in § 15-3-340 (action by an individual for recovery of real property). I disagree.

Section 15-3-520(b) (action on a sealed instrument) is plainly inapplicable to this case. In making this determination, the court need look no further than the definition of "sealed instrument" set forth in Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015). In Lyons, the Court of Appeals defined a sealed instrument as "an instrument in which the *bound party* has affixed a personal seal, recognized as providing indisputable evidence of the validity of the underlying obligations." Id. at 125, 781 S.E.2d at 131-32 (emphasis added). In this case, neither the deed to the Disputed Tract nor the mortgage covering the Disputed Tract was signed or "sealed" by Jayma. Jayma is not the "bound party" of either instrument, and Wilson's claims against Jayma are not "an action on a sealed instrument."

Nor do Wilson's claims fall within § 15-3-520(a), as an action on a "bond or other contract in writing secured by a mortgage of real property." The focus of § 15-3-520(a) is not a mortgage, but rather a written contract that is secured by a mortgage. There is no evidence that

Jayma signed any "written contract secured by a mortgage" and Wilson's complaint does not allege that he seeks to enforce any such contract.

Wilson's claims also are not governed by the ten year statute of limitations set forth in § 15-3-340. Our Supreme Court has specifically held that an action to set aside a deed on the basis of fraud is not an "action for the recovery of real property." McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953). Such claims are, instead, an "action for relief on the ground of fraud," and subject to the "general" statute of limitations - a six-year limitations period when McKinnon was decided. That limitations period has since been reduced to three years, and is now codified as § 15-3-530(7)(Law. Co-op. 2005). Reviewing Wilson's complaint, as McKinnon instructs, the court notes that Wilson alleges Jayma obtained title to the Disputed Tract through a fraudulent deed. Wilson's action to set aside that deed is, therefore, subject to a three-year statute of limitations and not the ten-year statute of §15-3-340.

B. The undisputed factual record establishes that Wilson did not commence This action within three years of the accrual of his claims, and his entire Complaint is subject to dismissal as a matter of law.

The question of when a claim accrues for purposes of calculating the statute of limitations is generally a question of fact. The statute begins to run when "the underlying cause of action reasonably ought to have been discovered." Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011). When there is conflicting evidence as to whether a claim has accrued for purposes of the statute of limitations, the issue must be submitted to a jury. When the evidence is conclusive, the question may be decided as a matter of law.

In this case, there is no material issue of fact in dispute as to the accrual of Wilson's claims. The undisputed evidence conclusively establishes that Wilson had knowledge of facts

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P. 14.

which put him on notice of harm or injury from Jayma's alleged conduct at least by September 12, 2008, the date an attorney sent a demand letter on Wilson's behalf. In fact, there is even evidence in the record that Wilson had discovered Jayma's alleged fraud as early as March 6, 2008, when he wrote Jayma that he had been "deceived, defrauded, tricked and shammed." Given these undisputed facts, it is implausible that Wilson did not believe he had been injured by, at latest, September 12, 2008. As a matter of law, the statute of limitations required Wilson to file his complaint on or before September 12, 2011, the third anniversary of that date. His complaint was not filed until April 2012, several months after the statute of limitations had expired.

Wilson argues that, even if his claims are subject to a three year statute of limitations, the limitations period was equitably tolled by Jayma's conduct. South Carolina's courts have held that a defendant may be estopped from asserting the statute of limitations "if the defendant's conduct has induced the delay that otherwise would give operation to the statute [of limitations]." Moates, 322 S.C. at 175, 470 S.E.2d at 403 (citing Vines v. Self Memorial Hosp., 314 S.C. 305, 443 S.E.2d 909 (1994)). Here, the record is devoid of any evidence that Jayma made representations or took actions that lulled Wilson into a belief that the issues between the parties would be resolved without litigation. Jayma's silence, such as not responding to Plaintiff's correspondence, cannot be relied upon as conduct that would toll the statute of limitations.

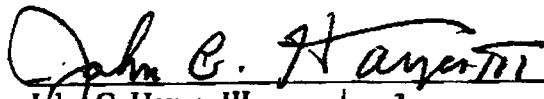
In an affidavit, Wilson directs the court's attention to a 2011 email from Jayma as evidence that the two parties were "still arguing over profits of [the] job." A review of that email provides no support for Plaintiff's position that the statute of limitations was equitably tolled by Jayma's conduct. The email is not an offer of resolution without litigation, but rather a

castigation of Plaintiff in which Jayma makes clear his position that he does not owe the Plaintiff anything. No reasonable reading of that email could be construed as words or actions that "induced" the Plaintiff to delay filing his complaint.

Order

For the reasons set forth herein, the court finds and concludes, as a matter of law, that Plaintiff's claims were not commenced within the applicable statute of limitations. There is no evidence in the record that Defendant induced Plaintiff's inaction, and there is no basis to equitably toll the statute of limitations on Plaintiff's claims. Plaintiff's claims are time-barred, and Defendant is, therefore, entitled to summary judgment. Motion granted.

September 22nd, 2017


John C. Hayes, III
Circuit Court Judge #8

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)
)
Plaintiff,)

C/A No. 2012-CP-29-498

v.)

Keith Jayma and Wilbur Street, III,¹)
)
Defendants,)
_____)

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OR FOR
PARTIAL SUMMARY JUDGMENT

FILED
OFFICE OF CLERK
OF COURT
2016 SEP 30 PM 1:17
CLERK OF COURT
LANCASTER, SC

Defendant Keith Jayma ("Jayma") moves for summary judgment or for partial summary judgment as to each of Plaintiff's substantive claims, pursuant to Rule 56 S.C. R. Civ. P. This motion is based upon the fact that each of Plaintiff's substantive claims is barred by the applicable statute of limitations. In support of this motion, Jayma would further allege and show as follows:

1. Plaintiff's claims all arise from a business relationship between Plaintiff and Defendants, which Plaintiff alleges began in April 2005 and which terminated, at latest, in late 2007.

2. The facts allegedly giving rise to Plaintiff's claims were known to or reasonably discoverable by Plaintiff by early 2008. There is indisputable evidence that Plaintiff consulted attorneys regarding his potential claims against Jayma as early as March 2008. On September 12, 2008, an attorney representing Plaintiff sent a demand letter, via certified mail, outlining the substance of Plaintiff's alleged claims against Jayma.

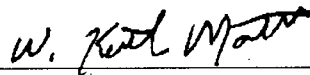
¹ Wilbur Streeter, III has been dismissed from this action.

3. Plaintiff did not file this action until April 5, 2012, more than four years after Plaintiff knew or reasonably should have known that he had a claim and more than three years after Plaintiff's attorney made a demand upon Jayma.

4. Jayma is informed and believes that each of Plaintiff's substantive claims for relief is governed by a three year statute of limitations. Because Plaintiff did not commence suit within the applicable statute of limitations his entire complaint is time-barred. In the event this court determines that Plaintiff's entire action is not time-barred, then Jayma moves for partial summary judgment as to those causes of action which are time-barred.

This motion will be based upon the pleadings and affidavits of record, the appropriate statutory and case law and the South Carolina Rules of Civil Procedure. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P. that, given the nature of this motion, he had no obligation to consult with opposing counsel prior to filing this motion.

September 28, 2016



W. Keith Martens
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
keith.martens@hamiltonmartens.com

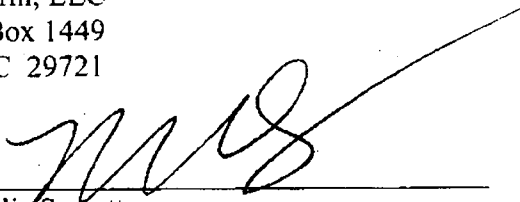
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens, LLC, certifies that the within Motion for Summary Judgment was served on the all parties of record by placing the same in regular United State mail addressed as follows:

David C. Cook
Cook Law Firm, LLC
Post Office Box 1449
Lancaster, SC 29721

This the 28th day of September, 2016.



L. Melia Sweatt

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,

CASE NUMBER: 2012-CP-29-00498

☐ Plaintiff

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Keith Jayma and Wilbur Streater III,

☒ Defendant.

Plaintiff's Attorney: David C. Cook, 300 North
White Street, Lancaster, SC 29720
Phone:
e-mail:

Defendant's Attorney: W. Keith Martens
Address: PO Box 10940, Rock Hill, SC 29731
Phone: 803.329.7672 fax: 803.329.7678
e-mail: keith.martens@hamiltonmartens.com

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

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 15 minutes

Court reporter needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted 9/28/16

SECTION III: Motion Fee

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

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

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

FILED
OFFICE OF CLERK
OF COURT
2016 SEP 30 PM 1:17
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Mark Wilson

2012 APR -5 PM 4:29

IN THE COURT OF COMMON PLEAS

Plaintiff(s)

CIVIL ACTION COVERSHEET

2012-CP - 29-

498

vs.

Keith Jayma, Wilbur Streater, III, and Sun
Trust Bank

Defendant(s)

(Please Print)

Submitted By: David Cook

Address: P. O. Box 1449, Lancaster, SC 29721

SC Bar #: 75081

Telephone #: 803-285-4848

Fax #: 803-283-3680

Other:

E-mail: dcook@dcooklaw.com

NOTE: The cover sheet 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 cover sheet 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)

- 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)
- ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

- 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 Commission (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:

4/5/12

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.

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Mark Wilson,)

Plaintiff,)

vs.)

Keith Jayma, Wilbur Street, III,)
And Sun Trust Bank,)

Defendant.)

2012 APR -5 PM 4:29

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

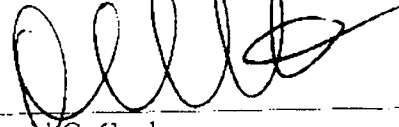
Case No.: 2012-CP-29-

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, to appear and defend the action, and to serve a copy of your Answer upon the subscribers at their offices at 300 North White Street, P.O. Box 1449, Lancaster, SC 29721 within thirty days from the date of service; you are also notified that, in case of your failure to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE COOK LAW FIRM, LLC



David C. Cook

SC Bar Number 75081

Attorney for Plaintiff

300 North White Street

Post Office Box 1449

Lancaster, South Carolina 29721

Phone: 803-285-4848

Facsimile: 803-283-3680

This the 5th day April, 2012.
Lancaster, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2012-CP-29

Mark Wilson.

Plaintiff,

COMPLAINT

Bench Trial Requested

vs.

Keith Jayma, Wilbur Streater, III, and Sun
Trust Bank.

Defendant.

NOW COMES the Plaintiff, above-named, complaining of the Defendant, above-named,
and does allege and show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. That the Plaintiff is a citizen and resident of the County of Lancaster, State of South Carolina.
2. That upon information and belief, the Defendants Keith Jayma and Wilbur Streater III are residents of Mecklenburg County, North Carolina.
3. That upon information and belief, the Defendant Sun Trust Bank is a corporation formed and existing under the laws of the State of North Carolina with its registered agent being David A. Stevens, who is located in Durham, North Carolina.
4. That jurisdiction over the parties is proper pursuant to South Carolina Code of Laws § 27-7-10, jurisdiction over the subject matter is proper pursuant to S.C. Const. art. V, § 11; venue is proper pursuant to South Carolina Code of Laws § 15-7-10.

STATEMENT OF FACTS

5. In April of 2005 the parties entered into an agreement that created a partnership whereby Defendant Jayma and Defendant Streeter loaned Plaintiff Wilson \$32,000 for living expenses (hereinafter referred to as the "April mortgage"). In exchange Wilson gave Jayma and Streeter a mortgage on a certain parcel of land owned by Wilson, to be described more completely below in the legal description of the attachment. On April 18, 2005 Plaintiff signed a mortgage to this affect and recorded it in the Lancaster County Register of Deeds, please find a copy attached hereto and incorporated herein by reference.

6. The parties entered into an agreement whereby Wilson would build certain houses and Jayma would secure the funding for building the houses and sell the houses. The parties would split the profits. In order to acquire money for the projects, Wilson agreed to deed 25 acres of a certain tract of land to Jayma, to wit, the same property described above regarding the April mortgage. In exchange, Jayma would secure a new mortgage on the property with his good credit and use the money to pay Wilson for living expenses and labor and materials, then sell the houses once built. The parties agreed that Wilson would pay back the above-mentioned \$32,000 in addition to any more money that may be loaned to Wilson in advance for living expenses. Then once Wilson's debts to Jayma were paid off, the parties would split the rest of the profit. Also, once the houses were sold, Jayma would deed the land used to secure the funding back to Wilson free and clear. Streeter's only role was to provide \$16,000 of the above-mentioned \$32,000 for the April mortgage.

7. On November 04, 2005, Wilson met Greta M. Neal, paralegal for attorney Blackmon Huckabee of Rock Hill, South Carolina, at a Honda car dealership where Wilson was getting his car serviced. Ms. Neal and Wilson were the only two present when Ms. Neal asked

Wilson to sign the deed that would purportedly convey the acreage from Wilson to Jayma. There was no legal description attached to the deed at the time of execution. The deed was subsequently filed in the Register of Deeds for Lancaster County on November 14, 2005 in Deed Book 308 at Page 59, please find a verified true copy of said deed attached hereto and incorporated herein by reference as "Exhibit A".

8. Plaintiff alleges that this deed was invalidly and fraudulently executed pursuant to the South Carolina Code of Laws, as amended, § 27-7-10, in that there was only one witness present during the execution, despite the fact that the deed shows that two witnesses were present. The deed shows that another witness, named "Lula Hardin" was present. Furthermore, it shows that Ms. Hardin appeared before Ms. Neal in her capacity as a notary, in order to execute the probate of the deed.

9. The deed has a legal description attached to it that purports to convey 62.69 acres, which is the larger tract from which Wilson planned on conveying the twenty five (25) acres mentioned above in the agreement. There is also an improper derivation clause in the legal description for the deed.

10. Jayma then took out a mortgage on the land Wilson conveyed to Jayma. The mortgage was with Sun Trust Bank for approximately \$194,000. Jayma gave Wilson \$50,000 for Wilson's living expenses, and used the rest to finance the building of a speculation home on 10010 Strike the Gold Lane, Waxhaw, North Carolina. The agreement between the parties was that when this house sold the parties would split the profits, Wilson would pay back Jayma the \$50,000 and the \$32,000 forwarded for Wilson's living expenses, and Jayma would convey the 25 acres back to Wilson in fee simple absolute and satisfy the April mortgage. Wilson built a home on the property at Strike the Gold Lane.

11. Upon information and belief Jayma sold the property on Strike the Gold Lane, but did not perform any other part of the agreement. Jayma did not give Wilson any monies from the profit of the sale nor did he re-convey the property used to secure the Sun Trust mortgage. Jayma also did not satisfy the April mortgage.

FOR A FIRST CAUSE OF ACTION:

DECLARATORY JUDGMENT

12. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

13. Plaintiff respectfully requests a declaratory judgment from this Court to set aside the deed transfer of the subject property of this action based on the invalid execution of the deed.

FOR A SECOND CAUSE OF ACTION:

UNJUST ENRICHMENT

14. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

15. Plaintiff alleges that a benefit was conferred upon the Defendant by the Plaintiff. The Defendant realized that benefit. Retention by the Defendant of the benefit under conditions that make it unjust to retain it without paying its value exists.

FOR A THIRD CAUSE OF ACTION:

BREACH OF DUTY IN A PARTNERSHIP

16. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

17. Parties entered into an agreement that created a partnership. The partners owed each other a fiduciary duty in regards to the creation of the partnership. Defendant Jayma breached that duty. Plaintiff Wilson has experienced damages directly due to the breach of that duty by Defendant Jayma.

FOR A FOURTH CAUSE OF ACTION:

SPECIFIC PERFORMANCE

18. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

19. Defendant Jayma has breached his obligations under the agreement and Plaintiff Wilson is entitled to a decree compelling specific performance.

FOR A FOURTH CAUSE OF ACTION:

RESULTING TRUST

20. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

21. Pursuant to the agreement between parties, Plaintiff Wilson is entitled to an order finding that he owns, under a resulting trust, an interest in the real property that is the subject of this litigation.

FOR A FOURTH CAUSE OF ACTION:

NEGLIGENT MISREPRESENTATION

22. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

23. A false representation was made by the Defendant to Plaintiff. A pecuniary interest by the Defendant in making the statement existed. A duty of care owed by the Defendant to see that truthful information was communicated to the Plaintiff existed. The Defendant breached the duty by failing to exercise due care. The Plaintiff justifiably relied on the representation. The Plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation.

FOR A FIFTH CAUSE OF ACTION

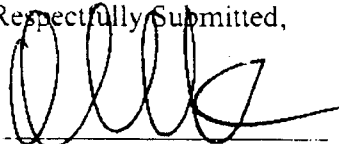
ATTORNEY'S FEES

24. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

25. Plaintiff alleges that due to Defendant's fraudulent actions Plaintiff was forced to retain the services of counsel. Plaintiff respectfully requests the Court to award him attorney's fees in this suit.

WHEREFORE, Plaintiff prays for declaratory judgment against the Defendant to set aside the deed transfer of the subject property in this action, or in the alternative, for judgment against the Defendant in an amount of actual damages and for punitive damages in an appropriate amount, for attorney fees and the costs of this action, specific performance, and for such other and further relief as this Court might deem just and proper.

Respectfully Submitted,



David C. Cook
Attorney for Plaintiff
Cook Law Firm, L.L.C.
300 North White Street
Post Office Box 1449
Lancaster, SC 29721
Phone: (803) 285-4848
Facsimile: (803) 283-3680
dcook@dcooklaw.com
South Carolina Bar Number 75081

Lancaster, South Carolina
April 5, 2012

LANCASTER COUNTY ASSESSOR
Tax Map:
0037 00 003 00

AFTER RECORDING RETURN TO:
Huckabee Law Firm
141 Oakland Avenue
Rock Hill, SC 29732

200505423
DEED
RECORDING FEES \$10.00
EXEMPT
PRESENTED & RECORDED:
11-14-2005 12:07 PM
JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE KINKLEY DEPUTY
BK: DEED 308
PG: 59-61

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

TITLE TO REAL ESTATE
NO TITLE EXAMINATION

KNOW ALL MEN BY THESE PRESENTS THAT, I, F. Mark Wilson, Jr., herein referred to as Grantor(s) for and in consideration of Five Dollars and no/100 (\$5.00) paid by Keith Jayma, hereinafter referred to as Grantee(s) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee(s) all of the following real estate to-wit:

See attached Exhibit A for legal description.
(which is incorporated herein by reference)

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantee(s)' Address: 7631 Sharon Lakes Rd. Suite D.
Charlotte NC 28210

Tax Map No: 0037-00-003-00

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee(s), his heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor(s)' successors, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee(s), his heirs and assigns, against Grantor(s) and Grantor(s)' successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

RECORDED THIS 15th DAY
OF NOVEMBER, 2005
IN BOOK O PAGE J-01

Charles A. Morgan

Auditor, Lancaster County, SC

WITNESS our Hand and Seal this 4th day of November 2005.

Signed, Sealed and Delivered
in the Presence of:

Lula Hardin
Witness #1

F. Mark Wilson, Jr.
F. Mark Wilson, Jr.

Greta M. Neal
Notary Public

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that (s)he saw the within-named Grantor(s) sign, seal and as their act and deed deliver the within-written Deed for the uses and purposes, therein mentioned, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 4th
day of November, 2005.

Lula Hardin

Greta M. Neal
Notary Public for South Carolina
My Commission expires: _____

GRETA M. NEAL
NOTARY STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES:
MAY 14, 2014

P. 30.

Exhibit 'A'

BEGINNING at a nail set in the centerline of the 88' right of way of S 29-51 (Camp Creek Road) and running thence with said centerline, South 61-44-37 West 391.55 feet to a nail found, a common corner with the Douglas A. Wise property (47/131 Plat 99/354 Tax Parcel 37-3.03); thence with the said Wise property, two calls as follows: 1st North 27-38-36 West 695.83 feet (crossing an iron found at 33.07 feet) to an iron found; South 72-21-57 West 537.12 feet to an iron found, a common corner with the Timothy P. Cauthen property (57/248 Plat 15257 Tax Parcel 37-3.02); thence with the northern boundary line of the said Cauthen property, South 74-58-18 West 624.93 feet to an iron found, a common corner with the Frank P. Lopez property (W9/279 Plat 11568 Tax Parcel 37-3.04); thence with the northern boundary line of the said Lopez property, North 78-14-33 West 571.28 feet to an iron found, a common corner with the Gregg P. Shipston property (X8/122 Plat 10649 Tax Parcel 37-3.01); thence with the said Shipston property, two calls as follows: 1st North 13-00-38 West 261.76 feet to an iron found; 2nd North 89-12-45 West 648.11 feet to an iron found in the centerline of the 66' right of way of S.C. Mockingbird Lane (50' right of way of N.C. Gus Eubanks Road); thence with said centerline, six calls as follows: 1st North 06-16-21 East 283.54 feet to a point; 2nd North 06-16-36 East 21.51 feet to a point; 3rd North 01-13-15 East 83.39 feet to a point; 4th North 08-55-51 West 93.43 feet to a point; 5th North 10-15-40 West 120.35 feet to a point; 6th North 03-38-50 West 79.92 feet to a point, a common corner with the Gladys Autry property; thence with the southern boundary line of the said Gladys Autry property, South 87-10-52 East 534.71 feet to an iron found, a common corner with the Richard Autry property (372/336); thence with the southern boundary line of the said Richard Autry property, South 85-47-19 East 1,393.75 feet to an iron found in the southern boundary line of the Richard Autry, Jr. property (481/141); thence with the said southern boundary line of the Richard Autry, Jr. property, South 85-43-56 East 897.45 feet to an iron found, a common corner with the Edwards Wood Products property (450/587); thence with the said Edwards property, North 89-45-41 East 787.65 feet (crossing an iron set at 757.65 feet) to a point in the centerline of the Lynches River; thence with the centerline of Lynches River, twelve calls as follows: 1st South 51-42-41 West 67.13 feet to a point; 2nd South 30-42-50 West 47.29 feet to a point; 3rd South 09-40-29 West 41.97 feet to a point; 4th South 30-59-50 West 136.58 feet to a point; 5th South 36-29-25 West 128.10 feet to a point; 6th South 31-04-26 West 295.20 feet to a point; 7th South 05-50-11 West 98.47 feet to a point; 8th South 38-37-40 West 41.27 feet to a point; 9th South 15-40-34 West 140.22 feet to a point; 10th South 04-55-30 West 39.41 feet to a point; 11th South 16-49-06 East 47.69 feet to a point; 12th South 17-07-30 West 88.41 feet to the point and place of BEGINNING and containing approximately 62.89 acres as shown on that survey by Thomas M. Park, S.C.R.L.S., dated November 27, 2000 and being the same property conveyed to Grantor in Deed Book C6/4835 Tax Parcel 37-3.00.

Being the identical property conveyed to C. Ingram Walters by Deed of F. Mark Wilson, Jr., a/k/a Frederick Wilson, Jr. dated May 1, 2001 and recorded May 2, 2001 in Deed Book 117 Page 140, Register of Deeds Office for Lancaster County, South Carolina.

State of South Carolina)

County of Lancaster)

MORTGAGE ON REAL PROPERTY

FILED, RECORDED, INDEXED
 04/22/2005 09:47AM
 Rec Fees: 12.00 St Fees: 0.00
 Co Fees: 0.00 Prepay: 0
 LANCASTER COUNTY, SC

18th JMW
 THIS MORTGAGE, made this 15th day of April, 2005, among Frederick Mark Wilson (hereinafter referred to as Mortgagor) and Keith Jayma and Wilbur Streater, III., (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements (Note(s)) with the original Note being in the principal sum of Thirty Two Thousand and 00/100 DOLLARS (\$32,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or pursuant to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or Thirty Two Thousand and 00/100 DOLLARS (\$32,000.00) whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash in hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located in Lancaster County, South Carolina:

SEE ATTACHED EXHIBIT A

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining, including but not limited to all buildings improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagor covenants with Mortgagee, its successors and assigns, that Mortgagor is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given; and that Mortgagor will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

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1. NOTE PAYMENTS. Mortgagor shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. TAXES. Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgage or debts secured thereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. INSURANCE. Mortgagor shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefore when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagor and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor, in any insurance policies then in force shall pass to the Mortgagee.

4. REPAIRS. Mortgagor will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. COMPLIANCE WITH LAWS. Mortgagor shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. CONDEMNATION AWARD. Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. PAYMENTS BY MORTGAGEE. If Mortgagor shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagor such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagor such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. TRANSFER OF THE PROPERTY ASSUMPTION. If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation

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of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. MORTGAGOR'S CONTINUING OBLIGATION. It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagor, and all indebtedness now and hereafter owed by Mortgagor to Mortgagee, and any other present or future indebtedness or liability of Mortgagor to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagor, will satisfy this mortgage whenever: (1) Mortgagor owes no indebtedness to Mortgagee, (2) Mortgagor has no liability to Mortgagee, (3) Mortgagor requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagor. The Mortgagor shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagor's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagor or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagor or any party assuming the obligations hereunder.

10. WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS. The Mortgagor does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagor, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagor agrees to and does hereby waive any and rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagor in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. DEFAULT. Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagor.

12. ASSIGNMENT OF RENTS, LEASES AND PROFITS. Mortgagor hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no Default has occurred, Mortgagor shall be entitled to collect and retain all such rents, leases and profits. In the event of Default, all rents, leases and profits shall be payable and delivered to Mortgagee and Mortgagor hereby authorizes Mortgagee to notify any and all tenants of this assignment and that all payments of rents, leases and profits should be made directly to Mortgagee.

13. APPOINTMENT OF RECEIVER. Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the herein described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such

JMW

foreclosure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

14. ENVIRONMENTAL MATTERS. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason or arising out of any violation of any federal, state or local health, safety, or environmental laws, ordinances, and regulations, requiring the removal of, or otherwise regulating the maintenance, storage, transportation or disposal of any hazardous substance or any other toxic substances, asbestos, contaminants, petroleum products, or radioactive materials. The provisions of this paragraph shall survive the satisfaction or release of this Mortgage and the satisfaction of the Note(s) and shall continue thereafter in full force and effect.

The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any laws, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighting in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

15. APPRAISAL. Mortgagor shall pay when due the cost of providing to Mortgagee, at its request, from time to time, a then-current appraisal if the market value of the property prepared by an appraiser acceptable to Mortgagee, in its sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every two (2) years, unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every two (2) years. If Mortgagor fails to pay such costs when due, Mortgagee may pay such costs on Mortgagor's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. DEFINITIONS. As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

AND IT IS AGREED by and between the parties that in the case of foreclosure of this Mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor a sum as attorney's fees as set out in said Note(s) which shall be secured by this Mortgage, and shall be included in judgment of foreclosure.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) or any advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

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IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor the day and year first above written.

Carolyn M. Reynolds
1st Witness
W. Blackmon Huckabee
2nd Witness (Notary)

Frederick Mark Wilson
Frederick Mark Wilson

State of South Carolina)
County of Lancaster)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-named Frederick Mark Wilson sign, seal and as their act and deed, deliver the within-written Mortgage of Real Property; and, that (s)he with the other subscribing witness, witnessed the execution thereof.

SWORN to before me this 18th
Day of April, 2005

W. Blackmon Huckabee (L.S.) Carolyn M. Reynolds
Notary Public for South Carolina
My Commission Expires: September 21, 2010

William Blackmon Huckabee
Notary State of South Carolina

BEGINNING at a nail set in the centerline of the 66' right of way of S 29-51 (Camp Creek Road) and running thence with said centerline, South 61-44-37 West 391.55 feet to a nail found, a common corner with the Douglas A. Wise property (47/131 Plat 98/354 Tax Parcel 37-3.03); thence with the said Wise property, two calls as follows: 1st North 27-38-36 West 895.83 feet (crossing an iron found at 33.07 feet) to an iron found; South 72-21-57 West 637.12 feet to an iron found, a common corner with the Timothy F. Cauthen property (67/248 Plat 18287 Tax Parcel 37-3.02); thence with the northern boundary line of the said Cauthen property, South 74-38-18 West 824.93 feet to an iron found, a common corner with the Frank P. Lopez property (WB/278 Plat 11868 Tax Parcel 37-3.04); thence with the northern boundary line of the said Lopez property, North 78-14-33 West 571.28 feet to an iron found, a common corner with the Gregg P. Shipston property (X8/122 Plat 10849 Tax Parcel 37-3.01); thence with the said Shipston property, two calls as follows: 1st North 13-00-38 West 261.78 feet to an iron found; 2nd North 89-12-45 West 648.11 feet to an iron found in the centerline of the 88' right of way of S.C. Mockingbird Lane (50' right of way of N.C. Gus Eubanks Road); thence with said centerline, six calls as follows: 1st North 08-16-21 East 283.64 feet to a point; 2nd North 06-18-36 East 21.51 feet to a point; 3rd North 01-13-18 East 83.39 feet to a point; 4th North 08-55-51 West 93.43 feet to a point; 5th North 10-15-40 West 120.35 feet to a point; 6th North 03-38-50 West 79.92 feet to a point, a common corner with the Gladys Autry property; thence with the southern boundary line of the said Gladys Autry property, South 87-10-52 East 534.71 feet to an iron found, a common corner with the Richard Autry property (372/336); thence with the southern boundary line of the said Richard Autry property, South 85-47-19 East 1,393.75 feet to an iron found in the southern boundary line of the Richard Autry, Jr. property (461/141); thence with the said southern boundary line of the Richard Autry, Jr. property, South 86-43-86 East 697.43 feet to an iron found, a common corner with the Edwards Wood Products property (450/587); thence with the said Edwards property, North 89-45-41 East 787.65 feet (crossing an iron set at 787.65 feet) to a point in the centerline of the Lynchess River; thence with the centerline of Lynchess River, twelve calls as follows: 1st South 51-42-41 West 67.13 feet to a point; 2nd South 30-42-30 West 47.29 feet to a point; 3rd South 09-40-29 West 41.67 feet to a point; 4th South 30-52-50 West 138.56 feet to a point; 5th South 36-29-26 West 128.10 feet to a point; 6th South 31-04-28 West 295.20 feet to a point; 7th South 65-50-11 West 98.47 feet to a point; 8th South 38-37-40 West 41.27 feet to a point; 9th South 15-40-34 West 140.22 feet to a point; 10th South 04-56-30 West 38.41 feet to a point; 11th South 16-49-08 East 47.69 feet to a point; 12th South 17-07-30 West 88.41 feet to the point and place of BEGINNING and containing approximately 62.88 acres as shown on that survey by Thomas M. Park, S.C.R.L.S., dated November 27, 2000 and being the same property conveyed to Grantor in Deed Book C5/4635 Tax Parcel 37-3.00.

Being the identical property conveyed to C. Ingram Walters by Deed of F. Mark Wilson, Jr., a/k/a Frederick Wilson, Jr. dated May 1, 2001 and recorded May 2, 2001 in Deed Book 117 Page 140, Register of Deeds Office for Lancaster County, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

FILED
VERIFICATION

2012 APR -5 PM 4:29

LANCASTER, SC

PERSONALLY appeared before me Frederick Mark Wilson who, being duly sworn, says that he is the plaintiff herein, that he has read the foregoing **Summons and Complaint**, and that he knows of his own knowledge that the allegations contained therein are true, except so much thereof as is alleged upon information and belief, and as to them he believes them to be true.

Frederick Mark Wilson
Frederick Mark Wilson

SWORN TO and subscribed before me
this 5 day of April, 2012

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 7/4/16

In The Court of Common Pleas Sixth Judicial Circuit

F. Mark Wilson Jr.,

CIVIL ACTION ANSWER

Plaintiff,

vs.

Wilbur B. Streater III,

Defendant

Case No.: 2012-CP-29-498

FILED
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2012 MAY 11 PM 2:20
CLERK OF COURT
LANCASTER, SC

ANSWER

I defendant Wilbur B. Streater III submit this document as an answer to the civil action commenced against me on April 5, 2012 by F. Mark Wilson Jr. also known to me as "Mark Wilson", "Mark F. Wilson", "Wilson", "Mark F. Wilson Jr."

Answering the Statement of Facts Paragraphs 5-6 of the Complaint herein, Defendant details facts related to Defendant Wilbur B. Streater III. Misspelled "Streeter" on the complaint served to defendant.

Complaint Paragraphs:

- 1.-4. I do not contest Mark F. Wilson's rights to sue anyone in a court of law located in Lancaster County, South Carolina.
5. Defendant Streater loaned Plaintiff Wilson \$16,000 for any use that Wilson saw fit in exchange for a mortgage and future payments on said mortgaged property.
6. Defendant Streater's only role was to provide \$16,000 of the above mentioned \$32,000 for the April mortgage.
- 7.-11. Defendant Streater is not mentioned or involved with any of these Mark F. Wilson Jr. complaints.

Further Statement of Facts by Defendant Streater:

1. Defendant Streater has no other business relations verbally or written with Plaintiff Mark F. Wilson Jr. outside of documented "April Mortgage".
2. Streater was not privileged to the business discussions or decisions made between Keith Jayma, Mark F. Wilson Jr. and Suntrust Bank.

The Defendant now brings forth the following Affirmative Defenses:

DEFENSE 1 – Failure to State a Claim against Wilbur B. Streater III's perfected property lien dated April 18, 2005.

Defendant answering the Complaint herein alleges that all allegations and counts brought forth therein fails to state a claim for which relief can be granted by Defendant Streater.

Streater's time is valuable and being named in this suit serves no future purpose to all other parties named. Upon permission of Defendant Streater, he request to be removed from this suit and dismissed immediately. Immediately meaning, "before a court date." If immediately is not met then Streater will retain all rights to countersue Mark F. Wilson for lost work time and other damages that may occur.

WHEREFORE, Defendant prays that the Plaintiff take nothing and the Defendant have judgment against the Plaintiff and recover the costs of suit herein, and such other relief the court may deem proper.

Wilbur B. Streater III
12207 Royal Castle Court
Charlotte, NC 28277

Signed Wilbur B. Streater III
Wilbur B. Streater III

SWORN TO and subscribed before me this 11th day
of May, 2012

Nicole Clyburn

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commision Expires 1-13-21

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Mark Wilson,)

Plaintiff,)

vs.)

Keith Jayma, Wilbur Street, III,)

Defendant.)

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

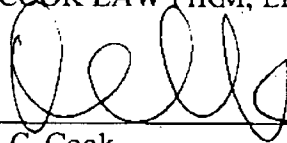
Case No.: 2012-CP-29-498

AMENDED SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, to appear and defend the action, and to serve a copy of your Answer upon the subscribers at their offices at 300 North White Street, P.O. Box 1449, Lancaster, SC 29721 within thirty days from the date of service; you are also notified that, in case of your failure to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE COOK LAW FIRM, LLC



David C. Cook
SC Bar Number 75081
Attorney for Plaintiff
300 North White Street
Post Office Box 1449
Lancaster, South Carolina 29721
Phone: 803-285-4848
Facsimile: 803-283-3680

This the 23RD day September, 2013.
Lancaster, South Carolina

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CLERK OF COURT
LANCASTER, SC

P. 41

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,

Plaintiff,

vs.

Keith Jayma, Wilbur Streater, III,

Defendant.

2012-CP-29-498

AMENDED COMPLAINT

Bench Trial Requested

CLERK OF COURT
LANCASTER, SC

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NOW COMES the Plaintiff, above-named, complaining of the Defendant, above-named, and does allege and show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. That the Plaintiff is a citizen and resident of the County of Union, State of North Carolina.
2. That upon information and belief, the Defendants Keith Jayma and Wilbur Streater III are residents of Mecklenburg County, North Carolina.
3. That jurisdiction over the parties is proper pursuant to South Carolina Code of Laws § 27-7-10, jurisdiction over the subject matter is proper pursuant to S.C. Const. art. V, § 11; venue is proper pursuant to South Carolina Code of Laws § 15-7-10.

STATEMENT OF FACTS

4. In April of 2005 the parties entered into an agreement that created a partnership whereby Defendant Jayma and Defendant Streater loaned Plaintiff Wilson \$32,000 for living expenses (hereinafter referred to as the "April mortgage"). In exchange Wilson gave Jayma and Streater a mortgage on a certain parcel of land owned by Wilson, to be described more

completely below in the legal description of the attachment. On April 18, 2005 Plaintiff signed a mortgage to this affect and recorded it in the Lancaster County Register of Deeds, please find a copy attached hereto and incorporated herein by reference.

5. The parties entered into an agreement whereby Wilson would build certain houses and Jayma would secure the funding for building the houses and sell the houses. The parties would split the profits. In order to acquire money for the projects, Wilson agreed to deed 25 acres of a certain tract of land to Jayma, to wit, the same property described above regarding the April mortgage. In exchange, Jayma would secure a new mortgage on the property with his good credit and use the money to pay Wilson for living expenses and labor and materials, then sell the houses once built. The parties agreed that Wilson would pay back the above-mentioned \$32,000 in addition to any more money that may be loaned to Wilson in advance for living expenses. Then once Wilson's debts to Jayma were paid off, the parties would split the rest of the profit. Also, once the houses were sold, Jayma would deed the land used to secure the funding back to Wilson free and clear. Streeter's only role was to provide \$16,000 of the above-mentioned \$32,000 for the April mortgage.

6. On November 04, 2005, Wilson met Greta M. Neal, paralegal for attorney Blackmon Huckabee of Rock Hill, South Carolina, at a Honda car dealership where Wilson was getting his car serviced. Ms. Neal and Wilson were the only two present when Ms. Neal asked Wilson to sign the deed that would purportedly convey the acreage from Wilson to Jayma. There was no legal description attached to the deed at the time of execution. The deed was subsequently filed in the Register of Deeds for Lancaster County on November 14, 2005 in Deed Book 308 at Page 59, please find a verified true copy of said deed attached hereto and incorporated herein by reference as "Exhibit A".

7. Plaintiff alleges that this deed was invalidly and fraudulently executed pursuant to the South Carolina Code of Laws, as amended, § 27-7-10, in that there was only one witness present during the execution, despite the fact that the deed shows that two witnesses were present. The deed shows that another witness, named "Lula Hardin" was present. Furthermore, it shows that Ms. Hardin appeared before Ms. Neal in her capacity as a notary, in order to execute the probate of the deed.

8. The deed has a legal description attached to it that purports to convey 62.69 acres, which is the larger tract from which Wilson planned on conveying the twenty five (25) acres mentioned above in the agreement. There is also an improper derivation clause in the legal description for the deed.

9. Jayma then took out a mortgage on the land Wilson conveyed to Jayma. The mortgage was with Sun Trust Bank for approximately \$194,000. Jayma gave Wilson \$50,000 for Wilson's living expenses, and used the rest to finance the building of a speculation home on 10010 Strike the Gold Lane, Waxhaw, North Carolina. The agreement between the parties was that when this house sold the parties would split the profits, Wilson would pay back Jayma the \$50,000 and the \$32,000 forwarded for Wilson's living expenses, and Jayma would convey the 25 acres back to Wilson in fee simple absolute and satisfy the April mortgage. Wilson built a home on the property at Strike the Gold Lane.

10. Upon information and belief Jayma sold the property on Strike the Gold Lane, but did not perform any other part of the agreement. Jayma did not give Wilson any monies from the profit of the sale nor did he re-convey the property used to secure the Sun Trust mortgage. Jayma also did not satisfy the April mortgage.

11. Defendant Jayma and Plaintiff Wilson entered into other agreements as well concerning lots 31, 52 and 53 of the Longbrooke Subdivision in Lancaster County, South Carolina, please see the relevant deeds attached hereto and incorporated herein by reference. The agreement was that Plaintiff Wilson would pick out lots to buy, situate the homes on the lots based on topography, develop the blueprint for the prospective houses and build the houses. Defendant Jayma and Plaintiff Wilson would then sell the houses and land for a profit and split the profit evenly.

12. From September to November of 2006 Defendant Jayma bought the three lots mentioned above, 31, 53 and 53 of Longbrooke Subdivision, at the direction of Plaintiff Wilson. Before the houses could be built, the lots were sold for a profit. Defendant Jayma alleged that he gave Plaintiff Wilson his proper share of the profits. Plaintiff Wilson alleges, however, that he did not receive his proper share of the profits.

FOR A FIRST CAUSE OF ACTION:

DECLARATORY JUDGMENT

13. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

14. Plaintiff respectfully requests a declaratory judgment from this Court to set aside the deed transfer of the subject property, 10010 Strike the Gold Lane, Waxhaw, North Carolina, 28173, of this action based on the invalid execution of the deed.

FOR A SECOND CAUSE OF ACTION:

UNJUST ENRICHMENT

15. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

16. Plaintiff alleges that a benefit was conferred upon the Defendant by the Plaintiff regarding all properties. The Defendant realized that benefit. Retention by the Defendant of the

benefit under conditions that make it unjust to retain it without paying its value exists.

FOR A THIRD CAUSE OF ACTION:

BREACH OF DUTY IN A PARTNERSHIP

17. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

18. Parties entered into several agreements that created a partnership. The partners owed each other a fiduciary duty in regards to the creation of the partnership. Defendant Jayma breached that duty. Plaintiff Wilson has experienced damages directly due to the breach of that duty by Defendant Jayma.

FOR A FOURTH CAUSE OF ACTION:

SPECIFIC PERFORMANCE

19. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

20. Defendant Jayma has breached his obligations under the agreement and Plaintiff Wilson is entitled to a decree compelling specific performance.

FOR A FIFTH CAUSE OF ACTION:

RESULTING TRUST

21. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

22. Pursuant to the agreement between parties, Plaintiff Wilson is entitled to an order finding that he owns, under a resulting trust, an interest in the real property at 10010 Strike the Gold Lane, Waxhaw, North Carolina, 28173, that is the subject of this litigation.

FOR A SIXTH CAUSE OF ACTION:

NEGLIGENT MISREPRESENTATION

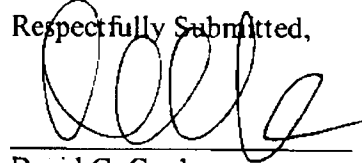
23. Plaintiff reiterates all prior paragraphs as if stated herein verbatim.

24. A false representation was made by the Defendant to Plaintiff regarding all

properties. A pecuniary interest by the Defendant in making the statement existed. A duty of care owed by the Defendant to see that truthful information was communicated to the Plaintiff existed. The Defendant breached the duty by failing to exercise due care. The Plaintiff justifiably relied on the representation. The Plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation.

WHEREFORE, Plaintiff prays for declaratory judgment against the Defendant to set aside the deed transfer of the subject property 10010 Strike the Gold Lane, Waxhaw, North Carolina, 28173, in this action, or in the alternative, for judgment against the Defendant in an amount of actual damages and for punitive damages in an appropriate amount regarding all properties, for attorney fees and the costs of this action, specific performance, and for such other and further relief as this Court might deem just and proper.

Respectfully Submitted,



David C. Cook
Attorney for Plaintiff
Cook Law Firm, L.L.C.
300 North White Street
Post Office Box 1449
Lancaster, SC 29721
Phone: (803) 285-4848
Facsimile: (803) 283-3680
dcook@dcooklaw.com
South Carolina Bar Number 75081

Lancaster, South Carolina
September 23, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)
)
Mark Wilson,)
)
Plaintiff,)
)
v.)
)
Keith Jayma, Wilbur Streater, II,)
and Sun Trust Bank)
)
Defendants.)

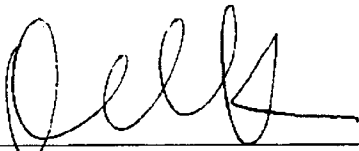
IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
Case No.: 2012-CP-29-498

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED and agreed, pursuant to Rule 41(a)(1)(A), by the Plaintiff that this action is hereby dismissed as to Defendant, Sun Trust Bank with each party to bear its own costs.

AND IT IS SO STIPULATED.

WE SO STIPULATE:



David C. Cook
Attorney for Plaintiff
Post Office Box 1449
Lancaster, SC 29721
Phone: (803) 285-4848
Facsimile: (803) 283-3680
South Carolina Bar Number 75081

July 12, 2012

FILED
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CLERK OF COURT
SIXTH JUDICIAL CIRCUIT
LANCASTER, SC

JUL 17 2012

P. 48.

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)
Plaintiff,)

Case No. 2012-CP-29-00498

v.)

AMENDED ANSWER
AND COUNTERCLAIMS

Keith Jayma and)
Wilbur Streater, III,)
Defendants.)

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CLERK OF COURT
LANCASTER, SC

Defendant Keith Jayma (hereinafter "**Defendant Jayma**" or "**Jayma**") by and through his undersigned counsel, answers Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The allegations of the Complaint fail to state a cause of action upon which relief can be granted against this Defendant.

FOR A SECOND DEFENSE

2. All matters and things alleged in the Complaint, not hereinafter specifically admitted are **DENIED** and strict proof demanded thereof.

3. Defendant Jayma lacks the knowledge to either admit or deny the allegations of Paragraph 1 of the Complaint.

4. Defendant, Jayma **ADMITS** so much of Paragraph 2 as alleges that he is a resident of Mecklenburg County, North Carolina.

5. Defendant Jayma **DENIES** the allegations of Paragraph 3 of the Complaint. Upon information and belief, the Defendant Sun Trust Bank is a corporation formed and existing under

the laws of the State of Georgia and has been dismissed from this case by a Stipulation of Dismissal filed July 17, 2012.

6. Defendant **ADMITS** so much of Paragraph 4 as alleges the court has jurisdiction over the parties and subject matter and that venue is proper but does not admit that the statutes cited are those conferring jurisdiction over the parties.

7. Defendant Jayma **DENIES** the allegations of Paragraph 5 of the Complaint as stated, and asserts that in April of 2005, at the request of Plaintiff, who was about to lose his property for failure to pay past due taxes, Defendant Jayma and Defendant Streater agreed to and did loan Plaintiff Wilson \$32,000 in a purely debtor/creditor relationship. In connection with that debtor/creditor relationship, in April of 2005, Plaintiff Wilson executed an Agreement to Lend, a Promissory Note, and a Mortgage on a certain piece of real estate in Lancaster County. At closing, a portion of the proceeds of this loan was paid to the Lancaster County Tax Collector to pay outstanding back taxes. Said Agreement to Lend, Promissory Note, and Mortgage, along with the subsequent receipt for payment of back taxes, are attached hereto as Exhibits A, B, C, and D, respectively, and are incorporated herein by reference. Said documents speak for themselves in regard to the relationship between the parties and the terms of the parties' agreements.

8. Defendant Jayma **DENIES** the allegations of Paragraph 6 of the Complaint.

9. Defendant Jayma **DENIES** the allegations of paragraph 7 concerning the execution of the Deed for lack of personal knowledge. It is **ADMITTED** that in November of 2005, Plaintiff Wilson agreed to execute a valid deed to the subject property to Defendant Jayma and did execute the deed which deed was subsequently recorded at Deed Book 308 pages 59

through 61. Said deed is attached hereto as Exhibit F and is incorporated herein by reference. The Deed speaks for itself.

10. Defendant Jayma **DENIES** the allegations of paragraph 8 and states the Deed speaks for itself.

11. Defendant Jayma **DENIES** the allegations of paragraph 9 and states the Deed speaks for itself.

12. Defendant Jayma **DENIES** the remaining allegations of the partially admitted or denied Paragraphs and Paragraphs 10 through 25 of the Complaint and the Plaintiff's prayer for relief.

FOR A THIRD DEFENSE

13. Any defect in execution of the Deed would only affect its effectiveness against innocent third parties. It would still be effective between Plaintiff and Defendant Jayma.

FOR A FOURTH DEFENSE

14. The Complaint fails to demonstrate that Defendant Jayma realized any value from any benefit conferred by Plaintiff or that it would be inequitable for Defendant Jayma to retain any such benefit without paying additional value to Plaintiff.

FOR A FIFTH DEFENSE

15. If Jayma owed Plaintiff any fiduciary duties, which is denied, Plaintiff would owe Defendant Jayma reciprocal fiduciary duties which he breached causing far greater damages to Defendant Jayma than any action of Defendant Jayma's could possibly have caused to Plaintiff.

FOR A SIXTH DEFENSE

16. If Plaintiff were entitled to a share of any profits, he would also be obligated to share in any losses. There were substantial losses and no profits on the house on lot 163. Plaintiff

has made no contribution to cover those losses which would far outweigh any claims he might have to compensation based on a partnership theory.

FOR A SEVENTH DEFENSE

17. Defendant Jayma took action to his detriment and for the benefit of Plaintiff based on Plaintiff's representation of the validity of the November 2005 deed as set out in the allegations of the Counterclaims below. Plaintiff is estopped by the November 2005 deed from asserting against Defendant Jayma any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it.

FOR AN EIGHTH DEFENSE

18. Plaintiff comes to the Court with unclean hands, as set out in the allegations of the counterclaims, seeking equitable relief.

FOR A NINTH DEFENSE

19. One or more of Plaintiff's causes of action is barred by the applicable statute(s) of limitations.

FOR A TENTH DEFENSE

20. One or more of Plaintiff's causes of action is barred by the applicable statute of frauds.

COUNTERCLAIMS AGAINST PLAINTIFF

21. Defendant Keith Jayma (hereinafter "Jayma") counterclaiming against the Plaintiff Wilson (hereinafter "Wilson") alleges and would show as follows:

JURISDICTION

22. The Court has personal jurisdiction over Wilson as he has alleged in his Complaint that he is a resident of Lancaster County, South Carolina.

23. The Court has jurisdiction over the subject matter and venue of the Counterclaims pursuant to S.C. Const. Ann. Art. V, § 11, S.C. Code §§15-7-10, 15-7-30, 15-67-10.

FACTUAL ALLEGATIONS

24. Jayma was employed in the lending industry from June 2000 through September 2009.

25. In the spring of 2005, Wilson was seeking financing. After Wilson had already been turned down several times, he approached Jayma and requested assistance in obtaining a loan of approximately \$75,000 to \$100,000.

26. Jayma checked and confirmed that Wilson would not qualify for conventional lending because Wilson could not provide the required tax returns and had no current income. The private lending market was the only market that would even consider lending Wilson money based on collateral. Although Jayma attempted to secure the requested loan in the private lending market, Wilson did not qualify in any lending market.

27. At the time, Wilson was unemployed and facing a potential loss of approximately 62.69 acres of undeveloped land he owned in Lancaster County for failure to pay past due back taxes.

28. Wilson was aware that Jayma did some private lending personally. When Jayma was unable to obtain a loan for Wilson in the private lending market, Wilson requested that Jayma personally make a loan to him to be secured by the Lancaster County land.

29. Given the state of Wilson's financial affairs, Jayma would not have a loaned any money or provided any financing to Wilson without a first lien on collateral more than fully sufficient to cover any and all potential risks including the principal, interest and late fees

through the initial term and any extensions, potential costs of collection, and the risks of decline in value of the collateral and potential reduced value from circumstances of foreclosure.

30. Wilson and Jayma along with Defendant Streater carried out this transaction with the assistance of Attorney Blackmon Huckabee through three documents: an Agreement to Lend, Promissory Note, and Mortgage attached hereto as Exhibits A, B, and C, respectively, and incorporated herein by reference.

31. By its terms, the Mortgage contained express provisions covering both current and future loans, notes, and debts securing all indebtedness now and hereafter owed by Mortgagor [Wilson] to Mortgagees [Jayma and Streater] and any other present or future indebtedness or liability of Mortgagor or Mortgagees, whether as principal debtor, surety, guarantor, endorser or otherwise until it is satisfied of record.

32. Jayma subsequently bought out Defendant Streater's interest in the loan, note and mortgage becoming the sole lender in the transaction.

33. As part of the closing for this secured loan, Attorney Huckabee dispersed \$2,254.17 to the Lancaster County Tax Collector to resolve the tax lien and satisfy the requirements of the Mortgage. See Exhibit D attached hereto. The remainder of the proceeds, less closing costs, was dispersed to Wilson.

34. The terms of this loan required monthly interest only payments at the request of Wilson. For the first three years, the interest rate was set at ten percent (10%). If the principal was not repaid at the end of three years and the loan was not called at that point, the terms of the note called for an increase in the interest rate to fifteen percent (15%). Thereafter the loan became callable at any time at the option of the lender. See Exhibit B.

35. Wilson made approximately seven monthly interest payments on the loan or note during the first year.

36. Thereafter, Wilson ceased making monthly payments. Numerous other monthly interest payments and late fees remain unpaid. No principal payments have been made on the loan or note.

37. In August of 2005, Wilson still not having obtained employment in the building industry and seriously in need of work proposed a joint venture to Jayma which Wilson hoped would get him re-started with his own construction company focusing on residential construction. Wilson proposed that he enter into a residential construction contract with Jayma to build a home in Providence Downs South Subdivision in Union County, North Carolina. Wilson proposed that Jayma use the contract and estimate supplied by Wilson to obtain a residential construction loan to finance building the home. Wilson would use his building expertise to build the home as general contractor, completing the home in about six months.

38. Wilson represented to Jayma that he had substantial expertise in the area of residential building and development providing his North Carolina General Contractor License as evidence of this represented expertise.

39. As incentive to encourage Jayma to agree to this project and contract, Wilson proposed that he deed approximately 63 acres he owned in Lancaster County to Jayma so Jayma could get a line of credit secured by the land which would be available for various purposes connected with construction, such as using part of the line of credit to pay interest on the residential construction loan and to pay subcontractors until funds related to their work could be drawn from the construction loan.

40. Wilson estimated the cost to construct the new home to be \$822,625 or less, in documents he submitted knowing his estimate would be relied upon by Jayma and used to secure a residential construction loan to be secured by a mortgage on the new home to be built.
41. Wilson represented that the lot would cost \$276,745 in the estimate he prepared and gave to Jayma to submit in obtaining a residential construction loan for the project.
42. In documents he knew would be relied upon by Jayma and a lender, Wilson represented the completed home would have a market value between \$1.328 and \$1.538 million dollars.
43. Wilson represented to Jayma and the lender that he would complete the new home within twenty-two weeks of beginning construction.
44. Wilson represented that his contractor's fee for building the home would be \$5,500 calculated at \$250 a week for a total of twenty-two weeks.
45. Wilson also represented he would draw no more than \$250 a week up to a maximum of \$5,000 (twenty weeks) for himself as contractor during the construction of the home. The remaining \$500 of the contractor's fee would be paid with the final draw upon presentation to the lender of the certificate of occupancy.
46. Wilson represented to Jayma that with his building expertise and Jayma's financing, they could sell the house and realize a profit of \$250,000 to \$500,000 which they could split after the house was sold.
47. Relying on these representations, especially the time and cost to complete the new home, Jayma discussed the proposal with his family and banker. The Jayma family's existing home was paid off. That point provided multiple possibilities tending to reduce the risk of the project, including selling the completed Providence Downs South house for a profit, or moving

Jayma's family into the Providence Downs South house and selling his existing home if market conditions were more favorable with that approach.

48. Based on Wilson's representations, Jayma accepted Wilson's offer of the residential construction contract and orally agreed to a joint venture for building the Providence Downs South house and splitting any profits from its sale.

49. Relying on these representations, Jayma, as owner, entered into a residential construction contract with Wilson as contractor to build a new home on lot 163 of Strike the Gold in Providence Downs South. A non-integrated memorandum of agreement concerning this contract is attached as Exhibit E and incorporated herein by reference.

50. Under the residential construction contract, Jayma agreed to deposit the sum of one million dollars (\$1,000,000) in an account against which Wilson could draw for the costs of constructing the home. No changes or additional charges were permitted without written change orders.

51. Relying on the building contract and the representations of Wilson, and in furtherance of the building contract, Jayma entered into a contract to buy lot 163 in Providence Downs for \$276,745 as arranged by Wilson who had a close relationship with the sellers.

52. Relying on the building contract and the representations by Wilson, Jayma obtained a one million dollar (\$1,000,000) personal residential construction loan and purchased lot 163, using the lot and home to be constructed as collateral. The \$276,745 purchase price of the lot was dispersed at closing. The bank would pay out the remainder of the funds as construction progressed and bills were submitted to the bank. The funds disbursed by the bank would be deposited in a joint account in the name of Jayma and Wilson. That account would be used to segregate, track, and pay costs for the Providence Downs South house joint venture.

53. Although he contracted to take only a contractor's fee of \$250 a week for twenty-two weeks as contractor's fee on the Providence Downs South house contract, less than a month after getting Jayma to enter into the contract to build that house, Wilson informed Jayma he needed a cash flow of about \$6,500 a month to cover his family's expenses while he was getting his construction company going. However, he did not want a second loan agreement with an additional monthly payment. He proposed that he deed to Jayma the 62.69 acres in Lancaster County which were already mortgaged to Jayma and Streater to secure the earlier loan and any future indebtedness. Wilson suggested Jayma then use his own personal credit rating and the ownership of the 62.69 acres to obtain an additional \$200,000 line of credit which would be available in part for Wilson to draw against for living expenses and also for Jayma to draw against for interest payments on the construction loan to build the joint venture house. Wilson stated that if he was not back on his feet and in a position to pay off the line of credit within ten months, Jayma would then keep the land to cover the line of credit Jayma would be liable on.

54. Jayma did not accept Wilson's September 2005 proposal at that time or on those terms.

55. Jayma did make some inquiries to determine how much he would be able to borrow on a smaller number of acres. The amount would have been far less than what Wilson had proposed, and no loans were made as a result of these preliminary inquiries.

56. On or about September 23, 2005, Wilson received a "refund" check for \$31,150 on the purchase price of the Providence Downs South lot Jayma had purchased for the joint venture home. Although Wilson showed Jayma this check when he received it, he had not informed Jayma prior to receiving the check that he would be getting a "refund" of part of the purchase price for the lot for the joint venture house.

57. Wilson "advanced" himself personally \$15,000 from this joint venture "refund" which he later claimed was advancement of sixty (60) weeks of the contractor's fee to no more than \$5,000 or only twenty-two weeks at \$250 a week. Wilson took this personal "advance" from the joint venture project without obtaining Jayma's consent or agreement.

58. Wilson began construction on the house he represented would take twenty-two weeks to complete in October of 2005.

59. In November of 2005, Wilson deeded the 62.69 acres in Lancaster County to Jayma as set forth in Exhibit F.

60. Around the same time as the deed, Wilson revised his estimate submitted to the bank for the cost to build the joint venture house.

61. Wilson had control of the draws against the proceeds of the residential construction loan as the bank released the funds as he submitted evidence of the costs and progress of ongoing construction.

62. As contractor, Wilson was responsible for selecting, hiring, contracting with, supervising, and paying the subcontractors to build the new home.

63. Deficiencies in performance of Wilson's obligations as contractor under the residential construction contract, especially in regard to subcontractors, resulted in numerous delays and cost overruns.

64. By June of 2006, the proceeds of the \$1,000,000 construction loan were nearly exhausted, but the new home was far from completion. It was obvious Wilson's representations as to the cost and time for him to build the house were seriously low balled. Additional funds were needed to complete the house, but the construction lender was not going to advance

additional funds with the incomplete house as collateral. Wilson was also insisting he needed additional funds himself to cover his family's living expenses.

65. The problems with the new house and the transactions between Wilson and Jayma placed serious strain on Jayma's marriage. It was apparent that the option of Jayma moving into the new home with his family was no long viable, and it would be necessary to sell the Providence Downs South house as soon as possible after completion.

66. Jayma and Wilson approached Jayma's personal banker at SunTrust seeking additional funds through a line of credit on the land in Lancaster County Wilson had previously deeded to Jayma. SunTrust Bank would not lend the requested funds in return for just an additional real estate mortgage on the 62.69 acres of land. It would agree only to a commercial line of credit in Jayma's name of up to \$194,000 supported by Jayma's note and secured by a mortgage from Jayma as owner of the Lancaster County land verified by a title search and further secured by any and all present and future collateral Jayma had or would pledge to SunTrust for any other obligations plus a lien on all deposits and investments Jayma might have with SunTrust, which was his personal bank.

67. Wilson and Jayma agreed Wilson could draw up to \$50,000 from this line of credit to support himself personally, but the remainder would be reserved to pay subcontractors and to cover the costs of completing the house so it could be sold.

68. Upon information and belief, Wilson drew more than the agreed upon limit from the line of credit for his personal use.

69. In September 2006, the joint venture house was listed for sale.

70. By the end of October, 2006, three buyers were interested in purchasing the house for a price between \$1.5 million and almost \$1.7 million, but a contract could not be reached because the house was too far from complete.

71. By December of 2006, the \$194,000 line of credit was maxed out and the joint venture home was still far from complete. Jayma had to negotiate an extension on the residential construction loan as interest costs continued to mount quickly.

72. Although Wilson agreed to use the remaining funds solely for completion of the new home, he has not provided Jayma with sufficient documentation to account for the expenditure of the funds from the line of credit.

73. The last amount from the construction loan could not be drawn until a certificate of completion on the house was obtained.

74. As the completion date was delayed and delayed yet again, the interest costs to Jayma on both the \$1,000,000 construction loan and the \$194,000 line of credit he was personally liable for continued to mount.

75. Jayma repeatedly attempted to contact Wilson in order to obtain completion of their residential building contract.

76. Between January and April of 2007 in an effort to obtain completion of the home and mitigate the damages from Wilson's breach of their residential building contract, Jayma personally paid for the additional costs required for construction and personally paid vendors which Wilson should have paid but was not paying.

77. Jayma estimates the amount he has had to personally pay out of his own funds for completion of the joint venture home after exhaustion of the proceeds of the one million dollar

loan and the \$194,000 line of credit was well in excess of \$150,000 exclusive of the interest costs.

78. Between January 18, 2007 and April 2007, Wilson and Jayma attempted to reach an agreement to settle Wilson's obligations to Jayma.

79. On or about January 18, 2007, Wilson proposed that the new home be sold and the proceeds used first to pay off the one million dollar construction loan, second to pay off the principal of the \$194,000 line of credit and the interest for that loan, and third to pay off the other expenses Jayma had incurred in connection with the building of the new home. If there were any profits remaining after the first three priorities were paid off, Wilson proposed any profits be split equally between himself and Jayma with his share being used to pay off \$46,976.65 that Wilson acknowledged owing to Jayma on the joint venture transactions and the accrued interest due on the \$32,000 loan he first obtained from Jayma in the spring of 2005.

80. After the sale of the new house and the payment of the agreed amounts from the proceeds, Wilson wanted Jayma to deed the 62.69 acres in Lancaster County back to him subject to the mortgage to secure later repayment of the \$32,000 in principal from the spring 2005 loan. Upon repayment of the principal, he wanted the mortgage to continue and to serve as a \$32,000 personal line of credit for himself from Jayma which he could draw against at will.

81. Jayma agreed to the sale of the joint venture home and the distribution of the proceeds from that sale.

82. In regard to the \$32,000 loan and the 62.69 acres in Lancaster County, Jayma rejected Wilson's request. He countered that he would deed the 62.69 acres in Lancaster County back to Wilson upon occurrence of all the following three conditions: a) the full amount of the \$194,000 line of credit with all interest connected to this line of credit had to be paid/reimbursed.

The proceeds of the sale of the joint venture home could be used for these payments if they were sufficient; b) Jayma had to be reimbursed for all the cost overruns on the joint venture home. The proceeds of the sale of the joint venture home could be used for these payments if they were sufficient; and, c) the \$32,000 loan with all accrued interest and late fees had to be paid off. Wilson has never met these conditions.

83. A certificate of occupancy was finally obtained on April 19, 2007; some 20 months after construction was begun on a house the contractor Wilson had represented would take less than six months to build.

84. As a result of the additional fourteen months Wilson took to complete the house, Jayma incurred approximately \$63,000 in additional interest costs on the one million dollar mortgage.

85. The joint venture house was put on the market once the certificate of occupancy was obtained in late April 2007, but by that time the real estate market was substantially depressed.

86. The joint venture house did not sell until September 2008.

87. On the date the sale closed, Wilson had his counsel mail by certified first class mail a demand letter to Jayma seeking to prevent Jayma from selling the joint venture house.

88. During the period the joint venture house was on the market, the \$194,000 line of credit in Jayma's name came due and he had to get an extension on it.

89. During the period the joint venture home was on the market, monthly expenses for interest payments on the one million dollar mortgage, taxes, insurance, and utilities accrued at a rate of about \$6,000 a month which Jayma had to pay.

90. In October of 2007, Jayma wrote Wilson informing him of the costs which had accrued thus far in regard to the joint venture home and informing him that it was fast approaching the point where the associated cost agreed to be paid from the proceeds of its sale would reach \$1.4 million dollars.

91. The sales price for the joint venture home was only \$1,240,000.

92. At closing, seller's settlement costs, the broker's fee, the payoff for the one million dollar mortgage on the joint venture home, taxes, assessments and other fees were deducted from the proceeds.

93. At closing, only \$194,096.86 remained to be disbursed.

94. The \$194,096.86 disbursed to Jayma was used to pay off the remaining contractors for building the joint venture house and applied to interest only mortgage payments Jayma had paid during the three year life of the one million dollar construction loan/mortgage.

95. No proceeds remained from the sale of the house to pay off the \$194,000 line of credit or the interest on it which remains outstanding at this time. Jayma has had to continue to pay the interest on the line of credit.

96. By the time the joint venture house was sold, Jayma had paid \$28,938.79 in interest on just the \$194,000 line of credit. From June 12, 2006 through May of 2012, Jayma has had to pay \$53,049.79 interest on the line of credit.

97. There were no profits from the sale of the joint venture home.

98. The joint venture home was sold at a loss, the total amount of which cannot be calculated until the \$194,000 loan has been repaid and its costs cease to climb.

99. Although Wilson has fallen far behind in the interest payments on the \$32,000 note, Jayma has continued the loan under the past three year increased interest rate and has elected not to call the loan or to foreclose the mortgage securing that loan up to this point.

100. With these counterclaims, Jayma is now electing to call the \$32,000 loan. As of June 17, 2012, the amount of principal, interest and late fees due under the promissory note was approximately \$76,359 exclusive of any cost of collection or foreclosure.

101. Jayma is also electing to foreclose on the mortgage securing the \$32,000 loan and all other debts owed by Wilson to Jayma.

FIRST COUNTERCLAIM

BREACH OF CONTRACT/COLLECTION OF \$32,000 PROMISSORY NOTE

102. Jayma re-alleges the preceding paragraphs of the Counterclaims here as if again fully restated.

103. Wilson entered into a contract to borrow money and repay it in accordance with the terms of the agreements entered into in connection with the Spring 2005 \$32,000 loan including Exhibits A, B, and C which are attached and incorporated herein.

104. Wilson has breached the terms of those agreements and is in default on the 2005 Agreement to Lend, the 2005 Promissory Note, and the associated mortgage.

105. The terms of the Note provide for the recovery of attorney's fees.

106. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma in the amount to be calculated in accordance with the terms of said Note which is believed to be approximately \$76,359 as of June 17, 2012 exclusive of attorney's fees and costs of collection.

SECOND COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (RESIDENTIAL CONSTRUCTION CONTRACT)

107. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

108. Wilson, as contractor, entered into a residential construction contract with Jayma upon the terms and representations described above.

109. Wilson has breached the terms of that contract as described above and is in default.

110. Wilson's breaches of the residential construction contract were accompanied by one or more fraudulent acts, including but not limited to:

- a. arranging for and obtaining a refund or kickback on the purchase price charged to Jayma for the lot which was not disclosed to Jayma at the time Jayma entered into the residential construction contract and was not disclosed to the lender at the time Wilson submitted construction estimates to the lender to support the loan;
- b. advancing himself more than the contractually agreed upon Contractor's fee without prompt and full disclosure, consent or agreement; and
- c. personally drawing a substantially larger sum for his personal use from funds/accounts set aside for completion of the home than he represented he would draw or disclosed that he had withdrawn at the time he withdrew the funds.

111. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

112. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of unauthorized or improper expenditures and draws, additional costs for completing the home, the additional interest costs on the mortgage on the new home for the extra time it took to complete the home, the personal draws in excess of \$5,500, the principal and interest incurred on the line of credit, the harm to Jayma's valuable credit reputation, and the loss on the sale of the home.

113. Wilson's obligations and liability to Jayma on the residential construction contract are secured by the above described mortgage which provides for the recovery of attorney's fees.

THIRD COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (LINE OF CREDIT)

114. Jayma re-alleges the preceding paragraphs of the Counterclaims as in again fully restated.

115. Wilson entered into a contract with Jayma regarding the use of the funds from the \$194,000 line of credit by which he was granted the authority to make draws against the line of credit strictly for legitimate cost overruns in completing the home and no more than \$50,000 for his personal use.

116. Wilson has breached the terms of that contract as described above and is in default.

117. Wilson's breach of this contract was accompanied by one or more fraudulent acts including personally drawing more than \$50,000 for his personal use and

exhausting the line of credit within three or four months after it was obtained all without making commensurate progress in completing the home or documenting the amount and reasons for the draws.

118. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

119. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of excess personal use of funds, reimbursement of draws which have not been properly documented as authorized construction costs for the home, additional costs for completing the home, the interest incurred on the line of credit, impairment of Jayma's valuable credit reputation.

120. Wilson's obligations and liability to Jayma under the contract are secured by the above described mortgage which provides for the recovery of attorney's fees and/or by Wilson's conveyance and deed of the 62.69 acres to Jayma.

FOURTH COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (SALE OF THE PROVIDENCE DOWNS SOUTH HOUSE)

121. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

122. Wilson entered into a contract with Jayma concerning sale of the house and use of the proceeds from the sale of the house.

123. Wilson has breached the terms of that contract and is in default.

124. Wilson's breach of this contract was accompanied by one or more fraudulent acts including an effort to sabotage sale of the home through a formal demand to re-convey the property conveyed to Jayma free of all encumbrances placed on that land after the November 5, 2005 deed (including the \$194,000 line of credit) and to stop efforts to sell the home until Wilson approved of the sale.

125. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

126. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of the interest cost, costs of the sale, the loss on the sale of the house, the cost to remove the cloud on Jayma's title to the 62.69 acres, the continuing impairment of Jayma property by the line of credit, and impairment of Jayma's valuable credit reputation.

127. Wilson's obligations and liability to Jayma on this contract are secured by the above described mortgage which provides for the recovery of attorney's fees and/or by Wilson's conveyance and deed of the 62.69 acres to Jayma.

FIFTH COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (JOINT VENTURE - PROVIDENCE DOWNS SOUTH HOUSE)

128. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

129. Wilson entered into a joint venture with Jayma to construct the Providence Downs South house.

130. Wilson has breached the terms of the joint venture agreement and is in default.

131. Wilson's breach of this contract was accompanied by one or more fraudulent acts including:

- a. Misrepresenting his expertise in the business of serving as general contractor on similar residential construction to that found in the Providence Downs South subdivision;
- b. Misrepresenting the time it would take him to complete construction of the house;
- c. Misrepresenting at the beginning of the contract, the costs of the project, including the cost of the lot;
- d. Misrepresenting the amount he would draw for himself personally from the construction funds;
- e. Drawing more than the contractually agreed upon amount as the contractor's fee for the project;
- f. Attempting to sabotage sale of the joint venture home through a formal demand to stop efforts to sell the home until Wilson approved of the sale and until the property conveyed to Jayma was re-conveyed free of all encumbrances placed on that land after the November 5, 2005 deed (including the \$194,000 line of credit).
- g. Failing to redeposit funds into the construction account which he acknowledged owing to the joint venture;
- h. Failing to contribute his share to cover his half of the joint venture losses.

132. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and fees in addition to compensatory damages.

133. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of the interest, cost, costs of the sale, the loss on the sale of the house, the cost to remove the cloud on Jayma's title to the 62.69 acres, the continuing impairment of Jayma property by the line of credit, and impairment of Jayma's valuable credit reputation.

134. Wilson's obligations and liability to Jayma on this contract are secured by the above described mortgage which provides for the recovery of attorney's fees and/or by Wilson's conveyance and deed of the 62.69 acres to Jayma.

SIXTH COUNTERCLAIM

REMOVE CLOUD ON AND CONFIRM OR QUIET TITLE

135. Jayma re-alleges the preceding paragraphs of the Counterclaims here as if again fully restated.

136. On or about November 5, 2005, Wilson executed and recorded the deed attached hereto as Exhibit F conveying 62.69 acres of land in Lancaster County to Jayma with the intent of persuading Jayma to pay him \$75,000 to \$100,000 with a right to redeem the land within 10 months for the amount paid to him plus something to compensate Jayma, but forfeiting all interest in the land if he failed to timely redeem it. However, Jayma did not agree to this deal.

137. In June of 2006, while in default on the residential construction contract, Wilson used the deed to get Jayma, as owner of the land under the deed, to obligate

himself on a line of credit for \$194,000 of which no more than \$50,000 would go to Wilson personally while the remainder would be made available to cover the cost overruns on the residential construction contract. There was no right to redeem the 62.69 acres in this agreement.

138. Wilson personally received more than the agreed upon limit from the proceeds of that line of credit.

139. Even if the deed was imperfectly executed, it is nevertheless effective between the parties.

140. In reliance upon this deed, Jayma obtained the line of credit and agreed that Wilson would personally receive up to \$50,000 from the proceeds.

141. By this deed, Wilson is estopped from asserting as against Jayma any right or title in derogation of the deed or from denying the truth of any material fact asserted in it.

142. Thus, Jayma's title to the 62.69 acres should be confirmed and quieted as against all claims of Wilson.

SEVENTH COUNTERCLAIM

CONSTRUCTIVE TRUST

143. Jayma re-alleges the precedent paragraphs of the Counterclaims as if again restated.

144. To the extent that Wilson continues to possess legal title or any other or any other ownership interest in the 62.69 acres, given the facts alleged in this Counterclaim, it would be inequitable for Wilson to retain such interests, especially in light of his inequitable conduct such as arranging for and obtaining a refund or kickback

on the purchase price charged to Jayma for the lot which he did not disclose until he actually received the check, advancing himself more than the contractually agreed upon contractor's fee without prompt and full disclosure, consent or agreement, and personally drawing a substantially larger sum for his personal use from funds/accounts set aside for completion of the Providence Downs South house than he represented he would draw or disclosed that he had withdrawn, and inducing Jayma to loan him \$32,000 personally, then to take out a \$1 million construction loan, and then to take out a \$194,000 line of credit all of which Wilson benefitted from personally and on all of which Wilson represented that his contribution was represented by the land.

EIGHTH COUNTERCLAIM

UNJUST ENRICHMENT

145. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

146. Through the facts alleged above, Wilson received multiple benefits including the proceeds of loans and various sums of cash. As demonstrated by the facts alleged above, none of these benefits were intended to be conferred gratuitously. In contrast, Jayma relied upon the representations, agreements and claimed expertise of Wilson in taking actions which benefitted Wilson and have been detrimental to Jayma causing him to take on additional obligations, causing substantial monetary losses, and resulting in the impairment of Jayma's property and credit. It would be inequitable for Wilson to retain the benefits conferred without repaying Jayma for the value received.

147. Accordingly, Wilson should be required to repay to Jayma all funds drawn from the construction mortgage account and the line of credit which Wilson cannot

demonstrate were legitimate costs for construction as set out by the residential construction contract (without including any cost increases resulting from Wilson's problems in selecting, hiring, contracting with, supervising, and paying the subcontractors in his role as contractor).

148. Additionally, Wilson should be required to repay to Jayma all funds received as a refund on the purchase of lot 163.

149. Further, Wilson should be required to repay to Jayma the time value of the money he received in the form of interest from the time received until the time repaid.

150. It would be inequitable to allow Wilson to retain these benefits in light of the losses he caused to Jayma.

NINTH COUNTERCLAIM

ALTERNATIVELY BREACH OF FUDICIARY DUTY OF A PARTNER OF JOINT VENTURER

151. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

152. In the event it is found that there was a partnership or joint venture agreement between Wilson and Jayma in regard to the construction of the house on lot 163 in Providence Downs South, then Wilson is liable to Jayma for breach of fiduciary duties in regard to that partnership or joint venture.

153. Wilson's breaches of fiduciary duty would include, but not be limited to:

- a. arranging for and obtaining a refund or kickback on the purchase price charged to Jayma for the lot which was not disclosed until after Wilson received the kickback;
- b. advancing himself more than the contractually agreed upon contractor's fee without prompt and full disclosure, consent or agreement;

- c. personally drawing a substantially larger sum for his personal use from funds/accounts set aside for completion of the house than he represented he would draw or disclosed that he had withdrawn when he withdrew them; and
- d. Attempting to stop the sale of the joint venture house.

TENTH COUNTERCLAIM

FORECLOSURE OF MORTGAGE/ ENFORCEMENT OF SECURITY INTEREST

154. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.
155. The terms of the mortgage secured all current and future indebtedness and liability of Wilson to Jayma until the mortgage is satisfied of record.
156. The mortgage has not been satisfied of record.
157. Any right of appraisal under the mortgage has been waived.
158. The terms of the mortgage provide for the recovery of attorney's fees.
159. Jayma is entitled to have the indebtedness and liability of Wilson on all the counts alleged in the Counterclaims together with attorney's fees reduced to judgment for purposes of foreclosure of the mortgage and to have the court direct the sale of the mortgaged premises and the entry of a deficiency judgment in the event the sale of the mortgaged premises fails to be sufficient to pay the full judgment subject to the mortgage.

ELEVENTH COUNTERCLAIM

ALTERNATIVELY, ENFORCEMENT OF DEED AS A SECURITY INTEREST

160. Jayma re-alleges the preceding paragraphs of the Counterclaims here as if again fully restated.

161. In the event it should be found that the November 2005 deed is not fully effective as an enforceable deed in fee simple to Jayma of the 62.69 acres, Jayma seeks a declaration that the deed remains effective as a conditional deed, security agreement or mortgage and that Wilson has so failed in the performance of his obligations secured by the deed or land as to have forfeited any right he might have to redeem the deed and/or avoid full and effective conveyance of the property.

162. In this event, Jayma is entitled to enforcement of the deed as a security interest and to a judgment ordering conveyance or ordering Wilson to execute an effective conveyance as a result of Wilson's failure to fully perform all the obligations for which the deed was used as security.

WHEREFORE, having fully answered the Complaint of the Plaintiff, and Counterclaimed against him, Defendant Jayma requests the following:

- A) That the Plaintiff receive nothing and his claims be dismissed, together with the costs of this action.
- B) Judgment on the \$32,000 promissory note in an amount to be calculated in accordance with the terms of said note (which is believed to be approximately \$76,359 as of June 17, 2012 plus attorney's fees and costs;
- C) Judgment for compensatory damages for breach of the residential construction contract in an amount to be found sufficient to reimburse;

1. any and all unauthorized or improper expenditures and draws (unable to estimate without discovery);
 2. reimbursement of the amounts Wilson should have paid back to the construction accounts (estimated to be over \$46,000);
 3. Additional costs for completing the home (estimated at \$307,700);
 4. the interest costs on the mortgage on the new home (estimated at \$99,000);
 5. the personal draws in excess of \$5,500 (estimated to be at least \$69,500);
 6. the costs to sell the home (estimated to be about \$8100);
 7. the principal and interest incurred on the line of credit (estimated to be about \$250,000);
 8. the harm to Jayma's valuable credit reputation and impairment of collateral available for credit (estimated to be about \$1.5 million); and
 9. the loss on the sale of the Providence Downs South house (estimated to be about \$813,000).
- D) Judgment for punitive damages for fraudulent breach of the residential construction contract;
- E) Judgment for compensatory damages for breach of contract concerning line of credit in an amount sufficient to reimburse:
- i. any and all unauthorized or improper expenditures and draws (unable to estimate without discovery but in excess of \$60,000);
 - ii. draws which have not been properly documented as authorized construction costs for the home (unable to estimate without discovery);
 - iii. additional costs for completing the home not completed within the line of credit (estimated to be about \$163,700);
 - iv. the interest incurred on the line of credit (estimated to be about \$53,050 through May of 2012);
 - v. the impairment of Jayma's property by the line of credit and impairment of Jayma's valuable credit reputation (estimated to be about \$.5 million);
- F. Judgment for punitive damages for fraudulent breach of the agreement regarding the line of credit:

- G. Judgment for compensatory damages for fraudulent breach of agreement concerning sale of the house and application of the proceeds in an amount sufficient to reimburse:
- i) continuing interest costs and principal on the line of credit not covered by the sale process (estimated at \$250,000 as of May 2012);
 - ii) the costs to sell the home (estimated to be about \$8100);
 - iii) the loss on the sale of the house (estimated to be about \$183,000);
 - iv) the cost to remove the cloud on Jayma's title to the 62.69 acres (cannot be estimated or calculated until the end of this action); and
 - v) the continuing impairment of Jayma's property by the line of credit and impairment of Jayma's valuable credit reputation (estimated to be about \$1.5 million);
- H) Judgment for punitive damages for fraudulent breach of the agreement to sell the house and for application of the proceeds of the sale;
- I) Judgment for appropriate compensatory damages for breach of the joint venture (unable to estimate without discovery);
- J) Judgment for punitive damages for fraudulent breach of the joint venture contract;
- K) Judgment for attorney's fees; and
- L) Judgment:
- i. confirming title in Jayma to the 62.69 acres in Lancaster County and quieting title against any and all claims of Wilson and his heirs and assigns in perpetuity; or, in the alternative;
 - ii. judgment fixing the amount of Wilson's obligations and liabilities to Jayma secured by the 62.69 acres in Lancaster County coupled with a foreclosure order of sale and judgment for deficiencies.
- M) For such other and further relief as the Court deems just and proper.

October 2, 2015

W. Keith Martens

W. Keith Martens
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
keith.martens@hiltonmartens.com

ATTORNEYS FOR DEFENDANT KEITH JAYMA



CONTRACT FOR RESIDENTIAL CONSTRUCTION

AGREEMENT

Made as of the 24th day of August, 2005.

BETWEEN the OWNER: Keith Jayma
9817 Pallisers Terrace
Charlotte, NC 28210

And the CONTRACTOR: F. Mark Wilson Construction
7502 Gus Eubanks Rd.
Monroe, NC 28112
Unlimited N.C. License #26620
Unlimited S.C. License #9794

The Project location: LOT 165 on Strike the Gold in Providence Downs South.

P.M.

ARTICLE IV**CONTRACT AMOUNT**

The Contract Amount for the Work described in Exhibits A & B is the actual cost to complete which is estimated to be \$822,625.00

ARTICLE V**DEPOSIT AMOUNT**

The deposit amount shall be \$1,000,000. This amount is due and payable upon execution of this contract as witnessed by the signature here within.

ARTICLE VI**CHANGE ORDERS**

The CONTRACTOR agrees to work closely with the OWNER to target the amount reflected on the ESTIMATE GUIDE. The OWNER and CONTRACTOR shall meet regularly to evaluate the status of work relative to the ESTIMATED BUDGET. Additionally, during the regular meetings, any change the OWNER would like to make to the project will be discussed.

There shall be no CHANGES or ADDITIONS to the Work as described in the CONTRACT DOCUMENTS, except those in the form of written change orders which have been signed by both the OWNER and the CONTRACTOR, as well as setting out the additional charge or credit to the OWNER, as well as additional time for the CONTRACTOR to comply with the change order.

ARTICLE VII**PAYMENT SCHEDULE**

The CONTRACTOR shall submit to the OWNER a JOB COST LEDGER. Attached to these Reports will be copies of the actual invoices for which payment has been requested.

The CONTRACTOR shall receive payment for WORK IN PROGRESS as the work progresses.

ARTICLE VIII

OTHER PROVISIONS

This AGREEMENT BETWEEN OWNER AND CONTRACTOR shall be governed by the laws of the State of North Carolina.

The OWNER or his or her agent may enter and inspect the Work for the purpose of determining whether the WORK performed or being performed conforms with the CONTRACT DOCUMENTS.

If the CONTRACTOR voluntarily or involuntarily goes into bankruptcy or receivership, or if the CONTRACTOR fails to make any significant progress on the WORK for a period of 30 days after commencement of the WORK, then in any of these events, the OWNER may, after seven (7) days written notice, direct the CONTRACTOR to cease work. Adverse weather as described in Article III is specifically excluded from counting against the 30 day period above referenced. Upon such default, in addition to any other remedies the OWNER may have, the OWNER may retain another party or parties to complete the WORK in accordance with the CONTRACT DOCUMENTS and make payments to such parties as provided for in the CONTRACT DOCUMENTS with respect to the CONTRACTOR.

AGREEMENT BETWEEN OWNER AND CONTRACTOR, or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.

Each provision of this AGREEMENT BETWEEN OWNER AND CONTRACTOR is separate from every other provision contained here within, and if any provision is determined to be unenforceable or is revised, it will not affect the enforceability or validity of any other provision.

This agreement entered into as of the day and year first written above.

OWNER (S)

CONTRACTOR

_____ (seal)

_____ (seal)
F. Mark Wilson
F. Mark Wilson Construction

_____ (seal)

ARTICLE VIII

OTHER PROVISIONS

This AGREEMENT BETWEEN OWNER AND CONTRACTOR shall be governed by the laws of the State of North Carolina.

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This agreement entered into as of the day and year first written above.

OWNER ('S)

 (seal)

CONTRACTOR

F. Mark Wilson (seal)
F. Mark Wilson Construction

____ (seal)

I. Sealed Instrument, the "CONTRACT"; as outlined in Appellant's Amended Brief pages 1-3.

There are significant issues surrounding the "CONTRACT" as admitted into evidence as Exhibit 4 at Appellant's deposition by Attorney Keith Martins.

In his order granting summary judgement to Respondent, dated September 22, 2017, Judge Hayes erred when he stated on page 5 of 8, the very last paragraph, "There is no evidence "that", continued on page 6 of 8, "Jayma signed any "written contract secured by a mortgage." There was a written "CONTRACT" presented into evidence at Appellant's deposition on 7/5/17 as exhibit 4 page 61 lines 18-25 by attorney Keith Martens. He presented a very vague, difficult to read CONTRACT that he says he "thought" was complete, p. 64 lines 23-25, p. 65 line 1. Appellant's signature had been fraudulently removed from the "seal" line. Respondent's signature had also been fraudulently removed from the "seal" line of the CONTRACT that was admitted into evidence as exhibit 4 at Appellant's deposition. Respondent's signature is clearly written and visible on Appellant's copy of the CONTRACT as entered in his Amended Brief of 6/28/18 under I. Sealed Instrument, the "CONTRACT" p 1-3. That CONTRACT names both Appellant and Respondent on the first page. The word "seal" is written and presented on that CONTRACT three (3) times. Appellant generated that CONTRACT admitted into evidence at Appellant's deposition, p 64 lines 18-21. That CONTRACT was for a 4,500 square foot home to be built, admitted into evidence at Appellant's deposition, p 64 lines 1-10. Appellant has been harmed by the CONTRACT.

Attorney Keith Martens, in an attempt to discredit, trick and confuse Appellant, entered this incomplete, unsigned and fraudulent copy of the CONTRACT as exhibit 4 at Appellant's deposition. Attorney Martens himself was ambiguous and confused and made questionable statements; there was a genuine dispute of the facts:

- (1) P 62 line 14 "You think I'm missing some pages?"
P 62 line 15 "Yes sir."
- (2) P 63 line 5 "Let's figure out what we've got there first."
- (3) P 63 line 22 "We'll get it out of the way and not get confused."
- (4) P 64 lines 11-12 "We're not sure what that is."
- (5) P 64 lines 23-25 "Obviously there are some provisions that are missing in the copy that I made, and I apologize for that."
- (6) P 64 line 25, p 65 line 1 "I thought I had a complete copy when I copied that."
- (7) P 65 line 3 "Let's take a quick break."
- (8) P 65 lines 5-7 "I understand that what we've marked as exhibit 4 is not a complete copy of 'your contract' with Mr. Jayma."

Both Appellant's and Respondent's signatures have been removed from the signature line as submitted by attorney Keith Martens; to intentionally injure, defraud and deceive Appellant and to provide false, incomplete, fraudulent and misleading information to the bank for the purpose of applying for and successfully securing a one million dollar loan based on the CONTRACT.

P. 83.

Attorney David Cook entered: (1) the CONTRACT, (2) the Mortgage, (3) the Deed and (4) the Note into evidence in a series of arguments in the transcript, beginning on p. 14 lines 17-25.

"Your Honor, my main argument in defense of the Statute of Limitations is that—well, I have three arguments."

"Firstly, your Honor, I would allege that the statute that's applicable here is the twenty year statute regarding sealed instruments, and that would be 15-3-520 which reads and that within twenty years; an action upon a bond or other contract in writing is secured by the mortgage of real property."

Secondly, Page 15 lines 7-12, "Essentially, your Honor, my client's arguing that the mortgage and the deed, and the note, that this case is based on are sealed instruments." South Carolina's 20 year and 10 year statute of limitations are applicable in Appellant's lawsuit, p 14 lines 21-25 citing SC 15-3-520 and SC 15-3-520(b). P 15 lines 3-23 as prescribed in 36-2-725, P 17 lines 19-25, SC Statute 15-3-340 Action by an Individual for Recovery of Real Property, continued on p 18 lines 1-15, "And I would argue that this lawsuit is, for one, for the recovery of real property because we're requesting the recovery of the sixty two acres that were deeded out my client would allege improperly.... And under those two statutes, your Honor, my client would argue that this case would well be within the statute of limitations for either the twenty or the ten year statutes."

Attorney Cook continues "Finally, your Honor," p 18 lines 1-25 and p 21 lines 1-12.

Attorney Martens stated, p 23 lines 9-19.

Attorney Martens stated, p 24 lines 1-6, "an action to set aside a deed for the basis of fraud, and that a shorter, at the time a six-year statute of limitations should apply." All of the above statutes of limitations carry a longer time to file a lawsuit rather than the standard 3 year statute imposed by Judge Hayes.

Attorney David Cook continues, p 25 lines 1-25, line 1 "my client", p 26 lines 23-25, p 27 lines 13-20. Attorney David Cook's argument is continued on the entire pages of 15, 16, 17, 18, 19, and 20 of the 8-23-17 transcript. Continued on p 25 lines 5-7, "My client deeded out his family land to Mr. Jayma in this agreement with an understanding that the land would be deeded back to him..." P 25 line 10, "There is a mortgage involved that has a seal and the deed as well..."

Appellant was HARMED from the written CONTRACT under seal:

- (1) That CONTRACT made payments to the Appellant as the work progressed on the home, including the very last payment that would be issued after both parties on the CONTRACT signed a written affidavit; that all bills had been paid. That affidavit was never signed, however Respondent Jayma was able to fraudulently convince the bank to issue a final official bank check that had the Appellant's name on it.

P. 84.

Respondent Jayma forged Appellant's name (entered into evidence by attorney Keith Martens at Appellant's deposition on 7-15-17; p 98 line 25, p 99 line 7, p 104 lines 1-4, p 120 line 14, and again entered as evidence by attorney Keith Martens on p 9 lines 9-25, p 10 lines 1-12, p 12 lines 6, 7, and 8 of the transcript, and deposited that money in Respondent's own account. The "Forged Check" was also entered into evidence as exhibit 12 of Appellant's deposition. All a part of the trickery and fraud that Respondent committed against Appellant in violation of the law.

- (2) Respondent's wife, Diana Jayma, was advertising the home for sale as a licensed Real Estate Agent as 8,180 sq. ft for \$1.89 million, a 50 percent increase in the heated sq. ft from the CONTRACT specification "per plan" of 5,469 sq. ft., entered into evidence by Attorney Martens as exhibit 15 at Appellant's deposition. That CONTRACT allowed more time and more money for the Contractor (Appellant) for any additions to the home, there was a 50 percent increase from the original CONTRACT price and the Contractor (Appellant) lost his entire 63-acre farm to Respondent Jayma, as the farm was collateralize to complete Respondent's "2nd home as financed". If the harm is from a written contract under seal, then South Carolina has a 20-year statute of limitations to file a lawsuit. As the CONTRACT is a "Sealed Instrument", the 20-year statute of limitations is applicable; and Appellant is entitled to have the issues surrounding the "CONTRACT" fully adjudicated. Therefor, Judge Hayes' order granting summary judgement to Respondent should be reversed.

based entirely upon the alleged acts or omissions of Jayma as a partner in the men's business venture, and includes specific causes of action for breach of fiduciary duty and fraud. Our Court of Appeals has held that each of those causes of action is subject to a three-year statute of limitations. Mazloom v. Mazloom, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009)(breach of fiduciary duty); Turner v. Millman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009)(fraud).

In opposition to Jayma's motion, Wilson argues that his claims are not subject to the three-year statute of limitations of § 15-3-530. Instead, Wilson argues that his claims are subject either to the twenty-year statute of limitations of § 15-3-520 (actions upon a sealed instrument, bond or other contract in writing secured by a mortgage of real property) or to the ten-year statute of limitations set forth in § 15-3-340 (action by an individual for recovery of real property). I disagree.

Section 15-3-520(b) (action on a sealed instrument) is plainly inapplicable to this case. In making this determination, the court need look no further than the definition of "sealed instrument" set forth in Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015). In Lyons, the Court of Appeals defined a sealed instrument as "an instrument in which the *bound party* has affixed a personal seal, recognized as providing indisputable evidence of the validity of the underlying obligations." Id. at 125, 781 S.E.2d at 131-32 (emphasis added). In this case, neither the deed to the Disputed Tract nor the mortgage covering the Disputed Tract was signed or "sealed" by Jayma. Jayma is not the "bound party" of either instrument, and Wilson's claims against Jayma are not "an action on a sealed instrument."

Nor do Wilson's claims fall within § 15-3-520(a), as an action on a "bond or other contract in writing secured by a mortgage of real property." The focus of § 15-3-520(a) is not a mortgage, but rather a written contract that is secured by a mortgage. There is no evidence that

JOH #5
Page 86

Jayma signed any "written contract secured by a mortgage" and Wilson's complaint does not allege that he seeks to enforce any such contract.

Wilson's claims also are not governed by the ten year statute of limitations set forth in § 15-3-340. Our Supreme Court has specifically held that an action to set aside a deed on the basis of fraud is not an "action for the recovery of real property." McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953). Such claims are, instead, an "action for relief on the ground of fraud," and subject to the "general" statute of limitations - a six-year limitations period when McKinnon was decided. That limitations period has since been reduced to three years, and is now codified as § 15-3-530(7)(Law. Co-op. 2005). Reviewing Wilson's complaint, as McKinnon instructs, the court notes that Wilson alleges Jayma obtained title to the Disputed Tract through a fraudulent deed. Wilson's action to set aside that deed is, therefore, subject to a three-year statute of limitations and not the ten-year statute of §15-3-340.

B. The undisputed factual record establishes that Wilson did not commence this action within three years of the accrual of his claims, and his entire Complaint is subject to dismissal as a matter of law.

The question of when a claim accrues for purposes of calculating the statute of limitations is generally a question of fact. The statute begins to run when "the underlying cause of action reasonably ought to have been discovered." Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011). When there is conflicting evidence as to whether a claim has accrued for purposes of the statute of limitations, the issue must be submitted to a jury. When the evidence is conclusive, the question may be decided as a matter of law.

In this case, there is no material issue of fact in dispute as to the accrual of Wilson's claims. The undisputed evidence conclusively establishes that Wilson had knowledge of facts

John H. #6
Page 87.

1 Q When you say, the first document, what pages?
2 A One, two, three.
3 Q Is that single document?
4 A That's a single document.
5 Q If you will, go ahead and pull that. Let's
6 take those first three pages off, and we're going to call
7 those Exhibit 4.
8 A (Witness complies)
9 Q We will call that Exhibit 4. Now, the next
10 page -- Tell me what else goes together. Does anything
11 else go with what we've now pulled off and marked as
12 Exhibit 4?
13 A You're missing some pages.
14 Q You think I'm missing some pages?
15 A Yes, sir.
16 Q After those first three pages that we've pulled
17 off and marked as Exhibit 4, what else goes together.
18 Tell me what those other pages are?
19 A You have two cost codes in here.
20 Q What is a cost code?
21 A It's a cost estimate that I provided before
22 construction was started.
23 Q Do the next four pages go together as a single
24 cost code?
25 A Yes.

1 Q Let's pull that off, and we'll mark that as
2 Exhibit 5.

3 A (Witness complies) Well, this is the second
4 cost code. You had another one here.

5 Q Let's figure out what we've got here first.

6 A I don't know if they're in order or not.

7 Q Let's mark that one.

8 A As 5?

9 Q Yes, sir. We'll mark that as 5.

10 Whereupon - Document marked as Exhibit 5.

11 Q Looking through the stack that I handed you,
12 what else goes together? Do the next four pages go
13 together?

14 A No. Skip one page and the next will go
15 together. That's the original cost code.

16 Mr. Martens - Let's mark that as Exhibit
17 6.

18 Whereupon - Document marked as Exhibit 6.

19 Q What was the page that we skipped?

20 A I don't know -- I don't know about this page.

21 Q So we won't mark that. Let me just have that,
22 we'll get it out of the way and not get confused. What
23 about the document that's got the caption of Sale Price of
24 Waystrode on Lot 163, do you know what that document is?

25 A I recognize the Waystrode plan on Lot 163.

1 I'm looking at the 4,500 square feet. So your question
2 to me is what?

3 Q Do you know what that document is?

4 A I recognize the Waystrode plan.

5 Q But other than that, you don't recognize
6 anything about that document?

7 A It looks like I was calculating -- If I produced
8 it, I see -- I'm going to say that's Jayma's handwriting
9 on it so I must have generated some kind of estimate
10 based on 4,500 square feet and the lot cost.

11 Q Let's set that document aside, too. We're
12 not sure what that is. We broke the documents up into
13 three separate exhibits, 4, 5 and 6.

14 You told me what we marked as Exhibit 4 is an
15 unsigned contract for residential construction. You've
16 testified, and I see that, that there appear to be
17 articles one, two and three missing from this exhibit.

18 Was there a written contract between you and Mr.
19 Jayma concerning the construction of the Strike the Gold
20 property?

21 A I generated a contract.

22 Q Did it look like the document that we marked as
23 Exhibit 4, with the exception of -- obviously there are
24 some provisions that are missing in the copy that I made,
25 and I apologize for that. I thought I had a complete

1 copy when I copied that.

2 A (No response)

3 Mr. Martens - Let's take a quick break.

4 Mr. Martens - Resuming

5 Q So Exhibit 4 - I understand what we've marked
6 as Exhibit 4 is not a complete copy of your contract
7 with Mr. Jayma. Do you have a copy of a complete copy of
8 a construction contract between you and Mr. Jayma?

9 A Not that I am aware of.

10 Q Did you and Mr. Jayma ever execute a written
11 contract related to the construction of Strike the Gold?

12 A I don't think so.

13 Q Did you and Mr. Jayma ever execute a written
14 contract concerning how you would pay for, complete,
15 market and sell the Strike the Gold house?

16 A No. Well, a gentlemen's agreement. That was
17 our contract.

18 Q Tell me what you mean by gentlemen's agreement.

19 A I trusted him as a man of his word.

20 Q And as I understand, your gentlemen's agreement
21 was that Mr. Jayma would buy the lot in his name, right?

22 A Yes.

23 Q That Mr. Jayma would borrow the money needed
24 to build the house.

25 A Yes.

1 representation by the defendant that the claim is going to
2 be resolved outside of court, or, the defendant has to have
3 engaged in conduct that makes the plaintiff reasonably
4 believe the claim will be resolved outside of court. We
5 don't have any of that here.

6 We have demands that were made to my client, they were
7 not responded to, and as I said we also have evidence that
8 Mr. Wilson just said he couldn't afford to pursue the claim
9 at the time, and he waited until he had enough money to
10 bring the claim. And so, we think all these claims are
11 time barred and we're asking that the plaintiff's claims be
12 dismissed pursuant to the Statute of Limitations.

13 THE COURT: All right. Thank you. All right.

14 MR. COOK: May it please the Court, your Honor. And,
15 your Honor, my client would agree with all of the factual
16 recitations by opposing counsel.

17 Your Honor, my main argument in defense of the Statute
18 of Limitations is that -- Well, I have ~~three~~ arguments.

19 Firstly, your Honor, I would allege that the statute
20 that's applicable here is the twenty year statute regarding
21 sealed instruments, and that would be 15-3-520 which reads
22 and that within twenty years: an action upon a bond or
23 other contract in writing is secured by the mortgage of
24 real property. And then that's Subsection A.

25 Subsection (b) it relates to, an action upon a sealed

1 instrument other than a sealed note and personal bond for
2 payment of money only whereon the period of limitations is
3 the same as prescribed in 15-3-530, except that a sealed
4 contract for sale or another -- or an offer to buy or sell
5 goods whereon the period of limitations is the same as
6 prescribed in 36-2-725.

7 Essentially, your Honor, my client's arguing that the
8 mortgage and the deed, and the note, that this case is
9 based on are sealed instruments. And I've offered up the
10 the Lyle -- the Lyons case, your Honor, which is 415 S.C.
11 115. Also at 781 SE 2d 126. This is *Lyons versus Fidelity*
12 *National Title Insurance Company*.

13 Your Honor, this is a 2015 case which essentially
14 summarizes a lot of the case law on this point.

15 And I also printed off a lot of the cases that it
16 discusses but page 3 starts with the Statute of Limitations
17 analysis, your Honor, and in essentially the *Lyons* case
18 itself, your Honor, is -- Beg the Court's brief indulgence.

19 Well, and I don't want to get too far into the facts
20 of this other case, your Honor, but its dealing with --
21 it's asking whether a title insurance policy is a sealed
22 instrument upon which a law suit or the statute of
23 limitations for twenty years would apply.

24 But the analysis on page 3 from the Statute of
25 Limitations runs through a lot of what I'm arguing here,

1 your Honor. It basically -- It says that because these are
2 sealed instruments the statute of limitations is twenty
3 years and wouldn't be the three year statute of limitations
4 that opposing counsel's arguing is applicable.

5 Of course, your Honor, you know, the case law
6 runs through all the policies behind the Statute of
7 Limitations. And I may have accidentally handed up, your
8 Honor, if there's some red ink on your Honor's case the case
9 that I have --

10 THE COURT: No, mine doesn't have any red.

11 MR. COOK: I gave it to opposing counsel.

12 And so, essentially that's the crux of my argument,
13 your Honor. I don't want to just sit here and regurgitate
14 a bunch of the paragraphs in the case but essentially it
15 comes down to whether -- what's at stake in the law suit is
16 a sealed instrument. It says on page 4 in the second
17 paragraph, South Carolina Code 520(b) provides for a
18 twenty-year statute of limitations for an action upon a
19 sealed instrument other than a sealed note, et cetera,
20 and it reads out what I just recited.

21 We adhere to our general three year statute of
22 limitations the Court states for most contract actions and
23 acknowledged the availability of the twenty-year limitation
24 periods where contracts clearly evidence is an intent
25 to create a sealed instrument. We acknowledge South

P.94.

1 Carolina has not specifically considered whether an
2 instrument -- an insurance policy is a sealed instrument
3 or not and it goes on to find that it was.

4 It says the sealed instrument is defined as an
5 instrument to which the bound party has a fixed personal
6 seal usually recognized is provided undisputable evidence
7 of the validity.

8 And so, your Honor, the mortgage and the deed which
9 are in evidence in opposing counsel's brief, as well as in
10 the pleadings, in my complaint, has a probate, the
11 mortgage has a probate on the back of it. And there's a
12 lot of things on point and *Lyons* discusses it that, you
13 know, just the phrase in witness whereof in and of itself and
14 by itself would not indicate a sealed instrument. But if
15 the instrument has either an actual seal, or the L.S.,
16 locus sigilli next to it, then it would be a -- instrument,
17 or if it's notarized it is probate as well as the deed that's
18 mentioned, your Honor.

19 So my client would argue that the twenty-year statute
20 applies in this matter feverishly. And he would in the
21 alternative, your Honor, also argue that there's a
22 ten-year statute that may be applicable. And I have that.

23 I have it right here in front of me, your Honor.
24 It's 15-3-340 Action by an Individual for Recovery of
25 Real Property.

1 And I would argue that this law suit is, for one, for
2 recovery of real property because we're requesting the
3 recovery of the sixty-two acres that were deeded out my
4 client would allege improperly.

5 And that statute I'm sure your Honor is aware of it
6 for the record states no action for the recovery of real
7 property, or for the recovery of the possession of
8 real property, may be maintained unless it appears that
9 the plaintiff, his ancestor, predecessor, or grantor, was
10 seized or possessed of the premises in question within ten
11 years before the commencement of the action.

12 And under those two statutes, your Honor, my client
13 would argue that this case would well be within the
14 statute of limitations for either the twenty or the ten
15 year statute.

16 Finally, your Honor, regarding -- If the Court's
17 inclined to apply the three year statute, my client has
18 an argument in those regards which are essentially outlined
19 in his affidavit that he filed with the motion, but he
20 basically argues in his affidavit that there's
21 communications between Defendant Jayma and my client as
22 late as 2011 where they're discussing the profits of this
23 job. And that's included as Exhibit A to my affidavit,
24 your Honor.

25 Looking through this email it shows that these

1 parties were, still years after the letters that were
2 discussed by opposing counsel, emailing back and forth
3 fighting over the profits, and they're agreement regarding
4 this matter, and so my client would argue that -- And its
5 not necessarily an estoppel argument but it kind of falls
6 within those lines. He's not claiming that necessarily
7 that Defendant Jayma is saying here, not giving any type
8 of indication that he'll settle this out of court but
9 he's still arguing over the profits and so my client would
10 argue that he hasn't been aware of his injury.

11 Furthermore, your Honor, the fact alone that -- in
12 regards to the Nexsen Pruet letter, the fact alone that --

13 Beg the Court's brief indulgence.

14 (PAUSE.)

15 MR. COOK: The fact alone that the letter was not
16 responded to isn't proof that my client should have known
17 that he was not -- that Jayma was not going to honor the
18 agreement. In other words, my client sends a letter to
19 him -- Jayma from a lawyer that ask for records and
20 alleges, you know, possible causes of action. The fact that
21 Jayma did not respond -- this is just one of my client's
22 arguments on this tier -- the fact that Jayma did not
23 respond to that letter doesn't put my client on notice
24 that there is a potential law suit that's ripe.

25 My client's still receiving emails back and forth

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1 from him; even three years later they're still receiving
2 emails where they're fusing over the profits.

3 And so my client would respectfully argue that while
4 that letter is troublesome it's not favorable in the
5 sense that it doesn't put my client on notice that Jayma
6 is refusing to honor the agreement.

7 Now, had Jayma's attorney replied to this letter and
8 said we're absolutely not providing you any records and
9 we disagree with all of your allegations, you know, that
10 there would be a strong argument there that would have put
11 my client on notice. But when these two parties are still
12 communicating back and forth and arguing over the profits,
13 my client would allege he had -- wouldn't have reasonable
14 knowledge to know through diligence that he had been
15 harmed.

16 And then lastly, your Honor, and this I believe is
17 my strongest point in regards to the three-year argument,
18 that Defendant Jayma admits on his own responsive pleadings
19 in paragraphs 94 and 96, that the damages from the case
20 cannot be determined until the interest on the home
21 equity line of credit with a hundred and ninety-four
22 thousand dollar second mortgage has been paid off.

23 So it wasn't satisfied until May 15th of 2012 as
24 evidenced by Exhibit B here. So, my client couldn't know
25 the harm that he had received for this law suit until

1 this was determined, until that line of credit was paid
2 off and we could ascertain the damages from it.

3 So those are my arguments, your Honor. I won't
4 reiterate or I'll rest there. Thank you.

5 THE COURT: I do not see a copy of the deed. I see a
6 copy of the mortgage, I do not see a copy of the deed.

7 Is it important that I have a copy of the deed?

8 MR. COOK: Yes, sir.

9 THE COURT: And that's the instrument you are
10 claiming under the twenty years.

11 MR. COOK: Yes, sir, your Honor, and this is attached
12 to the complaint.

13 THE COURT: Well not to my copy.

14 MR. COOK: I apologize.

15 THE COURT: That's all right. Unless I've got another
16 one.

17 MR. COOK: No, sir.

18 THE COURT: Okay. All right, Mr. Martens.

19 MR. MARTENS: Very briefly, your Honor. Let me first
20 respond to the comment about what's in the pleadings of
21 damages not being ascertained.

22 As the Court's aware I took over this case from
23 another attorney so I don't know what the other attorney
24 meant when he drafted those pleadings. They're simply
25 pleadings. My client has counter-claims for the damages

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1 bifurcate the issues and dismiss those tort claims, my client
2 would certainly request for the recovery of the real property
3 to remain.

4 This is an action for the recovery of real property.

5 My client deeded out his family land to Mr. Jayma
6 in this agreement with an understanding that that
7 land would be deeded back to him and the profits for this
8 case would be disbursed. That hasn't happened. This
9 isn't just a three year statute of limitations case on a
10 contract, your Honor. There's a mortgage involved that
11 has a seal and the deed as well my client would
12 respectfully, your Honor, argue, your Honor.

13 And I don't want to start handing up the litany of
14 cases that's cited in *Lyons* but I would like to hand up
15 one of them, your Honor, which is *Carmichael* that's
16 mentioned in *Lyons* as well. But just to show your Honor,
17 there are several of these cases that deal with mortgages
18 and deeds that have a dispute over the mortgage and the
19 deed. Whether my client is foreclosing on it or not
20 which, you know, I would argue it's obviously not a
21 foreclosure action, but it's still an action that has the
22 subject matter of the case being a sealed instrument and
23 a deed and a mortgage.

24 In regards to the deed, the deed has more importance
25 than just the allegations of fraud. In my complaint my

1 client alleges that there was only one witness and that
2 the execution of the deed occurred improperly but that's
3 not what I'm arguing here.

4 A three year statute of limitations would apply
5 perhaps to that argument, but I'm arguing that the subject
6 matter of the property is the deed. Thank you, your Honor.

7 THE COURT: All right. I have a bedrock question.

8 Does the twenty-year -- How would the twenty-year
9 statute of limitations apply to the grantee? The grantee
10 didn't sign anything under seal. But it seems to me that
11 the twenty-years run as to the person that signed -- the
12 grantor in this case -- that signed something under seal.

13 Do any of the cases that you have found indicate that
14 twenty-years run against someone who didn't even sign a
15 sealed instrument or just the recipient of some benefit
16 from a sealed instrument?

17 MR. COOK: To be candid, your Honor, I didn't look
18 at the cases with that in mind and my copy is not in front
19 of me. I'd be glad to read through it. I handed it to
20 your Honor. I do believe in my candor that some of the
21 cases are brought by the mortgagor, that would not have
22 signed the deed in that action but I'm not --

23 THE COURT: Well the document because the mortgagor
24 would sign the mortgage.

25 MR. COOK: Yes, sir, but not the deed.

1 me and cussing him.

2 Q Did they know you had done this before?

3 A Yes.

4 Q Were they upset with you about the first time
5 you did it?

6 A No.

7 Q Because you got the property back the first
8 time.

9 A Absolutely, a man of his word.

10 Q And the second time you weren't able to pay
11 back the money so you couldn't get your property back.

12 A He didn't sell the house. I was to build it,
13 and he was to sell it. He didn't do it.

14 Q If the house sells, all this will be great.

15 A Yeah.

16 Q If for some reason it doesn't sell, like you
17 having to take it off the market, then there should be
18 a time set for this to happen. At the time you wrote
19 this letter in January of 2007, did you believe that
20 everything you had in there was accurate?

21 A Yes, I did at that time.

22 Q Were you and Mr. Jayma starting to have
23 difficulties with one another by January of 2007?

24 A He's hiding so much stuff from me, like the sale
25 of the lots and forging my name on documents. I don't

1 know when the snowball started rolling exactly. There
2 came a time, yes.

3 Q When did you start to suspect that Mr. Jayma
4 was cheating you?

5 A In what way?

6 Q In any way.

7 A Forging my name?

8 Q In any way. When did you start to suspect that
9 Mr. Jayma was cutting you out of your share of the
10 partnership profits?

11 A Well, I always counted on him to pay me so I
12 don't know. He paid me on two lots. I thought he was
13 going to pay me on all of them. I'm the one that picked
14 them out. I did the leg work. He did go get the loan,
15 but I'm doing all the work so I just thought he was going
16 to pay me.

17 Q Is it safe to say that by January 18, 2007,
18 you and Mr. Jayma were starting to have problems with
19 one another, at the time you wrote this letter?

20 A Like I said, I don't recall. He's hiding so
21 many things from me. I didn't know what was going on.

22 Q When did you start to suspect that Mr. Jayma
23 was hiding things from you, Mr. Wilson?

24 A I don't recall exactly. I counted on him to
25 pay me. He paid me on 52 and 53 and then he stops paying

1 after seeing that forgery. You know, I expected him to
2 be a man of his word. I expected him to pay me. I was
3 waiting on payment. He's out there forging documents.
4 That's not the only forgery.

5 Q Why didn't Nexsen Pruet file a lawsuit on your
6 behalf in September of 2008?

7 A Well, I was waiting on Jayma to produce --
8 what he asked for, cease the sale, reconvey the 63 acres
9 free and clear.

10 Q Did he do any of that?

11 A Jayma didn't do any of it.

12 Q Then why didn't you sue him in 2008?

13 A I thought he was going to -- He was going to
14 furnish me the books and records, and he never did. Like
15 on the records, to see how much money.

16 Q Why did you think he was going to do that,
17 Mr. Wilson?

18 A Be a man of his word. We were partners.

19 Q What was his word? This is a demand letter
20 that says, cease the sale and pay my client a bunch of
21 money or we're going to sue you. That's what this letter
22 says, in effect, doesn't it?

23 A Say pay me a bunch of money. It says, right
24 the wrong.

25 Q Please contact me at your earliest convenience

1 A To see how the case came out. We asked for
2 documentation. I didn't know Jayma had gone to the
3 bank and convinced somebody to get that money. We don't
4 know how he got it. That's got to come out. How did
5 he get this check? How did he convince First Charter
6 to issue a check in my company name, and Jayma signed
7 my name on it.

8 Q It might take an all out investigation to
9 determine how and who you deceived and tricked into doing
10 what they did for you, and who forged my name on First
11 Charter's check. I want to make clear. We're talking
12 about the check that you received in January of '08.

13 A Yes.

14 Q Two felonies were committed in forging my name
15 on that \$30,000.00 check. Do you believe that to be true?

16 A Well, I got the information from his wife. She
17 told me about what -- She's not a lawyer. I was just
18 using the information she gave me.

19 Q What information did you get from Mr. Jayma's
20 wife?

21 A I asked her if she recognized my signature on
22 it, and she said, no, but she recognized Jayma's on there.

23 Q When did you talk to Mr. Jayma's wife?

24 A Before I wrote this letter, but I don't know
25 when I wrote the letter.

1 planned. There were significant delays. There were cost
2 over runs. A CO for the completion of the house was not
3 issued by Union County until April of 2007. By the time
4 the house was completed these two men were not talking with
5 each other unless they had to. And when they spoke with
6 one another it was usually in writing.

7 Once the house was completed my client set out to
8 market and sell it. Eventually he got a contract on it in
9 late 2008. We know, and this is undisputed, that in
10 October of 2007 Mr. Wilson contacted the construction
11 lender to request a draw on the construction loan.
12 According to Mr. Wilson's testimony he was told at that
13 time there is no more money, Mr. Jayma took the last of it
14 in May of this year. And according to Mr. Wilson's
15 testimony the construction lender also told him, I don't
16 know how Mr. Jayma did that, it wasn't done properly, you
17 should have someone look -- you should look into that.

18 In January of 2008 Mr. Wilson obtained a copy of the
19 final construction draw check from the construction lender,
20 and according to his testimony when he reviewed that check
21 he realized that his signature had been forged. We know
22 that -- His endorsement had been forged, excuse me. We
23 know that on March 6th of 2008 Mr. Wilson sent an eight
24 page --

25 THE COURT: What was that date again? That last date

1 you said.

2 MR. MARTENS: March 6th, 2008. On March 6th, 2008 Mr.
3 Wilson sent an eight-page fax to my client. It included a
4 copy of the last construction draw check with handwritten
5 notes. Among other things it says that I have sought legal
6 counsel from attorney Doug Underwood. He said there are
7 two felonies, one for forgery, one for uttering, someone
8 has done the crime and they've gotten away with it since
9 May of 2007.

10 I will be pursuing what went on at First Charter. It
11 was not closed the right way to the detriment of Mark
12 Wilson. He also says, I signed over with no legal
13 representation to an attorney that you have used many
14 times, not twenty-five acres, but my sixty-three acres with
15 absolutely no money changing hands, and you said you were
16 snickered too. I have been deceived, defrauded, tricked,
17 and shammed. That fax was sent by Mark Wilson on March
18 6th, 2008 to my client.

19 In September of 2008 on the eve of closing, my client
20 received a letter from the Nexsen Pruet Law Firm, and the
21 Nexsen Pruet Law Firm a certified return receipt requested
22 first-class mail and a first-class mailed letter. Nexsen
23 Pruet said that they were representing Mr. Wilson. They
24 say that it is clear you two created a partnership to
25 develop the Strike the Gold Property, you're obligated to

1 would be held liable for his misconduct.

2 Your Honor, this law suit was not filed until April
3 5th, 2012 over three and a half years after the letter from
4 Nexsen Pruet. More than four years after the letter
5 initial fax from Mr. Wilson accusing my client of wrong.
6 And over four years from the date Mr. Wilson first contends
7 he discovered his endorsement had been forged on that draw
8 check.

9 The plaintiff's claims in this law suit relate
10 entirely to the parties purported partnership, and they're
11 all based upon the alleged acts, or omissions, of my client
12 that occurred during the course of that partnership.

13 The undisputed evidence establishes that Mr. Wilson
14 knew, or reasonably should have known, that he had claims
15 against my client as early as January of 2008, perhaps as
16 early as October of 2007. And certainly by the time he had
17 met with Attorney Doug Underwood and the Nexsen Pruet Law
18 Firm. Mr. Wilson knew and had legal counsel that said you
19 have claims to be pursued here, yet, he didn't pursue them
20 until April of 2012.

21 We believe that each of these claims -- His claims
22 include breach of a duty as a partnership, unjust
23 enrichment. They allege that my client absconded with
24 partnership assets, and there's a claim for negligent
25 misrepresentation, and then there's a fifth cause of action

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF LANCASTER)

NO TITLE EXAMINATION

KNOW ALL MEN BY THESE PRESENTS THAT, I, **F. Mark Wilson, Jr.**, herein referred to as Grantor(s) for and in consideration of **Five Dollars and no/100 (\$5.00)** paid by **Keith Jayma**, hereinafter referred to as Grantee(s) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee(s) all of the following real estate to-wit:

See attached Exhibit A for legal description.
(which is incorporated herein by reference)

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantee(s)' Address:

1631 Sharon Lakes Rd. Suite D.
Cherokee NC 28510

Tax Map No:

0037-00-003-00

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee(s), his heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor(s)' successors, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee(s), his heirs and assigns, against Grantor(s) and Grantor(s)' successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

RECORDED THIS 15th DAY
OF NOVEMBER, 2005
IN BOOK O PAGE J-01

Cheryl Morgan

Auditor, Lancaster County, SC

WITNESS our Hand and Seal this 4th day of November 2005.

Signed, Sealed and Delivered
in the Presence of:

Lula Hardin

Witness #1

F. Mark Wilson, Jr.

F. Mark Wilson, Jr.

Greta M. Neal

Notary Public

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that (s)he saw the within-named Grantor(s) sign, seal and as their act and deed deliver the within-written Deed for the uses and purposes, therein mentioned, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 4th
day of November, 2005.

Lula Hardin

Greta M. Neal

Notary Public for South Carolina

My Commission expires: _____

GRETA M. NEAL
NOTARY STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES:
MAY 14, 2014

West 391.30 feet to a nail found, a common corner with the Douglas A. Wise property (47/131 Plat 99/354 Tax Parcel 37-3.03); thence with the said Wise property, two calls as follows: 1st North 27-38-36 West 695.83 feet (crossing an iron found at 33.07 feet) to an iron found; South 72-21-57 West 537.12 feet to an iron found, a common corner with the Timothy P. Cauthen property (57/248 Plat 15257 Tax Parcel 37-3.02); thence with the northern boundary line of the said Cauthen property, South 74-58-18 West 624.93 feet to an iron found, a common corner with the Frank P. Lopez property (W9/279 Plat 11568 Tax Parcel 37-3.04); thence with the northern boundary line of the said Lopez property, North 78-14-33 West 571.28 feet to an iron found, a common corner with the Gregg P. Shipston property (X8/122 Plat 10649 Tax Parcel 37-3.01); thence with the said Shipston property, two calls as follows: 1st North 13-00-38 West 261.76 feet to an iron found; 2nd North 89-12-45 West 648.11 feet to an iron found in the centerline of the 66' right of way of S.C. Mockingbird Lane (50' right of way of N.C. Gus Eubanks Road); thence with said centerline, six calls as follows: 1st North 06-16-21 East 283.54 feet to a point; 2nd North 06-16-36 East 21.51 feet to a point; 3rd North 01-13-15 East 83.39 feet to a point; 4th North 08-55-51 West 93.43 feet to a point; 5th North 10-15-40 West 120.35 feet to a point; 6th North 03-38-50 West 79.92 feet to a point, a common corner with the Gladys Autry property; thence with the southern boundary line of the said Gladys Autry property, South 87-10-52 East 534.71 feet to an iron found, a common corner with the Richard Autry property (372/336); thence with the southern boundary line of the said Richard Autry property, South 85-47-19 East 1,393.75 feet to an iron found in the southern boundary line of the Richard Autry, Jr. property (461/141); thence with the said southern boundary line of the Richard Autry, Jr. property, South 85-43-56 East 897.45 feet to an iron found, a common corner with the Edwards Wood Products property (450/587); thence with the said Edwards property, North 89-45-41 East 787.65 feet (crossing an iron set at 757.65 feet) to a point in the centerline of the Lynches River; thence with the centerline of Lynches River, twelve calls as follows: 1st South 51-42-41 West 67.13 feet to a point; 2nd South 30-42-50 West 47.29 feet to a point; 3rd South 09-40-29 West 41.97 feet to a point; 4th South 30-59-50 West 136.56 feet to a point; 5th South 36-29-25 West 128.10 feet to a point; 6th South 31-04-26 West 295.20 feet to a point; 7th South 65-50-11 West 98.47 feet to a point; 8th South 38-37-40 West 41.27 feet to a point; 9th South 15-40-34 West 140.22 feet to a point; 10th South 04-55-30 West 39.41 feet to a point; 11th South 16-49-06 East 47.69 feet to a point; 12th South 17-07-30 West 86.41 feet to the point and place of BEGINNING and containing approximately 62.69 acres as shown on that survey by Thomas M. Park, S.C.R.L.S., dated November 27, 2000 and being the same property conveyed to Grantor in Deed Book C6/4835 Tax Parcel 37-3.00.

Being the identical property conveyed to C. Ingram Walters by Deed of F. Mark Wilson, Jr., a/k/a Frederick Wilson, Jr. dated May 1, 2001 and recorded May 2, 2001 in Deed Book 117 Page 140, Register of Deeds Office for Lancaster County, South Carolina.

II. Sealed Instrument, the "Title to Real Estate"; as outlined in Appellant's amended Brief pages 4-5.

There are significant issues surrounding the execution of the Title to Real Estate, admitted into evidence in the transcript by attorney Keith Martens p 7 lines 24-25 and p 8 lines 1-3. The evidence recorded in the transcript that, yes, there was a genuine dispute of the facts, and that there was a disputed tract;

- (1) The legal description was attached after the execution of the instrument by the law firm of Blackmon Huckabee and to this date has never been signed or initialed by Appellant as recorded, entered into evidence by attorney Keith Martens p 8 lines 7-12, in an attempt to fraudulently deceive Appellant and take his land;
- (2) That there was no witness present; Lula Hardin, who has fraudulently signed the instrument as Witness #1 and was attested to. This was admitted into evidence in the transcript by attorney Keith Martens p 8 lines 8-9 and by attorney David Cook p 25 lines 24-25 and p 26 lines 1-2.
- (3) That there were no attorneys present representing either party, admitted into evidence by attorney Keith Martens p 10 lines 12-15 and;
- (4) That there was absolutely "no consideration" given for the 63-acre farm to Appellant, admitted into evidence by attorney Keith Martens p 10 lines 14-15, and should be most troubling to the Court. The "Title to Real Estate" was neither a gift nor a conveyance for a fair consideration. The purpose of the deed was to allow Respondent to obtain financing in furtherance of the partnership. The "Disputed Tract" was mortgaged and financing to pay partnership expenses was obtained. The mortgage to SunTrust Bank was marked satisfied, leaving the "Disputed Tract" unencumbered. It would be fraud for Respondent to continue to maintain unencumbered ownership of Appellant's property under the circumstances.
- (5) Evidence was recorded in Appellant's deposition that Respondent was approved for a loan of 25 acres, not the 63 acres that were erroneously conveyed to him, p 115 lines 16-25, p 126 lines 20-25 and p 127 lines 1-3. Judge Hayes, in his order, referred to the deeded property as (the "Disputed Tract") p 1 end of the 2nd paragraph. Motions are ordinarily denied upon a showing of the existence of a genuine issue of material fact in dispute.

The Title to Real Estate in this case mentions "Seal" and "Sealed" three (3) times: "WITNESS our Hand and Seal this 4th day of November 2005"; "Signed, Sealed, and Delivered in the Presence of"; and "Personally appeared before me the undersigned and made oath that (s)he say the within Grantor(s) sign, seal and as their act and deed deliver the written Deed..."

Based on legal precedent, the subject Title to Real Estate is a "sealed instrument" and this suit to construe the validity thereof should be determined on the merits. Judge Hayes' order denies the opportunity to have the parties' interests under the Title to Real Estate properly evaluated and determined.

Attorney Keith Martens “personally answered” the reason for this lawsuit and entered it as evidence at the Appellant’s deposition:

p 102 line 16: “I mean, that’s what this lawsuit is about,”

p 102 line 17: “Right?”

p 102 line 18: “What?”

p 102 line 19: “You transferring 63 acres instead of 25.”

P 102 line 20: “Yeah.”

Attorney David Cook entered: (1) the CONTRACT, (2) the Mortgage, (3) the Deed and (4) the Note into evidence in a series of arguments in the transcript, beginning on p. 14 lines 17-25.

“Your Honor, my main argument in defense of the Statute of Limitations is that—well, I have three arguments.”

“Firstly, your Honor, I would allege that the statute that’s applicable here is the twenty year statute regarding sealed instruments, and that would be 15-3-520 which reads and that within twenty years; an action upon a bond or other contract in writing is secured by the mortgage of real property.”

Secondly, Page 15 lines 7-12, “Essentially, your Honor, my client’s arguing that the mortgage and the deed, and the note, that this case is based on are sealed instruments.” South Carolina’s 20 year and 10 year statute of limitations are applicable in Appellant’s lawsuit, p 14 lines 21-25 citing SC 15-3-520 and SC 15-3-520(b). P 15 lines 3-23 as prescribed in 36-2-725, P 17 lines 19-25, SC Statute 15-3-340 Action by an Individual for Recovery of Real Property, continued on p 18 lines 1-15, “And I would argue that this lawsuit is, for one, for the recovery of real property because we’re requesting the recovery of the sixty two acres that were deeded out my client would allege improperly.... And under those two statutes, your Honor, my client would argue that this case would well be within the statute of limitations for either the twenty or the ten year statutes.”

Attorney Cook continues “Finally, your Honor,” p 18 lines 1-25 and p 21 lines 1-12.

Attorney Martens stated, p 23 lines 9-19.

Attorney Martens stated, p 24 lines 1-6, “an action to set aside a deed for the basis of fraud, and that a shorter, at the time a six-year statute of limitations should apply.” All of the above statutes of limitations carry a longer time to file a lawsuit rather than the standard 3 year statute imposed by Judge Hayes.

Attorney David Cook continues, p 25 lines 1-25, line 1 “my client”, p 26 lines 23-25, p 27 lines 13-20. Attorney David Cook’s argument is continued on the entire pages of 15, 16, 17, 18, 19, and 20 of the 8-23-17 transcript. Continued on p 25 lines 5-7, “My client deeded out his family

land to Mr. Jayma in this agreement with an understanding that the land would be deeded back to him..." P 25 line 10, "There is a mortgage involved that has a seal and the deed as well..."

The fact that attorney Martens states and admits into evidence in the transcript page 10 lines 12-16, that Respondent even told Appellant that he had been snookered too; lines 15-16 "and you said you were snickered too" about the entire 63 acre tract that was erroneously transferred rather than 25 acres and "with absolutely no money changing hands", lines 6-7, proves there were genuine issues of material fact surrounding the Title to Real Estate that the Court cannot ignore.

The reason for this lawsuit was also admitted by attorney David Cook in the transcript, p 25 line 4-12. The Title to Real Estate which erroneously conveyed the 62-acre farm is a "Sealed Instrument" which is subject to South Carolina's 20-year statute of limitations for actions upon sealed instruments; and Appellant is entitled to have the issues surrounding the Title to Real Estate fully adjudicated. The issues and the laws that may have been broken surrounding the way that this land transfer was executed and recorded by a South Carolina attorney, Blackmon Huckabee, has to be most troubling to this court. Judge Hayes erred in his order for summary judgement which denies the opportunity to have the Appellant's interest under the Title to Real Estate to be properly evaluated and determined. Therefor, Judge Hayes' order for summary judgement should be reversed.

Respondent's Initial Brief and the Order Granting Summary Judgment, both of which were obviously prepared by Attorney Martens, miss the point. The Title to Real Estate, on which Appellant (as signor) is the *bound party*¹ (according to Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct.App. 2015), and it is a sealed instrument (also according to Lyons and the various cases cited therein). One of those cases, Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct.App. 1996), makes it clear that a "non-sealed" instrument may be shown to be intended to be a "sealed instrument." In Treadaway, the Court concluded that the language included in the agreement "manifested the parties' intent to create a seal instrument." That language was the standard attestation clause: "In WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals" along with the following standard language: "SIGNED SEALED AND DELIVERED IN THE PRESENCE OF." ("Seals" or Sealed" mentioned twice).

In comparison, the said Title to Real Estate in this case mentions "Seal" and "Sealed" three (3) times: "WITNESS our Hand and Seal this 4th day of November, 2005;" "Signed, Sealed and Delivered in the Presence of;" and "Personally appeared before me the undersigned and made oath that (s)he saw the within Grantor(s) sign, seal and as their act and deed deliver the written-written Deed"

Based upon legal precedent, the subject Title to Real Estate is a "sealed instrument;" and this suit to construe the validity thereof should be determined on the merits. Judge Hayes' Order denies the opportunity to have the parties' interests under the Title to Real Estate properly evaluated and determined.

There are significant issues surrounding the execution of the Title to Real Estate, but Appellant's argument that the legal description was attached after the execution of the instrument should be most troubling to the Court. Judge Hayes was troubled by this issue. In his Order, he referred to the deeded property as the "Disputed Tract." This terminology is interesting in light of the decision being made on a Motion for Summary Judgment, which Motions are ordinarily denied upon a showing of the existence of a genuine issue of material fact in dispute.

Also, this Title to Real Estate was, from all appearances, neither a gift nor a conveyance for a fair consideration. The purpose of the deed was to allow Respondent to obtain additional financing in furtherance of the parties' partnership. The "Disputed Tract" was mortgaged and financing to pay partnership expenses was obtained. The mortgage to SunTrust Bank was subsequently marked satisfied, leaving the "Disputed Tract" unencumbered. It would be fraud for Respondent to continue to maintain ownership of Appellant's property under the circumstances. As the Title to Real Estate is a "sealed instrument," the 20-year statute of limitations is applicable; and Appellant is entitled to have the issues surrounding the Title to Real Estate fully adjudicated.

¹ Interestingly, Judge Hayes' Order found that "Jayma is not the 'bound party' of 'the deed to the Disputed Tract. Of course, he is not a bound party. He didn't sign the deed. Appellant signed the deed as the sole grantor (sole bound party)." P. 115.

1 issue in this case has to do with the fifth lot, a lot that
2 was purchased in a high-end subdivision up in Union County,
3 North Carolina, and I guess fittingly named Strike the Gold
4 Lane was the address.

5 The parties decided they were going to purchase a lot
6 on Strike the Gold Lane; that Mr. Wilson would build a
7 house, a spec house on the land. They projected that --
8 initially projected that the cost of all this would be a
9 million dollars. They closed on the lot on September 19th
10 of 2005 and at that time my client also obtained a one
11 million dollars construction loan. Shortly after the
12 initial closing they determined that that wasn't going to
13 be enough to build the house they wanted to build.

14 On September 6th, 2005 Mr. Wilson wrote my client and
15 he proposed that he owned a piece of property in Lancaster
16 County, South Carolina, that he would deed, and I think the
17 amount is in dispute, but for purposes of this motion we
18 will assume that his proposal was that he would deed a
19 portion of that land to my client; that my client could
20 then go out and borrow money using that land as collateral,
21 and they would be able to use that additional money to help
22 fund the construction of this property on Strike the Gold
23 Lane.

24 In November of 2005 Mr. Wilson met with a paralegal
25 for Attorney Blackmon Huckabee while he was getting his oil

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1 changed at a local car dealership. At that meeting Mr.
2 Wilson signed a deed. That deed is attached to the
3 affidavit of Keith Jayma that we have filed in support of
4 this motion. I believe it's Exhibit B to that affidavit,
5 your Honor.

6 Mr. Wilson says that he did not read the deed. There
7 was no legal description for the property attached at the
8 time he executed it and the only two people who where there
9 when he signed the deed were Mr. Wilson and this paralegal.

10 Mr. Wilson contends that he thought he was deeding
11 twenty-five acres of land to my client and in fact the deed
12 that was ultimately recorded was for sixty-three acres.

13 And that deed was recorded in 2005.

14 After that land was conveyed to Mr. Jayma, Mr. Jayma
15 went out and obtained another loan for a hundred and
16 ninety-four thousand dollars which was --

17 THE COURT: How much was that? Eight hundred and
18 ninety-four?

19 MR. MARTENS: No, your Honor. One hundred and ninety-
20 four. One hundred and ninety-four thousand.

21 So by this point they had -- my client in his
22 individual name had borrowed the total of one million, one
23 hundred and ninety-four thousand dollars. I think that
24 both men believed that would be enough to complete the
25 construction of this house. Construction did not go as

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1 bifurcate the issues and dismiss those tort claims, my client
2 would certainly request for the recovery of the real property
3 to remain.

4 This is an action for the recovery of real property.

5 My client deeded out his family land to Mr. Jayma
6 in this agreement with an understanding that that
7 land would be deeded back to him and the profits for this
8 case would be disbursed. That hasn't happened. This
9 isn't just a three year statute of limitations case on a
10 contract, your Honor. There's a mortgage involved that
11 has a seal and the deed as well my client would
12 respectfully, your Honor, argue, your Honor.

13 And I don't want to start handing up the litany of
14 cases that's cited in *Lyons* but I would like to hand up
15 one of them, your Honor, which is *Carmichael* that's
16 mentioned in *Lyons* as well. But just to show your Honor,
17 there are several of these cases that deal with mortgages
18 and deeds that have a dispute over the mortgage and the
19 deed. Whether my client is foreclosing on it or not
20 which, you know, I would argue it's obviously not a
21 foreclosure action, but it's still an action that has the
22 subject matter of the case being a sealed instrument and
23 a deed and a mortgage.

24 In regards to the deed, the deed has more importance
25 than just the allegations of fraud. In my complaint my

1 client alleges that there was only one witness and that
2 the execution of the deed occurred improperly but that's
3 not what I'm arguing here.

4 A three year statute of limitations would apply
5 perhaps to that argument, but I'm arguing that the subject
6 matter of the property is the deed. Thank you, your Honor.

7 THE COURT: All right. I have a bedrock question.

8 Does the twenty-year -- How would the twenty-year
9 statute of limitations apply to the grantee? The grantee
10 didn't sign anything under seal. But it seems to me that
11 the twenty-years run as to the person that signed -- the
12 grantor in this case -- that signed something under seal.

13 Do any of the cases that you have found indicate that
14 twenty-years run against someone who didn't even sign a
15 sealed instrument or just the recipient of some benefit
16 from a sealed instrument?

17 MR. COOK: To be candid, your Honor, I didn't look
18 at the cases with that in mind and my copy is not in front
19 of me. I'd be glad to read through it. I handed it to
20 your Honor. I do believe in my candor that some of the
21 cases are brought by the mortgagor, that would not have
22 signed the deed in that action but I'm not --

23 THE COURT: Well the document because the mortgagor
24 would sign the mortgage.

25 MR. COOK: Yes, sir, but not the deed.

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1 you said.

2 MR. MARTENS: March 6th, 2008. On March 6th, 2008 Mr.
3 Wilson sent an eight-page fax to my client. It included a
4 copy of the last construction draw check with handwritten
5 notes. Among other things it says that I have sought legal
6 counsel from attorney Doug Underwood. He said there are
7 two felonies, one for forgery, one for uttering, someone
8 has done the crime and they've gotten away with it since
9 May of 2007.

10 I will be pursuing what went on at First Charter. It
11 was not closed the right way to the detriment of Mark
12 Wilson. He also says, I signed over with no legal
13 representation to an attorney that you have used many
14 times, not twenty-five acres, but my sixty-three acres with
15 absolutely no money changing hands, and you said you were
16 snickered too. I have been deceived, defrauded, tricked,
17 and shammed. That fax was sent by Mark Wilson on March
18 6th, 2008 to my client.

19 In September of 2008 on the eve of closing, my client
20 received a letter from the Nexsen Pruet Law Firm, and the
21 Nexsen Pruet Law Firm a certified return receipt requested
22 first-class mail and a first-class mailed letter. Nexsen
23 Pruet said that they were representing Mr. Wilson. They
24 say that it is clear you two created a partnership to
25 develop the Strike the Gold Property, you're obligated to

Keith Jayma

From: "Joannah Thompson" <ThompsoJ@firstcharter.com>
 To: "Keith Jayma" <keith@lendinglocal.com>
 Sent: Thursday, September 15, 2005 2:43 PM
 Subject: RE: 25 acres

Joannah B. Thompson
 Vice President
 Consumer Loan Officer

FIRST
CHARTER
 INVESTMENT SERVICES

Mailing Address:
 P.O. Box 37937
 Charlotte, NC 28237-7937
 thompsoj@firstcharter.com

6310 Fairview Road
 Charlotte, NC 28210
 704-688-1424
 704-367-5461 Fax
 704-408-7210 Cell

Financial, Retirement, College Planning • Life/Long Term Care Insurance
 Securities offered by UVEST Investment Services
 Member NASD, SIPC

Got you approved. Just waiting for an address to send out an appraiser.
 When will the property be deeded to you? Can you get me a copy of the
 book and page once it is recorded?
 Can you send me your latest pay stub?

65% of appraised value.
 7.25% fixed
 24 months interest only

Here are your other choices:

Fixed Rate	Variable Rate	Term
7.625	N/A	120 months
7.125	p + .25	240 / 60

From: Keith Jayma [mailto:keith@lendinglocal.com]
 Sent: Thursday, September 15, 2005 9:44 AM
 To: Joannah Thompson
 Subject: Re: 25 acres

Mark's number is 704-321-5230.

He can work the details with you. Did you talk to him?

----- Original Message -----

From: Joannah Thompson
 To: Keith Jayma
 Sent: Thursday, September 15, 2005 9:34 AM
 Subject: RE: 25 acres

Ok. Mark is getting an address for me. I'm going to give it a value of \$200k and see what it appraises for.

From: Keith Jayma [mailto:keith@lendinglocal.com]
 Sent: Thursday, September 15, 2005 9:37 AM
 To: Joannah Thompson
 Subject: Re: 25 acres

An appraiser said it was worth about 7K to 8K per acre. However, I do not think Mark has a current appraisal.....Also, I think the property is in South Carolina. Mark's acreage is like Carowinds, its on the border, some in NC, some in SC.

Keith

----- Original Message -----

From: Joannah Thompson
 To: Keith Jayma

1 Q Someone removed my signature from the
2 construction contract that I furnished to you as a
3 licensed general contractor. Tell me what you meant by
4 that?

5 A I could have signed it, and the copy he gave
6 to me didn't have my signature. I don't think I would
7 have signed it without him signing it. So that may be
8 inaccurate.

9 Q All of this supposedly orchestrated at your
10 direction for each and every bank and loan officer you
11 dealt with. I don't know how you did it all. It will
12 have to come out in discoveries and depositions. Do you
13 believe those to be true statements at the time you wrote
14 this letter?

15 A Yes.

16 Q I can get documentation and evidence from a
17 thorough investigation of all the bank records and from
18 the loan officers you dealt with directly, starting
19 first with Joannah Thompson. Who is Joannah Thompson?

20 A She's the loan officer that got him approved
21 for the 25 acre loan.

22 Q For the \$194,000.00 loan?

23 A No. Well, it wasn't going to be \$194,000.00.
24 It became \$194,000.00, but he didn't use Joannah. He
25 did something else. Joannah Thompson was 25 acres at

1 A To be honest, I think I took it of the Hispanic
2 fellow because he was getting my water.

3 Q Any other reason?

4 A At that time, that was the only reason. Looking
5 back now, I see it has Diana Jayma's name. There's a
6 for sale sign during early construction.

7 Q And that for sale sign was in the front yard?

8 A It's in the front yard.

9 Q Did you understand that the house wasn't
10 supposed to be for sale?

11 A No. The house was always for sale.

12 Q At some point during the construction, the
13 draw inspector said, this house isn't supposed to be for
14 sale.

15 A Right.

16 Q Did that concern you when he said that?

17 A The flag didn't go off at that time. I didn't
18 know what he was doing behind my back. I recall that ---
19 I didn't know he had financed it as his second home.

20 Q Continuing on to Page 5 you say, the money from
21 my land was for Mark and his girls, your quote to
22 Joannah Thompson as to the stated purpose of that loan.
23 It will be easy to prove in court and one of the very
24 first things to prove. Tell me what you meant by that?

25 A That's on the 25 acre loan that he got

1 approved for. He emailed and said, Keith, got you
2 approved. He told Joannah Thompson the reason for the
3 loan was for Mark and his girls.

4 Q Didn't the money go to Mark and his girls?

5 A Some of it did.

6 Q So what's wrong with that?

7 A I think he accused me of spending the money on
8 personal things.

9 Q Didn't you?

10 A I did, clothes, toiletries, food.

11 Q On Page 6 you say, you fire sold the house using
12 my farm as your safety net. Tell me what you meant by
13 that.

14 A That's what he told me he was going to do. He
15 said he didn't care what he sold it for. He'd tried to
16 sell it for 1.89 million. He tried it at 1.6, 1.5, and
17 he ended up selling it for 1.24. I had nothing to do
18 with it. As a partner, I should have had something to do
19 with the sales price.

20 Q Don't you think the market had something to do
21 with it, too?

22 A The market did turn down. There again, he
23 should have sold it.

24 Q When the market turned down, who was holding
25 the loan? Who was making the interest payments on the

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)

C/A No. 2012-CP-29-498

Plaintiff,)

v.)

ORDER GRANTING SUMMARY JUDGMENT

Keith Jayma,)

Defendants,)

2017 SEP 27 AM 11:40
CLERK OF COURT
LANCASTER, SC
OFFICE OF THE CLERK
J. H. Wilson

This case came before the court on August 15, 2017 for a hearing on Defendant Keith Jayma's motion for summary judgment, based upon expiration of the statute of limitations on each of Plaintiff's causes of action. For the reasons set forth below, I find and conclude that Plaintiff's entire complaint is time-barred and, therefore, GRANT summary judgment in favor of Defendant.

Relevant Facts

Wilson and Jayma began a business relationship in April 2005, when Jayma and a friend¹ made a \$32,000 loan to Wilson. The loan was evidenced by a written promissory note, and was secured by a mortgage covering 63+/- acre parcel of land that was owned by Wilson and located in Lancaster County, South Carolina (the "Disputed Tract").

In approximately August 2005, Wilson and Jayma continued their business relationship, when they formed a partnership to construct and sell a million-dollar speculative home in Union County, North Carolina. By the terms of their unwritten agreement, Wilson would serve as

¹ Jayma's friend, Wilbur Streeter, III, was originally named a defendant in this action. Streeter has since been dismissed.

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page 125.

1 about in Exhibit 12?

2 A Yes.

3 Q So that would mean you wrote Exhibit 12 sometime
4 after September 12 of 2008, right, because you refer to
5 that in this letter?

6 A I don't know the date.

7 Q Why did you go see Nexsen Pruet in 2008?

8 A Well, I wasn't happy with Mr. Jayma. I wanted
9 to talk to a lawyer about the conveying 63 acres instead
10 of 25 and not signing the description page and wanted to
11 talk about the issues I had.

12 Q Is it true that what you wanted to go talk to
13 somebody at Nexsen Pruet are the same issues you're suing
14 Mr. Jayma about in this lawsuit?

15 A I didn't follow you.

16 Q I mean, that's what this lawsuit is about,
17 right?

18 A What?

19 Q You transferring 63 acres instead of 25.

20 A Yeah.

21 Q You contend that Mr. Wilson didn't pay you
22 your rightful share of partnership profits?

23 A That's right.

24 Q What else is this lawsuit about, Mr. Wilson?
25 What else are you trying to accomplish here?

1 representation by the defendant that the claim is going to
2 be resolved outside of court, or, the defendant has to have
3 engaged in conduct that makes the plaintiff reasonably
4 believe the claim will be resolved outside of court. We
5 don't have any of that here.

6 We have demands that were made to my client, they were
7 not responded to, and as I said we also have evidence that
8 Mr. Wilson just said he couldn't afford to pursue the claim
9 at the time, and he waited until he had enough money to
10 bring the claim. And so, we think all these claims are
11 time barred and we're asking that the plaintiff's claims be
12 dismissed pursuant to the Statute of Limitations.

13 THE COURT: All right. Thank you. All right.

14 MR. COOK: May it please the Court, your Honor. And,
15 your Honor, my client would agree with all of the factual
16 recitations by opposing counsel.

17 Your Honor, my main argument in defense of the Statute
18 of Limitations is that -- Well, I have ~~three~~ arguments.

19 Firstly, your Honor, I would allege that the statute
20 that's applicable here is the twenty year statute regarding
21 sealed instruments, and that would be 15-3-520 which reads
22 and that within twenty years: an action upon a bond or
23 other contract in writing is secured by the mortgage of
24 real property. And then that's Subsection A.

25 Subsection (b) it relates to, an action upon a sealed

1 instrument other than a sealed note and personal bond for
2 payment of money only whereon the period of limitations is
3 the same as prescribed in 15-3-530, except that a sealed
4 contract for sale or another -- or an offer to buy or sell
5 goods whereon the period of limitations is the same as
6 prescribed in 36-2-725.

7 Essentially, your Honor, my client's arguing that the
8 mortgage and the deed, and the note, that this case is
9 based on are sealed instruments. And I've offered up the
10 the Lyle -- the Lyons case, your Honor, which is 415 S.C.
11 115. Also at 781 SE 2d 126. This is *Lyons versus Fidelity*
12 *National Title Insurance Company*.

13 Your Honor, this is a 2015 case which essentially
14 summarizes a lot of the case law on this point.

15 And I also printed off a lot of the cases that it
16 discusses but page 3 starts with the Statute of Limitations
17 analysis, your Honor, and in essentially the *Lyons* case
18 itself, your Honor, is -- Beg the Court's brief indulgence.

19 Well, and I don't want to get too far into the facts
20 of this other case, your Honor, but its dealing with --
21 it's asking whether a title insurance policy is a sealed
22 instrument upon which a law suit or the statute of
23 limitations for twenty years would apply.

24 But the analysis on page 3 from the Statute of
25 Limitations runs through a lot of what I'm arguing here,

1 your Honor. It basically -- It says that because these are
2 sealed instruments the statute of limitations is twenty
3 years and wouldn't be the three year statute of limitations
4 that opposing counsel's arguing is applicable.

5 Of course, your Honor, you know, the case law
6 runs through all the policies behind the Statute of
7 Limitations. And I may have accidentally handed up, your
8 Honor, if there's some red ink on your Honor's case the case
9 that I have --

10 THE COURT: No, mine doesn't have any red.

11 MR. COOK: I gave it to opposing counsel.

12 And so, essentially that's the crux of my argument,
13 your Honor. I don't want to just sit here and regurgitate
14 a bunch of the paragraphs in the case but essentially it
15 comes down to whether -- what's at stake in the law suit is
16 a sealed instrument. It says on page 4 in the second
17 paragraph, South Carolina Code 520(b) provides for a
18 twenty-year statute of limitations for an action upon a
19 sealed instrument other than a sealed note, et cetera,
20 and it reads out what I just recited.

21 We adhere to our general three year statute of
22 limitations the Court states for most contract actions and
23 acknowledged the availability of the twenty-year limitation
24 periods where contracts clearly evidence is an intent
25 to create a sealed instrument. We acknowledge South

1 Carolina has not specifically considered whether an
2 instrument -- an insurance policy is a sealed instrument
3 or not and it goes on to find that it was.

4 It says the sealed instrument is defined as an
5 instrument to which the bound party has a fixed personal
6 seal usually recognized is provided undisputable evidence
7 of the validity.

8 And so, your Honor, the mortgage and the deed which
9 are in evidence in opposing counsel's brief, as well as in
10 the pleadings, in my complaint, has a probate, the
11 mortgage has a probate on the back of it. And there's a
12 lot of things on point and Lyons discusses it that, you
13 know, just the phrase in witness whereof in and of itself and
14 by itself would not indicate a sealed instrument. But if
15 the instrument has either an actual seal, or the L.S.,
16 locus sigilli next to it, then it would be a -- instrument,
17 or if it's notarized it is probate as well as the deed that's
18 mentioned, your Honor.

19 So my client would argue that the twenty-year statute
20 applies in this matter feverishly. And he would in the
21 alternative, your Honor, also argue that there's a
22 ten-year statute that may be applicable. And I have that.

23 I have it right here in front of me, your Honor.
24 It's 15-3-340 Action by an Individual for Recovery of
25 Real Property.

1 And I would argue that this law suit is, for one, for
2 recovery of real property because we're requesting the
3 recovery of the sixty-two acres that were deeded out my
4 client would allege improperly.

5 And that statute I'm sure your Honor is aware of it
6 for the record states no action for the recovery of real
7 property, or for the recovery of the possession of
8 real property, may be maintained unless it appears that
9 the plaintiff, his ancestor, predecessor, or grantor, was
10 seized or possessed of the premises in question within ten
11 years before the commencement of the action.

12 And under those two statutes, your Honor, my client
13 would argue that this case would well be within the
14 statute of limitations for either the twenty or the ten
15 year statute.

16 Finally, your Honor, regarding -- If the Court's
17 inclined to apply the three year statute, my client has
18 an argument in those regards which are essentially outlined
19 in his affidavit that he filed with the motion, but he
20 basically argues in his affidavit that there's
21 communications between Defendant Jayma and my client as
22 late as 2011 where they're discussing the profits of this
23 job. And that's included as Exhibit A to my affidavit,
24 your Honor.

25 Looking through this email it shows that these

1 parties were, still years after the letters that were
2 discussed by opposing counsel, emailing back and forth
3 fighting over the profits, and they're agreement regarding
4 this matter, and so my client would argue that -- And its
5 not necessarily an estoppel argument but it kind of falls
6 within those lines. He's not claiming that necessarily
7 that Defendant Jayma is saying here, not giving any type
8 of indication that he'll settle this out of court but
9 he's still arguing over the profits and so my client would
10 argue that he hasn't been aware of his injury.

11 Furthermore, your Honor, the fact alone that -- in
12 regards to the Nexsen Pruet letter, the fact alone that --

13 Beg the Court's brief indulgence.

14 (PAUSE.)

15 MR. COOK: The fact alone that the letter was not
16 responded to isn't proof that my client should have known
17 that he was not -- that Jayma was not going to honor the
18 agreement. In other words, my client sends a letter to
19 him -- Jayma from a lawyer that ask for records and
20 alleges, you know, possible causes of action. The fact that
21 Jayma did not respond -- this is just one of my client's
22 arguments on this tier -- the fact that Jayma did not
23 respond to that letter doesn't put my client on notice
24 that there is a potential law suit that's ripe.

25 My client's still receiving emails back and forth

1 from him; even three years later they're still receiving
2 emails where they're fusing over the profits.

3 And so my client would respectfully argue that while
4 that letter is troublesome it's not favorable in the
5 sense that it doesn't put my client on notice that Jayma
6 is refusing to honor the agreement.

7 Now, had Jayma's attorney replied to this letter and
8 said we're absolutely not providing you any records and
9 we disagree with all of your allegations, you know, that
10 there would be a strong argument there that would have put
11 my client on notice. But when these two parties are still
12 communicating back and forth and arguing over the profits,
13 my client would allege he had -- wouldn't have reasonable
14 knowledge to know through diligence that he had been
15 harmed.

16 And then lastly, your Honor, and this I believe is
17 my strongest point in regards to the three-year argument,
18 that Defendant Jayma admits on his own responsive pleadings
19 in paragraphs 94 and 96, that the damages from the case
20 cannot be determined until the interest on the home
21 equity line of credit with a hundred and ninety-four
22 thousand dollar second mortgage has been paid off.

23 So it wasn't satisfied until May 15th of 2012 as
24 evidenced by Exhibit B here. So, my client couldn't know
25 the harm that he had received for this law suit until

1 this was determined, until that line of credit was paid
2 off and we could ascertain the damages from it.

3 So those are my arguments, your Honor. I won't
4 reiterate or I'll rest there. Thank you.

5 THE COURT: I do not see a copy of the deed. I see a
6 copy of the mortgage, I do not see a copy of the deed.

7 Is it important that I have a copy of the deed?

8 MR. COOK: Yes, sir.

9 THE COURT: And that's the instrument you are
10 claiming under the twenty years.

11 MR. COOK: Yes, sir, your Honor, and this is attached
12 to the complaint.

13 THE COURT: Well not to my copy.

14 MR. COOK: I apologize.

15 THE COURT: That's all right. Unless I've got another
16 one.

17 MR. COOK: No, sir.

18 THE COURT: Okay. All right, Mr. Martens.

19 MR. MARTENS: Very briefly, your Honor. Let me first
20 respond to the comment about what's in the pleadings of
21 damages not being ascertained.

22 As the Court's aware I took over this case from
23 another attorney so I don't know what the other attorney
24 meant when he drafted those pleadings. They're simply
25 pleadings. My client has counter-claims for the damages

1 he has suffered, and I believe that those paragraphs are
2 saying that he can't ascertain the amount of his damages
3 until the mortgage has been paid off.

4 And at any rate I don't believe that that extends
5 the statute of limitations at all.

6 Counsel's argument that there was correspondence, as
7 he describes it correspondence between Mr. Jayma and
8 Mr. Wilson running in 2010, 2011 arguing about profits.
9 Our courts have clearly held that even settlement
10 negotiations between the parties that don't result in
11 settlement, don't extend the statute of limitations. And I
12 would cite *Gadsden versus Southern Railway* for that
13 proposition 206 S.E.2nd 882.

14 Your Honor, with regard to this argument that this is
15 an action, either an action for recovery of property or an
16 action upon a sealed instrument, I believe in the cases
17 Mr. Cook is correct when the cases talk about unless
18 there's an actual seal the Court can look at the document
19 and determine what was the intent of the parties whether
20 it was intended to be a sealed instrument. I don't -- I
21 believe the Court's gonna have to make that decision. I'm
22 not sure it's even proper for me to tell you what the
23 what your conclusion of the law is as to that. But I think
24 there are - really are not being indicia that you see in
25 these other cases that these were intended to be sealed

1 instruments.

2 Furthermore with regard to the argument that this is
3 an action on a sealed instrument, an action on a sealed
4 instrument would be a suit on a mortgage, foreclose on a
5 mortgage, foreclose on the note. In these cases that
6 counsel has cited talk about one of the indicia being
7 continuing obligations. Your obligations of payment or
8 obligations of compliance.

9 I know one of the cases that counsel highlighted to me
10 and I'm not sure - I think it's mentioned in the case he
11 brought to the Court's attention - was a sealed Family Court
12 agreement where the father agreed that he was gonna pay for
13 the son's college education down the road and then he
14 rejigged on that agreement and the question was is there --
15 is the claim time barred or not.

16 The Court found that that continuing on-going
17 obligation was an indicia that they intended that to be
18 a sealed instrument and so therefore a longer statute of
19 limitations applied.

20 There's a 1953 case from the South Carolina Supreme
21 Court, *McKinnon versus Summers*, which is really very
22 similar to the arguments that Mr. Wilson is making here,
23 and in that case the plaintiff's were suing to cancel
24 deeds. The only argument that they were invalidly
25 executed, fraudulently executed, and in that case the

1 Court found that that was not an action on a sealed
2 instrument; that was an action to set aside a deed for the
3 basis of fraud, and that the shorter, at that time six-year
4 statute
5 of limitations, not a twenty-year statute of limitations
6 should apply.

7 And finally, even if the Court were inclined to --

8 Well, this is not simply an action for recover of
9 real property. If you look at the complaint they're
10 seeking damages, punitive damages, actual damages, attorney
11 fees, cost of the action. This is not simply an action
12 for recovery of real property. But even if the Court were
13 to find that this action includes a claim for recovery of
14 real property, that twenty-year statute of limitations is
15 not all encompassing.

16 The claims for damages, for breach of fiduciary duty,
17 for negligent misrepresentation, all of the things
18 by which they seek to hold my client liable in damages,
19 those are just straight-up tort claims and they're governed
20 by the three-year statute of limitations and they're time
21 barred unless you'd be dismissed even if the entire action
22 is not.

23 MR. COOK: I don't really have much of a comment on
24 the tort claims and if obviously, you know, my client
25 would request that, you know, if your Honor sees fit to

1 bifurcate the issues and dismiss those tort claims, my client
2 would certainly request for the recovery of the real property
3 to remain.

4 This is an action for the recovery of real property.

5 My client deeded out his family land to Mr. Jayma
6 in this agreement with an understanding that that
7 land would be deeded back to him and the profits for this
8 case would be disbursed. That hasn't happened. This
9 isn't just a three year statute of limitations case on a
10 contract, your Honor. There's a mortgage involved that
11 has a seal and the deed as well my client would
12 respectfully, your Honor, argue, your Honor.

13 And I don't want to start handing up the litany of
14 cases that's cited in *Lyons* but I would like to hand up
15 one of them, your Honor, which is *Carmichael* that's
16 mentioned in *Lyons* as well. But just to show your Honor,
17 there are several of these cases that deal with mortgages
18 and deeds that have a dispute over the mortgage and the
19 deed. Whether my client is foreclosing on it or not
20 which, you know, I would argue it's obviously not a
21 foreclosure action, but it's still an action that has the
22 subject matter of the case being a sealed instrument and
23 a deed and a mortgage.

24 In regards to the deed, the deed has more importance
25 than just the allegations of fraud. In my complaint my

1 client alleges that there was only one witness and that
2 the execution of the deed occurred improperly but that's
3 not what I'm arguing here.

4 A three year statute of limitations would apply
5 perhaps to that argument, but I'm arguing that the subject
6 matter of the property is the deed. Thank you, your Honor.

7 THE COURT: All right. I have a bedrock question.

8 Does the twenty-year -- How would the twenty-year
9 statute of limitations apply to the grantee? The grantee
10 didn't sign anything under seal. But it seems to me that
11 the twenty-years run as to the person that signed -- the
12 grantor in this case -- that signed something under seal.

13 Do any of the cases that you have found indicate that
14 twenty-years run against someone who didn't even sign a
15 sealed instrument or just the recipient of some benefit
16 from a sealed instrument?

17 MR. COOK: To be candid, your Honor, I didn't look
18 at the cases with that in mind and my copy is not in front
19 of me. I'd be glad to read through it. I handed it to
20 your Honor. I do believe in my candor that some of the
21 cases are brought by the mortgagor, that would not have
22 signed the deed in that action but I'm not --

23 THE COURT: Well the document because the mortgagor
24 would sign the mortgage.

25 MR. COOK: Yes, sir, but not the deed.

1 THE COURT: Well, but in this case Mr. Wilson signed
2 both.

3 MR. COOK: Yes, sir.

4 THE COURT: Every document I see is signed. He didn't
5 sign it under seal, it's signed by the plaintiff.

6 MR. COOK: Yes, sir, your Honor. What I mean to say
7 is, I believe, and I'm must being candid, there is case
8 law to that effect wherein the person that didn't sign
9 any of the documents proceeded with under the statute.

10 THE COURT: All right.

11 MR. COOK: But --

12 THE COURT: Well hand 'em up. I'll give you --

13 MR. COOK: Yes, sir. I've got *Treadaway* which is
14 479 S.E.2nd 849. I've got *South Carolina Department of*
15 *Social Services versus Winyah Nursing Homes*, these are
16 all mentioned in the *Lyons* case, 320 S.E.2nd at 464.

17 I've got copies for opposing counsel here as well.

18 *Carolina Marine Handling Incorporated versus Lasch*,
19 *L-a-s-c-h*, that's 363 SC 169. And also I have here
20 *Suttles versus Wood*. Let's see, which is 312 S.E.2nd 574.

21 THE COURT: Mr. Martens, do you have any observation
22 on my observation?

23 MR. MARTENS: Your Honor, my understanding of what
24 you have ask is exactly right. If you're suing to enforce
25 a sealed instrument, there's a twenty-year statute of

2007000610

MORTGAGE
RECORDING FEES

\$14.00

PRESENTED & RECORDED:

01-12-2007 02:43 PM

JOHN LANE

REGISTER OF DEEDS
LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

BK:MORT 1646

PG:154-161

SUNTRUST**Credit Line Mortgage
South Carolina****THIS IS A CREDIT LINE MORTGAGE**

This Credit Line Mortgage, made and entered into as of June 07, 2006, by and among Diana Jayma and Keith D. Jayma, Sole (herein, whether one or more, referred to as "Mortgagor") and SunTrust Bank, its present and future affiliates, successors and assigns (referred to herein as "Mortgagee") provides:

The name of the noteholder secured hereby is SunTrust Bank. Communications to the noteholder are to be mailed or delivered to 211 Perimeter Center Parkway, Suite 100, Atlanta, GA 30346.

This Mortgage secures, among other obligations, a revolving line of credit, under the terms of which funds may be advanced, paid back and readvanced, provided however, the maximum aggregate amount of principal to be secured hereby at any one time is One Hundred Ninety-Four Thousand Dollars and no cents (\$194,000.00). Interest may be deferred, accrued or capitalized.

For and in consideration of the indebtedness herein recited and the trust herein created, Mortgagor hereby grants, bargains, mortgages, assigns, sells and conveys unto Mortgagee, in trust, with power of sale and with general warranty of title,

all of Mortgagor's present and future right, title and interest in and to certain real estate located in the County of Lancaster, South Carolina, more particularly described on attached Exhibit A which has the address of Camp Creek Road, Lancaster, SC 28720 together with all easements and appurtenances thereto, all of the rights of Mortgagor in and to the streets, alleys, and rights-of-way appurtenant to and adjoining or adjacent to the land described above and together with any and all right title and interest of Mortgagor in and to the improvements, which shall include any and all buildings and structures now or at any time hereafter erected, constructed or situated upon said land or any part thereof, together with all fixtures, machinery, apparatus, fittings and equipment now or hereafter located in or upon the premises and now owned or which may hereafter be owned by Mortgagor, in and upon said land and premises, or which may hereafter be placed thereon, including, but not limited to, any equity which may be acquired by Mortgagor in such property as a result of the making of installment payments on account of the purchase thereof, including but not limited to elevators, escalators, boilers, engines, heating, ventilating and air conditioning systems, sprinkler or fire extinguishing systems, plumbing, partitions, wiring, storm doors and windows, wire screens, awnings, carpeting, drapes, window shades, switchboards, communications apparatus, floor tiling, linoleum, attached cabinets, wall panels and decorations attached to walls and ceilings, gas and electrical fixtures, chattels, attached appliances, and material used and to be used in the buildings and structures. Reference in this Mortgage to "Property" shall be deemed to include, in addition to the described land, improvements now or hereafter located thereon and rights appurtenant thereto, all the equipment, furnishings, fixtures, goods and chattels, above-mentioned and conveyed, all of which are deemed part and parcel of the real estate and appropriated to the use of the real estate and, whether affixed or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and conveyed hereby, together with the proceeds of all the foregoing.

This Mortgage is given (a) to secure the prompt performance and payment of all Obligations (as hereinafter defined), in favor of or payable to Mortgagee at the address set out above; (b) to secure performance and observance of the terms and conditions of this Mortgage, any Note (as hereinafter defined) or any Agreement (as hereinafter defined); and (c) to secure Future Advances made under Paragraph 16 below in accordance with section 29-3-50 as amended, Code of Laws of South Carolina (1976). The amount of debt secured by this Mortgage, including the outstanding amount advanced under the Note and all Future Advances under Paragraph 16 below, shall at no time be more than double the principal amount of any Note or \$194,000.00, whichever is greater, plus interest, attorneys' fees, and court costs incurred in the collection of amounts due thereunder and expenditures by Mortgagee. TO HAVE AND TO HOLD all and singular the Property unto Mortgagee and the successor or assigns of Mortgagee forever.

Copies: 0
Distribution: Original - Filed in Land Records
630399 (10/05)



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Mortgagee has extended credit, or may in the future extend credit to Keith D. Jayma (herein, whether one or more, "Debtor," and which as used herein shall

include any one or more and any combination of the parties constituting Debtor). The term "Obligations" as used herein shall mean all obligations and indebtedness of Debtor to Mortgagee, whether now existing or hereinafter arising, direct or indirect, fixed or contingent, due or to become due, joint or several, for whatever purpose, irrespective of how such indebtedness is evidenced, whether by notes, bonds, letters of credit, advances, overdrafts, interest rate hedge agreements or other derivative transaction agreements, accounting entries or otherwise, or by the endorsement or guaranty by Debtor of the obligations of another; provided, however, that the aggregate outstanding principal amount of all Obligations secured by this Mortgage shall not at any one time exceed the maximum aggregate amount of principal stated above, plus interest thereon (at the rate or rates set forth in the Notes or Agreements or other evidences of such indebtedness), fees due with respect to any such indebtedness, and, to the extent permitted by applicable law, all costs of collection with respect thereto, including without limitation, any costs and expenses incurred by Mortgagee in connection with the enforcement of this Mortgage or as otherwise provided herein. Obligations shall include, but not be limited to, the principal of, interest on and all other amounts due under or in connection with the following:

Note in the amount of \$194,000.00 dated June 07, 2006 executed by Keith D. Jayma and any modifications, extensions or renewals thereof. This mortgage shall mature on June 07, 2026.

As used herein the term "Note" shall mean each and any note or obligations executed and delivered by Debtor to Mortgagee, whether joint or several or joint and several, to repay the Obligations or any part thereof. The term "Agreement" shall mean each and any agreement between Debtor and Mortgagee of whatever nature executed and delivered by Debtor to Mortgagee in connection with any Note or the Obligations or any part thereof.

It is understood and agreed that the Obligations will be advanced from time to time by Mortgagee in accordance with the provisions of any Note or any Agreement, each of which is incorporated herein and made a part hereof by reference to the same extent as if fully set forth herein, and it is further understood and agreed that, from time to time, repayments on account of the Obligations may be made and Mortgagee may thereafter make additional advances including re-advances of sums previously repaid, as provided in any Note or any Agreement, it being understood and agreed that each and every advance made at the present or hereafter to Debtor or on behalf of Debtor or Mortgagor shall be deemed to be an advance made on account of the Obligations and secured hereby unless otherwise specifically provided in the Note, Agreement or other documents evidencing such advance.

Repayment to Mortgagee of all of the Obligations by Debtor shall not terminate the lien of this Mortgage unless it is released by Mortgagee upon receipt of the written request of Mortgagor, payment of all outstanding Obligations and termination of all applicable Notes and Agreements; otherwise it shall remain in force to secure future advances and indebtedness, irrespective of any additional security that may be taken as to the Obligations.

Mortgagor represents, warrants, covenants and agrees as follows:

1. **Payment and Performance.** Mortgagor shall perform its obligations under and comply with the provisions of this Mortgage and any Note and any Agreement to which it is a party.
2. **Covenants; Warranty of Title; Payment of Taxes and Assessments; Prior Mortgages.** Mortgagor is lawfully seized of the Property in fee simple absolute or the leasehold estate if this Credit Line Mortgage is on a leasehold, and has the right to convey the same. At the time of recordation, this Mortgage shall be a **first lien** and encumbrance on the Property. Mortgagor will execute such further assurances as Mortgagee deems necessary or desirable in order to more fully vest title in Mortgagee. So long as any part of the Obligations shall be unpaid, Mortgagor will protect the title and possession of the Property and will pay when the same become due all taxes and assessments now existing or hereafter levied or assessed upon the Property or the interest therein created by this Mortgage, or which by the laws of the jurisdiction where the Property is located may be levied or assessed against Mortgagee or its successors, for or on account of the Obligations upon this Mortgage or the interest in the Property thereby created, together with all sums now or hereafter owing on any senior mortgages. Mortgagor will provide Mortgagee with evidence of any such payments which from time to time may be required by Mortgagee. Mortgagor will, at its expense, take such other action and execute such other instruments as may be necessary or desirable in the sole discretion of Mortgagee to preserve and protect the lien and priority of this Mortgage and all other instruments evidencing or securing payment of the sums secured hereby.
3. **Preservation and Maintenance of Property; Environmental Requirements.** No building or other improvement shall be substantially altered, removed or demolished, except for changes which enhance its value, nor shall any fixtures or attached appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged without the prior written consent of Mortgagee (provided, however, that minor non-structural changes costing not more than \$10,000 may be undertaken without such consent, and that replacement of such appliances or fixtures of equivalent value and function may be undertaken without such consent). Mortgagor will not commit or suffer any waste, nor permit or suffer any impairment or deterioration of the Property, or any part thereof. Mortgagor will at all times keep and maintain the Property and every part thereof in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor will comply with all statutes, orders, requirements or decrees relating to the Property, whether under federal, state, county or municipal authority, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Property or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of Property. Mortgagor will permit Mortgagee or its agents to enter upon and inspect the Property at all reasonable times and Mortgagee shall have the right to obtain such appraisals, reappraisals, appraisal updates or environmental inspections as Mortgagee, in its sole discretion, may deem necessary from time to time.

Mortgagor represents and warrants that the Property never has been, and never will be so long as this Mortgage remains in effect, used for the generation, collection, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), Superfund Amendments and Preauthorization Act ("SARA"), applicable state laws, or regulations adopted pursuant to either of the foregoing. Mortgagor agrees to comply with any federal, state, or local law, statute, ordinance or regulation, court or administrative order or decree or private agreement regarding materials which require special handling in collection, storage, treatment or disposal because of their impact on the environment ("Environmental Requirements"). Mortgagor agrees to indemnify and hold Mortgagee harmless against any and all claims and losses and expenses and costs resulting from a breach of this paragraph and Mortgagor will pay or reimburse Mortgagee for all costs and expenses for expert opinions, inspections or investigations required or requested by Mortgagee which, in Mortgagee's sole discretion, are necessary to ensure compliance with this paragraph. This obligation to indemnify shall survive the payment of the Obligations and the release of this Mortgage.

4. **Insurance.** Mortgagor will keep the Property and the improvements thereon insured against loss by fire, casualty and other hazards (including flood damage, if the improvements are located in a special flood hazard area) as may from time to time be required by Mortgagee for the benefit of Mortgagee. If permitted by applicable law, Mortgagor will maintain such public liability and indemnity insurance as may from time to time be required by Mortgagee. To the extent permitted by applicable law, all such insurance shall be written in forms, amounts and by companies satisfactory to Mortgagee and losses thereunder shall be payable to Mortgagee pursuant to a standard noncontributing mortgagee's clause. Certificates or other proof of insurance shall be delivered to Mortgagee and Mortgagor shall provide Mortgagee with such evidence of payment or premiums due on account of such insurance as from time to time may be required by Mortgagee. All such policies shall provide for at least thirty (30) days' prior written notice to Mortgagee of any cancellation or modification thereof, including without limitation, cancellation for nonpayment of premium. Mortgagor shall give Mortgagee prompt notice of any loss covered by such insurance and Mortgagee shall have the right to join Mortgagor in adjusting any loss. Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to collect, adjust and compromise any losses under any such insurance policies herein referred to. Any funds received as payment for any loss under any such insurance shall be paid over to Mortgagee and shall be applied, after deducting the costs of collection, at the option of Mortgagee, either to the prepayment of the Obligations or to the reimbursement of Mortgagor for expense actually incurred by Mortgagor in the restoration or replacement of Property, or any part thereof, in the event of foreclosure of this Mortgage or other transfer of title to the Property conveyed hereby, all right, title or any part thereof. In the event of foreclosure of this Mortgage or other transfer of title to the Property conveyed hereby, all right, title and interest of Mortgagor, in and to any insurance policies then in force, shall pass to the purchaser or grantee, which may be, but shall not be limited to, Mortgagee.
5. **Mortgagee's Right to Remedy Defaults.** In the event Mortgagor shall neglect or refuse (a) to keep the Property in good repair and condition; (b) to pay promptly when due all taxes and assessments as aforesaid; (c) to remove any statutory liens on the Property; (d) to keep the buildings, improvements and chattels insured as aforesaid; (e) to deliver certificates or other proof of the policies or policy of insurance or the renewals thereof to Mortgagee as aforesaid; (f) or if all amounts owed under any Note, Agreement or other obligation secured by this Mortgage or any other Mortgage or other lien on the Property are not paid promptly when due or all obligations, covenants, conditions and agreements under such Mortgage or other lien are not observed, then Mortgagee may, if it shall so elect, in addition to any other rights it may have under this Mortgage, take possession of the Property, make repairs as it deems necessary, pay such taxes and assessments with the accrued penalties and/or interest, pay any necessary expenses, redeem the Property which may have been sold or forfeited for taxes or assessments thereon, purchase any tax title thereon, remove any statutory liens or encumbrances and prosecute or defend any suit in relation thereto, or insure and keep insured said buildings, improvements and chattels as provided herein, or make any payments as may be necessary to cure any default. Any sums including, without limitation, costs, expenses and attorneys' fees which may be expended by Mortgagee in so doing or otherwise for the protection or preservation of the Property hereby or the lien of this Mortgage thereon, shall bear interest from the dates of such payments at the highest rate of interest being paid on any Obligations (but in no event higher than the rate or rates permitted under applicable law), shall be paid by Mortgagor to Mortgagee upon demand, shall become a part of the Obligations and shall be recoverable as such in all respects. Any such liens, claims, taxes, expenses, assessments or tax titles so purchased, paid or redeemed by Mortgagee shall, as between the parties hereto and their successors in interest, be deemed valid, so that in no event shall the necessity or validity of any such payment be disputed.
6. **Default, Acceleration of Payments; Mortgagee's Sale or Lease; Advertisement Required.** Any of the following shall constitute an event of default under this Mortgage (a) Debtor's failure to make when due any instalment or other payment of any Obligations, whether of principal, interest, late charge or otherwise; (b) the death, dissolution, merger, acquisition, consolidation or termination of existence of Mortgagor, Debtor, any guarantor or endorser of any Obligations or any party who has pledged any property as collateral for any Obligations (collectively, a "Party"); (c) the insolvency of any Party, or the application for the appointment of a receiver for any Party or the filing of a petition under any provisions of the Federal Bankruptcy Code, as now or hereinafter in effect, by or against any Party or any assignment for the benefit of creditors by or against any Party; (d) the entry of a judgment against any party or the issuance or service of any attachment, levy or garnishment against any Party or the property of any Party; (e) a determination by Mortgagee that it deems itself insecure or that a material adverse change in the financial condition of any Party has occurred since the date of this Mortgage; (f) the failure of any Party to perform any obligation under any Note or Agreement or this Mortgage; (g) a default under any superior or inferior lien upon the Property; or (h) the sale, transfer, conveyance or assignment of any beneficial interest in any Party, including but not limited to voting stock, partnership interests or beneficial interests in a trust, without the prior written consent

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of Mortgagee. Upon the occurrence of any event of default regardless of whether Mortgagee shall have cured such event of default on behalf of Mortgagor in accordance with the terms of this Mortgage, Mortgagee may elect, without notice, to cause all the Obligations to be at once due and payable in full, and the Mortgagee, or its successor in trust, as soon as reasonably practicable after requested to do so by Mortgagee (i) may take possession of the Property, may make any repairs or replacements to the Property deemed necessary by Mortgagee and/or sell (and in case of default of any purchaser, resell) in whole or in part the Property; and (ii) may revoke any license granted to Mortgagor to collect and apply rents, issues and profits; and (iii) may take possession of the Property and may lease the Property either pending sale or until the amount of the Obligations is paid and deduct from rents received all costs of collection, repair, replacement and administration and apply the net proceeds to the Obligations. The Mortgagee is hereby empowered to bring in its name, or in the name of the Mortgagor, any suit or action it deems advisable for the enforcement of the provisions of this clause, but the Mortgagee and the Mortgagee shall be in no way personally liable under any of the provisions of such lease or of this clause, and shall not be personally liable to any person by virtue of their possession of the Property or by virtue of their acting under any provisions of this clause, except to the extent of accounting for rents actually received by them.

The proceeds of any sale of the Property by Mortgagee shall be applied by Mortgagee: First, to pay all proper costs and charges, including but not limited to court costs, advertising expenses, auctioneers' allowances, the expenses, if any, required to correct any irregularity in the title, auditors' fees, attorneys' fees, cost of repairs or replacements, and all other expenses of sale incurred in and about the protection and execution of this Mortgage, and all moneys advanced for taxes, assessments, insurance, and with interest thereon at the highest rate of interest being paid on any Obligations (but in no event higher than the rate or rates permitted under applicable law), and all taxes and assessments due upon said land and premises at time of sale, and attorneys' fees and expenses of any litigation which may arise on account of the execution and enforcement of this Mortgage or any Note or Agreement. Second, to pay and satisfy all Obligations, interest and all other charges hereby secured then remaining unpaid, and interest thereon to date of payment, whether the same shall be due or not, it being understood and agreed by Mortgagor that the amounts due under any Note or Agreement shall, upon such sale being made before the maturity thereof, be and become immediately due and payable at the election of Mortgagee; and Third, to pay the remainder of said proceeds, if any, to Mortgagor, its heirs, personal representatives, successors or assigns, or to any other person lawfully entitled thereto, upon the delivery and surrender to the purchaser, his, her or their heirs and assigns, of possession of the Property and premises, less costs and expenses of obtaining possession. If after so applying such proceeds, any portion of the Obligations shall remain unpaid, such balances shall continue to be due and payable, and shall be subject to collection by Mortgagee by suit or otherwise. In addition, in the event of default hereunder, Mortgagee shall have all rights and remedies permitted by law and by any document evidencing, governing, or securing the obligations secured hereby.

7. **Condemnation.** Mortgagor hereby irrevocably grants, assigns, transfers and sets over unto Mortgagee all right, title and interest of Mortgagor in and to any award or payment made (not to exceed the outstanding Obligations including, without limitation, accrued interest, and costs, expenses, reasonable attorneys' fees, and disbursements incurred by Mortgagee in connection with collection of such award and payment) in respect of (a) any taking of the Property or any part thereof as a result of, or by agreement in anticipation or in lieu of, any exercise of the power of eminent domain or condemnation; and (b) any such taking of any appurtenances to the Property; and (c) any damage to the Property or any part thereof due to governmental action affecting, but not resulting in a taking of, the Property, including, by way of example and not by way of limitation, the changing of the grade of a street adjacent or proximate to the Property. Mortgagor agrees to promptly notify Mortgagee of the commencement of any condemnation or eminent domain proceeding. Mortgagor further agrees, upon request, to make, execute and deliver any assignments or other instruments necessary for the purpose of assigning or transferring any such award or awards to Mortgagee free and clear of any encumbrances whatsoever. The excess amount of such award over and above sums due Mortgagee on account of the Obligations, interest and other charges, shall be paid to Mortgagor, its successor and assigns.

8. **Restrictions on Transfer of Property; No Secondary Financing; Mechanics' Liens.**

NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY.

- a. If all or any part of the Property is sold, transferred, conveyed or encumbered without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage and exercise all remedies provided in this Mortgage in the event of default. However, this option shall not be exercised by Mortgagee if exercise is prohibited by federal law as of the date of this Mortgage. Mortgagee reserves the absolute option and right, if permitted by applicable law, among other things, to: require the agreement by Mortgagor and Mortgagor's transferee to any terms and conditions that Mortgagee may require upon transfer; increase the rate of interest upon transfer; and charge an assumption fee.
- b. To the extent permitted by applicable law, Mortgagor shall not voluntarily or otherwise permit to be created or filed against the Property, without the prior written consent of Mortgagee in each instance, any other Mortgage or mortgage or other lien or liens inferior or superior to the lien of this Mortgage. Further encumbrances, however, shall not be prohibited if the Property consists of a one-to-four family residential dwelling.
- c. Mortgagor will keep and maintain the Property free from all liens arising by virtue of all persons supplying labor or materials performed thereon or incorporated therein, notwithstanding by whom such labor or materials may have been contracted, and if any liens in respect to any such labor or materials are filed against the Property, Mortgagor shall cause the same to be released completely of record either by payment and discharge or by the posting of substitute collateral

therefore in accordance with applicable laws within twenty (20) days of the filing thereof, and Mortgagor will make all payments on all liens permitted herein (if any), when due.

9. **Assignment of Rents.** Mortgagor hereby assigns unto Mortgagee the rents, issues and profits accrued and to accrue from all tenants of the Property or any part thereof, during the term of this Mortgage, or any extensions thereof Until and unless revoked by the Mortgagee, Mortgagor shall have a license to manage and operate the Property and to collect and apply to its own account all rents, issues and profits as they become due, but no more than one month in advance. Mortgagee may revoke this license at any time, in its sole and absolute discretion. Mortgagee shall give the Mortgagor notice of any demand for rents made against tenants of the Property contemporaneously with the giving of notice to tenants. Mortgagor will not execute any assignment of the rents, issues and profits from the Property or any part thereof unless such assignment shall provide that it is subordinate to the assignment of rents set forth in this Mortgage and any other assignments executed pursuant hereto or in conjunction herewith.
10. **Notice of Adverse Claim of Lien.** If Mortgagor shall receive any notice or other instrument which might materially adversely affect the Property or the lien of this Mortgage thereon, Mortgagor will furnish, within three (3) days following such receipt, by certified mail, a copy of such notice or other instrument to Mortgagee. The notices referred to herein shall include, but not be limited to, notices from any tenant or lessee claiming a default by Mortgagor under any lease or occupancy agreement, any notice by any public authority concerning any tax or special assessment; and any notice of any alleged violation of any building, zoning, fire or other law or regulation affecting the Property.
11. **Remedies Cumulative; Forbearance by Mortgagee Not a Waiver.** All remedies available to the Mortgagee with respect to this Mortgage or under any instrument evidencing, governing, or securing the Obligations, including, but not limited to, any other deeds or mortgages conveying other property in trust to secure payment of the obligations secured hereunder, or provided by law or in equity or by any statute, or otherwise, shall be cumulative and may be pursued concurrently or successively. Mortgagor, for itself and all who claim under it, waives to the extent that it lawfully may, all right to have the Property marshaled upon any sale or foreclosure hereunder. No delay or omission of Mortgagee to exercise any right, power or remedy shall impair any such right, power or remedy, or shall be construed to be a waiver of any default or any acquiescence therein. No delay or omission on the part of Mortgagee to exercise any option granted for acceleration of the maturity of the Obligations or for foreclosure following any default or any other option granted to Mortgagee hereunder in any one or more instances, or tender and/or acceptance by Mortgagee of any partial payment on account of Mortgagor's or Debtor's obligations shall constitute a waiver of any such default or operate to rescind any such acceleration and each such option shall remain continuously in full force and effect.
12. **Covenants Running with the Land.** All covenants hereof shall run with and be binding on the land and improvements conveyed hereby until this Mortgage shall be released of record.
13. **Hold Harmless.** Mortgagor shall save Mortgagee harmless from all costs and expenses, including reasonable attorneys' fees and costs incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which Mortgagee may be or become a party by reason of this Mortgage, including, but not limited to, condemnation, bankruptcy, probate and administration proceedings, as well as any of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms or priority of this Mortgage, and all money paid or expended by Mortgagee in that regard, together with interest thereon from date of such payment at the highest rate of interest being charged on any Obligations (but in no event higher than the rate or rates permitted under applicable law), shall be immediately and without notice due and payable by Mortgagor, shall become a part of the Obligations and shall be recoverable as such in all respects.
14. **Governing Law.** This Mortgage, without regard for the place of contract, advance of funds or payment, shall be governed, construed and enforced according to the laws of the State of South Carolina.
15. **Severability of Provisions.** In the event any one or more of the provisions hereof or of any Note or Agreement shall for any reason be held to be invalid, illegal, or unenforceable, in whole or in part or in any respect, or in the event any one or more of the provisions hereof or of any Note or Agreement operate or would prospectively operate to invalidate this Mortgage, then and in any of those events, at the option of Mortgagee, such provision or provisions shall be severable and shall not affect any other provision hereof or of such Note or Agreement or the validity of Mortgagor's or Debtor's other obligation and the remaining provisions hereof or of the Note or Agreement shall remain operative and in full force and effect and shall in no way be affected, prejudiced, or disturbed thereby.
16. **Future Advances.** Mortgagee, at its option, may make Future Advances to Mortgagor. Such Future Advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other note stating that it is secured by this Mortgage or when advanced under the terms of this Mortgage; Mortgagee may make such Future Advances (a) at the request of Mortgagor, whether or not there is any obligation to make Future Advances; (b) pursuant to an advance of funds under this Mortgage; or (c) to pay, with or without the consent of Mortgagor, any amounts which may be due under any other mortgage or lien affecting the Property.
17. **Waiver of Notice of Future Advances and Consent or Extensions, Modifications and Release.** If Mortgagor (or any one or more of the parties constituting Mortgagor) is not the Debtor, then Mortgagor expressly (a) waives notice of any and all loans and/or advances made, from time to time during the continuance of this Mortgage by the Mortgagee to Debtor (or any one or more of the parties constituting Debtor); (b) agrees that modifications of the terms of any Note or Agreement, including without limitation, modifications extending the term for payment or adjusting the interest rate applicable to any Obligations, may be made from time to time between Mortgagee and Debtor without notice to or consent of Mortgagor; (c) agrees that

Mortgagee, without notice to or further consent of Mortgagor, may grant extension of time and other indulgences to and renew any of the obligations of Debtor without regard to the number and length of such extensions, renewals or other indulgences. Mortgagor further agrees that Mortgagee without notice or further consent of Mortgagor, may release or discharge any persons who are or may be liable for the payment of any Note or Agreement or release or discharge any collateral for payment of the Obligations and that any such release or discharge shall not alter, modify, release or limit the liability of Mortgagor (or any one or more of the parties constituting Mortgagor) or the validity or the enforceability of this Mortgage; and (d) agrees that Mortgagee may exercise its rights under this Mortgage prior to taking any action against the Debtor.

18. **Time is of the Essence.** Time shall be of the essence for each and every provision of any Note, any Agreement, this Mortgage and all other documents, agreements and contracts evidencing, securing, or governing the obligations secured hereby.
19. **References; Applicability; Collateral Agent.** All references in the foregoing covenants to Mortgagee shall apply equally to any subsequent holder or assignee of any Note or any Agreement.
20. **Titles.** The paragraph titles contained in this Mortgage are for reference purposes only and shall not affect the meaning or interpretation of this Mortgage.
21. **Designations.** In any designation hereunder, the use of one gender shall include any other gender wherever same may be appropriate, and the plural shall be substituted for the singular or the singular for the plural in any place herein in which the context may require such substitution.
22. **Waiver of Appraisal Rights.** This paragraph is not applicable to consumer purpose loans or loans secured by a dwelling place. The laws of South Carolina provide that in any real estate foreclosure proceeding, a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction.
THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGE PROPERTY.

In Witness Whereof, Mortgagor on the year and day first written above, has caused this Mortgage to be signed, sealed and delivered.

Signed, sealed, and delivered in the presence of:

Witness Signature

Name printed or typed

Keith D. Jayma

(Seal)

Witness Signature

Name printed or typed

Signed, sealed, and delivered in the presence of:

Witness Signature

Name printed or typed

Diana Jayma

(Seal)

Witness Signature

Name printed or typed

Acknowledgments:

(Individual)
Jurisdiction: County of York
State of SC To Wit:

I, W. Blackmon Huckabee, a Notary Public in and for the above jurisdiction,
do hereby certify that Keith - Dale Symon, party(ies) to the
foregoing instrument dated June 12, 2004, and hereto annexed, personally appeared before me in said Jurisdiction, the
said Borrowers being personally well-known to me as (or proved by
the oath of credible witnesses to be) the person who executed this instrument and acknowledged the same to be (his) (her) (their) act
and deed.

Given under my hand and seal this 12 day of June, 2004

W. Blackmon Huckabee
Notary Public

Type or Print Name:

My Commission Expires:

My Commission Expires

September 21, 2010

William Blackmon Huckabee
Notary State of South Carolina

(Notary Seal)

(Individual)
Jurisdiction: _____ of _____
_____ To Wit:

I, _____, a Notary Public in and for the above jurisdiction,
do hereby certify that _____, party(ies) to the
foregoing instrument dated _____, and hereto annexed, personally appeared before me in said Jurisdiction, the
said _____ being personally well-known to me as (or proved by
the oath of credible witnesses to be) the person who executed this instrument and acknowledged the same to be (his) (her) (their) act
and deed.

Given under my hand and seal this _____ day of _____, _____.

Notary Public

Type or Print Name:

My Commission Expires:

(Notary Seal)

(Non-Individual)
Jurisdiction: _____ of _____
_____ To Wit:

I, _____, a Notary Public in and for the above jurisdiction,
do hereby certify that _____, party to the
foregoing instrument dated _____, and hereto annexed, personally appeared before me in said
Jurisdiction, the said _____ being personally well-known to me as (or proved by the oath of credible witnesses
to be) the _____ of _____ and
acknowledged the same to be the act and deed of _____, the party named within.

Given under my hand and seal this _____ day of _____, _____.

Notary Public

Type or Print Name:

My Commission Expires:

(Notary Seal)

Exhibit 'A'

BEGINNING at a nail set in the centerline of the 66' right of way of S 29-51 (Camp Creek Road) and running thence with said centerline, South 61-44-37 West 391.55 feet to a nail found; a common corner with the Douglas A. Wise property (47/131 Plat 99/354 Tax Parcel 37-3.03); thence with the said Wise property, two calls as follows: 1st North 27-38-36 West 695.83 feet (crossing an iron found at 33.07 feet) to an iron found; South 72-21-57 West 537.12 feet to an iron found, a common corner with the Timothy P. Cauthen property (57/248 Plat 15257 Tax Parcel 37-3.02); thence with the northern boundary line of the said Cauthen property, South 74-58-18 West 624.93 feet to an iron found, a common corner with the Frank P. Lopez property (W9/279 Plat 11568 Tax Parcel 37-3.04); thence with the northern boundary line of the said Lopez property, North 78-14-33 West 571.28 feet to an iron found, a common corner with the Gregg P. Shipston property (X8/122 Plat 10649 Tax Parcel 37-3.01); thence with the said Shipston property, two calls as follows: 1st North 13-00-38 West 261.76 feet to an iron found; 2nd North 89-12-45 West 648.11 feet to an iron found in the centerline of the 66' right of way of S.C. Mockingbird Lane (50' right of way of N.C. Gus Eubanks Road); thence with said centerline, six calls as follows: 1st North 06-16-21 East 283.54 feet to a point; 2nd North 06-16-36 East 21.51 feet to a point; 3rd North 01-13-15 East 83.39 feet to a point; 4th North 08-55-51 West 93.43 feet to a point; 5th North 10-15-40 West 120.35 feet to a point; 6th North 03-38-50 West 79.92 feet to a point, a common corner with the Gladys Autry property; thence with the southern boundary line of the said Gladys Autry property, South 87-10-52 East 534.71 feet to an iron found, a common corner with the Richard Autry property (372/336); thence with the southern boundary line of the said Richard Autry property, South 85-47-19 East 1,393.75 feet to an iron found in the southern boundary line of the Richard Autry, Jr. property (461/141); thence with the said southern boundary line of the Richard Autry, Jr. property, South 85-43-56 East 897.45 feet to an iron found, a common corner with the Edwards Wood Products property (450/587); thence with the said Edwards property, North 89-45-41 East 787.65 feet (crossing an iron set at 757.65 feet) to a point in the centerline of the Lynches River; thence with the centerline of Lynches River, twelve calls as follows: 1st South 51-42-41 West 67.13 feet to a point; 2nd South 30-42-50 West 47.29 feet to a point; 3rd South 09-40-29 West 41.97 feet to a point; 4th South 30-59-50 West 136.56 feet to a point; 5th South 36-29-25 West 128.10 feet to a point; 6th South 31-04-26 West 295.20 feet to a point; 7th South 65-50-11 West 98.47 feet to a point; 8th South 38-37-40 West 41.27 feet to a point; 9th South 15-40-34 West 140.22 feet to a point; 10th South 04-55-30 West 39.41 feet to a point; 11th South 16-49-06 East 47.69 feet to a point; 12th South 17-07-30 West 86.41 feet to the point and place of BEGINNING and containing approximately 62.69 acres as shown on that survey by Thomas M. Park, S.C.R.L.S., dated November 27, 2000 and being the same property conveyed to Grantor in Deed Book C6/4835 Tax Parcel 37-3.00.

Derivation: This being the same property conveyed to Keith Jayma by deed of F. Mark Wilson, Jr. dated November 4, 2005 and recorded on November 14, 2005 in Book 308, Page 59 office of the Clerk of Court for Lancaster County, South Carolina.

III. Sealed Instrument, The "SunTrust Credit Line Mortgage", as outlined in Appellant's Amended Brief, page 6

There are significant issues surrounding the "SunTrust Credit Line Mortgage" admitted into evidence at Appellant's deposition.

Respondent Jayma's "SEAL" is affixed to the June 7, 2006 instrument, the "SunTrust Credit Line Mortgage" where 38 acres of the 63-acre farm were erroneously and fraudulently conveyed to Respondent Jayma under "SEAL", which created a sealed instrument. The SC 20-year statute of limitations for actions upon a sealed instrument is applicable, Title 15 Chapter 3 Section 15-3-520 and SC section 15-3-520(b). In his order, Judge Hayes called the Appellant's 63 acre farm the "Disputed Tract". Respondent Jayma used the "Disputed Tract" to obtain a mortgage from SunTrust Bank. This SunTrust Credit Line Mortgage, dated 6-7-2006 was admitted into evidence at the Appellant's deposition by attorney Keith Martens on 7-5-2017 and was discussed at length between attorney Martens and the Appellant where Martens claimed Respondent Jayma had paid off the original mortgage personally that was secured by the "Disputed Tract" and Respondent Jayma then used his personal home as collateral to acquire a "new" equity line that did not use any part of the disputed tract. P 132 lines 13-18. Judge Hayes asked for clarification for the dollar amount of this mortgage at the hearing, page 8, lines 17 and 18 of the transcript. Appellant contended during his deposition that SunTrust Bank had forgiven and therefor "Satisfied" the \$194,000 mortgage (page 131 lines 14, p 132 lines 7-10, p 133 lines 5-6), 40 days after Appellant filed his lawsuit which included SunTrust Bank on April 5, 2012, to be dismissed from the Appellant's Lawsuit and they were dismissed, on May 15, 2012, by Appellant's Attorney David Cook. See copy of that "Satisfaction of Mortgage", p 148. This was also admitted into evidence by attorney David Cook on page 20 lines 16-25, and page 21 lines 1 and 2 of the transcript. Attorney Keith Martens entered into evidence that Respondent "can't ascertain the amount of his damages until the mortgage has been paid off", page 22 lines 2 and 3 as evidenced in Exhibit B of the transcript. At Appellant's deposition Attorney Keith Martens jumped up and out of his seat and exclaimed loudly, "Are you calling me a liar?" page 133 Line 3. Respondent Jayma's SEAL is affixed to this SunTrust Credit Line Mortgage and was admitted into evidence as an exhibit during the Appellant's deposition on 7-5-2017 and should have been considered as evidence by judge Hayes and the law that is subject to South Carolina's 20 year Statute of Limitations for sealed instruments provided by Title 15 Chapter 3 Section 15-3-520, SC Section 15-3-520(a) and SC Section 15-3-520(b)

Attorney David Cook entered: (1) the CONTRACT, (2) the Mortgage, (3) the Deed and (4) the Note into evidence in a series of arguments in the transcript, beginning on p. 14 lines 17-25. "Your Honor, my main argument in defense of the Statute of Limitations is that—well, I have three arguments."

"Firstly, your Honor, I would allege that the statute that's applicable here is the twenty year statute regarding sealed instruments, and that would be 15-3-520 which reads and that within

twenty years; an action upon a bond or other contract in writing is secured by the mortgage of real property.”

Secondly, Page 15 lines 7-12, “Essentially, your Honor, my client’s arguing that the mortgage and the deed, and the note, that this case is based on are sealed instruments.” South Carolina’s 20 year and 10 year statute of limitations are applicable in Appellant’s lawsuit, p 14 lines 21-25 citing SC 15-3-520 and SC 15-3-520(b). P 15 lines 3-23 as prescribed in 36-2-725, P 17 lines 19-25, SC Statute 15-3-340 Action by an Individual for Recovery of Real Property, continued on p 18 lines 1-15, “And I would argue that this lawsuit is, for one, for the recovery of real property because we’re requesting the recovery of the sixty two acres that were deeded out my client would allege improperly.... And under those two statutes, your Honor, my client would argue that this case would well be within the statute of limitations for either the twenty or the ten year statutes.”

Attorney Cook continues “Finally, your Honor,” p 18 lines 1-25 and p 21 lines 1-12.

Attorney Martens stated, p 23 lines 9-19.

Attorney Martens stated, p 24 lines 1-6, “an action to set aside a deed for the basis of fraud, and that a shorter, at the time a six-year statute of limitations should apply.” All of the above statutes of limitations carry a longer time to file a lawsuit rather than the standard 3 year statute imposed by Judge Hayes.

Attorney David Cook continues, p 25 lines 1-25, line 1 “my client”, p 26 lines 23-25, p 27 lines 13-20. Attorney David Cook’s argument is continued on the entire pages of 15, 16, 17, 18, 19, and 20 of the 8-23-17 transcript. Continued on p 25 lines 5-7, “My client deeded out his family land to Mr. Jayma in this agreement with an understanding that the land would be deeded back to him...” P 25 line 10, “There is a mortgage involved that has a seal and the deed as well...”

Disputes about the SunTrust Mortgage were entered into evidence at Appellant’s deposition on 7-5-17; Attorney Martens made questionable statements. There was a dispute of the facts:

- (1) Attorney Keith Martens asks, “Do you know how much ‘you’ owed on that \$194,000 loan?” p 131 lines 12-13
“It’s been paid in full.” P 131 line 14.
- (2) Appellant testifies that SunTrust Bank, “they satisfied the mortgage in full” p 132 lines 7-10.
- (3) Rather than asking questions of Appellant, attorney Martens took it upon himself to admit his own testimony into the record during Appellant’s deposition, disputing how the SunTrust credit line mortgage was satisfied. P 132 lines 11-25.
- (4) Attorney Martens wanted Appellant to “assume” this is true. P 132 lines 13-14.
- (5) Attorney Martens continues, “I want you to assume that it is true because that’s what I’m telling you is true.” P 132 lines 14-15.

- (6) Attorney Martens testifies to Appellant, "That the only reason that loan has been paid off on that 63 acres is because Mr. Jayma now has \$194,000 credit line against his personal home." P 132 lines 15-18
- (7) Then Attorney Martens jumped up and out of his seat exclaiming, "So you're calling me a liar?" p 133 line 3
- (8) Appellant says, "I'm saying SunTrust satisfied the mortgage because of my lawsuit, not because Jayma got a equity line." P 133 lines 19-23.
- (9) Appellant says "He could borrow whatever he wanted to on his home." P 133 lines 5-6.
"That doesn't have anything to do with the \$194,000 and my 63 acres." P 133 lines 7-8.

The SunTrust Credit Line Mortgage in this case mentions "Seal" and "sealed" five (5) times: (1) this Mortgage to be signed, sealed and delivered; (2) (3) Signed, sealed, and delivered in the presence of: twice; (4) Keith D. Jayma, (Seal); (5) Diana Jayma (Seal).

As the SunTrust Credit Line Mortgage is a "sealed instrument", the 20-year statute of limitations is applicable; and Appellant is entitled to have the issues surrounding the SunTrust Credit Line Mortgage fully adjudicated. Therefore, Judge Hayes' order for summary judgement granted to Respondent should be reversed

1 A No. You've got to ask me that again.

2 Q That's all right. I don't think I need to.

3 Have you made any payments toward the \$194,000.00 that

4 Mr. Jayma took out on the 63 acres?

5 A I made the interest payments.

6 Q Where did you get the money to make the

7 interest payments?

8 A From the \$194,000.00.

9 Q So you used that money that was borrowed to
10 make the interest payments?

11 A Right.

12 Q Do you how much you owed on that \$194,000.00
13 loan?

14 A It's been paid in full.

15 Q Would it surprise you to know that that loan
16 has been transferred to Mr. Jayma's personal residence?

17 A I would be shocked if that mortgage was not
18 paid and satisfied in full in May of 2012.

19 Q Why?

20 A Because I've seen the satisfaction of mortgage
21 from SunTrust.

22 Q Would you be shocked to know that the reason
23 it was paid in full in May of 2012 was the bank required
24 Mr. Jayma to take a \$194,000.00 loan out on his own house
25 to pay it off?

1 A I would be shocked.

2 Q Did you know that's the truth?

3 A No.

4 Q Do you feel any obligation to pay back any
5 portion of that \$194,000.00 loan that Mr. Jayma has been
6 carrying for the last 10 years?

7 A When you talked about who was included in this
8 lawsuit, my attorney included SunTrust in April of '08.
9 In May of '08, one month later, they satisfied the
10 mortgage in full.

11 Q I'm going to represent to you -- You can find
12 out for yourself, but for purposes of this deposition
13 I'm representing to you, and I want you to assume this is
14 true. I want you to assume that it is true because that's
15 what I'm telling you is true. That the only reason that
16 loan has been paid off on that 63 acres is because Mr.
17 Jayma now has \$194,000.00 credit line against his personal
18 home.

19 A I don't believe that to be true.

20 Q I'm telling you it's true, Mr. Wilson.

21 A I don't believe it.

22 Q Fine. If it were true, don't you feel some
23 obligation to repay a portion of that?

24 A If it's not true that SunTrust satisfied that
25 mortgage in full -- satisfied it and paid it in full

1 because of my attorney's efforts -- I would have to look
2 at -- I don't believe it. I just don't believe it.

3 Q So you're calling me a liar?

4 A I'm not calling you a liar. I'm just saying
5 I don't believe it. He could borrow whatever he wanted
6 to on his home. He could borrow \$200,000.00, \$300,000.00,
7 \$500,000.00. That doesn't have anything to do with the
8 \$194,000.00 and my 63 acres.

9 Q If the only reason that loan got paid off on
10 those 63 acres is because Mr. Jayma went and borrowed
11 \$194,000.00 against his house and wrote a check for it,
12 you don't feel any obligation to pay any portion of that
13 back?

14 A Part of his trickery and forgery and fraud is
15 --- He could put a \$194,000.00 equity line against his
16 house.

17 Q How would that be an advantage to him? How
18 would that defraud you?

19 A He might have needed money. Well, I'm not
20 saying he defrauded me in that respect. I'm saying
21 SunTrust satisfied the mortgage because of my lawsuit,
22 not because Jayma got an equity line.

23 Q Mr. Wilson, what are you claiming you're out
24 in this case?

25 A Oh, we don't have a clue until Jayma produces

1 changed at a local car dealership. At that meeting Mr.
2 Wilson signed a deed. That deed is attached to the
3 affidavit of Keith Jayma that we have filed in support of
4 this motion. I believe it's Exhibit B to that affidavit,
5 your Honor.

6 Mr. Wilson says that he did not read the deed. There
7 was no legal description for the property attached at the
8 time he executed it and the only two people who where there
9 when he signed the deed were Mr. Wilson and this paralegal.

10 Mr. Wilson contends that he thought he was deeding
11 twenty-five acres of land to my client and in fact the deed
12 that was ultimately recorded was for sixty-three acres.

13 And that deed was recorded in 2005.

14 After that land was conveyed to Mr. Jayma, Mr. Jayma
15 went out and obtained another loan for a hundred and
16 ninety-four thousand dollars which was --

17 THE COURT: How much was that? Eight hundred and
18 ninety-four?

19 MR. MARTENS: No, your Honor. One hundred and ninety-
20 four. One hundred and ninety-four thousand.

21 So by this point they had -- my client in his
22 individual name had borrowed the total of one million, one
23 hundred and ninety-four thousand dollars. I think that
24 both men believed that would be enough to complete the
25 construction of this house. Construction did not go as

Recording Requested/Prepared By:
Yolanda Brown
SunTrust Bank
211 Perimeter Center Parkway,
Atlanta, GA - 30346
Voice: 800-331-3282

When Recorded Return To:

CT Lien Solutions
P.O.Box 29071
Glendale, CA 91209



SATISFACTION OF MORTGAGE

LOAN #: 60669048-42 "DIANA JAYMA AND KEITH D. JAYMA" LANCASTER COUNTY, South Carolina

Dated: May 15, 2012

STATE: South Carolina

COUNTY: LANCASTER COUNTY

Original Mortgagor: DIANA JAYMA AND KEITH D. JAYMA

Original Mortgagee: SUNTRUST BANK

Dated: 6/7/2006 Recorded: JANUARY 12, 2007, in Book/Reel/Liber: MORT 1646, Page/Folio: 154-161
as Instrument No.: 2007000610

Present Owner/Holder: SUNTRUST BANK

The undersigned, being the owner and holder of the above-described mortgage, acknowledges that the debt which was secured hereby has been paid in full and the lien of the mortgage is satisfied and cancelled.

Loan Amount \$194,000.00

Property Address: CAMP CREEK RD, LANCASTER, SC 28720

Legal and/or Assignment:

SUNTRUST BANK

On May 15, 2012

By: Karen Shelton
KAREN SHELTON
ASSISTANT VICE PRESIDENT

WITNESSES:

Virginia Hearn
VIRGINIA HEARN

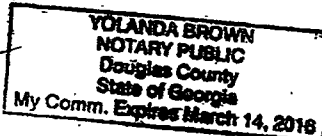
Sean Cook
SEAN COOK

State of GEORGIA
County of DOUGLAS

On May 15, 2012, before me, Yolanda Brown a Notary Public in and for the county of DOUGLAS in the state of Georgia, personally appeared Karen Shelton, ASSISTANT VICE PRESIDENT of SUNTRUST BANK personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Yolanda Brown
Notary Public
Yolanda Brown



(This area is for notarial seal)

1 from him; even three years later they're still receiving
2 emails where they're fusing over the profits.

3 And so my client would respectfully argue that while
4 that letter is troublesome it's not favorable in the
5 sense that it doesn't put my client on notice that Jayma
6 is refusing to honor the agreement.

7 Now, had Jayma's attorney replied to this letter and
8 said we're absolutely not providing you any records and
9 we disagree with all of your allegations, you know, that
10 there would be a strong argument there that would have put
11 my client on notice. But when these two parties are still
12 communicating back and forth and arguing over the profits,
13 my client would allege he had -- wouldn't have reasonable
14 knowledge to know through diligence that he had been
15 harmed.

16 And then lastly, your Honor, and this I believe is
17 my strongest point in regards to the three-year argument,
18 that Defendant Jayma admits on his own responsive pleadings
19 in paragraphs 94 and 96, that the damages from the case
20 cannot be determined until the interest on the home
21 equity line of credit with a hundred and ninety-four
22 thousand dollar second mortgage has been paid off.

23 So it wasn't satisfied until May 15th of 2012 as
24 evidenced by Exhibit B here. So, my client couldn't know
25 the harm that he had received for this law suit until

1 this was determined, until that line of credit was paid
2 off and we could ascertain the damages from it.

3 So those are my arguments, your Honor. I won't
4 reiterate or I'll rest there. Thank you.

5 THE COURT: I do not see a copy of the deed. I see a
6 copy of the mortgage, I do not see a copy of the deed.

7 Is it important that I have a copy of the deed?

8 MR. COOK: Yes, sir.

9 THE COURT: And that's the instrument you are
10 claiming under the twenty years.

11 MR. COOK: Yes, sir, your Honor, and this is attached
12 to the complaint.

13 THE COURT: Well not to my copy.

14 MR. COOK: I apologize.

15 THE COURT: That's all right. Unless I've got another
16 one.

17 MR. COOK: No, sir.

18 THE COURT: Okay. All right, Mr. Martens.

19 MR. MARTENS: Very briefly, your Honor. Let me first
20 respond to the comment about what's in the pleadings of
21 damages not being ascertained.

22 As the Court's aware I took over this case from
23 another attorney so I don't know what the other attorney
24 meant when he drafted those pleadings. They're simply
25 pleadings. My client has counter-claims for the damages

1 he has suffered, and I believe that those paragraphs are
2 saying that he can't ascertain the amount of his damages
3 until the mortgage has been paid off.

4 And at any rate I don't believe that that extends
5 the statute of limitations at all.

6 Counsel's argument that there was correspondence, as
7 he describes it correspondence between Mr. Jayma and
8 Mr. Wilson running in 2010, 2011 arguing about profits.
9 Our courts have clearly held that even settlement
10 negotiations between the parties that don't result in
11 settlement, don't extend the statute of limitations. And I
12 would cite *Gadsden versus Southern Railway* for that
13 proposition 206 S.E.2nd 882.

14 Your Honor, with regard to this argument that this is
15 an action, either an action for recovery of property or an
16 action upon a sealed instrument, I believe in the cases
17 Mr. Cook is correct when the cases talk about unless
18 there's an actual seal the Court can look at the document
19 and determine what was the intent of the parties whether
20 it was intended to be a sealed instrument. I don't -- I
21 believe the Court's gonna have to make that decision. I'm
22 not sure it's even proper for me to tell you what the
23 what your conclusion of the law is as to that. But I think
24 there are - really are not being indicia that you see in
25 these other cases that these were intended to be sealed

FILED, RECORDED, INDEXED

04/22/2005 09:47AM

Rec Fee: 12.00 St Fees: 0.00

Co Fee: 0.00 Pages: 6

Register of Deeds
LANCASTER COUNTY, SC

State of South Carolina

County of Lancaster

MORTGAGE ON REAL PROPERTY

THIS MORTGAGE, made this 15th day of April, 2005, among Frederick Mark Wilson (hereinafter referred to as Mortgagor) and Keith Jayma and Wilbur Streater, III., (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements Note(s) with the original Note being in the principal sum of Thirty Two Thousand and 00/100 DOLLARS (\$32,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or due to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or Thirty Two Thousand and 00 DOLLARS (\$32,000.00) whichever is greater, plus or together with interest thereon, attorneys' fees, court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located in Lancaster County, South Carolina:

SEE ATTACHED EXHIBIT A

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining. Including but not limited to all buildings improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or utilities, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagor covenants with Mortgagee, its successors and assigns, that Mortgagor is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to Mortgagee at the time this Mortgage is given; and that Mortgagor will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

EXHIBIT

3 Wilson
Huseby.com
GLOBAL LITIGATION SUPPORT
85 YEARS OF
TRADITION, EXCELLENCE

1. NOTE PAYMENTS. Mortgagor shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. TAXES. Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgage or debts secured hereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. INSURANCE. Mortgagor shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefore when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagor and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest in any insurance policies then in force shall pass to the Mortgagee.

4. REPAIRS. Mortgagor will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. COMPLIANCE WITH LAWS. Mortgagor shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. CONDEMNATION AWARD. Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. PAYMENTS BY MORTGAGEE. If Mortgagor shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagor such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagor such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default under.

8. TRANSFER OF THE PROPERTY ASSUMPTION. If all or any part of the property or an interest herein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation

or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest in household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. MORTGAGOR'S CONTINUING OBLIGATION. It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagor, and all indebtedness now and hereafter owed by Mortgagor to Mortgagee, and any other present or future indebtedness or liability of Mortgagor to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagor, will satisfy this mortgage whenever: (1) Mortgagor owes no indebtedness to Mortgagee, (2) Mortgagor has no liability to Mortgagee, (3) Mortgagor requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagor. The Mortgagor shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagor's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagor or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagor or any party assuming the obligations hereunder.

10. WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS. The Mortgagor does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagor, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagor agrees to and does hereby waive any and all rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagor in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. DEFAULT. Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagor.

12. ASSIGNMENT OF RENTS, LEASES AND PROFITS. Mortgagor hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no Default has occurred, Mortgagor shall be entitled to collect and retain all such rents, leases and profits. In the event of Default, all rents, leases and profits shall be payable and delivered to Mortgagee and Mortgagor hereby authorizes Mortgagee to notify any and all tenants of this assignment and that all payments of rents, leases and profits should be made directly to Mortgagee.

13. APPOINTMENT OF RECEIVER. Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the herein described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such

closure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

14. ENVIRONMENTAL MATTERS. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason or arising out of any violation of any federal, state or local health, safety, or environmental laws, ordinances, and regulations, requiring the removal of, or otherwise regulating the maintenance, storage, transportation or disposal of any hazardous substance or any other toxic substances, asbestos, contaminants, petroleum products, or radioactive materials. The provisions of this paragraph shall survive the satisfaction or release of this Mortgage and the satisfaction of the Note(s) and shall continue thereafter in full force and effect.

The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any laws, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighting in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

15. APPRAISAL. Mortgagor shall pay when due the cost of providing to Mortgagee, at its request, from time to time, a then-current appraisal of the market value of the property prepared by an appraiser acceptable to Mortgagee, in its sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every two (2) years, unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every two (2) years. If Mortgagor fails to pay such costs when due, Mortgagee may pay such costs on Mortgagor's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. DEFINITIONS. As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

AND IT IS AGREED by and between the parties that in the case of foreclosure of this Mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor a sum as attorney's fees as set out in said Note(s) which shall be secured by this Mortgage, and shall be included in judgment of foreclosure.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) by advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

shall

P. 162.

IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor the
and year first above written.

Carolyn M. Reynolds

Witness

Frederick Mark Wilson

Frederick Mark Wilson

William Blackmon Huckabee
Witness (Notary)

ate of South Carolina)

)

PROBATE

ounty of Lancaster)

)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-
med Frederick Mark Wilson sign, seal and as their act and deed deliver the within-written Mortgage of Real
property; and, that (s)he with the other subscribing witness, witnessed the execution thereof.

WORN to before me this 18th
y of April, 2005

William Blackmon Huckabee (L.S.)

Carolyn M. Reynolds

tary Public for South Carolina

Commission Expires:

My Commission Expires

September 21, 2010

William Blackmon Huckabee
Notary State of South Carolina

BEGINNING at a nail set in the centerline of the 66' right of way of S 29-51 (Camp Creek Road) and running thence with said centerline, South 61-44-37 West 391.55 feet to a nail found, a common corner with the Douglas A. Wise property (47/131 Plat 99/354 Tax Parcel 37-3.03); thence with the said Wise property, two calls as follows: 1st North 27-38-36 West 895.83 feet (crossing an iron found at 33.07 feet) to an iron found; South 72-21-57 West 537.12 feet to an iron found, a common corner with the Timothy P. Cauthen property (57/248 Plat 15257 Tax Parcel 37-3.02); thence with the northern boundary line of the said Cauthen property, South 74-58-18 West 824.83 feet to an iron found, a common corner with the Frank P. Lopez property (W8/279 Plat 11668 Tax Parcel 37-3.04); thence with the northern boundary line of the said Lopez property, North 78-14-33 West 571.28 feet to an iron found, a common corner with the Gregg P. Shipston property (X8/122 Plat 10849 Tax Parcel 37-3.01); thence with the said Shipston property, two calls as follows: 1st North 13-00-38 West 261.78 feet to an iron found; 2nd North 89-12-45 West 648.11 feet to an iron found in the centerline of the 66' right of way of S.C. Mockingbird Lane (50' right of way of N.C. Gus Eubanks Road); thence with said centerline, six calls as follows: 1st North 00-16-21 East 283.54 feet to a point; 2nd North 06-16-38 East 21.51 feet to a point; 3rd North 01-13-15 East 83.39 feet to a point; 4th North 08-55-51 West 93.43 feet to a point; 5th North 10-15-40 West 120.35 feet to a point; 6th North 03-38-50 West 79.92 feet to a point, a common corner with the Gladys Autry property; thence with the southern boundary line of the said Gladys Autry property, South 07-10-52 East 534.71 feet to an iron found, a common corner with the Richard Autry property (372/336); thence with the southern boundary line of the said Richard Autry property, South 85-47-19 East 1,393.75 feet to an iron found in the southern boundary line of the Richard Autry, Jr. property (461/141); thence with the said southern boundary line of the Richard Autry, Jr. property, South 85-43-56 East 897.45 feet to an iron found, a common corner with the Edwards Wood Products property (450/587); thence with the said Edwards property, North 89-45-41 East 787.65 feet (crossing an iron set at 757.65 feet) to a point in the centerline of the Lynches River; thence with the centerline of Lynches River, twelve calls as follows: 1st South 51-42-41 West 67.13 feet to a point; 2nd South 30-42-50 West 47.28 feet to a point; 3rd South 08-40-29 West 41.97 feet to a point; 4th South 30-59-50 West 136.56 feet to a point; 5th South 36-29-25 West 128.10 feet to a point; 6th South 31-04-26 West 295.20 feet to a point; 7th South 66-50-11 West 98.47 feet to a point; 8th South 38-37-40 West 41.27 feet to a point; 9th South 15-40-34 West 140.22 feet to a point; 10th South 04-56-30 West 39.41 feet to a point; 11th South 18-49-08 East 47.69 feet to a point; 12th South 17-07-30 West 80.41 feet to the point and place of BEGINNING and containing approximately 82.69 acres as shown on that survey by Thomas M. Park, S.C.R.L.S., dated November 27, 2000 and being the same property conveyed to Grantor in Deed Book C6/4835 Tax Parcel 37-3.00.

Being the identical property conveyed to C. Ingram Walters by Deed of F. Mark Wilson, Jr., a/k/a Frederick Wilson, Jr. dated May 1, 2001 and recorded May 2, 2001 in Deed Book 117 Page 140, Register of Deeds Office for Lancaster County, South Carolina.

IV. Sealed Instrument, "Mortgage of Real Property"; as outlined in Appellant's Amended Brief page 7.

The April 18, 2005 document "Mortgage of Real Property" was a sealed instrument between the Appellant and Respondent's Jayma and Streeter. This "Sealed Instrument" was admitted into evidence as an exhibit by Attorney Keith Martens at the Appellant's deposition on 7-5-2017, Exhibit 3, p 43 line 9, and p 44 lines 9-10, and proved that the Appellant did not identify the property, I.E. the "Disputed Tract," as he did not initial the description page of that "Sealed" document as executed and attested by Attorney Blackmon Huckabee. This document mentions signed, sealed, sign and seal four (4) times; IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor.... That (s)he saw the within named Frederick Mark Wilson sign, seal and as their act and deed, deliver the within- written Mortgage of Real Property;

- (1) Appellant did not sign or initial the description page of Exhibit 3, the "Mortgage of Real Property"; p 43 lines 5-10; line 9 "I was just looking at the description page, and I don't see my signature on it." Page 44 lines 9-10, Attorney Martens said, "And then the property description does not have your initials on your signature on it." Appellant, line 11, "Right."
- (2) Appellant had no legal representation at the signing of the Mortgage of Real Property, p 47 lines 8-10.
- (3) Respondent has been paid in full as admitted into evidence at Appellant's deposition; p 34 lines 23-25, p 35 lines 1-2, "You repaid the entire amount of that loan?" "Yes, sir." P 37 lines 2-12, p 38 lines 24-25, p 39 lines 1-10, p 41 lines 1-4, p 43 lines 5-10.
- (4) P 53 lines 10-21, line 12, "In lieu of any interest on the promissory note, I agreed to work on his building. I did the work on his wife's real estate office."
- (5) Respondent was a mortgage lender, DBA International Mortgage Services. Appellant contends that this loan did not meet federal guidelines for making a loan and the fact that the "Mortgage of Real Property" is a "sealed instrument" and the 20 year statute of limitations is applicable in this case; Appellant is entitled to have the issues surrounding the "Mortgage of Real Property" fully adjudicated. Therefore, Judge Hayes' order granting summary judgement to Respondent should be reversed.

This sealed document and evidence should have been considered by Judge Hayes. Judge Hayes erred when he did not recognize the evidence that the Appellant did not initial the description page of the Mortgage of Real Property (Promissory Note) that was executed under seal as attested to in Appellant's deposition and the law that is subject to South Carolina's 20 year statute of limitations afforded under Title 15 Chapter 3 Section 15-3-520, and SC Section 15-3-520(a) and SC Section 15-3-520(b) that is applicable in the Appellant's case. A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal," Black Law Dictionary (9th Ed. 2010.)

1 issue with it.

2 Q Did you read Exhibit 2 before you executed that
3 promissory note?

4 A Yes.

5 Q In Exhibit 3, the Mortgage on Real Property, did
6 you read that before you signed it?

7 A Probably not.

8 Q Why not?

9 A I was just looking at the description page, and
10 I don't see my signature on it.

11 Q But you do see your signature on the page before
12 that description?

13 A Yes, I do.

14 Q Other than the property description page, is
15 there anything else that you see in Exhibit 3 that doesn't
16 appear to be something that you would have seen prior to
17 signing that mortgage?

18 A Well, I would have to read this whole document.

19 Q That's okay.

20 A Do you want me ---

21 Q Let me ask you this first. On the bottom of
22 Page 1 of Exhibit 3, are those your initials?

23 A Yes, they are.

24 Q On the bottom of Page 2 of Exhibit 3, are those
25 your initials?

1 A Yes, they are.

2 Q And the next page, are those your initials?

3 A Yes, they are.

4 Q And on the next page, are those your initials?

5 A Yes, they are.

6 Q So you initialed every page except for the page

7 you signed, right?

8 A Except for the description.

9 Q And then the property description does not

10 have your initials or your signature on it?

11 A Right.

12 Q Do you know who prepared that mortgage, Exhibit

13 3?

14 A I recognize Huckabee's name.

15 Q Blackmon Huckabee?

16 A Blackmon Huckabee.

17 Q He was an attorney who passed away?

18 A I believe he was Keith Jayma's attorney, yes.

19 Q Do you know who Carolyn Reynolds is?

20 A No.

21 Q Do you believe Mr. Huckabee drafted this

22 mortgage?

23 A I don't know.

24 Q Where did you sign the mortgage?

25 A I think I signed this in Huckabee's office.

1 Q But you weren't sure in your own mind how much
2 of that you were mortgaging, whether it was 25 acres or
3 the entire 62.69?

4 A Right.

5 Q Did you ask for any clarification on that
6 prior to signing the note and the mortgage?

7 A I don't think I asked for clarification.

8 Q Other than Mr. Huckabee, did you have an
9 attorney review the mortgage prior to executing it?

10 A No.

11 Q Other than the \$32,000.00 loan that's evidenced
12 by the three documents we've marked as exhibits to your
13 deposition, did you have any business dealings with Mr.
14 Jayma prior to April of 2005?

15 A No.

16 Q So the first business dealings you had with
17 Mr. Jayma were his agreement to loan you \$32,000.00
18 secured by a mortgage on some property that you owned?

19 A No, that's not right.

20 Q You had business dealings with Mr. Jayma prior
21 to that \$32,000.00 loan?

22 A Yes.

23 Q Tell me about those because I thought you told
24 me that you called him ---

25 A I did call him. That's how I met him.

1 A Yes.

2 Whereupon - Document marked as Exhibit 2.

3 Q The court reporter has handed you what we've
4 marked as Exhibit 2 to your deposition. If you would
5 first, sir, flip to the last page of Exhibit 2.

6 A (Witness complies)

7 Q Does that appear to be your signature under
8 borrower/promissor?

9 A Yes.

10 Q Is Exhibit 2 the Promissory Note that you
11 executed in connection with what you call the Yellow
12 Page ad loan?

13 A Yes.

14 Q Did Mr. Jayma and Mr. Streater, in fact, loan
15 loan you \$32,000.00 in April of 2005?

16 A Yes.

17 Q Did you, in fact, execute this promissory note
18 that we've marked as Exhibit 2?

19 A Yes, I did.

20 Q Did you agree to repay the loan on the terms
21 that are set forth in the promissory note?

22 A Yes.

23 Q Did you repay the loan on the terms that are
24 set forth in the promissory note?

25 A I did repay the loan.

1 Q You repaid the entire amount of that loan?

2 A Yes, sir.

3 Q You have documentation to substantiate that?

4 A Yes, sir.

5 Q Where is that?

6 A I'll have to get that to you. I have it.

7 Q Have you provided it to your attorney?

8 A No, not all of it.

9 Q Why not?

10 A Because Mr. Jayma has refused to turn over his
11 information that we asked for since 2012, including his
12 tax returns, that would show the money that we made on
13 five building lots.

14 Q So do I understand -- I want to make sure I
15 understand your testimony, Mr. Wilson. Your testimony
16 is that you have documents in your possession that are
17 responsive to information we have asked for in discovery
18 that you have not given to your attorney.

19 A The documents that I don't have are the ones
20 Jayma has not given us. I need those documents. I need
21 interest payments. I need taxes for the year. I need
22 homeowner's association. I need all the fees incurred.

23 Q Tell me what documents you have related -- that
24 could prove that you repaid this promissory note that's
25 marked as Exhibit 2. What documents do you have in your

1 repayment?

2 A We bought five lots. He gave me a check on
3 two of them. On the other three lots, he kept all the
4 money, all the profit, and he took all the deductions.

5 Q Is it your contention that Mr. Jayma repaid
6 your debt by keeping the profit and the deduction on
7 those lots?

8 A Yes. He's been paid in full.

9 Q Okay. So your position is that by -- that Mr.
10 Jayma kept money that you should have been paid, to repay
11 the note?

12 A Kept all of it.

13 Q And you say you don't have those documents.

14 A No, he's got them. I do have the check he paid
15 me on the two lots, 52 and 53. He kept all the money on
16 the other three. One other payment was from First
17 Charter Bank for \$30,225.00 made out to my company and
18 Mr. Jayma. He kept that check, too.

19 Q Let me ask you this. The five lots that you're
20 talking about, those are in the Longbrook Subdivision?

21 A No, three of them were.

22 Q Three of them were in Longbrook. Where were
23 the other ones?

24 A Providence Downs South.

25 Q Who purchased those lots?

1 A Mr. Jayma.

2 Q Whose money was used to purchase those lots?

3 A Mr. Jayma.

4 Q Who sold those lots?

5 A Mr. Jayma.

6 Q And it's your testimony that you're entitled
7 to half of the profits from those?

8 A He did give me half on two of them. Oh, he
9 says he paid me half. He justified the numbers in
10 handwriting, but I wasn't -- There, again, I say he took
11 all the deductions for interest expense on the lots and
12 the taxes on the lots and the homeowner's association.

13 Q Did you borrow any money related to the
14 purchase of those lots?

15 A No.

16 Q Did you pay any of the loan payments on the
17 purchase of those lots?

18 A No.

19 Q Did you pay any of the carrying costs related
20 to those lots?

21 A I did not.

22 Q Mr. Jayma did?

23 A Yes. That was his job.

24 Q Why would you be entitled to half the profits?

25 A I picked out the lots. That was my legwork to

1 pick out the lots based on topography and where to build
2 a house. I picked out the house plans to build. I had
3 the houses put on the lots.

4 Q What year was this that you're talking about?

5 A 2005 and 2006.

6 Q When did you learn that the lots had been sold?

7 A Well, the first two, I learned quickly because
8 he sent me a check.

9 Q How about the other three?

10 A He hid those. He could have let me know on
11 Lot 31 that he was selling it. He never gave me any money
12 on the lot.

13 Q When did you discover that all five lots had
14 been sold by Mr. Jayma?

15 A I don't recall.

16 Q He told you about two of them, paid you on
17 two of them?

18 A Yes.

19 Q You said he told you about a third?

20 A Yes.

21 Q And you said he hid ---

22 A He hid one, and I wasn't involved on Lot 163,
23 the partnership lot, 163.

24 Q When did you learn that all five lots had been
25 sold?

1 Q Okay. So it's your contention that those
2 payments offset any liability that you had under this
3 promissory note?

4 A That's correct.

5 Whereupon - Document marked Exhibit 3.

6 Q Mr. Wilson, was there any written agreement
7 between you and Mr. Jayma related to division of profits
8 from the sale of these lots?

9 A I don't recall. I don't think there was a
10 written agreement.

11 Q Was there ever anything that Mr. Jayma wrote
12 you or sent to you and said promissory note has been
13 forgiven?

14 A No.

15 Q Did Mr. Jayma ever tell you, you don't need to
16 make payments on this promissory note because I'm just
17 going to keep your half of the profits from these other
18 lot sales?

19 A No.

20 Q Did Mr. Jayma ever tell you the note was
21 satisfied?

22 A I think he said he fell out with Streater or
23 almost lost him as a friend, in a letter to me. So I
24 think he paid off Streater, but I don't know.

25 Q I show you what we've marked as Exhibit 3 to

1 Q Have you provided those to your attorney?

2 A Probably not.

3 Q I'm going to ask that you provide to your
4 attorney any documents that you have that show payments
5 that you've made toward this promissory note.

6 A I've got a big one to throw at you if you want
7 to know about payments.

8 Q What big one do you have to throw at me, Mr.
9 Wilson?

10 A Mr. Jayma bought a suite in an office building.
11 He was going to put his wife's real estate company in
12 that building. In lieu of any interest on the promissory
13 note, I agreed to work on his building. I did the work
14 on his wife's real estate office.

15 Q Did you and Mr. Jayma come to an agreement about
16 how much credit you would receive for that work?

17 A In lieu of any interest due.

18 Q Your understanding was if you would work on his
19 wife's real estate office, you would have no interest due
20 on repayment of this loan.

21 A That's correct.

22 Q Is there any documentation to support that?

23 A No documentation, just our word.

24 Q Do you have any documentation where Mr. Jayma
25 has written to tell you that the note is satisfied, the

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)
Plaintiff,)

C/A No. 2012-CP-29-498

v.)

AFFIDAVIT OF KEITH JAYMA

Keith Jayma and Wilbur Street, III,¹)
Defendants,)

FILED
OFFICE OF CLERK
OF COURT
2016 SEP 30 PM 1:17
CLERK OF COURT
LANCASTER, SC

Personally appeared before me, Keith Jayma, who first being duly sworn deposes and states:

1. I am a citizen and resident of North Carolina, and the only remaining defendant in this lawsuit. I am over the age of eighteen and I am legally competent to give this affidavit. The facts set forth in this affidavit are based upon my personal knowledge.

2. My business relationship with Mark Wilson began in April 2005, when Wilbur Streeter and I made him a \$32,000 loan, secured by a mortgage on a parcel of real property that was owned by Mr. Wilson and located in Lancaster County, South Carolina. A true and accurate copy of Mr. Wilson's April 2005 promissory note is attached as Exhibit A and is incorporated by reference. A true and accurate copy of Mr. Wilson's April 2005 mortgage is attached as Exhibit B and is incorporated by reference.

3. In or about August 2005, Mr. Wilson and I entered into a business arrangement to build a \$1,000,000 "spec" home at 10010 Strike the Gold Lane, in Waxhaw, North Carolina. Our arrangement was that I would secure financing for the home and Mr. Wilson would serve as

¹ Wilbur Streeter, III has been dismissed from this action.

the general contractor. Our arrangement did not go well, and we ended up significantly behind schedule and significantly over budget. I ended up borrowing well in excess of \$1,000,000 just to complete the project, and also exhausted most, if not all, of my personal savings.

4. The house was finally completed in April 2007, and I began to aggressively market it for sale in order to pay off the primary construction lender and with the goal of recouping the additional amounts that I had paid and borrowed to complete the project.

5. By the time we completed the house, my relationship with Mr. Wilson had deteriorated to the point that we were only communicating with each other in writing, and only when necessary.

6. In early 2008, I received a fax from Mr. Wilson, accusing me of various wrongs. A copy of Mr. Wilson's fax is attached as Exhibit C and incorporated by reference.

7. I finally secured a purchase contract for the house in mid-2008, but for less than I had borrowed and spent to complete the project.

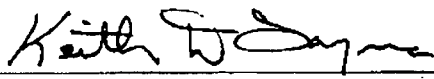
8. Closing occurred on or about September 12, 2008. While I was able to pay off the primary (\$1,000,000) construction loan, I was unable to pay off approximately \$194,000 that I had drawn on a line of credit. I am still carrying that debt to this day. It is secured by an equity line on my home.

9. A few days after closing, I received a certified letter from an attorney representing Mr. Wilson. A true and accurate copy of that letter is attached as Exhibit D and is incorporated by reference.

10. Over the next few years, I continued to receive correspondence from Mr. Wilson, accusing me of various wrongs and continuing to threaten me with legal action. One of the letters I received is attached as Exhibit E and is incorporated by reference. The letter is in Mr.

Wilson's handwriting. At the top of the letter, Mr. Wilson dated the letter 7-14-11, then wrote "mailed 7-19-11." I recall that I received the letter around that time. Mr. Wilson's July 2011 letter specifically references the letter I received from his attorney in September 2008, and then continues "unfortunately, I was unable to pursue you in court at that time."

11. While I vehemently deny the substance of the claims and allegations that Mr. Wilson has made against me in this lawsuit, I can state unequivocally that he has been making the same claims against me since, at least late 2007 or early 2008. Mr. Wilson did not file this lawsuit until April 2012, more than four years after he first threatened me with legal action. I was served with his summons and complaint on April 22, 2012.


Keith D. Jayma

Sworn to before me this

17th day of September, 2016

Barbara Dianne Mellon (notary's signature)

Barbara Dianne Mellon (notary's printed name)

Notary Public for SC

My commission expires: 1/19/26.

4835-7219-3080, v. 1

Affidavit of Keith Jayma

Respondent testifies in his affidavit #3, that he entered into a business arrangement to build a \$1,000,000 "spec" home at 10010 Strike the Gold. Attorney Martens entered Exhibit 5 of Appellant's deposition, lines 1-10, the second cost code for \$1,005,870 and was based on 4,500 square feet.

The first cost code, Exhibit 6, was \$1,099,370 based on 4,500 square feet, the dollar amount only changed at the direction of Respondent. Diana Jayma was advertising the home with 8180 square feet, an 82% increase in square footage from the first estimates. Was this a "spec" home or a "second home as financed"? Respondent has kept Appellant's farm to recoup any money he may or may not have lost on his "second home as financed". All in an attempt to hide the fact that Respondent feloniously made material misstatements, misrepresentations, and omissions to the mortgage lender, First Charter Bank, to obtain a residential mortgage loan. There was a clear record to market and sell the home from the very beginning, as evidenced by the long, detailed and everchanging MLS record.

Attorney Martens entered the closing statement of the home loan as Exhibit 8 page 71, line 13 and lines 14-21 of Appellant's deposition, where Diana Jayma signed. Was Diana Jayma a partner of the "spec" home or the "second home as financed"?



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III
Judge

Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745-7434
Phone: (803) 628-3047
Fax: (803) 628-3055
jhayesj@sccourts.org

August 24, 2017

W. Keith Martens, Esq.
Hamilton, Martens, Ballou & Carroll, LLC
Attorneys at Law
130 E. Main Street
Rock Hill, SC 29731

Re: Mark Wilson v. Keith Jayma and Wilbur Street, III
C.A. No.: 2012-CP-29-498

Dear Keith:

Please draw an Order granting Defendant Jayma summary judgment.

First, I find Section 15-3-520(b), S.C. Code, is inapplicable. The Court need look no further than the definition of a sealed instrument set forth in Lyons v. Fidelity National Title, 415 S.C. 115 (Ct. App. 2015). In Lyons, the Court defined a sealed instrument for the purposes of Section 15-3-520 as:

an instrument to which the bound party has affixed a
personal seal. (emphasis added)

In the instant case neither the deed nor the mortgage at issue were signed by Jayma.

As to Section 15-3-520(a) there is neither a bond on a contract secured by a mortgage of real property in the case. The focus of this statute is not the mortgage, but the contract. In this case there is no evidence presented to the Court of any contract in writing. It is the contract which would be subject to the 20 year statute of limitations, not the mortgage which stands as security for the mortgage.

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W. Keith Martens, Esq.
August 24, 2017
Page 2

Section 15-3-340 does not provide Plaintiff here with a ten year statute of limitations. Our courts have specifically held that this statutory provision does not apply to cases alleging forgery or fraud. See McKinnon v. Summers, 224 S.C. 331 (SC 1953). In 1953 the statute of limitations for such causes of action was six years. Now the applicable statute of limitations is three years (See §15-3-530(7)).

In looking at the Complaint as McKinnon instructs, Plaintiff alleges in paragraph 8 of his Complaint that the deed here at issue was obtained by fraud and is invalid.

Section 15-3-530(7) provides a three year statute of limitation for "any action for relief on the ground of fraud." The three years specifically runs from the time the aggrieved party has discovered 'facts constituting the fraud.'

I find the three year provisions of Section 15-3-530(7) apply to Plaintiff's here.

I also find, applying the general rule of discovery pertaining to all causes of action and specifically the discovery provision of Section 15-3-530(7), that Plaintiff had knowledge of facts which put him on notice of harm or injury from Jayma's alleged conduct at least by September 12, 2008, the date of the Nexsen/Pruet letter. However, there is evidence of Plaintiff's discovery of what I deemed to be a fraud accusation on the part of Jayma as early as March 6, 2008. In his handwritten note dated 3-6-08, directed to Jayma Plaintiff alleges fraud relative to the deed in question.

As to Jayma's conduct constituting tolling of the statute of limitations the record is void of any conduct by Jayma from which Plaintiff could have been lulled into any belief that the issues between the parties would be resolved between themselves. Inaction by Jayma, such as not responding to communication from Plaintiff, cannot be relied on by Plaintiff as conduct upon which he did or could have relied on for tolling purposes.

Plaintiff, in his affidavit, directs the Court to an email from Defendant to him as evidence that Plaintiff believed in July of 2011, the two parties were "still arguing over profits of [the] job." A review of that email reveals no evidence that supports Plaintiff's claim. The email is rather a castigation of Plaintiff and in it Jayma makes it clear his position was that he did not owe Plaintiff anything.

The question of the commencement of the time at which a statute of limitations begins to run is generally a jury question. However, in this case the undisputed factual evidence is conclusive. In March 2008 Plaintiff claimed he had been defrauded by Jayma. In September of 2008, counsel, on behalf of Plaintiff, alleges the deed here at issue conveyed to Jayma 63 acres when it should have conveyed 25. It is unimaginable that Plaintiff did not consider he had been injured by Jayma's alleged conduct at the latest by September 12, 2008. While Plaintiff did not

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W. Keith Martens, Esq.

August 24, 2017

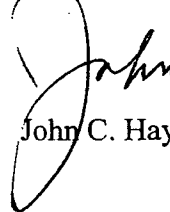
Page 3

write the letter, it is written on his behalf and expresses the exact claim Plaintiff had expressed in March of 2008. The fact that Plaintiff felt compelled to seek legal counsel regarding his relationship with Jayma in and of itself is pretty indicative of Plaintiff's awareness of injury or have at the hands of Jayma.

Please favor Mr. Cook with a copy of your proposed Order when you send it to me for my review.

Thanking you, I am

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Hayes, III". The signature is stylized with a large, looping initial "J" and "H".

John C. Hayes, III

JCHIII/fjk

cc: David C. Cook, Esq.

P. 182.



Archive Search

#	Id#	Street Address	Field Name	Date Stamp	Old Value	New Value	DOM	Cat	Area	Agent	Office	Price
1	556953	10010 Strike The Gold LN	Status	11/14/2005	incom	act	1	RES	10/1	95132	8179	\$ 1580000
2	556953	10010 Strike The Gold LN	List Price	4/21/2006	1580000	1830000	159	RES	10/1	95132	8179	\$ 1830000
3	556953	10010 Strike The Gold LN	List Price	7/10/2006	1830000	1890000	239	RES	10/1	95132	8179	\$ 1890000
4	556953	10010 Strike The Gold LN	List Price	10/30/2006	1890000	1890000	351	RES	10/1	95132	8179	\$ 1890000
5	556953	10010 Strike The Gold LN	List Price	12/4/2006	1890000	1890009	386	RES	10/1	95132	8179	\$ 1890009
6	556953	10010 Strike The Gold LN	List Price	12/5/2006	1890009	1890000	387	RES	10/1	95132	8179	\$ 1890000
7	556953	10010 Strike The Gold LN	Expire Date	12/30/2006		Extended	412	RES	10/1	95132	8179	\$ 1890000
8	556953	10010 Strike The Gold LN	List Price	2/8/2007	1890000	1890900	452	RES	10/1	95132	8179	\$ 1890900
9	556953	10010 Strike The Gold LN	Type	3/8/2007	1108	1110	480	RES	10/1	95132	8179	\$ 1890900
10	556953	10010 Strike The Gold LN	Sub Area	3/8/2007	4	1	480	RES	10/1	95132	8179	\$ 1890900

Back to Archive Search

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 Support: support@carolinahome.com Suggestions: suggestions@carolinahome.com

P. 183.

Ways to

5,469 sq. ft.

<u>SQUARE FOOTAGE:</u>		
LOWER FLOOR	=	1471 SQ. FT.
MAIN FLOOR	=	2481 SQ. FT.
SECOND FLOOR	=	1017 SQ. FT.
TOTAL HEATED	=	5469 SQ. FT.
GARAGE	=	765 SQ. FT.
STORAGE/ POTTING	=	1147 SQ. FT.
PORCH	=	46 SQ. FT.
LOWER TERRACE	=	447 SQ. FT.
TOTAL UNDER ROOF	=	1874 SQ. FT.
MECH/ STOR. RM	=	365 SQ. FT.

FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"

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4



Jason Wiskow
704.591.7355

CAROLINA
BUYERS REALTY LLC

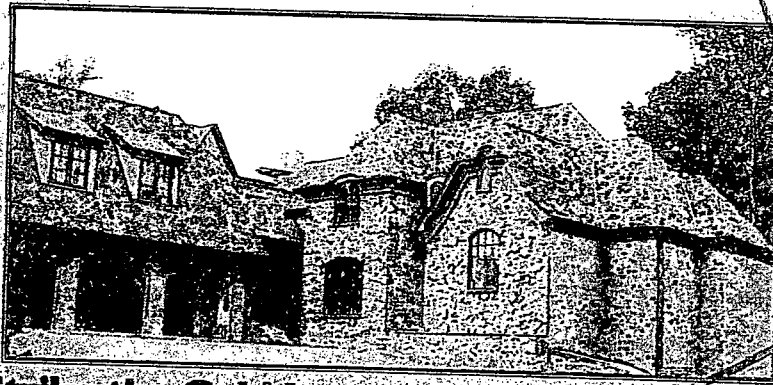
Diana Jayma
704.502.9100



www.carolinabuyers.com

jason@carolinabuyers.com

diana@carolinabuyers.com



8,180 heated
sq. ft.

10010 Strike the Gold Lane at Providence Downs South

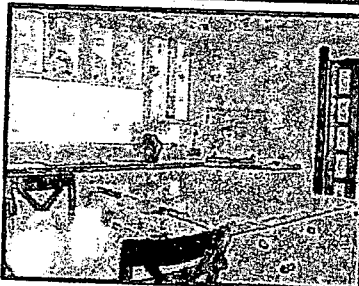
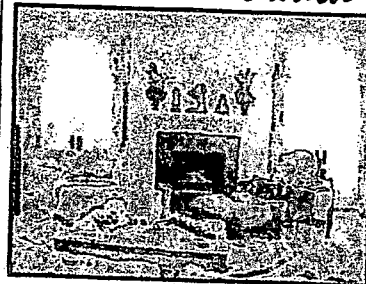
This Custom Built European Style Home with 8,180 heated SF with court yard entrance creates a very elegant look. The entire house has superior workmanship & detailing. Black Walnut hardwood, marble & ceramic tile floors. Bonus room with full BA & wet bar. Extra rooms include conservatory, exercise room, theatre & wine cellar. Enjoy the convenience of having a washer & dryer in the basement & both main & second floors. In-ground irrigation system. Outdoor fireplace in patio area. Located in a private gated community just minutes away from the Ballantyne & Stone Crest Shopping Areas. Low Union Country taxes! 6 BR, 6 full and 2 half BA. Completion Date: Oct. 2006. MLS#556953. \$1,890,000



Located in Highgrove!

\$900,000
MLS#605185

HomeArama Award Winning Home!



This home features four bedrooms, three and one half baths, computer/office and a playroom with access to upstairs terrace. Special design elements in the kitchen area include see-through glass cabinetry and an attached wet bar/butlery area connecting to the formal dining room. The rear sunroom overlooks an exquisite rear yard with trellis in an English garden setting.

**HELEN
ADAMS
REALTY**

NANCY TATE, CRS ABR
realestatebytate@aol.com

Cell: 704.661.8153
Main Office: 704.543.4492

P. 185.

*Presents: 10010 Strike the Gold Ln.
At Providence Downs South*



List Price \$1,890,000

CMLS# 556953

Marketed By

Jason Wiskow
704-591-SELL (7355)
jason@carolinabuyers.com

&

Diana Jayma
704-502-9100
diana@carolinabuyers.com

11535 Carmel Commons Blvd. Suite 102 Charlotte, NC 28226
www.carolinabuyers.com



F. Mark Wilson Construction
Cost Code File List

Lot 163 Providence Downs South/Waystrode

08-15-05

Cost Code Range All to End

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
001	Architect Fee/Blueprint	Other	Hour	1,150.00	
005	Legal Fees	Other	Hour	4,000.00	
010	Lot Cost - Land	Other	Acre	276,745.00	
015	Insurance - Builders Risk	Other	Each	1,500.00	
020	Construction Interest	Other	Rate	0.00	
025	Building Permits	Other	/Job	5,000.00	
030	Surveys	Other	/Job	1,000.00	
035	Lot Grading	Labor	Hour	10,000.00	
036	Lot Grading	Material		2,500.00	
040	Footing	Material		4,500.00	
045	Footing	Labor	Hour	4,500.00	
046	Rock/Stone	Material		5,000.00	
050	Foundation	Material		20,000.00	
055	Foundation/Preparation	Labor	/Job	5,000.00	
060	Foundation	Labor	Hour	15,000.00	
061	Foundation/Waterproofing	Subcontract		5,500.00	
065	Soil Treatment/Termite	Subcontract		2,500.00	
067	Fireplace	Material		1,500.00	
068	Fireplace	Labor	Hour	1,500.00	
069	Fireplace/marble/surround/mantel	Material	Job	5,000.00	
070	Site Preparation		Job	2,500.00	
075	Fill Dirt/Back Fill	Material	Ton	5,000.00	
080	Concrete	Material		1,000.00	
085	Port-A-Jon	Other	Day	1,000.00	
090	Framing	Lumber		50,000.00	
095	Framing	Labor	Hour	45,000.00	
096	Steel	Material	each	5,000.00	
097	Steel/crane	Labor		750.00	
100	Doors/exterior	Material		5,000.00	

EXHIBIT

5 Wilson



7-7-17

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F. Mark Wilson Construction
Cost Code File List

2

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
145	Plumbing/special/whirlpool	Material		1,500.00	
150	Electrical	Material		8,500.00	
155	Electrical	Labor	hour	8,500.00	
160	Telephone - Pre-wire	Subcontract		incl.	
163	Electrical - T.V.	Subcontract		incl.	
165	Electrical - security/alarm	Subcontract		incl.	
170	Intercom	Subcontract		incl.	
175	Electrical - Central Vacuum	Subcontract		2,000.00	
180	Heating & A/C	Subcontract		30,000.00	
185	Insulation	Subcontract		12,500.00	
190	Sheetrock	Material		12,500.00	
195	Sheetrock	Labor		12,500.00	
196	Sheetrock - special	Labor		2,000.00	
200	Interior Trim	Material		10,000.00	
205	Interior Doors	Material		6,500.00	
210	Interior Trim	Labor		10,000.00	
211	Exterior trim	Material		10,000.00	
212	Exterior Trim	Labor		12,500.00	
213	Exterior Siding	Material		35,000.00	
214	Exterior Siding	Labor		25,000.00	
215	Bath tiles	Material		6,000.00	
220	Bath tiles	Labor		6,000.00	
225	Cabinets - kitchen	Other		3,000.00	
226	Bath vanities	other		5,500.00	
227	Built in cabinets	Other		4,500.00	
230	Marble counter tops	Material		2,000.00	
235	Granite counter tops	Material		7,500.00	
236	Solid surface counter tops	Material		2,500.00	
240	Paint - interior	Material		10,000.00	
241	Paint - interior	Labor		10,000.00	
245	Paint - exterior	Material		5,000.00	
246	Paint - exterior	Labor		5,000.00	
250	Shower doors	Material		1,000.00	
251	Towel bars/tissue holders	Material		500.00	
255	Mirrors	Material		1,000.00	
256	Shelving	Material		2,000.00	
260	Wallpaper	Material			
265	Wallpaper	Labor			
267	Hardware	Material		2,000.00	
270	Light fixtures and fans	Material		10,000.00	
275	Garage doors & openers	Material		5,000.00	
280	Appliances	Material		15,000.00	

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F. Mark Wilson Construction
Cost Code File List

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
285	Vinyl Floors	Material			
290	Carpet	Material		7,500.00	
291	Hardwood floors	Material		12,500.00	
292	Hardwood floors	Labor		8,500.00	
293	Other special floors	Material		5,000.00	
295	Terrazo	Material		5,000.00	
297	Walk, driveway, patio	Material		5,000.00	
300	Walk, driveway, patio	Labor		5,000.00	
304	Final grading	Material		1,500.00	
305	Landscaping	Material		12,000.00	
306	Shrubs	Material		3,000.00	
307	Trees	Material			
308	Top Soil	Material		incl.	
309	Landscape	Labor		incl.	
310	Ornamental Iron	Material		5,000.00	
315	Fencing	Material		none	
320	Gutters	Material		2,500.00	
325	Water tap/well	Other		3,150.00	
326	Sewer tap/septic	Other		3,150.00	
330	Repairs/theft	Other		3,000.00	
335	Change orders	Other	N/C		
340	Maintenance	Labor		2,000.00	
345	Temporary Utilities	Other		500.00	
350	Warranty	Other		incl.	
354	Trash clean up/haul off	Labor		5,000.00	
355	Final clean up	Labor		1,500.00	
356	Clean Windows	Labor		1,000.00	
357	Clean exterior	Labor		1,000.00	
360	Sales commission	Other			
365	Perm. Loan discount	Other			
370	Title policy	Other			
375	Taxes & maintenance fees	Other			
380	Final Survey	Other		450.00	
385	Other Closing Costs	Other			
390	Contingency	Other			
395	Interior Decorator	Other	Owner		
396	Contractor's OH/Fees	Other		5,500.00	
396A	Contractor's OH/Fees	Other		incl.	
396B	Contractor's OH/Fees	Other		incl.	
396C	Contractor's OH/Fees	Other		incl.	
400	Other Closing Costs	Other	Owner		
401	Loan Origination Fee	Other	Owner		

F. Mark Wilson Construction
Cost Code File List

4

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
402	Title Insurance	Other	Owner	2,000.00	
403	Interest Expense	Other	Owner		
405	Indirect Labor	Other	Owner	2,000.00	
410	Advertising & Marketing	Other	none		
415	Site Office Costs	Other	none		
420	Non-refundable cost	Other	none		
425	M.T.C.E.	Other	none		
430	Models	Other	none		

TOTAL COST CODES: \$1,005,870.00

<u>Construction Draws</u>	<u>Amount</u>	<u>Date</u>	<u># of Draws</u>
---------------------------	---------------	-------------	-------------------

Total Job Cost: \$764,075.00 excluding lot, loan, legal and interest expenses.

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F. Mark Wilson Construction
Cost Code File List

Lot 163 Providence Downs South Wayside

08-15-05

Cost Code Range: All to End

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
001	Architect Fee/Blueprint	Other	Hour	1,150.00	
005	Legal Fees	Other	Hour	4,000.00	
010	Lot Cost - Land	Other	Acre	276,745.00	
015	Insurance - Builders Risk	Other	Each	2,500.00	
020	Construction Interest	Other	Rate	25,000.00	
025	Building Permits	Other	/Job	5,000.00	
030	Surveys	Other	/Job	1,000.00	
035	Lot Grading	Labor	Hour	10,000.00	
036	Lot Grading	Material		2,500.00	
040	Footing	Material		4,500.00	
045	Footing	Labor	Hour	4,500.00	
046	Rock/Stone	Material		5,000.00	
050	Foundation	Material		20,000.00	
055	Foundation Preparation	Labor	/Job	5,000.00	
060	Foundation	Labor	Hour	15,000.00	
061	Foundation/Waterproofing	Subcontract		5,500.00	
065	Soil Treatment/Termite	Subcontract		2,500.00	
067	Fireplace	Material		1,500.00	
068	Fireplace	Labor	Hour	1,500.00	
069	Fireplace/mantle surround mantel	Material	Job	5,000.00	
070	Site Preparation		Job	2,500.00	
075	Fill Dirt/Back Fill	Material	Ton	5,000.00	
080	Concrete	Material		1,000.00	
085	Por - A Jon	Other	Day	1,000.00	
090	Framing	Lumber		85,000.00	
095	Framing	Labor	Hour	45,000.00	
100	Steel	Material	each	5,000.00	
102	Steel crane	Labor		750.00	
100	Door/exterior	Material		5,000.00	
105	Windows	Material		33,000.00	
106	Window grilles	Material		incl.	
107	Window screens	Material		incl.	
108	Window Locks	Material		incl.	
110	Roof	Labor	hour	5,500.00	
115	Roof	Material	square	5,500.00	
116	Roof Flashing	Material	job	2,000.00	
120	Masonry	Material	job	5,000.00	
125	Masonry	Labor	job	5,000.00	
130	Clean up	Subcontract		5,000.00	
135	Plumbing	Material		12,500.00	
140	Plumbing	Labor		12,500.00	

EXHIBIT



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7-7-17

F. Mark Wilson Construction
Cost Code File List

2

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
145	Plumbing/special/whirlpool	Material		1,500.00	
150	Electrical	Material		8,500.00	
155	Electrical	Labor	hour	8,500.00	
160	Telephone - Pre-wire	Subcontract		incl.	
163	Electrical - T.V.	Subcontract		incl.	
165	Electrical - security/alarm	Subcontract		incl.	
170	Intercom	Subcontract		incl.	
175	Electrical - Central Vacuum	Subcontract		2,000.00	
180	Heating & A/C	Subcontract		30,000.00	
185	Insulation	Subcontract		12,500.00	
190	Sheetrock	Material		15,000.00	
195	Sheetrock	Labor		15,000.00	
196	Sheetrock - special	Labor		2,000.00	
200	Interior Trim	Material		10,000.00	
205	Interior Doors	Material		6,500.00	
210	Interior Trim	Labor		10,000.00	
211	Exterior trim	Material		10,000.00	
212	Exterior Trim	Labor		12,500.00	
213	Exterior Siding	Material		35,000.00	
214	Exterior Siding	Labor		25,000.00	
215	Bath tiles	Material		6,000.00	
220	Bath tiles	Labor		6,000.00	
225	Cabinets - kitchen	Other		40,000.00	
226	Bath vanities	other		5,500.00	
227	Built in cabinets	Other		4,500.00	
230	Marble counter tops	Material		2,000.00	
235	Granite counter tops	Material		7,500.00	
236	Solid surface counter tops	Material		2,500.00	
240	Paint - interior	Material		15,000.00	
241	Paint - interior	Labor		15,000.00	
245	Paint - exterior	Material		5,000.00	
246	Paint - exterior	Labor		5,000.00	
250	Shower doors	Material		1,000.00	
251	Towel bars-tissue holders	Material		500.00	
252	Mirrors	Material		1,000.00	
256	Shelving	Material		2,000.00	
260	Wallpaper	Material			
265	Wallpaper	Labor			
267	Hardware	Material		2,000.00	
270	Light fixtures and fans	Material		15,000.00	
275	Garage doors & openers	Material		5,000.00	
280	Appliances	Material		17,500.00	

F. Mark Wilson Construction
Cost Code File List

3

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
285	Vinyl Floors	Material			
290	Carpet	Material		7,500.00	
291	Hardwood floors	Material		12,500.00	
292	Hardwood floors	Labor		8,500.00	
293	Other special floors	Material		5,000.00	
295	Terrazo	Material		5,000.00	
297	Walk, driveway, patio	Material		5,000.00	
300	Walk, driveway, patio	Labor		5,000.00	
304	Final grading	Material		1,500.00	
305	Landscaping	Material		12,000.00	
306	Shrubs	Material		3,000.00	
307	Trees	Material			
308	Top Soil	Material		incl.	
309	Landscape	Labor		incl.	
310	Ornamental Iron	Material		5,000.00	
315	Fencing	Material		none	
320	Gutters	Material		2,500.00	
325	Water tap/well	Other		3,150.00	
326	Sewer tap/septic	Other		3,150.00	
330	Repairs/theft	Other		3,000.00	
335	Change orders	Other	N/C		
340	Maintenance	Labor		2,000.00	
345	Temporary Utilities	Other		500.00	
350	Warranty	Other		incl.	
354	Trash clean up/haul off	Labor		5,000.00	
355	Final clean up	Labor		1,500.00	
356	Clean Windows	Labor		1,000.00	
357	Clean exterior	Labor		1,000.00	
360	Sales commission	Other			
365	Perm. Loan discount	Other			
370	Title policy	Other			
375	Taxes & maintenance fees	Other			
380	Final Survey	Other		450.00	
385	Other Closing Costs	Other			
390	Contingency	Other			
395	Interior Decorator	Other	Owner		
396	Contractor's OH/Fees	Other		5,500.00	
396A	Contractor's OH/Fees	Other		incl.	
396B	Contractor's OH/Fees	Other		incl.	
396C	Contractor's OH/Fees	Other		incl.	
400	Other Closing Costs	Other	Owner		
401	Loan Origination Fee	Other	Owner		

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F. Mark Wilson Construction
Cost Code File List

4

CODE	DESCRIPTION	TYPE	MEASURE	ESTIMATED COST	ACTUAL COST
402	Title Insurance	Other	Owner	2,000.00	
403	Interest Expense	Other	Owner		
405	Indirect Labor	Other	Owner	2,000.00	
410	Advertising & Marketing	Other	none		
415	Site Office Costs	Other	none		
420	Non-refundable cost	Other	none		
425	M.T.C.E	Other	none		
430	Models	Other	none		

TOTAL COST CODES: \$1,099,370.00

Construction Draws	Amount	Date	# of Draws
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Total Job Cost: \$764,075.00 excluding lot, loan, legal and interest expenses

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7 DATE

EXHIBIT

12 Wilson



7-7-17

Someone has forged my name
on this \$30,225.00 check that was issued
to me and you. You never told me about
this check that was issued in March of
2007 and that I got a copy of on
1-29-08. My legal counsel
sent you a demand letter last September.
I haven't had the retainer that they
required. I am negotiating a deal
with my brother to get that money
together.

Mark Wilson
504-320-9634

In foreclosure 4807 Brook Valley Run
Monroe, N.C. 28110

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

52227900E900000
10031003001 0515/2007
1002/51/50 100E001E501

FIRST CHARTER	OFFICIAL CHECK	100566
	PAID 1026 DATE 8/14/07	NO
REMITTEE KEITH JAYMA		
PAY TO THE ORDER OF KEITH JAYMA & MARK WILSON CONSTRUCTION		
EXACTLY 008,225 AND 00/100 DOLLARS		\$ *****0.225.00
PRINTED AT THE REQUEST OF THE REMITTEE BY THE BANK OF AMERICA, N.A. 100566 00000709200100011568751		

1005664 10070921 01600115687511 0003822500

2051072

05162007
0111-0040-1
ENJ=0401 TRC=0020 PK=0
0222573510

1239-645

~~200703310100405155~~

4 Do not endorse or write below this line.4

053100300 05/35/2007
0000063000637775
113300344 05/35/2007
000006300637775
113310344 05/36/2007
002072017764
011100961 05/36/2007
6432326227

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031200481
05/16/2007
6432526227

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

053100300 05/15/2007
000006300617775

FIRST CHARTER **OFFICIAL CHECK**

NUMBER 100566
DATE 05/14/07

PAY TO THE ORDER OF **MIAMI JAMES & MARK WILSON CONSTRUCTION**

AMOUNT **ONE THOUSAND TWO HUNDRED AND 00/100 DOLLARS**

[Signature]

053100300 05/15/2007
000006300617775

053100300 05/15/2007

053100300 05/15/2007

053100300 05/15/2007

053100300 05/15/2007

2051072

05162007
0333-0040-1
EXT=0401 TRC=0020 PK=0
0822573518

053100300 05/15/2007
000006300617775

1200753210100405135

[Handwritten signature]

*Respondent's name or
forged Appellant's name or
the check.*

053100300 05/15/2007
000006300617775
111310300 05/15/2007
000006300617775
111310300 05/15/2007
000006300617775
111310300 05/15/2007
000006300617775

053100300 # 30,225

*checking account at First Citizens Bank
that this money went into.*

Page 11.

Recording Requested/Prepared By:
Yolanda Brown
SunTrust Bank
211 Perimeter Center Parkway,
Atlanta, GA - 30346
Voice: 800-331-3282

When Recorded Return To:

CT Lien Solutions
P.O.Box 29071
Glendale, CA 91209



SATISFACTION OF MORTGAGE
LOAN #: 60669048-42 "DIANA JAYMA AND KEITH D. JAYMA" LANCASTER COUNTY, South Carolina

Dated: May 15, 2012

*Appellant's lawsuit
was filed on
April 5, 2012*

STATE: South Carolina
COUNTY: LANCASTER COUNTY

Original Mortgagor: DIANA JAYMA AND KEITH D. JAYMA
Original Mortgagee: SUNTRUST BANK
Dated: 6/7/2006 Recorded: JANUARY 12, 2007, in Book/Reel/Liber: MORT 1646, Page/Folio: 154-161
as Instrument No.: 2007000610
Present Owner/Holder: SUNTRUST BANK

The undersigned, being the owner and holder of the above-described mortgage, acknowledges that the debt which was secured hereby has been paid in full and the lien of the mortgage is satisfied and cancelled.

Loan Amount \$194,000.00

Property Address: CAMP CREEK RD, LANCASTER, SC 28720

Legal and/or Assignment:

SUNTRUST BANK
On May 15, 2012

By: *Karen Shelton*
KAREN SHELTON
ASSISTANT VICE PRESIDENT

WITNESSES:
Virginia Hearn
VIRGINIA HEARN

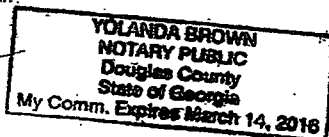
Sean Cook
SEAN COOK

State of GEORGIA
County of DOUGLAS

On May 15, 2012, before me, Yolanda Brown a Notary Public in and for the county of DOUGLAS in the state of Georgia, personally appeared Karen Shelton, ASSISTANT VICE PRESIDENT of SUNTRUST BANK personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Yolanda Brown
Notary Public
Yolanda Brown



(This area is for notarial seal)

State of South Carolina.,)

In the Court of Common
Pleas for York

County of York.)

Case No.: 2012-CP-29-00498

Mark Wilson.,)

Plaintiff.,)

-vs-)

Keith Jayma, Wilbur)
Streeter, III.,)

Defendants.)

Transcript of Record
Motion for Summary Judgment

August 23, 2017
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

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

Mr. David Clayton Cook
Cook Law Firm, LLC
PO Box 1449
Lancaster, SC 29721
dcook@dcooklaw.com
(803) 285-4848
Attorney for the Plaintiff

ORIGINAL

Mr. Walter Keith Martens
Hamilton Martens, LLC
PO Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
(803) 329-7662
Attorney for the Defendant

Wanda S. Nelson, CVR-M
Circuit Court Reporter
To the Honorable Daniel D. Hall
Sixteenth Judicial Circuit
Union and York Counties

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I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
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No Exhibits were received into the record.

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P. 201.

1 (COURT IN SESSION WEDNESDAY, AUGUST 23, 2017 IN THE
2 MATTER OF MARK WILSON VERSUS KEITH JAYMA, III, AT 09:35
3 AM.)

4 THE COURT: Good morning. Do I have copies of the
5 motions? This is a Lancaster case so we don't have any
6 clerk, I did not ask any clerk to be present.

7 No, no. This is a Lancaster case.

8 MR. MARTENS: Your Honor, I made copies of the
9 affidavits.

10 THE COURT: Well if you don't have copies of it maybe
11 I --

12 MR. COOK: I think I do, your Honor.

13 THE COURT: All right.

14 (DOCUMENTS RECEIVED UP BY THE COURT.)

15 MR. MARTENS: Your Honor, this is really just a
16 Statute of Limitations Motion.

17 THE COURT: Okay. All right. This is a -- I thought
18 about recalling it being a 2012 case from Lancaster that
19 was assigned to me by myself or by someone else. Its
20 obviously five years old but my understanding that it's
21 been up, as the lawyers say, maybe more than one time.

22 But its now fallen back into Circuit Court and I'm
23 here to hear whatever motions are on the table.

24 Mr. Martens, you want to start off?

25 MR. MARTENS: Thank you, your Honor. May it please

1 the Court, I'm Keith Martens on behalf of the Defendant,
2 Keith Jayma. The *Summons and Complaint* I want to point out
3 for the Court's information, and for the record, also
4 includes another defendant, a man named Wilbur Streeter.
5 Mr Streeter has been dismissed, he's not a party, so the
6 only two parties to the action at this point are the
7 plaintiff Mark Wilson and my client Keith Jayma.

8 And, your Honor, this is a -- this is our *Motion for*
9 *Summary Judgment* based on the *Statute of Limitations*, and,
10 or, the equitable equivalent of that the *Doctrine of*
11 *Laches*.

12 As the Court is well aware summary judgment is
13 appropriate when there is no issue of material fact in
14 dispute and the moving party is entitled to a judgment in
15 it's favor as a matter of law. And for purposes of this
16 motion I think the following facts need to be brought to
17 the Court's attention, and they are either undisputed or
18 they are being conveyed to the Court in a light most
19 favorable to the non-moving party.

20 It is undisputed that in 2005 Mr. Wilson and my
21 client, Mr. Jayma, came to know each other. My client was
22 a mortgage broker and he also had a side business where he
23 made personal loans to people using his own money. In
24 early 2005 Mr. Wilson responded to an advertisement he saw
25 and met my client and my client made a couple -- a small

1 loan to him. Also helped him obtain a mortgage loan to buy
2 a house for his family.

3 Over the next several months a friendship developed
4 between Mr. Wilson and Mr. Jayma. Toward the later part of
5 2005 they came up with a plan to enter into a partnership.
6 Mr. Wilson was a licensed residential home builder, and my
7 client obviously had access to mortgage lending, and they
8 came to a plan that they would go out; that Mr. Wilson
9 would select lots in various subdivisions that were popping
10 up around Charlotte; that my client would obtain financing
11 and purchase those lots. Mr. Wilson would build houses on
12 those lots and then once the houses were completed they
13 would sell them, pay off the expenses, and split the
14 profits.

15 There is -- It is undisputed that there were at least
16 three lots purchased. Mr. Wilson says there were five lots
17 purchased, I'm not certain, that will for the purposes of
18 this motion we'll assume that there were five lots
19 purchased. We know that two of those -- and this is
20 undisputed -- two of those were sold without houses being
21 built upon them, and my client sent a portion of the
22 profits from the sale of those lots to Mr. Wilson.

23 Its not clear what happened to the fourth lot. I
24 think that it's sort of has been lost to time in the
25 memories of folks as to what happened to that. The real

1 issue in this case has to do with the fifth lot, a lot that
2 was purchased in a high-end subdivision up in Union County,
3 North Carolina, and I guess fittingly named Strike the Gold
4 Lane was the address.

5 The parties decided they were going to purchase a lot
6 on Strike the Gold Lane; that Mr. Wilson would build a
7 house, a spec house on the land. They projected that --
8 initially projected that the cost of all this would be a
9 million dollars. They closed on the lot on September 19th
10 of 2005 and at that time my client also obtained a one
11 million dollars construction loan. Shortly after the
12 initial closing they determined that that wasn't going to
13 be enough to build the house they wanted to build.

14 On September 6th, 2005 Mr. Wilson wrote my client and
15 he proposed that he owned a piece of property in Lancaster
16 County, South Carolina, that he would deed, and I think the
17 amount is in dispute, but for purposes of this motion we
18 will assume that his proposal was that he would deed a
19 portion of that land to my client; that my client could
20 then go out and borrow money using that land as collateral,
21 and they would be able to use that additional money to help
22 fund the construction of this property on Strike the Gold
23 Lane.

24 In November of 2005 Mr. Wilson met with a paralegal
25 for Attorney Blackmon Huckabee while he was getting his oil

1 changed at a local car dealership. At that meeting Mr.
2 Wilson signed a deed. That deed is attached to the
3 affidavit of Keith Jayma that we have filed in support of
4 this motion. I believe it's Exhibit B to that affidavit,
5 your Honor.

6 Mr. Wilson says that he did not read the deed. There
7 was no legal description for the property attached at the
8 time he executed it and the only two people who where there
9 when he signed the deed were Mr. Wilson and this paralegal.

10 Mr. Wilson contends that he thought he was deeding
11 twenty-five acres of land to my client and in fact the deed
12 that was ultimately recorded was for sixty-three acres.

13 And that deed was recorded in 2005.

14 After that land was conveyed to Mr. Jayma, Mr. Jayma
15 went out and obtained another loan for a hundred and
16 ninety-four thousand dollars which was --

17 THE COURT: How much was that? Eight hundred and
18 ninety-four?

19 MR. MARTENS: No, your Honor. One hundred and ninety-
20 four. One hundred and ninety-four thousand.

21 So by this point they had -- my client in his
22 individual name had borrowed the total of one million, one
23 hundred and ninety-four thousand dollars. I think that
24 both men believed that would be enough to complete the
25 construction of this house. Construction did not go as

1 planned. There were significant delays. There were cost
2 over runs. A CO for the completion of the house was not
3 issued by Union County until April of 2007. By the time
4 the house was completed these two men were not talking with
5 each other unless they had to. And when they spoke with
6 one another it was usually in writing.

7 Once the house was completed my client set out to
8 market and sell it. Eventually he got a contract on it in
9 late 2008. We know, and this is undisputed, that in
10 October of 2007 Mr. Wilson contacted the construction
11 lender to request a draw on the construction loan.
12 According to Mr. Wilson's testimony he was told at that
13 time there is no more money, Mr. Jayma took the last of it
14 in May of this year. And according to Mr. Wilson's
15 testimony the construction lender also told him, I don't
16 know how Mr. Jayma did that, it wasn't done properly, you
17 should have someone look -- you should look into that.

18 In January of 2008 Mr. Wilson obtained a copy of the
19 final construction draw check from the construction lender,
20 and according to his testimony when he reviewed that check
21 he realized that his signature had been forged. We know
22 that -- His endorsement had been forged, excuse me. We
23 know that on March 6th of 2008 Mr. Wilson sent an eight
24 page --

25 THE COURT: What was that date again? That last date

1 you said.

2 MR. MARTENS: March 6th, 2008. On March 6th, 2008 Mr.
3 Wilson sent an eight-page fax to my client. It included a
4 copy of the last construction draw check with handwritten
5 notes. Among other things it says that I have sought legal
6 counsel from attorney Doug Underwood. He said there are
7 two felonies, one for forgery, one for uttering, someone
8 has done the crime and they've gotten away with it since
9 May of 2007.

10 I will be pursuing what went on at First Charter. It
11 was not closed the right way to the detriment of Mark
12 Wilson. He also says, I signed over with no legal
13 representation to an attorney that you have used many
14 times, not twenty-five acres, but my sixty-three acres with
15 absolutely no money changing hands, and you said you were
16 snickered too. I have been deceived, defrauded, tricked,
17 and shammed. That fax was sent by Mark Wilson on March
18 6th, 2008 to my client.

19 In September of 2008 on the eve of closing, my client
20 received a letter from the Nexsen Pruet Law Firm, and the
21 Nexsen Pruet Law Firm a certified return receipt requested
22 first-class mail and a first-class mailed letter. Nexsen
23 Pruet said that they were representing Mr. Wilson. They
24 say that it is clear you two created a partnership to
25 develop the Strike the Gold Property, you're obligated to

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1 the partnership as a general partner. Mr. Wilson is owed a
2 fiduciary duty, he has a right to inspect the books and
3 records, he has a right to an accounting of partnership
4 financial records, and the right to be involved in the
5 partnership's business.

6 They also mention that there was a deed for sixty-
7 three acres that should have been twenty-five acres; that
8 my client allegedly has failed to account for the financial
9 records related to Strike the Gold. My client has
10 expressed an intention to sell this property that he's not
11 entitled to sell. And they demand that we cease the sale,
12 provide all the information and accounting records, and
13 reconvey the sixty-three acres to Mr. Wilson free and clear
14 of any liens or encumbrances.

15 And that if my client does not do these things
16 immediately they will be pursuing legal action on behalf of
17 Mr. Wilson. That letter was dated September 12th, 2008.

18 We also know, and it's undisputed, that at least twice
19 after September 12th, 2008 Mr. Wilson wrote letters to my
20 client, again, accusing him of various wrongs. And in at
21 least one of those letters he mentions specifically that he
22 had retained a prominent law firm but he was unable to
23 pursue it at that time because he didn't have the money;
24 that he was working on getting enough money and that
25 eventually all the truths would come out and my client

1 would be held liable for his misconduct.

2 Your Honor, this law suit was not filed until April
3 5th, 2012 over three and a half years after the letter from
4 Nexsen Pruet. More than four years after the letter
5 initial fax from Mr. Wilson accusing my client of wrong.
6 And over four years from the date Mr. Wilson first contends
7 he discovered his endorsement had been forged on that draw
8 check.

9 The plaintiff's claims in this law suit relate
10 entirely to the parties purported partnership, and they're
11 all based upon the alleged acts, or omissions, of my client
12 that occurred during the course of that partnership.

13 The undisputed evidence establishes that Mr. Wilson
14 knew, or reasonably should have known, that he had claims
15 against my client as early as January of 2008, perhaps as
16 early as October of 2007. And certainly by the time he had
17 met with Attorney Doug Underwood and the Nexsen Pruet Law
18 Firm. Mr. Wilson knew and had legal counsel that said you
19 have claims to be pursued here, yet, he didn't pursue them
20 until April of 2012.

21 We believe that each of these claims -- His claims
22 include breach of a duty as a partnership, unjust
23 enrichment. They allege that my client absconded with
24 partnership assets, and there's a claim for negligent
25 misrepresentation, and then there's a fifth cause of action

1 for -- called for attorney's fees but as the Court's well
2 aware that's not a separate cause of action.

3 We believe that under the discovery rule the statute
4 of limitation -- Let me say this, first we believe that
5 each of those claims is governed by the general three-year
6 Statute of Limitations contained in 15-3-530. We also
7 believe that under the discovery rule the statute runs from
8 the date that the injury is either discovered, or may have
9 been discovered by the exercise of reasonable diligence.

10 And we believe that the evidence is clear and
11 undisputed that Mr. Wilson knew, or reasonably should have
12 known, that every claim he has asserted in this law suit
13 was a viable claim well before the statute of limitations
14 expired on those claims, and for those reasons we believe
15 that his entire complaint should be dismissed pursuant to
16 the Statute of Limitations.

17 There is -- When I took Mr. Wilson's deposition a few
18 weeks ago, I ask him why he didn't file this case sooner
19 and he said that well, I was waiting for Mr. Jayma to do
20 the right thing. And I assume that he is in essence in his
21 mind contending that Mr. Jayma's failure to respond to his
22 demands lulled him into inaction.

23 As the Court is likely aware, cases -- in cases where
24 the Statute of Limitations is equitable tolled by the
25 conduct of a defendant, there has to either be an expressed

1 representation by the defendant that the claim is going to
2 be resolved outside of court, or, the defendant has to have
3 engaged in conduct that makes the plaintiff reasonably
4 believe the claim will be resolved outside of court. We
5 don't have any of that here.

6 We have demands that were made to my client, they were
7 not responded to, and as I said we also have evidence that
8 Mr. Wilson just said he couldn't afford to pursue the claim
9 at the time, and he waited until he had enough money to
10 bring the claim. And so, we think all these claims are
11 time barred and we're asking that the plaintiff's claims be
12 dismissed pursuant to the Statute of Limitations.

13 THE COURT: All right. Thank you. All right.

14 MR. COOK: May it please the Court, your Honor. And,
15 your Honor, my client would agree with all of the factual
16 recitations by opposing counsel.

17 Your Honor, my main argument in defense of the Statute
18 of Limitations is that -- Well, I have ~~three~~ arguments.

19 Firstly, your Honor, I would allege that the statute
20 that's applicable here is the twenty year statute regarding
21 sealed instruments, and that would be 15-3-520 which reads
22 and that within twenty years: an action upon a bond or
23 other contract in writing is secured by the mortgage of
24 real property. And then that's Subsection A.

25 Subsection (b) it relates to, an action upon a sealed

1 instrument other than a sealed note and personal bond for
2 payment of money only whereon the period of limitations is
3 the same as prescribed in 15-3-530, except that a sealed
4 contract for sale or another -- or an offer to buy or sell
5 goods whereon the period of limitations is the same as
6 prescribed in 36-2-725.

7 Essentially, your Honor, my client's arguing that the
8 mortgage and the deed, and the note, that this case is
9 based on are sealed instruments. And I've offered up the
10 the Lyle -- the Lyons case, your Honor, which is 415 S.C.
11 115. Also at 781 SE 2d 126. This is *Lyons versus Fidelity*
12 *National Title Insurance Company*.

13 Your Honor, this is a 2015 case which essentially
14 summarizes a lot of the case law on this point.

15 And I also printed off a lot of the cases that it
16 discusses but page 3 starts with the Statute of Limitations
17 analysis, your Honor, and in essentially the *Lyons* case
18 itself, your Honor, is -- Beg the Court's brief indulgence.

19 Well, and I don't want to get too far into the facts
20 of this other case, your Honor, but its dealing with --
21 it's asking whether a title insurance policy is a sealed
22 instrument upon which a law suit or the statute of
23 limitations for twenty years would apply.

24 But the analysis on page 3 from the Statute of
25 Limitations runs through a lot of what I'm arguing here,

1 your Honor. It basically -- It says that because these are
2 sealed instruments the statute of limitations is twenty
3 years and wouldn't be the three year statute of limitations
4 that opposing counsel's arguing is applicable.

5 Of course, your Honor, you know, the case law
6 runs through all the policies behind the Statute of
7 Limitations. And I may have accidentally handed up, your
8 Honor, if there's some red ink on your Honor's case the case
9 that I have --

10 THE COURT: No, mine doesn't have any red.

11 MR. COOK: I gave it to opposing counsel.

12 And so, essentially that's the crux of my argument,
13 your Honor. I don't want to just sit here and regurgitate
14 a bunch of the paragraphs in the case but essentially it
15 comes down to whether -- what's at stake in the law suit is
16 a sealed instrument. It says on page 4 in the second
17 paragraph, South Carolina Code 520(b) provides for a
18 twenty-year statute of limitations for an action upon a
19 sealed instrument other than a sealed note, et cetera,
20 and it reads out what I just recited.

21 We adhere to our general three year statute of
22 limitations the Court states for most contract actions and
23 acknowledged the availability of the twenty-year limitation
24 periods where contracts clearly evidence is an intent
25 to create a sealed instrument. We acknowledge South

1 Carolina has not specifically considered whether an
2 instrument -- an insurance policy is a sealed instrument
3 or not and it goes on to find that it was.

4 It says the sealed instrument is defined as an
5 instrument to which the bound party has a fixed personal
6 seal usually recognized is provided undisputable evidence
7 of the validity.

8 And so, your Honor, the mortgage and the deed which
9 are in evidence in opposing counsel's brief, as well as in
10 the pleadings, in my complaint, has a probate, the
11 mortgage has a probate on the back of it. And there's a
12 lot of things on point and Lyons discusses it that, you
13 know, just the phrase in witness whereof in and of itself and
14 by itself would not indicate a sealed instrument. But if
15 the instrument has either an actual seal, or the L.S.,
16 locus sigilli next to it, then it would be a -- instrument,
17 or if it's notarized it is probate as well as the deed that's
18 mentioned, your Honor.

19 So my client would argue that the twenty-year statute
20 applies in this matter feverishly. And he would in the
21 alternative, your Honor, also argue that there's a
22 ten-year statute that may be applicable. And I have that.

23 I have it right here in front of me, your Honor.
24 It's 15-3-340 Action by an Individual for Recovery of
25 Real Property.

1 And I would argue that this law suit is, for one, for
2 recovery of real property because we're requesting the
3 recovery of the sixty-two acres that were deeded out my
4 client would allege improperly.

5 And that statute I'm sure your Honor is aware of it
6 for the record states no action for the recovery of real
7 property, or for the recovery of the possession of
8 real property, may be maintained unless it appears that
9 the plaintiff, his ancestor, predecessor, or grantor, was
10 seized or possessed of the premises in question within ten
11 years before the commencement of the action.

12 And under those two statutes, your Honor, my client
13 would argue that this case would well be within the
14 statute of limitations for either the twenty or the ten
15 year statute.

16 Finally, your Honor, regarding -- If the Court's
17 inclined to apply the three year statute, my client has
18 an argument in those regards which are essentially outlined
19 in his affidavit that he filed with the motion, but he
20 basically argues in his affidavit that there's
21 communications between Defendant Jayma and my client as
22 late as 2011 where they're discussing the profits of this
23 job. And that's included as Exhibit A to my affidavit,
24 your Honor.

25 Looking through this email it shows that these

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1 parties were, still years after the letters that were
2 discussed by opposing counsel, emailing back and forth
3 fighting over the profits, and they're agreement regarding
4 this matter, and so my client would argue that -- And its
5 not necessarily an estoppel argument but it kind of falls
6 within those lines. He's not claiming that necessarily
7 that Defendant Jayma is saying here, not giving any type
8 of indication that he'll settle this out of court but
9 he's still arguing over the profits and so my client would
10 argue that he hasn't been aware of his injury.

11 Furthermore, your Honor, the fact alone that -- in
12 regards to the Nexsen Pruet letter, the fact alone that --

13 Beg the Court's brief indulgence.

14 (PAUSE.)

15 MR. COOK: The fact alone that the letter was not
16 responded to isn't proof that my client should have known
17 that he was not -- that Jayma was not going to honor the
18 agreement. In other words, my client sends a letter to
19 him -- Jayma from a lawyer that ask for records and
20 alleges, you know, possible causes of action. The fact that
21 Jayma did not respond -- this is just one of my client's
22 arguments on this tier -- the fact that Jayma did not
23 respond to that letter doesn't put my client on notice
24 that there is a potential law suit that's ripe.

25 My client's still receiving emails back and forth

1 from him; even three years later they're still receiving
2 emails where they're fusing over the profits.

3 And so my client would respectfully argue that while
4 that letter is troublesome it's not favorable in the
5 sense that it doesn't put my client on notice that Jayma
6 is refusing to honor the agreement.

7 Now, had Jayma's attorney replied to this letter and
8 said we're absolutely not providing you any records and
9 we disagree with all of your allegations, you know, that
10 there would be a strong argument there that would have put
11 my client on notice. But when these two parties are still
12 communicating back and forth and arguing over the profits,
13 my client would allege he had -- wouldn't have reasonable
14 knowledge to know through diligence that he had been
15 harmed.

16 And then lastly, your Honor, and this I believe is
17 my strongest point in regards to the three-year argument,
18 that Defendant Jayma admits on his own responsive pleadings
19 in paragraphs 94 and 96, that the damages from the case
20 cannot be determined until the interest on the home
21 equity line of credit with a hundred and ninety-four
22 thousand dollar second mortgage has been paid off.

23 So it wasn't satisfied until May 15th of 2012 as
24 evidenced by Exhibit B here. So, my client couldn't know
25 the harm that he had received for this law suit until

1 this was determined, until that line of credit was paid
2 off and we could ascertain the damages from it.

3 So those are my arguments, your Honor. I won't
4 reiterate or I'll rest there. Thank you.

5 THE COURT: I do not see a copy of the deed. I see a
6 copy of the mortgage, I do not see a copy of the deed.

7 Is it important that I have a copy of the deed?

8 MR. COOK: Yes, sir.

9 THE COURT: And that's the instrument you are
10 claiming under the twenty years.

11 MR. COOK: Yes, sir, your Honor, and this is attached
12 to the complaint.

13 THE COURT: Well not to my copy.

14 MR. COOK: I apologize.

15 THE COURT: That's all right. Unless I've got another
16 one.

17 MR. COOK: No, sir.

18 THE COURT: Okay. All right, Mr. Martens.

19 MR. MARTENS: Very briefly, your Honor. Let me first
20 respond to the comment about what's in the pleadings of
21 damages not being ascertained.

22 As the Court's aware I took over this case from
23 another attorney so I don't know what the other attorney
24 meant when he drafted those pleadings. They're simply
25 pleadings. My client has counter-claims for the damages

1 he has suffered, and I believe that those paragraphs are
2 saying that he can't ascertain the amount of his damages
3 until the mortgage has been paid off.

4 And at any rate I don't believe that that extends
5 the statute of limitations at all.

6 Counsel's argument that there was correspondence, as
7 he describes it correspondence between Mr. Jayma and
8 Mr. Wilson running in 2010, 2011 arguing about profits.
9 Our courts have clearly held that even settlement
10 negotiations between the parties that don't result in
11 settlement, don't extend the statute of limitations. And I
12 would cite *Gadsden versus Southern Railway* for that
13 proposition 206 S.E.2nd 882.

14 Your Honor, with regard to this argument that this is
15 an action, either an action for recovery of property or an
16 action upon a sealed instrument, I believe in the cases
17 Mr. Cook is correct when the cases talk about unless
18 there's an actual seal the Court can look at the document
19 and determine what was the intent of the parties whether
20 it was intended to be a sealed instrument. I don't -- I
21 believe the Court's gonna have to make that decision. I'm
22 not sure it's even proper for me to tell you what the
23 what your conclusion of the law is as to that. But I think
24 there are -- really are not being indicia that you see in
25 these other cases that these were intended to be sealed

1 instruments.

2 Furthermore with regard to the argument that this is
3 an action on a sealed instrument, an action on a sealed
4 instrument would be a suit on a mortgage, foreclose on a
5 mortgage, foreclose on the note. In these cases that
6 counsel has cited talk about one of the indicia being
7 continuing obligations. Your obligations of payment or
8 obligations of compliance.

9 I know one of the cases that counsel highlighted to me
10 and I'm not sure - I think it's mentioned in the case he
11 brought to the Court's attention - was a sealed Family Court
12 agreement where the father agreed that he was gonna pay for
13 the son's college education down the road and then he
14 rejigged on that agreement and the question was is there --
15 is the claim time barred or not.

16 The Court found that that continuing on-going
17 obligation was an indicia that they intended that to be
18 a sealed instrument and so therefore a longer statute of
19 limitations applied.

20 There's a 1953 case from the South Carolina Supreme
21 Court, *McKinnon versus Summers*, which is really very
22 similar to the arguments that Mr. Wilson is making here,
23 and in that case the plaintiff's were suing to cancel
24 deeds. The only argument that they were invalidly
25 executed, fraudulently executed, and in that case the

1 Court found that that was not an action on a sealed
2 instrument; that was an action to set aside a deed for the
3 basis of fraud, and that the shorter, at that time six-year
4 statute
5 of limitations, not a twenty-year statute of limitations
6 should apply.

7 And finally, even if the Court were inclined to --

8 Well, this is not simply an action for recover of
9 real property. If you look at the complaint they're
10 seeking damages, punitive damages, actual damages, attorney
11 fees, cost of the action. This is not simply an action
12 for recovery of real property. But even if the Court were
13 to find that this action includes a claim for recovery of
14 real property, that twenty-year statute of limitations is
15 not all encompassing.

16 The claims for damages, for breach of fiduciary duty,
17 for negligent misrepresentation, all of the things
18 by which they seek to hold my client liable in damages,
19 those are just straight-up tort claims and they're governed
20 by the three-year statute of limitations and they're time
21 barred unless you'd be dismissed even if the entire action
22 is not.

23 MR. COOK: I don't really have much of a comment on
24 the tort claims and if obviously, you know, my client
25 would request that, you know, if your Honor sees fit to

1 bifurcate the issues and dismiss those tort claims, my client
2 would certainly request for the recovery of the real property
3 to remain.

4 This is an action for the recovery of real property.

5 My client deeded out his family land to Mr. Jayma
6 in this agreement with an understanding that that
7 land would be deeded back to him and the profits for this
8 case would be disbursed. That hasn't happened. This
9 isn't just a three year statute of limitations case on a
10 contract, your Honor. There's a mortgage involved that
11 has a seal and the deed as well my client would
12 respectfully, your Honor, argue, your Honor.

13 And I don't want to start handing up the litany of
14 cases that's cited in *Lyons* but I would like to hand up
15 one of them, your Honor, which is *Carmichael* that's
16 mentioned in *Lyons* as well. But just to show your Honor,
17 there are several of these cases that deal with mortgages
18 and deeds that have a dispute over the mortgage and the
19 deed. Whether my client is foreclosing on it or not
20 which, you know, I would argue it's obviously not a
21 foreclosure action, but it's still an action that has the
22 subject matter of the case being a sealed instrument and
23 a deed and a mortgage.

24 In regards to the deed, the deed has more importance
25 than just the allegations of fraud. In my complaint my

1 client alleges that there was only one witness and that
2 the execution of the deed occurred improperly but that's
3 not what I'm arguing here.

4 A three year statute of limitations would apply
5 perhaps to that argument, but I'm arguing that the subject
6 matter of the property is the deed. Thank you, your Honor.

7 THE COURT: All right. I have a bedrock question.

8 Does the twenty-year -- How would the twenty-year
9 statute of limitations apply to the grantee? The grantee
10 didn't sign anything under seal. But it seems to me that
11 the twenty-years run as to the person that signed -- the
12 grantor in this case -- that signed something under seal.

13 Do any of the cases that you have found indicate that
14 twenty-years run against someone who didn't even sign a
15 sealed instrument or just the recipient of some benefit
16 from a sealed instrument?

17 MR. COOK: To be candid, your Honor, I didn't look
18 at the cases with that in mind and my copy is not in front
19 of me. I'd be glad to read through it. I handed it to
20 your Honor. I do believe in my candor that some of the
21 cases are brought by the mortgagor, that would not have
22 signed the deed in that action but I'm not --

23 THE COURT: Well the document because the mortgagor
24 would sign the mortgage.

25 MR. COOK: Yes, sir, but not the deed.

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1 THE COURT: Well, but in this case Mr. Wilson signed
2 both.

3 MR. COOK: Yes, sir.

4 THE COURT: Every document I see is signed. He didn't
5 sign it under seal, it's signed by the plaintiff.

6 MR. COOK: Yes, sir, your Honor. What I mean to say
7 is, I believe, and I'm must being candid, there is case
8 law to that effect wherein the person that didn't sign
9 any of the documents proceeded with under the statute.

10 THE COURT: All right.

11 MR. COOK: But --

12 THE COURT: Well hand 'em up. I'll give you --

13 MR. COOK: Yes, sir. I've got *Treadaway* which is
14 479 S.E.2nd 849. I've got *South Carolina Department of*
15 *Social Services versus Winyah Nursing Homes*, these are
16 all mentioned in the *Lyons* case, 320 S.E.2nd at 464.

17 I've got copies for opposing counsel here as well.

18 *Carolina Marine Handling Incorporated versus Lasch,*
19 *L-a-s-c-h*, that's 363 SC 169. And also I have here
20 *Suttles versus Wood*. Let's see, which is 312 S.E.2nd 574.

21 THE COURT: Mr. Martens, do you have any observation
22 on my observation?

23 MR. MARTENS: Your Honor, my understanding of what
24 you have ask is exactly right. If you're suing to enforce
25 a sealed instrument, there's a twenty-year statute of

1 limitations. The claims in this case aren't on those
2 instruments.

3 THE COURT: Just the fact that it's opposite.

4 MR. MARTENS: Yes, sir.

5 THE COURT: All right. Well I'll take a look at all
6 of this. Other than this position of this motion, were I
7 to deny summary judgment based on the statute of
8 limitations, is this case postured for a trial
9 at any time in the near future? That is, is everything
10 else, all the discovery, and all collateral peripheral
11 matters that need to be taken care of; mediation and all
12 of those things, are they out of the way so that this
13 case can be tried as promptly as possible?

14 MR. COOK: Your Honor, and I defer to opposing
15 counsel as well, but we haven't attended mediation. From
16 a discovery standpoint I think, you know, let's say
17 hypothetically if we have a mediation next week, I could
18 try the case in two months. Or whenever the Court --

19 MR. MARTENS: I think we're in a position we can get it
20 tried certainly before the year end, your Honor. We have
21 -- We had my client's deposition scheduled and once we got
22 involved in it I think Mr. Cook decided that it probably
23 made more sense to put that off. We have informally
24 agreed that if this motion is denied that he'll get an
25 opportunity to depose my client. And then I think once

1 that occurs, we should be ready to prepare the case and
2 try it before the Court.

3 THE COURT: All right.

4 MR. COOK: Yes, sir. If we could have a quick
5 settlement with Brian McCoy, and Terry Malar has a
6 conflict in this case, but just wanted to mention that
7 as well, your Honor.

8 THE COURT: I'll take it under advisement.

9 MR. MARTENS: Thank you, sir.

10 MR. COOK: Thank you, your Honor.

11 (COURT IN RECESS AT 10:15 AM.)
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MARK WILSON vs. KEITH JAYMA, ET AL.

Mark Wilson on 07/07/2017

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT

3
4 MARK WILSON,)

5 PLAINTIFF,)

6 VS.)

7 KEITH JAYMA AND WILBUR)
8 STREATER, III,)

9 DEFENDANTS.)

COPY

CA NO. 2012-CP-29-00498

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12 DEPOSITION OF MARK WILSON

13 LANCASTER, SOUTH CAROLINA

14 JULY 7, 2017

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21 REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM
22 DALLAS REPORTING, A HUSEBY COMPANY

MARK WILSON vs. KEITH JAYMA, ET AL.
Mark Wilson on 07/07/2017

Pages 2..5

1	Appearances: Representing the Plaintiff -	Page 2	1	Deposition of Mark Wilson, taken before me, Shirley	Page 4
2	David C. Cook, Esquire		2	Dallas-Gerrald, CVR-CM, a Notary Public for the State of	
3	Cook Law Firm		3	South Carolina, at the Cook Law Firm, Lancaster, South	
4	300 N. White St.		4	Carolina, commencing at 1:05 P.M., on July 7, 2017, in	
5	Lancaster, South Carolina 29720		5	accordance with the South Carolina Rules of Civil	
6	803-285-4848		6	Procedure;	
7	dcook@dcooklaw.com		7	That the signing of the transcript of	
8	Representing the Defendant, Jayma -		8	deposition by the witness is reserved.	
9	W. Keith Martens, Esquire		9		
10	Hamilton Martens		10		
11	241 Oakland Avenue		11		
12	Rock Hill, South Carolina 29730		12		
13	803-329-7672		13		
14	keith.martens@hamiltonmartens.com		14		
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4	Examination by Mr. Martens	Page 5			
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1	EXHIBITS	Page 3	1	Mark Wilson, first being duly sworn, deposes and says as	Page 5
2	Exhibit 1 Agreement to Lend	Page 32	2	follows:	
3	Exhibit 2 Promissory Note	Page 34	3	Examination: (By Mr. Martens)	
4	Exhibit 3 Mortgage	Page 41	4	Q Mr. Wilson, good afternoon. My name is Keith	
5	Exhibit 4 Contract	Page 61	5	Martens. I'm an attorney in Rock Hill. I represent Keith	
6	Exhibit 5 Cost Code File List	Page 63	6	Jayma in this lawsuit that you've filed captioned Mark	
7	Exhibit 6 Cost Code File List	Page 63	7	Wilson -vs- Keith Jayma and Wilbur Streater. I believe	
8	Exhibit 7 Settlement Statement	Page 70	8	Wilbur Streater has been dismissed as a defendant; is	
9	Exhibit 8 Check Copy	Page 71	9	that correct?	
10	Exhibit 9 Handwritten Letter 9-6-05	Page 74	10	A I don't know.	
11	Exhibit 10 Lot 163 Contacts	Page 86	11	Q You're not sure of that?	
12	Exhibit 11 Letter 1-18-07	Page 89	12	A (Indicating)	
13	Exhibit 12 Handwritten Letter	Page 100	13	Q As I said, I represent Mr. Jayma, and I'm going	
14	Exhibit 13 Letter - Nexsen Pruet	Page 101	14	to take your deposition this afternoon. Have you ever	
15	Exhibit 14 Handwritten Letter	Page 105	15	given a deposition before?	
16	Exhibit 15 Photocopy of Photograph	Page 125	16	A Yes, sir.	
17			17	Q So you understand the process. The court	
18			18	reporter will be taking down everything that's said this	
19			19	afternoon, both my questions and your answers. For that	
20			20	reason, there's ground rules that I need to go over with	
21			21	you before we start.	
22			22	The first is this. If there is a question that I ask	
23			23	you that you don't understand, either because I've	
24			24	stumbled on my words or you didn't hear or you just don't	
25			25	understand what I'm trying to get out of my question, will	

MARK WILSON vs. KEITH JAYMA, ET AL.
Mark Wilson on 07/07/2017

Pages 6..9

Page 6	Page 8
1 you ask me to clarify that question until you do 2 understand it? 3 A I will. 4 Q If you answer my question, I will assume that 5 you've understood it; is that fair? 6 A To the best of my ability. 7 Q My purpose is not to trick or deceive you. My 8 purpose is to find out what you know about this case and 9 what you're going to say if this case goes to trial. 10 Okay? 11 A Okay. 12 Q It's not an endurance contest. We can take 13 whatever breaks you feel like you need to take during the 14 course of the deposition. If we do take a break, I will 15 ask that you not talk to your attorney or talk to anybody 16 else about the substance of your testimony. Is that 17 fair? 18 A Okay. 19 Mr. Martens - Are we going to reserve 20 except to the form of the question, with 21 objections? 22 Mr. Cook - (Indicating yes) 23 Q Give me your full name please, Mr. Wilson? 24 A Frederick, F-R-E-D-E-R-I-C-K, Mark Wilson, Jr. 25 Q Do you go by Mark?	1 Way? 2 A Two and a half years. 3 Q During those two and half years, has your 4 daughter lived with you the entire time? 5 A Yes. 6 Q Has anybody else lived with you at that 7 address during the last two and a half years? 8 A No. 9 Q Before you were at 2508 Kings Farm Way in 10 Indian trail, where did you live? 11 A 2513 Riverchase Drive. 12 Q Where is that? 13 A Monroe. 14 Q How long did you live there? 15 A Five years. 16 Q Did anybody live there with you? 17 A My daughter and my granddaughter. 18 Q Anybody else? 19 A No. 20 Q Before that, where did you live? 21 A Mr. Martens, I can't recall the address. I 22 lived in an apartment. 23 Q The 2506 Kings Farm Way, is that a home or an 24 apartment? 25 A It's a home.
Page 7	Page 9
1 A Yes. 2 Q What's your date of birth, sir? 3 A 11-2-52, 1952. 4 Q Where do you live? 5 A You need the address? 6 Q Yes, sir. 7 A 2506 Kings Farm Way. 8 Q Where is that? 9 A Indian Trail. Indian Trail, North Carolina. 10 Q What's your zip code? 11 A 28079. 12 Q Who lives there with you? 13 A One daughter, one of my daughters and one 14 granddaughter. 15 Q How old is your daughter? 16 A Thirty-five. 17 Q How many other children do you have other than 18 the daughter who lives with you? 19 A I have three other daughters. 20 Q So you have four total? 21 A Four total. 22 Q What are their ages? 23 A Thirty-five, thirty-three, twenty-seven and 24 twenty-three. 25 Q How long have you lived at 2506 Kings Farm	1 Q And do you own it or do you rent it? 2 A My daughter owns it. 3 Q How about 2513 Riverchase Drive? 4 A I rented that. 5 Q And the place you lived before 2513 Riverchase 6 Drive --- 7 A It was an apartment, rent. 8 Q Rental? 9 A (Indicating) 10 Q Are you married? 11 A No. 12 Q Have you ever been married? 13 A Yes. 14 Q When were you married and to whom? 15 A Mr. Martens, you want an exact date, the date 16 I got married? 17 Q Years, general -- If you can't remember exact 18 dates, general --- 19 A I was married about 16 years, up until '97 so 20 I probably got married in '81. 21 Q And to whom were you married? 22 A Kathleen O. Wilson. 23 Q You said '81 to '97 approximately? 24 A Right. 25 Q And did you all divorce?

MARK WILSON vs. KEITH JAYMA, ET AL.
Mark Wilson on 07/07/2017

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1 A Yes. 2 Q Do you know where Ms. Kathleen Wilson lives 3 now? 4 A No. 5 Q Have you ever been married to anyone other than 6 Kathleen Wilson? 7 A No. 8 Q I asked you at the outset if you have given a 9 deposition before, and you said, yes. When have you given 10 depositions and in what cases? 11 A I gave a deposition in my divorce case. 12 Q Any other cases? 13 A Yes. 14 Q What other cases? 15 A I was a plaintiff in a case involving 16 construction of a house. 17 Q Who was the defendant? 18 A Christi Queen. 19 Q Are you related to Ms. Queen? 20 A Through marriage I am. 21 Q What is your relationship with Ms. Queen? 22 A It's a he. 23 Q What is your relationship to Mr. Queen? 24 A Brother-in-law. 25 Q Your brother-in-law. I'm sorry. His name is	1 in South Carolina. Mr. Queen hired another architect 2 locally in Monroe to add on and change the plan. So the 3 house ended up being about 6,500 heated square feet, a lot 4 of changes. I kind of went along with him because he was 5 going to build homes with me in a partnership. He found 6 a place on the Catawba River to build three or four 7 homes. 8 I thought I would make up any monies that I might be 9 losing by meeting his demands for changes and extra square 10 footage. He didn't compensate me for the time. It took 11 about two and a half years. It was a seven car garage, 12 6,500 heated feet, nuclear fall out room, camera rooms, 13 you know, additions. 14 It came to the point where he said I couldn't trust 15 him, and he wasn't going to build those houses. We 16 fell out in the partnership. We weren't going to build 17 houses anymore so I wasn't ever going to get any money 18 back. I sued him for my time, two and a half years of my 19 time to build this house. I didn't sue my sister. I 20 sued him. She wasn't allowed to come out to the house. 21 She wasn't allowed to be involved with the building of 22 the house, so I sued him and not her. 23 Q Who was your attorney in that case? 24 A Ken Helms. 25 Q And who represented Mr. Queen?
Page 11	Page 13
1 Christi? 2 A It is. 3 Q Where was that case filed? 4 A In Monroe. 5 Q What was the result of that case? 6 A It was settled. 7 Q How was it settled? 8 A I believe the monies involved and the time 9 involved, both sides decided to settle. 10 Q What were the terms of the settlement? 11 A I don't understand. 12 Q Did you receive any money from the defendant? 13 A No, I did not. 14 Q Did the defendant receive any money from you? 15 A No, he did not. 16 Q Did the defendant pay your attorney's fees? 17 A No, he did not. 18 Q Did you pay the defendant's attorney's fees? 19 A No. 20 Q Did any money change hands for the settlement? 21 A No. 22 Q What was the basis of that lawsuit? Why did 23 you sue Mr. Queen? 24 A I started out building a house per plans, about 25 a 4,500 square foot home. It was drawn by an architect	1 A Hal Spears. 2 Q Other than that lawsuit, have you ever been a 3 party to a lawsuit? 4 A Yes. 5 Q Tell me about what other cases you've been a 6 party to a lawsuit? 7 A I got involved with another builder, and we 8 were going to build on some property I owned. 9 Q And what happened? 10 A He sued me. 11 Q Who was that? 12 A R. D. Harrell. 13 Q Why did he sue you? 14 A He had let me live in a house that he had 15 built, while we were negotiating doing this development 16 work. So he sued me for the rent. 17 Q How was that case resolved? 18 A I paid him. 19 Q When was that case filed? 20 A 2000. 21 Q Where was that? 22 A Monroe. 23 Q Have you been involved in any other lawsuits? 24 A Mr. Martens, I think I have because I know I've 25 had another deposition, but I can't think of it right

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1	now.	1	A A speeding ticket.
2	Q Do you remember what the other lawsuit may	2	Q Other than a speeding ticket.
3	have been about?	3	A No.
4	A Mr. Martens, you know what? I can't remember	4	Q Have you ever filed bankruptcy?
5	right now. I believe it was -- I was a plaintiff suing	5	A No.
6	a homeowner for payment.	6	Q Are you under any medications today that would
7	Q Where was that?	7	interfere with your ability to understand or answer my
8	A That was in Charlotte.	8	questions?
9	Q Do you remember when that was or approximately?	9	A No.
10	A That was 1993.	10	Q What's your educational background, Mr. Wilson?
11	Q Do you remember who the defendant was?	11	A High school.
12	A Jerry Helms.	12	Q You graduated from high school?
13	Q Did you have an attorney in that case?	13	A Yes.
14	A Yes, I did.	14	Q What school?
15	Q Who was your attorney?	15	A Monroe High School.
16	A I can't think of his name right now. I'm sorry.	16	Q What year?
17	Q How was that case concluded?	17	A I'm thinking '71.
18	A He paid me.	18	Q After high school, did you have any additional
19	Q Do you remember how much?	19	school?
20	A No, sir.	20	A Yes.
21	Q Was it resolved by a settlement or by a	21	Q Where else did you attend school?
22	judgment or do you recall?	22	A I got an AS in computer science from Wingate
23	A I believe we mediated that one.	23	University.
24	Q So it settled at mediation?	24	Q AS, is that an associates of science?
25	A Yes. Tom Green was my attorney.	25	A That's associates.
Page 15		Page 17	
1	Q Have you been involved in any other lawsuits?	1	Q From Wingate?
2	A Not that I can remember.	2	A Wingate.
3	Q Have you ever been convicted of a crime ---	3	Q When did you earn that degree?
4	A Yes, I did. I sued a homeowner for payment.	4	A 1973.
5	Q When was that and where was that?	5	Q Other than the degree from Wingate, do you have
6	A 1997 in Weddington, North Carolina.	6	any other education?
7	Q Who was the homeowner?	7	A Yes.
8	A Robert Gilmartin.	8	Q What else?
9	Q Did you have an attorney in that case?	9	A BA, political science.
10	A No.	10	Q Where did you earn that degree?
11	Q How much were you suing for? Do you recall?	11	A University of North Carolina at Charlotte.
12	A Five thousand.	12	Q When did you earn that?
13	Q How did that case resolve?	13	A 1975.
14	A He paid me.	14	Q Any other education, formal education?
15	Q Did he pay you by an agreed settlement or	15	A I've been to other colleges to take other
16	pursuant to a judgment?	16	courses for stuff.
17	A It was a small claims court, and the judge	17	Q Do you have any degrees other than your BA and
18	ordered him, you know.	18	your AS. Do you have a masters or a doctorate or anything
19	Q So the judge entered a judgment against him?	19	like that?
20	A Yes.	20	A No.
21	Q Any other civil lawsuits that you can recall	21	Q You've taken some additional courses in
22	that you've been either a plaintiff or a defendant?	22	addition to your degree courses?
23	A Not that I can remember.	23	A Yes.
24	Q Have you ever pled guilty to a crime or been	24	Q What other courses have you taken, if you can
25	convicted of a crime?	25	recall?

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Page 18	Page 20
1 A I took construction courses at the school in 2 Rock Hill, York Tech. 3 Q When did you take those? 4 A 1988. 5 Q Did you get a degree or a certificate with 6 regard to those courses? 7 A I think I received a license. 8 Q What kind of license? 9 A A contractor's license. 10 Q Do you currently hold a contractor's license? 11 A Yes, I do. 12 Q Where are you licensed as a contractor? 13 A North Carolina. 14 Q What type of license do you hold? 15 A A general contractor's license? 16 Q Is it unrestricted? 17 A Yes. 18 Q How long have you held that unrestricted 19 general contractor's license? 20 A Twenty-five years. 21 Q Are you licensed in any other jurisdictions 22 other than North Carolina? 23 A No. 24 Q Have you ever been licensed in any jurisdictions 25 other than North Carolina?	1 Q Have you ever had any sanctions or penalties 2 entered against you by any licensing board or agency in 3 North Carolina or South Carolina? 4 A No. 5 Q Have you ever had a complaint filed against 6 you with a licensing board in either North Carolina or 7 South Carolina? 8 A No. 9 Q Mr. Wilson, when did you first meet Keith Jayma? 10 A I believe it was the beginning of 2005, the 11 first months of 2005. 12 Q Early 2005? 13 A Early 2005. 14 Q Do you recall how you met him? 15 A He had an ad in the yellow pages. He was a 16 mortgage lender, and he had an ad for loans. 17 Q And you just responded to his ad in the yellow 18 pages? 19 A Yes. 20 Q What kind of loan were you looking for when 21 you first contacted Mr. Jayma? 22 A He was advertising for -- If you had a boat or 23 car or anything of value that he would make a loan against 24 it. 25 Q What did you have of value that you wanted to
Page 19	Page 21
1 A Yes. 2 Q Where else have you been licensed? 3 A South Carolina. 4 Q When were you licensed in South Carolina? 5 A In 1989. 6 Q How long did you hold that license? 7 A Twenty-five years. 8 Q What type of license was that? 9 A Residential homebuilders. 10 Q Did you surrender that license or allow it to 11 lapse? Why do you no longer hold that license? 12 A I haven't built many homes in South Carolina. 13 I developed a subdivision out Camp Creek Road in the 14 80s, and I used my license to build those homes. 15 Q So you weren't doing much work in South Carolina 16 so you let the license go? 17 A Yes. 18 Q Are there any other licenses that you currently 19 hold or that you have held in the past? 20 A No. 21 Q Have you ever had either your North Carolina 22 General Contractor's License or your South Carolina 23 Residential Home Builder's License suspended for any 24 reason? 25 A No.	1 take a loan against? 2 A I had some property. 3 Q Were you working in early 2005? 4 A Yes, I was working. 5 Q Who were you working for? 6 A I was working for myself. 7 Q Were you earning a regular pay check in early 8 2005? 9 A Probably -- I don't recall. 10 Q Do you recall why you wanted to take a loan 11 against this piece of property that you owned? 12 A Because I needed some money. 13 Q What did you need money for? 14 A To pay bills, car payment, car insurance. 15 Q Other than seeing an ad in the yellow pages, did 16 you know anything about Keith Jayma when you first 17 contacted him in early 2005? 18 A No. 19 Q Had anybody told you anything about Mr. Jayma? 20 A No. 21 Q Had anybody ever mentioned Mr. Jayma's name 22 to you? 23 A No. 24 Q What do you recall about your first interaction 25 with Mr. Jayma?

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1 A He was very upbeat, energetic, bought me a free 2 sandwich. 3 Q Did you call him initially? 4 A I called the number in his yellow page ad, and 5 his wife, at that time, answered the phone. 6 Q What did you tell his wife, if you recall? 7 A That I was interested in talking to him about 8 the kind of loans he was making. It was like non- 9 conforming. I don't remember the exact ad, but I know 10 it's if you have something of value, I'll lend you money. 11 Q You said he bought you a sandwich. So I assume 12 you met with him in person somewhere. 13 A I believe we set up an appointment, and I met 14 with him. 15 Q Where did you meet with him? 16 A I don't recall the first meeting. We probably 17 met at his mortgage office, and then he took me to the 18 sandwich shop. 19 Q You said you were working for yourself when you 20 first contacted Mr. Jayma. Did you have any active jobs 21 going on at that point in time? 22 A My farm. 23 Q Your farm was an active job? Tell me what you 24 mean by that? What were you doing on your farm? 25 A I've been developing and working on it for	1 Q In early 2005, was anyone other than you working 2 for Wilson Associates/Monroe? 3 A Yes. 4 Q Who else? 5 A My brother, Clifton. 6 Q What did he do? 7 A We're both general partners. I'm more into the 8 farming. He has cows. We both manage the farm together 9 and have for many, many years. 10 Q In early 2005, what did that LLC do to generate 11 revenue? 12 A We were growing trees. In 2005, the LLC was 13 receiving CRP payments. 14 Q What's that? 15 A Conservation Reserve. 16 Q I'm not sure I understand. 17 A It's a government program that pays landowners 18 not to farm their land. 19 Q That sounds like our government. 20 A Well, they have a good reason. 21 Q What's the reason? 22 A The way I interpret, in case -- Well, humans 23 like to eat so the government set land aside and paid 24 landowners not to farm it, but if there was a drought, 25 and that's all it would take in the United States is a
Page 23	Page 25
1 many, many years. 2 Q Was anybody paying you to do that work? 3 A Yes. 4 Q Who was paying you to do that work? 5 A My farm has an LLC. 6 Q So the LLC was paying you? 7 A Yes. 8 Q Who are the members of the LLC? 9 A Myself, my brother and I have two sisters. 10 Q Who is your brother? 11 A Clifton Wilson. 12 Q Who are your two sisters? 13 A Nancy Queen. 14 Q Who else? 15 A Vicky Murray. 16 Q What's the name of that LLC? 17 A Wilson Associates/Monroe, North Carolina. 18 Q Other than you, your brother and your two 19 sisters, have there ever been any other members of 20 Wilson Associates/Monroe? 21 A No. 22 Q What does Wilson Associates/Monroe do? 23 A We farm, row crop, grow trees. 24 Q What type of crops? 25 A Corn, soybeans, wheat.	1 severe drought to wipe out our food supply, we could 2 bring that land back into production. 3 Q Okay. So in early 2005, the LLC that you're 4 talking about, Wilson Associates/Monroe was receiving 5 these CRP payments. 6 A Yes. 7 Q Do you remember how much those were? 8 A No. 9 Q Was the LLC receiving those payments on a 10 monthly basis? 11 A Yearly. 12 Q Yearly. Do you recall whether the yearly 13 payments were more or less than \$10,000.00 a year? 14 A More. 15 Q Do you recall whether they were more or less 16 than \$50,000.00 a year. 17 A Less than 50. 18 Q So somewhere between 10 and 50? 19 A Yes. 20 Q What did the LLC do with those payments? 21 A They distributed them between the partners. 22 Q Did each of you four receive an equal amount? 23 A We did. 24 Q Assuming that it was as much as close to 25 fifty thousand, that would mean that you would have

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1 received about \$12,000 a year out of that? 2 A Mr. Martens, I was thinking how much it paid 3 -- It varied because the program changed. Some years we 4 got more or less. I don't know the exact amount. 5 Q Do you ever recall a year where you received 6 in excess of \$15,000.00? 7 A Yes. 8 Q Do you ever recall a year where you receive 9 in excess of \$25,000.00? 10 A Yes. 11 Q What's the most you can recall ever receiving 12 as a distribution from this LLC on an annual basis? 13 A Twenty-seven thousand. 14 Q What year was that? Do you recall? 15 A No, sir. 16 Q Did you report that on your tax return? 17 A No. 18 Q Why not? 19 A I haven't filed taxes. 20 Q You haven't filed a tax return? 21 A No, sir. 22 Q When is the last time you filed a tax return? 23 A I don't remember the exact date. 24 Q Has it been more than 10 years since you filed 25 a tax return?	1 for payment on a house. And you testified that Mr. Helms 2 paid you as a result of that. Did you report income on a 3 tax return related to the payments that you received from 4 Mr. Helms? 5 A I think that I did. 6 Q Who was your accountant in 1993? 7 A Doug Burnette. 8 Q And where is Mr. Burnette? 9 A He's next door. 10 Q Is he your current accountant? 11 A No, he's not. 12 Q Who is your current accountant? 13 A I don't have a current accountant. 14 Q When is the last time you had an accountant? 15 A Well, we have a farm accountant, Lisa Matthews. 16 Q She's the accountant for the LLC? 17 A She has done accounting work for the LLC. 18 Q Do you receive a K-1 from the LLC? 19 A Yes. 20 Q Do you receive a K-1 every year? 21 A Yes. 22 Q Do you report that on your taxes? 23 A No. 24 Q Mr. Burnette was your personal accountant? 25 A He has -- Yes, he was my accountant.
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1 A Yes, sir. 2 Q Has it been more than 20 years since you filed 3 a tax return? 4 A I don't think so. 5 Q Is there any reason you're not filing tax 6 returns? 7 A Yes. 8 Q Why? 9 A Well, my accountant that did my taxes always 10 filed them on completed projects. Completed projects 11 was based on when I got paid. So on this particular 12 house, I did get paid, but I thought I had more money 13 coming. So it's not a completed project to me so I have 14 not filed my taxes. 15 Q I'm not asking about this particular house 16 right now. I'm asking this. In the last 20 years, have 17 you had taxable income? 18 A No. 19 Q You haven't received any taxable income in the 20 last 20 years? 21 A I claim -- I'm working on my taxes. I'm 22 claiming a loss. Through my divorce, I lost several 23 properties, many properties, three homes and one 24 subdivision. 25 Q You testified that in 1993 you sued Jerry Helms	1 Q When is the last Mr. Burnette served as your 2 accountant? 3 A I don't recall. 4 Q Have you had a personal accountant other than 5 Mr. Burnette that you can recall? 6 A Personal, not LLC? 7 Q Yes, sir, you personally. 8 A No. 9 Q You testified earlier that you sued a homeowner 10 in 1997, Robert Gilmartin, and that he paid you as a 11 result of that lawsuit. Did you report the income that 12 you made from working for Mr. Gilmartin on a tax return? 13 A What year was that? 14 Q You testified it was 1997. 15 A No. 16 Q Why not? 17 A Well, through the divorce with my wife, losing 18 the properties, I'm going to claim a loss and not an 19 income. I'm going to have -- 20 Q But you still have to report a loss. Did I 21 understand your testimony that you haven't filed a tax 22 return in over 20 years? 23 A That's not my testimony. My testimony, I have 24 not filed my taxes. I'm working on them. 25 Q You've been working on them. For how many

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1 years have you been working on them? 2 A Fifteen years. 3 Q So for 15 years, you've been working on a tax 4 return? 5 A On my tax returns, yes. 6 Q Isn't it true that the reason you reached out to 7 Mr. Jayma for a loan was because you couldn't obtain a 8 loan through a traditional, commercial lender because you 9 hadn't done any tax returns? 10 A I don't think it was because I hadn't done tax 11 returns. He certainly got me four loans, four home 12 loans. 13 Q I'm not asking about him. I'm asking about 14 you. Other than Mr. Jayma, what other efforts did you 15 undertake, prior to early 2005, to obtain a loan from 16 somebody? 17 A None. 18 Q And isn't it true that you told Mr. Jayma that 19 part of the reason you couldn't get a loan was because you 20 didn't have any tax returns? 21 A I didn't tell him that, no. 22 Q How would Mr. Jayma know that if you didn't tell 23 him that? 24 A He asked me for them, and I told him I did not 25 have my tax returns.	1 Q Mr. Wilson, you understand that there's a 2 federal law that says whether you have a loss or an income 3 every American citizen is required to file a tax return. 4 Do you understand that's a law in this country? 5 A No. 6 Q You don't? 7 A No. 8 Q Do you understand that it's a law in the 9 State of North Carolina that you're required to file a 10 tax return on an annual basis? 11 A No. 12 Q Okay. Other than the distributions that you 13 were receiving from your family's LLC in early 2005, what 14 other sources of income did you have at that point in 15 time? 16 A I don't recall. 17 Q You don't recall? 18 A No. 19 Whereupon - Document marked as Exhibit 1. 20 Q Mr. Wilson, the court reporter has handed you 21 what we've marked as Exhibit 1 to your deposition. Take 22 a minute and review that and let me know when you've had 23 a chance to review that document. 24 A (Witness complies) 25 Q Have you had a chance to review that?
Page 31	Page 33
1 Q So you did tell him, I don't have any tax 2 returns? 3 A After he asked me. I didn't tell him. 4 Q I understand. I wasn't suggesting that you just 5 volunteered the information, but you did tell him, I 6 haven't filed taxes in a long time. 7 A Yes. 8 Q And even as we sit here today, you still haven't 9 filed taxes in a long time. 10 A Right. 11 Q Has anybody told you that you are entitled not 12 to file a tax return? 13 A Yes. 14 Q Who's told you that? 15 A My accountant. 16 Q And that would be Mr. Burnette? 17 A Yes. 18 Q That you haven't seen since 1997. 19 A He did my taxes, and we did them on completed 20 projects. I'm basing --- 21 Q Have you completed any projects between 1997 22 and 2017? 23 A I have, but I've got so many more that weren't 24 completed. I'm going to have a net loss. The IRS taxes 25 on income. I don't have the income. I have a loss.	1 A I have. 2 Q Do you recognize that document? 3 A Yes. 4 Q Does your signature appear on that document? 5 A Yes. 6 Q Do you recall that you agreed to borrow from 7 Mr. Jayma and Wilbur Streater, and they agreed to loan to 8 you \$32,000.00, repayable over three years at 10 percent 9 interest? 10 A (No response) 11 Q Do you recall that, that you borrowed \$32,000.00 12 from --- 13 A Yes, I did borrow \$32,000.00. 14 Q Now that you've had a chance to review Exhibit 15 1, is there anything about the terms of Exhibit 1, the 16 lender, borrower, the amount, the term, the rate, the 17 pre-payment penalty, secured interest -- As you review 18 this document, as we sit here today, is there anything 19 that you believe is inaccurate or erroneous about this 20 document with regard to the loan that Mr. Jayma and Mr. 21 Streater made to you? 22 A No. That's the yellow page loan. 23 Q That's the one that you contacted him and said, 24 I'd like to borrow some money, and I've got some land 25 that I can put up as collateral?

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1 A Yes.

2 Whereupon - Document marked as Exhibit 2.

3 Q The court reporter has handed you what we've

4 marked as Exhibit 2 to your deposition. If you would

5 first, sir, flip to the last page of Exhibit 2.

6 A (Witness complies)

7 Q Does that appear to be your signature under

8 borrower/promissor?

9 A Yes.

10 Q Is Exhibit 2 the Promissory Note that you

11 executed in connection with what you call the Yellow

12 Page ad loan?

13 A Yes.

14 Q Did Mr. Jayma and Mr. Streater, in fact, loan

15 loan you \$32,000.00 in April of 2005?

16 A Yes.

17 Q Did you, in fact, execute this promissory note

18 that we've marked as Exhibit 2?

19 A Yes, I did.

20 Q Did you agree to repay the loan on the terms

21 that are set forth in the promissory note?

22 A Yes.

23 Q Did you repay the loan on the terms that are

24 set forth in the promissory note?

25 A I did repay the loan.

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1 Q You repaid the entire amount of that loan?

2 A Yes, sir.

3 Q You have documentation to substantiate that?

4 A Yes, sir.

5 Q Where is that?

6 A I'll have to get that to you. I have it.

7 Q Have you provided it to your attorney?

8 A No, not all of it.

9 Q Why not?

10 A Because Mr. Jayma has refused to turn over his

11 information that we asked for since 2012, including his

12 tax returns, that would show the money that we made on

13 five building lots.

14 Q So do I understand -- I want to make sure I

15 understand your testimony, Mr. Wilson. Your testimony

16 is that you have documents in your possession that are

17 responsive to information we have asked for in discovery

18 that you have not given to your attorney.

19 A The documents that I don't have are the ones

20 Jayma has not given us. I need those documents. I need

21 interest payments. I need taxes for the year. I need

22 homeowner's association. I need all the fees incurred.

23 Q Tell me what documents you have related -- that

24 could prove that you repaid this promissory note that's

25 marked as Exhibit 2. What documents do you have in your

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1 possession to prove that you have repaid that note?

2 A I have a check from Mr. Jayma that he paid me

3 on lots 52 and 53 Longbrook. He says he split the money

4 with us 50/50. I don't agree with that. I want to see

5 the closing statements. He took all the deductions for

6 the interest on the lots ---

7 Q Let me go back. You're not answering my

8 question.

9 A I'm asking the best I can. I don't think you're

10 aware of this. I need those documents.

11 Q I think I'm aware of a lot more than you think

12 I am. My question for you, Mr. Wilson, is what

13 documentation do you have in your possession that proves

14 you repaid \$32,000.00 plus interest to Mr. ---

15 A I was answering your question, and you

16 interrupted me.

17 Q I'm happy for you to explain the answer. I

18 need you to answer my question first. What documentation

19 do you have in your possession that would prove that you

20 have repaid the \$32,000.00 evidenced by this promissory

21 note?

22 A I was telling you.

23 Q Tell me again.

24 A I have a check from Mr. Jayma to me.

25 Q Why would Mr. Jayma give you a check for your

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1 repayment?

2 A We bought five lots. He gave me a check on

3 two of them. On the other three lots, he kept all the

4 money, all the profit, and he took all the deductions.

5 Q Is it your contention that Mr. Jayma repaid

6 your debt by keeping the profit and the deduction on

7 those lots?

8 A Yes. He's been paid in full.

9 Q Okay. So your position is that by -- that Mr.

10 Jayma kept money that you should have been paid, to repay

11 the note?

12 A Kept all of it.

13 Q And you say you don't have those documents.

14 A No, he's got them. I do have the check he paid

15 me on the two lots, 52 and 53. He kept all the money on

16 the other three. One other payment was from First

17 Charter Bank for \$30,225.00 made out to my company and

18 Mr. Jayma. He kept that check, too.

19 Q Let me ask you this. The five lots that you're

20 talking about, those are in the Longbrook Subdivision?

21 A No, three of them were.

22 Q Three of them were in Longbrook. Where were

23 the other ones?

24 A Providence Downs South.

25 Q Who purchased those lots?

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1 A Mr. Jayma. 2 Q Whose money was used to purchase those lots? 3 A Mr. Jayma. 4 Q Who sold those lots? 5 A Mr. Jayma. 6 Q And it's your testimony that you're entitled 7 to half of the profits from those? 8 A He did give me half on two of them. Oh, he 9 says he paid me half. He justified the numbers in 10 handwriting, but I wasn't -- There, again, I say he took 11 all the deductions for interest expense on the lots and 12 the taxes on the lots and the homeowner's association. 13 Q Did you borrow any money related to the 14 purchase of those lots? 15 A No. 16 Q Did you pay any of the loan payments on the 17 purchase of those lots? 18 A No. 19 Q Did you pay any of the carrying costs related 20 to those lots? 21 A I did not. 22 Q Mr. Jayma did? 23 A Yes. That was his job. 24 Q Why would you be entitled to half the profits? 25 A I picked out the lots. That was my legwork to	1 A I don't recall. 2 Q 2005? 3 A Oh, no. 4 Q 2006? 5 A Some of them in '06, two of them in -- I can't 6 recall. He was doing this behind my back. I don't know 7 what this guy's doing. He's hiding everything from me. 8 Q Certainly by March of 2008, you knew he had 9 sold those lots because you sent him a letter accusing 10 him of fraud, right? 11 A I sent him a letter? 12 Q Yes, sir, and then you had an attorney send 13 him a letter right? 14 A Oh, okay. I might have had an attorney send 15 him a letter. 16 Q Well, we'll look at that. I just want to make 17 sure I understand. Your position is that you are not 18 required -- You were not required to make any more 19 payments on that promissory note because Mr. Jayma took 20 half of the proceeds that should have been given to you 21 from the sale of these five lots and put it in his pocket. 22 A That's right. Wait. Wait. And the check from 23 First Charter. You've got to add that in there. 24 Q And the check from First Charter. 25 A Was made out to my company.
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1 pick out the lots based on topography and where to build 2 a house. I picked out the house plans to build. I had 3 the houses put on the lots. 4 Q What year was this that you're talking about? 5 A 2005 and 2006. 6 Q When did you learn that the lots had been sold? 7 A Well, the first two, I learned quickly because 8 he sent me a check. 9 Q How about the other three? 10 A He hide those. He could have let me know on 11 Lot 31 that he was selling it. He never gave me any money 12 on the lot. 13 Q When did you discover that all five lots had 14 been sold by Mr. Jayma? 15 A I don't recall. 16 Q He told you about two of them, paid you on 17 two of them? 18 A Yes. 19 Q You said he told you about a third? 20 A Yes. 21 Q And you said he hid --- 22 A He hid one, and I wasn't involved on Lot 163, 23 the partnership lot, 163. 24 Q When did you learn that all five lots had been 25 sold?	1 Q Okay. So it's your contention that those 2 payments offset any liability that you had under this 3 promissory note? 4 A That's correct. 5 Whereupon - Document marked Exhibit 3. 6 Q Mr. Wilson, was there any written agreement 7 between you and Mr. Jayma related to division of profits 8 from the sale of these lots? 9 A I don't recall. I don't think there was a 10 written agreement. 11 Q Was there ever anything that Mr. Jayma wrote 12 you or sent to you and said promissory note has been 13 forgiven? 14 A No. 15 Q Did Mr. Jayma ever tell you, you don't need to 16 make payments on this promissory note because I'm just 17 going to keep your half of the profits from these other 18 lot sales? 19 A No. 20 Q Did Mr. Jayma ever tell you the note was 21 satisfied? 22 A I think he said he fell out with Streater or 23 almost lost him as a friend, in a letter to me. So I 24 think he paid off Streater, but I don't know. 25 Q I show you what we've marked as Exhibit 3 to

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1 your deposition, mortgage on real property, the second 2 to the last page of that document. Mr. Wilson, is that 3 your signature on that document? 4 A Second to the last? 5 Q Yes, sir. 6 A Yes. 7 Q And, in fact, did you agree to put up your 8 property in Lancaster County as collateral for your loan 9 from Mr. Jayma, this \$32,000.00 loan? 10 A Yes. 11 Q And is this the mortgage that you signed in 12 order to collateralize the \$32,000.00 loan from Mr. 13 Jayma? 14 A Yes. 15 Q Did you read the Agreement to Lend, Exhibit 1, 16 before you signed it? 17 A (No response) 18 Q I'm asking you about Exhibit 1. It's on the 19 bottom here. Did you read that document before you 20 signed it? 21 A Yes. 22 Q Did you read the promissory note, that we 23 marked as Exhibit 2 to your deposition, before you signed 24 it? It's this one. 25 A I keep going to this document because I see an	1 A Yes, they are. 2 Q And the next page, are those your initials? 3 A Yes, they are. 4 Q And on the next page, are those your initials? 5 A Yes, they are. 6 Q So you initialed every page except for the page 7 you signed, right? 8 A Except for the description. 9 Q And then the property description does not 10 have your initials or your signature on it? 11 A Right. 12 Q Do you know who prepared that mortgage, Exhibit 13 3? 14 A I recognize Huckabee's name. 15 Q Blackmon Huckabee? 16 A Blackmon Huckabee. 17 Q He was an attorney who passed away? 18 A I believe he was Keith Jayma's attorney, yes. 19 Q Do you know who Carolyn Reynolds is? 20 A No. 21 Q Do you believe Mr. Huckabee drafted this 22 mortgage? 23 A I don't know. 24 Q Where did you sign the mortgage? 25 A I think I signed this in Huckabee's office.
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1 issue with it. 2 Q Did you read Exhibit 2 before you executed that 3 promissory note? 4 A Yes. 5 Q In Exhibit 3, the Mortgage on Real Property, did 6 you read that before you signed it? 7 A Probably not. 8 Q Why not? 9 A I was just looking at the description page, and 10 I don't see my signature on it. 11 Q But you do see your signature on the page before 12 that description? 13 A Yes, I do. 14 Q Other than the property description page, is 15 there anything else that you see in Exhibit 3 that doesn't 16 appear to be something that you would have seen prior to 17 signing that mortgage? 18 A Well, I would have to read this whole document. 19 Q That's okay. 20 A Do you want me --- 21 Q Let me ask you this first. On the bottom of 22 Page 1 of Exhibit 3, are those your initials? 23 A Yes, they are. 24 Q On the bottom of Page 2 of Exhibit 3, are those 25 your initials?	1 Q Who else was there? 2 A I don't recall. Jayma might have been. I 3 think Jayma drove me down there. 4 Q You think Mr. Jayma was there when you signed 5 it? 6 A I think so. 7 Q And the document reflects that Mr. Huckabee 8 was there, correct? 9 A Yes. 10 Q Do you think that's accurate that he was there 11 when you signed it? 12 A Well, I don't remember. 13 Q And then Carolyn Reynolds. Do you recall Ms. 14 Reynolds? 15 A I don't recall Ms. Reynolds. 16 Q Did you understand that the mortgage, Exhibit 17 3, was intended to cover the entire 62 acres of your 18 land? 19 A I need to stand up. 20 Mr. Martens - Like I said before, if you 21 need to take a break at anytime that's fine. 22 Let me know. 23 Whereupon - The last question was read 24 back by the court reporter. 25 Q Do you understand the question?

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Page 46 1 A Mr. Martens, I do. Mr. Jayma and I had so 2 many conversations about acres, 63, 25, and I believe 3 there was a -- I was able to sell some acres if I needed 4 to. 5 Q Let me go back and ask the question again. 6 At the time you executed the mortgage -- the promissory 7 note and mortgage in April 2005, did you understand that 8 you were mortgaging the entire 62 acres of land that 9 you owned in Lancaster County? 10 A There's some questions there. 11 Q What questions? 12 A Whether 63, 25, if I could sell 8 acres. That's 13 why I'm a little thrown off not to see my signature on the 14 description page that's on all the other pages. 15 Q As we sit here today, you don't recall how 16 much of your land you intended to mortgage when you took 17 this loan out? 18 A It was changing. I didn't want to encumber 19 the entire 63 acres. 20 Q Was it 63 or 62? 21 A It's 62.69. We rounded up, my family farm. 22 Q Okay. So you understood you were mortgaging 23 some acreage at the time you were taking out this loan 24 in April 2005, correct? 25 A Yes.	Page 48 1 Q Yes, sir. And you said that was in early 2 2005. 3 A And when I met him, and he bought me the free 4 sandwich, he wanted to get me a mortgage because I was 5 in the apartment. I think he -- I think he got me a home 6 loan, two of them, and his wife was the real estate agent. 7 Q Okay. When did Mr. Jayma get you a home loan? 8 A I believe it was March of 2005. 9 Q Other than the two home loans and this loan, 10 were there any other business dealings prior to April of 11 2005 between you and Mr. Jayma? 12 A Not that I recall. 13 Q I just want to make sure I understand. You 14 didn't know Mr. Jayma until you saw an ad in the Yellow 15 Pages. 16 A That's right. 17 Q You saw that ad sometime in early 2005, correct? 18 A Yes. 19 Q You called him and met with him, and he bought 20 you a sandwich. 21 A Right. 22 Q He offered to get you a mortgage? 23 A Yes. 24 Q Did you do that? Did you go through with that 25 mortgage?
Page 47 1 Q But you weren't sure in your own mind how much 2 of that you were mortgaging, whether it was 25 acres or 3 the entire 62.69? 4 A Right. 5 Q Did you ask for any clarification on that 6 prior to signing the note and the mortgage? 7 A I don't think I asked for clarification. 8 Q Other than Mr. Huckabee, did you have an 9 attorney review the mortgage prior to executing it? 10 A No. 11 Q Other than the \$32,000.00 loan that's evidenced 12 by the three documents we've marked as exhibits to your 13 deposition, did you have any business dealings with Mr. 14 Jayma prior to April of 2005? 15 A No. 16 Q So the first business dealings you had with 17 Mr. Jayma were his agreement to loan you \$32,000.00 18 secured by a mortgage on some property that you owned? 19 A No, that's not right. 20 Q You had business dealings with Mr. Jayma prior 21 to that \$32,000.00 loan? 22 A Yes. 23 Q Tell me about those because I thought you told 24 me that you called him --- 25 A I did call him. That's how I met him.	Page 49 1 A Yes. 2 Q Who was the lender? 3 A He was, International Mortgage Services. 4 Wait a minute. He was the broker. 5 Q Who was the mortgage company? 6 A EMC. That was the first. 7 Q And that would have been in -- you think, in 8 March of 2005? 9 A I believe so. 10 Q And then after that is when Mr. Jayma made you 11 the \$32,000.00 loan that we're looking at as these first 12 three exhibits to your deposition? 13 A I believe that's right. 14 Q How much did EMC mortgage loan you? 15 A Two hundred thousand plus. 16 Q And what did EMC mortgage take a mortgage on? 17 A The house. 18 Q I thought you were in an apartment. 19 A I was in an apartment, but Jayma was in lending, 20 and I bought a house. 21 Q Okay. So you used that mortgage to buy a house. 22 Where was that house? 23 A It was -- You need an address? 24 Q Yes, sir. 25 A 4007 Brook Valley Road.

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1	Q Where? What city and state?	1	Q Did Bank of America file a lawsuit against you?
2	A Indian Trail, North Carolina.	2	A No, sir.
3	Q Was it a new home or was it ---	3	Q How did they foreclose?
4	A Yes.	4	A They had a program called Cash for Keys.
5	Q It was a new home?	5	Q So you surrendered the house?
6	A Yes.	6	A I surrendered the house.
7	Q Who was the seller?	7	Q Cash for Keys sounds to me like you turn in the
8	A Cambridge Homes.	8	keys, and they give you some cash?
9	Q How much did you pay for it?	9	A Yes.
10	A It was 254,000.	10	Q What cash did Bank of America give you?
11	Q How much of your own money did you put down?	11	A I think it was \$1,000.00. It might have been
12	A Five hundred dollars.	12	more.
13	Q Five hundred?	13	Q Other than the monies that we discussed earlier
14	A Yes.	14	-- I know you testified that Mr. Wilson (sic) sold some
15	Q You said the loan was for 200,000. Where did	15	lots and kept your share of the profit from those lots. I
16	the other ---	16	know you testified that there was a check that was jointly
17	A Had a second mortgage.	17	payable to the two of you that he kept that should have
18	Q You had a second mortgage.	18	come to you or part of it should have come to you. Other
19	A Yeah, with a higher -- eleven percent rate.	19	than those payments, did you make any other payments on
20	Q Who was the second mortgage lender?	20	the promissory note that's been marked as Exhibit 2 to
21	A I don't recall.	21	your deposition?
22	Q How much were your monthly payments on those	22	A I think in the beginning I made some interest
23	mortgages?	23	payments to him.
24	A It started out at 1,000 a month on the EMC and	24	Q Do you have any documentation of those payments?
25	then it was jacked up 50 percent to 1,500 a month.	25	A I probably do.
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1	Q When did it go up to 1,500?	1	Q Have you provided those to your attorney?
2	A Within -- I don't recall exactly. I got a	2	A Probably not.
3	letter from the bank, and it was a 60 day notice, you're	3	Q I'm going to ask that you provide to your
4	going to go up from \$1,056.00 a month to \$1,548.00 a	4	attorney any documents that you have that show payments
5	month.	5	that you've made toward this promissory note.
6	Q Was that consistent with the terms of your	6	A I've got a big one to throw at you if you want
7	loan agreement with EMC?	7	to know about payments.
8	A It probably was that they could do that.	8	Q What big one do you have to throw at me, Mr.
9	Q Did you read the loan agreement with EMC?	9	Wilson?
10	A Probably not.	10	A Mr. Jayma bought a suite in an office building.
11	Q Did EMC Mortgage foreclose on that house at	11	He was going to put his wife's real estate company in
12	some point?	12	that building. In lieu of any interest on the promissory
13	A No.	13	note, I agreed to work on his building. I did the work
14	Q What happened to that house?	14	on his wife's real estate office.
15	A Well, it was foreclosed on but not by EMC.	15	Q Did you and Mr. Jayma come to an agreement about
16	Q Who foreclosed on it?	16	how much credit you would receive for that work?
17	A Bank of America.	17	A In lieu of any interest due.
18	Q When did Bank of America foreclose?	18	Q Your understanding was if you would work on his
19	A Christmas of 2010.	19	wife's real estate office, you would have no interest due
20	Q So you were in that house for approximately	20	on repayment of this loan.
21	five years?	21	A That's correct.
22	A Yes.	22	Q Is there any documentation to support that?
23	Q When did you fall behind on your mortgage	23	A No documentation, just our word.
24	payments?	24	Q Do you have any documentation where Mr. Jayma
25	A I don't recall.	25	has written to tell you that the note is satisfied, the

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1 \$32,000.00 note is no longer owed? 2 A No. 3 Q Did you ever ask Mr. Jayma for something like 4 that after you finished the work on his wife's office? 5 A No. 6 Q Did you ever ask Mr. Jayma to give you something 7 that says, no interest is due on this note? 8 A No. A man of his word, thought he was. 9 Q After the loan in April of 2005, what was your 10 next business transaction with Mr. Jayma? Was that the 11 purchase of these lots we talked about? 12 A No, I believe it was -- Well, one of the lots -- 13 We decided to build, because I was a contractor. He 14 decided that he wanted to be a homebuilder. He had 15 cards drawn up to the effect that he was a custom 16 homebuilder, me, too. I came up with the name SunMark 17 Homes, and we formed a partnership to build homes. 18 Q How many homes did you build? 19 A Just one. 20 Q Was that SunMark Homes, LLC? 21 A Yes. 22 Q Did SunMark Homes, LLC, have anything to do with 23 the purchase of the five lots in Lancaster County? 24 A Yes. 25 Q Tell me what role SunMark Homes, LLC, played	1 A It was not in my name. 2 Q And you didn't put any money in for the purchase 3 of those lots? 4 A No. 5 Q And you didn't borrow any money for the purchase 6 of those lots? 7 A No. 8 Q You didn't build anything on any of those lots 9 other than Lot 163. 10 A Right. 11 Q Which of the lots did you receive some portion 12 of the sales proceeds from? 13 A Lots 52 and 53, Longbrook. 14 Q How much did you receive? 15 A Twenty-seven thousand plus. 16 Q Was that just cash? 17 A No, check. 18 Q Okay. 19 A Check. 20 Q What did you do with the \$27,000.00 you 21 received? 22 A I paid on that high interest, rate jacked loan 23 that I was -- The home I was living in, made payments. 24 Q So you used it to pay your mortgage? 25 A Yes, insurance, all those things.
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1 in the purchase of those five lots. 2 A I had met a developer that was developing in 3 Longbrook, and I chose the lots, based on topography, the 4 lay of the land. With a long history with an architect, 5 Building Graphics, working with the owner, I picked out 6 three homes, three house plans that would go on the three 7 lots, Lot 31, 52 and 53. I did the same thing on Lot 8 249, Providence Downs South, and Lot 163 Providence Downs 9 South. 10 Q Lot 163 is the Strike the Gold property, right? 11 A Yes. 12 Q So when you say five lots, that includes the 13 Strike the Gold property? 14 A Yes. 15 Q One of the five is the Strike the Gold? 16 A Yes. I chose that lot and that house plan. 17 Q And what was the other lot number that you 18 mentioned Providence Downs South? 19 A Lot 249. I picked that lot and that house 20 plan. 21 Q I think I asked you this before. When the lots 22 were purchased, in whose name were they purchased? 23 A Well --- I really don't know. It could have been 24 Keith Jayma, I don't know. 25 Q It wasn't in your name?	1 Q You used it for your own personal living 2 expenses? 3 A Well, I used it to make my car payment, too, 4 so I could get to the job. 5 Q Your car payment. You used part of this 6 \$27,000.00 to make your monthly car payment. 7 A Insurance. 8 Q You used part of the \$27,000.00 to pay your 9 mortgage. 10 A (Indicating) 11 Q You used part of the \$27,000.00 to pay your 12 car insurance. What else did you use part of the 13 \$27,000.00 for? 14 A Property taxes, maintenance, all the costs of 15 living. 16 Q Your cost of living, correct? 17 A My cost of doing business so I could, you know, 18 get to the job and living in the house, yeah, and my 19 mortgage was 2,000 a month with the interest rates jacked 20 up. 21 Q The \$27,000.00 that Mr. Jayma paid to you 22 out of the proceeds for the sales of these lots, that 23 would have been in what, 2005, 2006 time frame? 24 A I believe 2006. 25 Q Did you report that income on your 2006 tax

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1 return? 2 A No. 3 Q And you still haven't filed a tax return for 4 2006; is that correct? 5 A That's correct. 6 Q Did you pay any taxes on that \$27,000.00? 7 A No. 8 Q Let's talk about the Strike the Gold property. 9 Do you understand what I mean by the Strike the Gold 10 property? 11 A Yes. 12 Q That's Lot 163 in Providence Downs South, right? 13 A Yes. 14 Q Tell me what your agreement was with Mr. Jayma 15 concerning the Strike the Gold property? 16 A We had formed that partnership, and we were 17 going to build houses, and we would split the profit 18 50/50. 19 Q So you had formed SunMark, LLC, right? 20 A Yes. 21 Q And when you say the partnership, that's what 22 you're talking about, SunMark, LLC? 23 A Yes. 24 Q Did you contribute any capital to SunMark, LLC? 25 Did you put any money in when you came in as a member?	1 Q It wasn't you? 2 A No, it was not me. 3 Q Who borrowed the money to build the house on 4 Strike the Gold, was it you? 5 A No. 6 Q You do know that Mr. Jayma borrowed a million 7 dollars for the construction of that house, correct? 8 A I am aware of that, yes. 9 Q And that was in his own personal name? 10 A Well, I'm not aware of that. There, again, he's 11 hiding that fact and the purpose of the loan from me, 12 the builder. 13 Q Tell me what you mean by that? What do you 14 mean he's hiding --- 15 A Per our agreement, I'm the builder. I'm 16 going to build the house. My job is to build the house. 17 His job was to sell the house. So I don't know how he 18 represented himself. I don't know about the loan 19 documents, how he represented the purpose of the loan or 20 who was on the loan. You keep asking me. I don't know. 21 We'll have to find out. 22 Q Well, I'll tell you this. All those documents 23 have been produced to your attorney. 24 A And I just got them two weeks ago, and there's 25 1,200 pages and there's no way I've had time to go through
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1 A No. 2 Q Did Mr. Jayma put in any money? 3 A Not that I'm aware of. He may have paid the 4 LLC fee. 5 Q Did you have a operating agreement for SunMark, 6 LLC? 7 A I believe Jayma asked Huckabee to do that. 8 Q Do you recall ever seeing an operating agreement 9 for SunMark, LLC? 10 A No. 11 Q So your understanding was that SunMark, LLC, was 12 going to build this house on Lot 163. SunMark, LLC, was 13 going to sell the property upon completion and then you 14 and Mr. Jayma were going to split the profits. 15 A Me and Mr. Jayma would split the profits 16 50/50. 17 Q What if there were no profits? What was the 18 agreement? 19 A There was none. 20 Q So you had no agreement as to what would 21 happen if the project lost money? 22 A Right. 23 Q Who put up the money to buy Lot 163? 24 A There again, I don't know. It could have Keith 25 or it could have been Diana Jayma.	1 that. We asked that for that documentation in 2012. 2 Q Mr. Wilson, since we're putting all this on 3 the record, I'm going to tell you we sent it to your 4 attorney in 2012. 5 A His tax returns? 6 Q No, sir, not his tax returns. 7 A That's what we asked for. 8 Q Mr. Wilson, this is your deposition. I'm 9 entitled to ask you questions, and this isn't a discussion 10 about what has and hasn't been produced in discovery. My 11 question for you is, did you borrow any money for the 12 construction of the house on Lot 163 in Providence Downs 13 South subdivision? 14 A No. 15 Q Did you put up any of the money for the 16 construction of the house on that lot? 17 A No. 18 Whereupon - Document marked as Exhibit 4. 19 Q I've handed you what's been marked as Exhibit 4 20 to your deposition. Let me ask you this first. Do you 21 recognize the document that we've marked as Exhibit 4? 22 A Yeah, I recognize it. 23 Q What is it? 24 A The first document is a contract, an unsigned 25 contract.

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1 Q When you say, the first document, what pages? 2 A One, two, three. 3 Q Is that single document? 4 A That's a single document. 5 Q If you will, go ahead and pull that. Let's 6 take those first three pages off, and we're going to call 7 those Exhibit 4. 8 A (Witness complies) 9 Q We will call that Exhibit 4. Now, the next 10 page -- Tell me what else goes together. Does anything 11 else go with what we've now pulled off and marked as 12 Exhibit 4? 13 A You're missing some pages. 14 Q You think I'm missing some pages? 15 A Yes, sir. 16 Q After those first three pages that we've pulled 17 off and marked as Exhibit 4, what else goes together. 18 Tell me what those other pages are? 19 A You have two cost codes in here: 20 Q What is a cost code? 21 A It's a cost estimate that I provided before 22 construction was started. 23 Q Do the next four pages go together as a single 24 cost code? 25 A Yes.	1 I'm looking at the 4,500 square feet. So your question 2 to me is what? 3 Q Do you know what that document is? 4 A I recognize the Waystrode plan. 5 Q But other than that, you don't recognize 6 anything about that document? 7 A It looks like I was calculating -- If I produced 8 it, I see -- I'm going to say that's Jayma's handwriting 9 on it so I must have generated some kind of estimate 10 based on 4,500 square feet and the lot cost. 11 Q Let's set that document aside, too. We're 12 not sure what that is. We broke the documents up into 13 three separate exhibits, 4, 5 and 6. 14 You told me what we marked as Exhibit 4 is an 15 unsigned contract for residential construction. You've 16 testified, and I see that, that there appear to be 17 articles one, two and three missing from this exhibit. 18 Was there a written contract between you and Mr. 19 Jayma concerning the construction of the Strike the Gold 20 property? 21 A I generated a contract. 22 Q Did it look like the document that we marked as 23 Exhibit 4, with the exception of -- obviously there are 24 some provisions that are missing in the copy that I made, 25 and I apologize for that. I thought I had a complete
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1 Q Let's pull that off, and we'll mark that as 2 Exhibit 5. 3 A (Witness complies) Well, this is the second 4 cost code. You had another one here. 5 Q Let's figure out what we've got here first. 6 A I don't know if they're in order or not. 7 Q Let's mark that one. 8 A As 5? 9 Q Yes, sir. We'll mark that as 5. 10 Whereupon - Document marked as Exhibit 5. 11 Q Looking through the stack that I handed you, 12 what else goes together? Do the next four pages go 13 together? 14 A No. Skip one page and the next will go 15 together. That's the original cost code. 16 Mr. Martens - Let's mark that as Exhibit 17 6. 18 Whereupon - Document marked as Exhibit 6. 19 Q What was the page that we skipped? 20 A I don't know -- I don't know about this page. 21 Q So we won't mark that. Let me just have that, 22 we'll get it out of the way and not get confused. What 23 about the document that's got the caption of Sale Price of 24 Waystrode on Lot 163, do you know what that document is? 25 A I recognize the Waystrode plan on Lot 163.	1 copy when I copied that. 2 A (No response) 3 Mr. Martens - Let's take a quick break. 4 Mr. Martens - Resuming 5 Q So Exhibit 4 - I understand what we've marked 6 as Exhibit 4 is not a complete copy of your contract 7 with Mr. Jayma. Do you have a copy of a complete copy of 8 a construction contract between you and Mr. Jayma? 9 A Not that I am aware of. 10 Q Did you and Mr. Jayma ever execute a written 11 contract related to the construction of Strike the Gold? 12 A I don't think so. 13 Q Did you and Mr. Jayma ever execute a written 14 contract concerning how you would pay for, complete, 15 market and sell the Strike the Gold house? 16 A No. Well, a gentlemen's agreement. That was 17 our contract. 18 Q Tell me what you mean by gentlemen's agreement. 19 A I trusted him as a man of his word. 20 Q And as I understand, your gentlemen's agreement 21 was that Mr. Jayma would buy the lot in his name, right? 22 A Yes. 23 Q That Mr. Jayma would borrow the money needed 24 to build the house. 25 A Yes.

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1 Q That you would serve as the general contractor 2 for the construction of the house. 3 A Yes. 4 Q That once the house was completed, Mr. Jayma 5 would be responsible for marketing the house. 6 A He started marketing it at the very beginning. 7 Q So you were the general contractor. You would 8 be responsible for building the house. 9 A Yes. 10 Q Mr. Jayma would be responsible for marketing 11 and selling the house. 12 A Yes. 13 Q And then the profits would be split equally 14 between the two of you. 15 A That's correct. 16 Q What did you understand profits to be? 17 A Profits would be monies above and beyond the 18 costs to build the house. 19 Q Would interest on loans be considered a cost? 20 A Yes. 21 Q The amount to pay subcontractors would be 22 considered costs? 23 A Yes. 24 Q The cost of materials would be a cost? 25 A Yes.	1 A Yes. 2 Q And then I assume Exhibit 5 is a revision that 3 you made after -- Let me ask you. Why did you make a 4 revision to Exhibit 6? 5 A Mr. Jayma asked me to make a revision. 6 Q What did Mr. Jayma ask you to do? 7 A He said cut some of the costs out of it. 8 Q So your initial cost code, Exhibit 6, you 9 projected a construction cost of \$1,099,370.00? 10 A Yes. 11 Q And Mr. Jayma said that's too much. 12 A Yes. 13 Q We need to get it down. That's why you came 14 up with the cost code, what we've marked as Exhibit 5; 15 is that correct? 16 A Yes. 17 Q What did you change between Exhibit 6 and 18 Exhibit 5 to reduce the costs? 19 A I'll have to go item by item to answer that. 20 Q What kind of costs were you and Mr. Jayma 21 trying to stay within for the construction of this house? 22 A One million plus. 23 Q One million plus what? 24 A At one time, it was 1.1 million. That was my 25 original cost estimate.
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1 Q The cost of the land would be a cost? 2 A Yes. 3 Q You received a contractor's fee during the 4 construction of this house, did you not? 5 A I did receive a fee for incidentals, fuel for 6 the car, repairs, tires, cell phone, meals. That would 7 be rolled into the cost of the house. 8 Q So the money that you received as a contractor's 9 fee would be considered a cost? 10 A Yes. 11 Q That wouldn't be an advance on your share of 12 the profits? 13 A No. 14 Q Did you and Mr. Jayma discuss that in your 15 gentlemen's agreement? 16 A Yes, sir, sure did. 17 Q What else would be considered costs? 18 A All the costs of building a house. 19 Q Well, that's what I'm trying to figure out. 20 What are all the costs? 21 A I have a cost code sheet right here if you want 22 to go down it. 23 Q Maybe that's the simplest way to do it. 24 Exhibit 6, I think you testified earlier, that was your 25 first cost code sheet.	1 Q And Mr. Jayma said that was too high. 2 A He said that was too high. 3 Q And so you revised it? 4 A I revised it. 5 Q And what were you trying to get within? That's 6 my question. 7 A One million. 8 Q Did you believe that you could buy this lot and 9 build this house on this lot for a million dollars? 10 A Yes, at that time. 11 Q And is that what you told Mr. Jayma? 12 A Yes, at that time. 13 Q And is that when Mr. Jayma went out and borrowed 14 a million dollars? 15 A Yes. 16 Q And the plan was he would borrow a million 17 dollars, use that money to buy this lot and build this 18 house. You all were going to sell it, and everybody was 19 going to get rich? 20 A Right. 21 Q On Exhibit 5 on Line 10 -- Do you see Line 10, 22 010. 23 A Hold on. Exhibit 5, Line 10? 24 Q Yes, sir, Line 10, lot cost, land, \$276,745.00. 25 A Yes.

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1 Q Where did that number come from? 2 A That's the price the developer had on the lot. 3 Q So that's how much it was going to cost to buy 4 Lot 163, at the time you did these projections? 5 A Yes, sir. 6 Q Is that, in fact, what the cost was? 7 A Mr. Jayma went to the closing. I don't know. 8 Whereupon - Document marked as Exhibit 7. 9 Q Do you know what Exhibit 7 is? 10 A No, sir. 11 Q Have you ever seen a document like Exhibit 7? 12 A Yes. 13 Q The settlement statement. I'm going to tell 14 you that my understanding is this is the settlement 15 statement related to Mr. Jayma's purchase of Lot 163 and 16 the construction loan for the construction of this house 17 on Lot 163. You see it's dated September 19, 2005, 18 settlement date? 19 A My eyes are not very good. I do see that. 20 Q So you've never seen this closing statement? 21 A No, sir, I have not. 22 Q But you have seen closing statements before? 23 A Yes, I have. 24 Q If you look on the left-hand side of Exhibit 7, 25 do you see number 101, contract sale price?	1 \$31,150.00. 2 A Yes. 3 Q Signed by Louise Hemphill-Nolan. 4 A Yes. 5 Q For refund of Lot 163. 6 A I see that. 7 Q So you did get a discount on the sale of the 8 lot, correct? 9 A You know, Mr. Jayma negotiated that so I don't 10 know anything about it. 11 Q Do you deny that you received this check? 12 A I do not deny receiving the check. But I say 13 I had nothing to do with it. 14 Q What did you do with the \$31,150.00 that you 15 received as a refund from Mr. Jayma's purchase on Lot 16 163. 17 A I spent it on the partnership house. 18 Q Do you have documentation of that? 19 A Yes, I do. 20 Q What documentation do you have of that? 21 A I have a ledger of the date, who it was written 22 to, what it was for. 23 Q Did you ever tell Mr. Jayma that you received 24 a \$31,150.00 refund on the purchase of Lot 163? 25 A He's the one that generated, yeah.
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1 A Yes. 2 Q \$276,745.00. 3 A Yes. 4 Q That's the purchase price for the lot, right? 5 A I guess he didn't get a discount. 6 Q Well, that's what I'm asking. That's the 7 number you projected for the purchase of the lot, right? 8 A Yes. 9 Q And that's the amount that Mr. Jayma paid to 10 purchase the lot, according to this settlement statement, 11 correct? 12 A It looks like it. 13 Whereupon - Document marked as Exhibit 8. 14 A You see, Mr. Martens, you did ask me who 15 purchased the lot, Keith Jayma, and I told you I didn't 16 know if it was Keith and Diana or if was just Keith. 17 Q Right. 18 A But it looks like on this settlement she 19 signed it on the signature as borrower. I don't know. 20 I've never seen this. You asked me the questions and 21 now I see her signature. So maybe it was both of them. 22 Q Let me ask you this about Exhibit 8. You see 23 check number 8211 at the top? 24 A Yes. 25 Q It's a check payable to you, Mark Wilson, for	1 Q Mr. Jayma didn't generate this check. 2 A He generated whatever this is. 3 Q Where do you see Mr. Jayma's name or signature 4 anywhere on here. 5 A His signature is not on that check. 6 Q How did Mr. Jayma generate that check? 7 A Negotiating with Bill Nolan and Louise Hemphill. 8 I wasn't included in on that. 9 Q I'm not sure I understand at all what you're 10 saying. Do you deny that you received a \$31,150.00 check 11 --- 12 A I've already answered that question. 13 Q Well, I want you to answer it again, sir. 14 A I do not deny that that check is to me, and it's 15 in my name. 16 Q And you didn't purchase Lot 163, did you? 17 A No, I did not. 18 Q Do you recall telling Mr. Jayma, hey, Keith, 19 good news, we got a \$31,000.00 refund on the purchase 20 price of the lot? 21 A He's the one that generated this money, not 22 me. 23 Q What do you mean by that? 24 A He got the same check on Lot 249, and it went 25 to him, and he put it in the partnership account. I don't

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1 know how he did it. Jayma did it. I didn't do it. 2 Q Jayma did what? 3 A Generated this deal on how this check became 4 available on these two lots. 5 Q What two lots? I only see one check for one 6 lot. 7 A Well, there's another one. 8 Q So you're telling me you got \$62,000.00. 9 A No. Jayma got the other one. It was 27,000 10 plus. This one came to Mark Wilson. 11 Q How do you know that there was another check 12 for 27,000 plus? 13 A He sent me a fax. Hey, Mark, got this 27,000 14 from Nolan, Lot 249. 15 Q Is there a similar email or fax from you to 16 Mr. Jayma saying, hey, Keith, got a \$31,000.00 check on 17 Lot 163? 18 A There is not that I know of. 19 Whereupon - Document marked as Exhibit 9. 20 Q Mr. Wilson, do you recognize what we've marked 21 as Exhibit 9? 22 A Yes. 23 Q Is this a letter that you wrote to Mr. Jayma 24 on September 6, 2005? 25 A Yes.	1 about? 2 A Well, I'd done all the leg work. 3 Q Why would you be thanking him for purchasing 4 the lots, Mr. Wilson? 5 A Well, it was helping the partnership. We 6 needed some lots to build houses on. 7 Q Weren't you thanking him because he had sent 8 you a check for half of the sales proceeds from those 9 three lots? 10 A No, he didn't send me a check when he bought 11 them. 12 Q No, he sent you a check when he sold them, 13 right? 14 A Yeah, but that was later. 15 Q Are you sure about that? 16 A I'm sure. This is when he bought the lots, not 17 when he sold them. He didn't pay me on 31 so I wouldn't 18 thank him. I was mad at him. 19 Q So you were thanking him for buying those 20 lots? 21 A Yes. 22 Q You have proven to me that you will do whatever 23 it takes to get the job done. What did you mean by that? 24 A Well, that's -- Our deal was I picked the lots 25 out based on how the lot's laid and what house would go
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1 Q Is this your handwriting? 2 A Yes. 3 Q Let me ask you some questions about this 4 document marked as Exhibit 9 to your deposition. It 5 starts out, hey, buddy. I received your email which 6 included the closing statements on Lots 31, 52 and 53, 7 congratulations, and your request for a subcontractor 8 agreement from Blackmon. What does that first statement 9 refer to, Lots 31, 52 and 53. Are those the lots that we 10 were talking about before that Mr. --- 11 A Those are the lots that I picked out to build 12 homes on. We closed on them. I said congratulations. 13 Q And he sent you the closing statements for 14 those? 15 A Yeah. 16 Q For those three lots? 17 A Yeah. 18 Q And I think you testified earlier he only told 19 you about two of the five. 20 A When he sold them. This is when he bought 21 them. 22 Q This is when he bought them. Okay. I was 23 trying to email you back to say thank you. You will 24 have send to Robert, Michael lives in my backyard. What 25 were you writing to email him back to say thank you	1 on the lot. I did my part. He bought them. He was 2 doing his part. 3 Q You have shown me how genuine you are. What 4 did you mean by that? 5 A There, again, when I first met him, he was all 6 enthusiastic and bent over backwards to give me a free 7 sandwich. 8 Q Everything you have said you would do, you have 9 done. 10 A Yeah. 11 Q Is that true? 12 A At that time, yes. 13 Q So as of September 6, 2005, everything that Mr. 14 Jayma told you he was going to do he did? 15 A Yes. 16 Q Continuing down that page you say, I am ready to 17 step up and do my part by furnishing my expertise in 18 building. You know probably better than anyone where I 19 am financially. Where were you financially in September 20 of 2005? 21 A I'd gone through my divorce, exhausted my 22 monies, my cash reserve, paying attorney fees and --- 23 Q You were not in a good financial position in 24 September, 2005, were you? 25 A No. I'd just picked up a brand new house,

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1 2,000 a month. 2 Q Your initial loan was beneficial to me and my 3 family. Which initial loan were you referring to there? 4 A 32,000. 5 Q My initial request was 75,000, and you tried 6 to get King to do 100,000. I based my request on a 7 monthly budget of \$6,000.00, and I thought that within 8 a year I would be employed as a project manager for one 9 of the larger homebuilders. Did that happen? 10 A No, we formed the partnership. 11 Q Did you have any opportunities to go work for 12 one of the larger homebuilders? 13 A Could have. 14 Q Did you receive any offers to go work for any 15 larger homebuilders? 16 A No, Jayma and I formed a partnership to build 17 houses. 18 Q Your initial loan of \$32,000.00, minus the back 19 taxes of \$2,500.00 and the closing costs have carried me 20 for the past five months. You actually -- At the time you 21 got the loan from Mr. Jayma for \$32,000.00, your property 22 was delinquent for tax payment, right? 23 A Well, at that time I didn't own it. 24 Q Excuse me. What do you mean by that? 25 A Ingram Walters owned it. He's the one that	1 made his initial loan of \$32,000.00 there were back taxes 2 owed on your property in Lancaster County? That's what 3 you said in this letter. 4 A Yes. 5 Q And is it true that the \$32,000.00 loan carried 6 you for the five months before you wrote that letter? 7 A Yes. 8 Q Then you continue on. You said, without any 9 other income, I find myself at that crossroads again. Is 10 it true that you didn't have any other source of income 11 in September 2005 other than the \$32,000.00 loan that Mr. 12 Jayma had made to you in April? 13 A That's not true. 14 Q Why did you tell him, I don't have any other 15 income? 16 A I'm just writing a note to him. I did have 17 farm income. He knew that. 18 Q Nothing is worse than being under funded except 19 for not being funded at all. Is that what you wrote? 20 A I lost my place. Where am I at? 21 Q You're right --- 22 A Wrong page. 23 Q Yes, sir. That paragraph. Is it true, Mr. 24 Wilson, that in September of 2005 when you wrote this 25 letter, you had no income, other than your farm income,
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1 didn't pay the tax. 2 Q You had transferred it -- Before you transferred 3 the property to Mr. Jayma, you had transferred the 4 property to somebody else before? 5 A That's correct. 6 Q Is that accurate that that was something that 7 you would periodically do? You would let someone else 8 take title to your property, borrow money against it, 9 and then you would get the money? 10 A Well, in this case, I got a house. 11 Q How many times did you transfer that property 12 to someone else so that you could borrow money against 13 it? 14 A To borrow money against it? Well, Ingram didn't 15 borrow money against it. I exchanged the land for a 16 house in Bridgewater subdivision. 17 Q Which house? 18 A A house I built in Bridgewater in Monroe. 19 Q What did you do with that house? 20 A I sold it. 21 Q And who got the money for that? 22 A I gave it back to Ingram to get the land back, 23 nothing in writing, a gentlemen's agreement, but he did 24 it. 25 Q Is it true, Mr. Wilson, that when Mr. Jayma	1 and you had no job and you had exhausted the \$32,000.00 2 loan that Mr. Wilson had made to you in April, 2005? 3 A Yes. 4 Q Then you continue on. You said, think about 5 this. I will deed the entire 63 acres to you, you obtain 6 a business line of credit using the land as collateral. 7 What did you mean by that? 8 A Exactly what it says. 9 Q You signed your 63 acres over to Mr. Jayma, and 10 then Mr. Jayma goes out and borrows money against it. 11 A That was the plan. 12 Q Ingram, American Community Homes, got a 13 \$275,000.00 loan from First Charter. I paid him back 14 295,000 to get it back in March of 2004. 15 A That's correct. 16 Q That's the transaction we were just talking 17 about. 18 A Yes. 19 Q You had deeded your land to Mr. Ingram, correct? 20 A Yes. 21 Q Mr. Ingram went out and borrowed \$275,000.00 22 against that land, correct? 23 A I believe that's accurate. 24 Q Mr. Ingram had given you the \$275,000.00, and 25 then you paid him back later?

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1 A No. No. I believe he paid off the house. 2 Q So he took the \$275,000.00 and paid off the 3 house, and then you sold the house and paid him back? 4 A Correct. 5 Q The reason you were doing this was you couldn't 6 borrow money against the land yourself, right? 7 A That's right. 8 Q And the reason you couldn't money is because 9 you didn't have a job, you didn't have a steady source of 10 income, and you hadn't filed tax returns for years, 11 correct? 12 A I don't even think I tried to borrow any 13 money. 14 Q You continue on. You say, you can determine 15 your own figure, but I was thinking 200,000, less than 16 50 percent loan to value. I know you have your own money, 17 but this line of credit could pay me. 18 A That's right. 19 Q So what you wanted to do was to deed your 20 property to Mr. Jayma, right? 21 A (No response) 22 Q Right? 23 A Yes. 24 Q And then Mr. Jayma would go and borrow 25 \$200,000.00.	1 A No, this letter supercedes the 25 acres. 2 Q What letter supercedes that --- 3 A This letter that we're talking about. 4 Q So that's talking about 63 acres. 5 A Absolutely, but it got changed. 6 Q What superceded this letter? 7 A This letter supercedes the change. This was 8 first, and then it got changed to 25. 9 Q Is there a letter that says we're only putting 10 up 25 acres? 11 A Yes, there is. He got approved on a loan for 12 it. 13 Q Why did you deed 62.69 acres to Mr. Jayma? 14 A I didn't know I was doing that. 15 Q Did you review the deed before you signed it? 16 A Mr. Martens, I signed it at Honda Cars of 17 Rock Hill. 18 Q Did that concern you that you were signing a 19 deed at Honda Cars of Rock Hill? 20 A It does now. 21 Q It didn't bother you at the time? 22 A No. 23 Q Why not? 24 A Because Greta -- Blackmon agreed to send Greta 25 to the car dealership because I didn't know Rock Hill.
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1 A Yes. 2 Q And then that money would go to you. 3 A Yes. 4 Q It could pay the interest expense on all your 5 construction loans. It could pay subcontractors like 6 Doggett Concrete until bank draws are made or down 7 payments on new lots including closing costs. Isn't that 8 what you did? You transferred your property to Mr. Jayma, 9 right? 10 A I did. 11 Q And Mr. Jayma went out, and he borrowed 12 \$194,000.00 against that property, right? 13 A Well, that's not the way it was supposed to 14 have gone down. 15 Q Isn't that exactly what you've proposed here? 16 A On that date, but it got changed. 17 Q What got changed, Mr. Wilson? 18 A The 63 got changed to 25 acres. 19 Q By whom? 20 A By Keith Jayma and me. 21 Q Well, don't you continue on down in this letter, 22 and you say -- You talk about the cost per acre times 23 a number of acres. That would be how much money you 24 could borrow, right? He couldn't borrow \$200,000.00 25 against 25 acres, could he?	1 Jayma drove me down there for the 32,000 promissory note. 2 There's no notary. Blackmon wasn't there. It was just 3 Greta. 4 Q And you signed it none the less? 5 A I thought I was signing the 25 acres over. 6 Q But you didn't read it before signing it? 7 A I don't think she presented it to me, and it 8 certainly wasn't notarized in front of me. 9 Q Did you ask to review it before you signed it? 10 A I don't think she had it. I think all I had was 11 a signature page. 12 Q And you signed a blank signature page on a 13 deed to 63 acres. 14 A On 25 -- Well, I thought it was 25. That's the 15 discussion we had with First Charter Bank, and we have 16 that documentation. 17 Q You understood you were signing a deed to 18 something that you owned, right? 19 A Right. 20 Q And you didn't ask to look at the deed before 21 you signed it? 22 A I don't think she had it. She certainly didn't 23 have a notary there. 24 Q And you didn't say, I'm not signing this until 25 I have a chance to review it?

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1 A I did not. 2 Q You signed a blank signature page on a deed 3 and said, go stick on whatever deed you want? 4 A And they did. 5 Q Who did? 6 A Blackmon Huckabee and Greta. I believe it's 7 Greta -- No, Greta -- I'd have to see the page. 8 Whereupon - Document marked as Exhibit 10. 9 Q Do you recognize Exhibit 10, Mr. Wilson? 10 A It's concerning Lot 163 contacts. 11 Q Did you prepare that document? 12 A I -- I don't know. 13 Q Do you recall Jesse Cureton --- 14 A No. 15 Q --- contacting you offering 1.4 million? 16 A No, but because I was at the home, people 17 would walk in, and they would talk to me about it. It 18 looks like these were contacts. I was trying to tell 19 Jayma, here's some people that want to buy the house, 20 back in '06. 21 Q So that's what you believe this document is, 22 is you telling Mr. Jayma about opportunities to sell 23 the house? 24 A Yes. 25 Q Is that, in fact, your fax number at the top	1 A I would say, yeah, for dealing with Keith Jayma. 2 So I'll take the other 10 percent, because I had to deal 3 with Keith. 4 Q Let's go back to what you said your original 5 agreement with Mr. Jayma was. Mr. Jayma would buy the 6 lots, right? 7 A Right. 8 Q Mr. Jayma would get the financing? 9 A Yep. 10 Q Mr. Jayma would market the house? 11 A Yes. 12 Q Mr. Jayma would sell the house. 13 A Yes. 14 Q The only responsibility you had was to build 15 the house? 16 A Yes. 17 Q How could Mr. Jayma be at fault for delays in 18 construction when that was your responsibility under the 19 agreement? 20 A Well, Mr. Jayma was a big time builder. 21 Q Well, Mr. Wilson, who was the contractor that 22 pulled the permits on this house? 23 A I was. 24 Q Who was responsible for lining up the subs? 25 A I was.
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1 of that document? 2 A I don't recall. 3 Q Did you sell the house to Jesse Cureton for 4 1.6 million? 5 A No. 6 Q Did you sell it to Doctor and Mrs. Worley? 7 A He didn't sell the house in '06. 8 Q Was the house complete in '06? 9 A No. 10 Q Why not? 11 A Are you asking me why the house wasn't completed 12 in '06? 13 Q Yes, sir. You were the contractor. Why was 14 the house not completed by 2006? 15 A Well, I'm going to blame 80 percent of it on 16 Keith Jayma. 17 Q Who would you blame the other 20 percent on? 18 A I'm going to blame 10 percent on Katrina, 19 Hurricane Katrina hit in August of '05. It started a 20 month later, October 5th, 2005. 21 Q Eighty percent on Jayma, ten percent on 22 Katrina. Who is the other ten percent at fault? 23 A Let me think. 24 Q Let me just cut to the chase. Was any of the 25 delay caused by you as the contractor, Mr. Wilson?	1 Q Who was responsible for getting the inspections 2 done? 3 A I was. 4 Q You testified earlier about some work that you 5 did on Diana Jayma's office. You testified that you and 6 Mr. Jayma agreed that in exchange for you performing that 7 work in her office that he would - and correct me if I'm 8 wrong - that he waive all interest on the loan. That 9 was your testimony. 10 A That's correct. 11 Q When did you perform that work on Diana Jayma's 12 office? 13 A It could have been '05 and '06. 14 Q So it was the end of '05 to '06 time frame. 15 A Yes. 16 Q Certainly it was completed before January of 17 2007. 18 A I think so. 19 Whereupon - Document marked as Exhibit 11. 20 Q Let's look at this. Do you recognize what 21 we've marked as Exhibit 11 to your deposition? 22 A Yes. 23 Q What is it? 24 A It's a letter that I generated. 25 Q Is that something you sent to Mr. Jayma?

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1 A Looks like him. 2 Q It's a letter you sent to him on January 18, 3 2007. 4 A Looks like it. 5 Q It starts out, the scaffolding that the 6 brick mason hit was on your lot and only one section was 7 slightly damaged. Hazlett continued to use it for months. 8 Tell me what that sentence refers to? 9 A The brick mason hit the scaffolding. Just 10 what it says. 11 Q On your lot. What lot were you talking about? 12 A I'm referring to Lot 163. 13 Q And you refer to it as your lot, not our lot, 14 correct? 15 A In that sense, I am. 16 Q In fact, the only person who ever held title 17 to that lot was Mr. Jayma? 18 A And his wife. 19 Q Right, but never you? 20 A No, I --- 21 Q And never SunMark? 22 A No. 23 Q The next paragraph, the premise that starting 24 a company wouldn't require up front and continued working 25 capital has certainly backfired on me. To date, it has	1 that job every day for three years. Yeah. 2 Q But just to be clear, the \$45,976.54, that's 3 an amount that you received in cash from the \$194,000.00 4 loan --- 5 A That's correct. 6 Q The 32,000 plus, that's cash that you received 7 from the April 2005 loan that Mr. Jayma made to you, 8 correct? 9 A Yes. 10 Q The \$27,803.98, that's the portion of the 11 sales proceeds from those two lots we've talked about 12 that Mr. Jayma paid over to you. 13 A That's correct. 14 Q The \$7,819.00 you can't recall what that's for. 15 A No. 16 Q The \$15,000.00, tell me again what you said that 17 was for? 18 A That was -- The \$250.00 a week he agreed to 19 pay Mark Wilson Construction --- 20 Q So those are those weekly contractor fees we 21 were talking about before? 22 A Right. 23 Q You continue on, you say, you are not looking 24 at any other lots or working on any home plans to build 25 on any other lots. Tell me what you meant by that?
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1 cost me \$45,976.54 plus \$32,000.00 plus \$27,803.98 plus 2 \$7,819.50 plus \$15,000.00, for a total of \$128,600.02, 3 just to show up and be available to build this 1.69 4 million dollar home. Tell me what you meant by that. 5 What do these numbers refer to? 6 A The first figure, 45,976 is money from the 7 194 equity line that Jayma took out. 8 Q That's money that Mr. Jayma borrowed against 9 that 63 acres and gave directly to you. 10 A That's right. The next line is the 32,000 11 promissory note. The next line is the payment he gave 12 me for Lots 52 and 53. I don't remember the 7,800. 13 And the 15,000 is the \$250.00 a week he would pay or paid 14 Mark Wilson Construction in lieu of buying a partnership 15 truck and insuring it and maintaining it and cell phone. 16 Q So each of these numbers, this 45,000, 32,000 17 the 27,000, these all represent amounts that came to 18 you? 19 A Yes. 20 Q How did it cost you if you were receiving those 21 amounts? 22 A I'm making the payment on that crazy loan he 23 got for me, 2,000 a month. That was a hundred -- I 24 don't know, 125,000 just on the house. I had to eat. I 25 had to buy clothes. It cost me. It cost me to get to	1 A Well, by '07, he hadn't sold the house, and it 2 didn't look like he was going to sell it. So --- 3 Q Even if you decided to start an easy job, it 4 would be way out before I would see any money. 5 A Yep. 6 Q Kit quit her job at O'Charley's and studied at 7 SPCC for three months on my promise to support her. Who 8 is Kit? 9 A My daughter. 10 Q She got nothing. She has abandoned me over 11 this commercial license deal and talks about me like 12 you said Hazlett is. What's this commercial license 13 deal? 14 A Keith wanted to do commercial building. He 15 wanted to be a commercial contractor. Kit was the one who 16 was going to take the exam and be the commercial license 17 builder. 18 Q So Kit was going to get a commercial 19 contractor's license? 20 A Yes. 21 Q Didn't you have an unrestricted general 22 contractor's license? 23 A For residential. 24 Q So you were limited to residential construction? 25 A Yes.

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1 Q Now, my brother, who used to receive my tax
2 notice at his address, is mad that I signed over my farm
3 to you for no money and nothing in writing to get it back.
4 A That's correct. No money, no consideration.
5 Q But you don't mention 25 acres. You don't
6 specify in there, do you?
7 A No.
8 Q You and I have discussed many times at getting
9 an agreement in writing. Here is what I offer. First,
10 the proceeds of the sale from Strike the Gold Lane will
11 pay off the first mortgage to First Charter for one
12 million dollars. That's the million dollar loan that
13 Mr. Jayma took out to build this house, right?
14 A Yes.
15 Q And Mr. Jayma was carrying that and paying the
16 interest on it?
17 A I was paying interest.
18 Q Why were you paying interest?
19 A I wrote all the checks. I wrote all the
20 interest, taxes.
21 Q But you were paying them out of the construction
22 account.
23 A Yeah, our joint checking account, but I wrote
24 the checks. I paid it.
25 Q Whose money was it?

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1 A Well, that's the ten million dollar question.
2 Q Did you put any of that money in that went
3 to pay the construction loan?
4 A It came into my checking account, had my name
5 on it.
6 Q Did you put any of that money in?
7 A I'm the one that got the construction draws,
8 yes, I did. I'm the one that put the money in there.
9 Q You got the construction draws from the
10 million dollar loan that Mr. Jayma had taken out, right?
11 A Right. I wrote the checks from our joint
12 partnership account.
13 Q Second, the proceeds will immediately pay off
14 the SunTrust line of credit in the principal amount of
15 \$194,000.00 and the interest on that loan. That's the
16 loan that Mr. Jayma went out and got on the 63 acres,
17 correct?
18 A That's correct.
19 Q When the SunTrust account is paid, then Keith
20 Jayma will transfer back to F. M. Wilson or Crystal A.
21 Wilson the deed to the 63 acres, with a clear title as
22 F. M. Wilson transferred to Keith Jayma. Now, doesn't
23 that letter suggest that as of January 18, 2007, you
24 understood that you had transferred 63 acres, not 25?
25 A It had already been transferred to me -- to him

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1 in '05.
2 Q But you understood as of January 18 of 2007
3 that it was 63 acres, not 25?
4 A Yeah, I knew it then. I just didn't know when
5 I signed it over.
6 Q And you don't mention anything about that being
7 the improper acreage in this letter.
8 A Not in this letter, no.
9 Q And then you say, only the \$32,000.00 loan will
10 be attached. That's the \$32,000.00 loan that you borrowed
11 in April of 2005, right?
12 A Yes.
13 Q So as of January of 2007, you still acknowledge
14 that that money was owed to Mr. Jayma, correct?
15 A At that time, I didn't know he had kept all
16 the money on the other lots.
17 Q So at that time, you believed you still owed
18 him the \$32,000 that you borrowed from in April of 2005?
19 A Apparently at that time.
20 Q Third, the proceeds from the sale will pay
21 Keith Jayma his paid expenses for Strike the Gold. Four,
22 any remaining money from the sale of Strike the Gold will
23 be divided equally minus \$46,976.54 and interest money
24 owed on the \$32,000.00 loan.
25 Now, I asked you that just before we looked at this

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1 letter, and you said that when you did the work on
2 Diana Jayma's office, that was in satisfaction of all
3 interest that was owed on the \$32,000.00 loan?
4 A That's exactly correct.
5 Q And you told me that work was done a year
6 before, in 2006. Why were you concerned about paying back
7 interest money on a \$32,000.00 loan if your agreement
8 with Mr. Jayma was once you had completed that work on his
9 wife's office the previous year, you no longer owed
10 interest.
11 A I just proposed it. I don't know why I didn't
12 delete it. This is not accurate.
13 Q It's your letter, isn't it?
14 A It is a letter I generated. You've got to
15 realize at this time I didn't know what he was doing. He
16 was doing so many crooked things, I couldn't keep up with
17 what he was doing. This is a proposal I did make at that
18 time.
19 Q I think this is consistent with everything we've
20 said verbally. You have mentioned the use of the equity
21 line in future deals but for only \$194,000.00, and what
22 has gone on with my family, it is best that I get it
23 back in my name. Was your family upset with you that
24 you had transferred that property to Mr. Jayma?
25 A They were so upset with me and cussing at

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1 me and cussing him. 2 Q Did they know you had done this before? 3 A Yes. 4 Q Were they upset with you about the first time 5 you did it? 6 A No. 7 Q Because you got the property back the first 8 time. 9 A Absolutely, a man of his word. 10 Q And the second time you weren't able to pay 11 back the money so you couldn't get your property back. 12 A He didn't sell the house. I was to build it, 13 and he was to sell it. He didn't do it. 14 Q If the house sells, all this will be great. 15 A Yeah. 16 Q If for some reason it doesn't sell, like you 17 having to take it off the market, then there should be 18 a time set for this to happen. At the time you wrote 19 this letter in January of 2007, did you believe that 20 everything you had in there was accurate? 21 A Yes, I did at that time. 22 Q Were you and Mr. Jayma starting to have 23 difficulties with one another by January of 2007? 24 A He's hiding so much stuff from me, like the sale 25 of the lots and forging my name on documents. I don't	1 me. I thought he was going to pay me. 2 Whereupon - Document marked as Exhibit 12. 3 Q When did you discover the other two lots had 4 been sold? 5 A I don't recall. 6 Q How did you discover the other two lots had 7 been sold? 8 A I don't recall. 9 Q Do you agree that the property records are 10 matters of public knowledge? 11 A I didn't know he sold them. 12 Q But you could have gone to the courthouse and 13 found out. 14 A Why would I go to the courthouse? 15 Q Mr. Wilson, I don't know. You're the one who 16 brought this claim. I'm asking you the questions related 17 to your claim against my client. 18 A And I answered it. 19 Q So your answer is, you wouldn't have gone to 20 the courthouse. 21 A I'd had no reason. I didn't know what he was 22 doing. I didn't know he had sold the lots. 23 Q I'm going to show you what is marked as Exhibit 24 12. Do you recognize Exhibit 12? 25 A I do.
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1 know when the snowball started rolling exactly. There 2 came a time, yes. 3 Q When did you start to suspect that Mr. Jayma 4 was cheating you? 5 A In what way? 6 Q In any way. 7 A Forging my name? 8 Q In any way. When did you start to suspect that 9 Mr. Jayma was cutting you out of your share of the 10 partnership profits? 11 A Well, I always counted on him to pay me so I 12 don't know. He paid me on two lots. I thought he was 13 going to pay me on all of them. I'm the one that picked 14 them out. I did the leg work. He did go get the loan, 15 but I'm doing all the work so I just thought he was going 16 to pay me. 17 Q Is it safe to say that by January 18, 2007, 18 you and Mr. Jayma were starting to have problems with 19 one another, at the time you wrote this letter? 20 A Like I said, I don't recall. He's hiding so 21 many things from me. I didn't know what was going on. 22 Q When did you start to suspect that Mr. Jayma 23 was hiding things from you, Mr. Wilson? 24 A I don't recall exactly. I counted on him to 25 pay me. He paid me on 52 and 53 and then he stops paying	1 Q Is this your handwritten note, Page 1 of Exhibit 2 12? 3 A Yes. 4 Q And you wrote, someone has forged my name on 5 this \$30,225.00 check that was issued to me and you. 6 Is Page 2 of Exhibit 12 the check to which you are 7 referring? 8 A Yes. 9 Q You never told me about this check that was 10 issued in March of 2007, and that I got a copy of on 11 1-29-08. So you found out that this check had been 12 issued and deposited on January 29 of '08, correct? 13 A I got a copy on 1-29-08. 14 Q And that's when you found out about it, right? 15 A Found out about the check. 16 Q My legal counsel sent you a demand letter last 17 September. I haven't had the retainer that they required. 18 I'm negotiating a deal with my brother to get that money 19 together. Who was your legal counsel that sent a demand 20 letter to Mr. Jayma last September? 21 A That was Nexsen Pruet. 22 Q So this letter would have been -- Let's go 23 ahead and mark this. 24 Whereupon - Document marked as Exhibit 13. 25 Q Is Exhibit 13 the demand letter you were talking

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Page 102 1 about in Exhibit 12? 2 A Yes. 3 Q So that would mean you wrote Exhibit 12 sometime 4 after September 12 of 2008, right, because you refer to 5 that in this letter? 6 A I don't know the date. 7 Q Why did you go see Nexsen Pruet in 2008? 8 A Well, I wasn't happy with Mr. Jayma. I wanted 9 to talk to a lawyer about the conveying 63 acres instead 10 of 25 and not signing the description page and wanted to 11 talk about the issues I had. 12 Q Is it true that what you wanted to go talk to 13 somebody at Nexsen Pruet are the same issues you're suing 14 Mr. Jayma about in this lawsuit? 15 A I didn't follow you. 16 Q I mean, that's what this lawsuit is about, 17 right? 18 A What? 19 Q You transferring 63 acres instead of 25. 20 A Yeah. 21 Q You contend that Mr. Wilson didn't pay you 22 your rightful share of partnership profits? 23 A That's right. 24 Q What else is this lawsuit about, Mr. Wilson? 25 What else are you trying to accomplish here?	Page 104 1 after seeing that forgery. You know, I expected him to 2 be a man of his word. I expected him to pay me. I was 3 waiting on payment. He's out there forging documents. 4 That's not the only forgery. 5 Q Why didn't Nexsen Pruet file a lawsuit on your 6 behalf in September of 2008? 7 A Well, I was waiting on Jayma to produce -- 8 what he asked for, cease the sale, reconvey the 63 acres 9 free and clear. 10 Q Did he do any of that? 11 A Jayma didn't do any of it. 12 Q Then why didn't you sue him in 2008? 13 A I thought he was going to -- He was going to 14 furnish me the books and records, and he never did. Like 15 on the records, to see how much money. 16 Q Why did you think he was going to do that, 17 Mr. Wilson? 18 A Be a man of his word. We were partners. 19 Q What was his word? This is a demand letter 20 that says, cease the sale and pay my client a bunch of 21 money or we're going to sue you. That's what this letter 22 says, in effect, doesn't it? 23 A Say pay me a bunch of money. It says, right 24 the wrong. 25 Q Please contact me at your earliest convenience
Page 103 1 A To correct the wrong and to get paid. 2 Q And those are the things that you went to see 3 this attorney at Nexsen Pruet about, right? 4 A I sought counsel, yes. 5 Q And you actually saw somebody before you went 6 to Nexsen Pruet. You saw some other lawyer in March of 7 2008, didn't you? 8 A I believe my concrete supplier referred me to 9 an attorney. 10 Q Who was that? 11 A I don't recall. 12 Q Did you meet with an attorney? 13 A I have. 14 Q Did you meet with somebody before you met with 15 Nexsen Pruet? 16 A I don't recall. 17 Q And is it accurate that you weren't able to 18 come up with the retainer that Nexsen Pruet required? 19 A No. 20 Q Why did you say that in your letter to Mr. 21 Jayma, Exhibit 12? 22 A I was just generating a handwritten letter. 23 Q Do you regularly put things in letters that 24 you don't believe are true? 25 A I was so frustrated with Jayma at that time,	Page 105 1 to provide a proper accounting of the partnership books 2 and records and to provide a reconveyance of Mr. Wilson's 3 property. 4 A And I waited on it. I was waiting on Jayma. 5 Q And when you didn't get a response from Jayma, 6 why didn't you tell Nexsen Pruet to go ahead and file 7 suit on your behalf? 8 A I was waiting on Jayma to produce the records. 9 He was asked to. I just didn't do it. 10 Q It had nothing to do with your inability to 11 pay Nexsen Pruet's retainer? 12 A No. 13 Q Even though you said that in your letter to 14 Mr. Jayma, I haven't been able to come up with the 15 required retainer. 16 A I don't think he gave me a quote on the 17 retainage fee. 18 Mr. Martens - Let's mark that one. 19 Whereupon - Document marked as Exhibit 14. 20 Q Mr. Wilson, let me ask you a question about the 21 check that is attached to Page 2 of Exhibit 12. I know 22 you said in your letter here, that you got a copy of that 23 check on January 29 of 2008. How did you get that check? 24 A Well, I thought there was money in the account, 25 the construction account, so I called the bank. I talked

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1 to Eileen Vargosko, V-A-R-G-O-S-K-O. 2 Q You called somebody at the bank? 3 A Yes. The lady that I called for two years. 4 Q What did she tell you when you called her? 5 A She said, Mark, the money is gone. 6 Q Why were you trying to find out if there was 7 money in the construction account in --- 8 A To pay subcontractors. That's what I did for 9 two years. 10 Q Who was owed? 11 A A lot of people owed. 12 Q When was the CO issued on this house? 13 A I don't know exactly. I think in March of 14 '07. 15 Q March of '07? 16 A (Indicating) 17 Q So a year after the house was complete, there 18 were still subs that hadn't been paid? 19 A Yes, and bills. I know the bills were in my 20 name, the power bill, natural gas bill, water bill, 21 everything was in my name, not Jayma's. 22 Q Why had you not paid the subs for a year prior 23 to January of 2008? 24 A It wasn't a year. 25 Q Didn't you just tell me that the house was	1 pay the decorator on the real estate office, Melody 2 Bradshaw. Jayma calls me up in '08 wanting the colors 3 on the house. He didn't pay Melody Bradshaw her money. 4 He sent her a letter and said in his mind you're only due 5 \$250.00, and he sent a check, five months after she did 6 the work. 7 Q And that had nothing to do with the construction 8 of Strike the Gold. That was with Mr. Jayma's office. 9 A When he called for the colors for Strike the 10 Gold, when he had it sold, because they wanted to do 11 touch up painting, I couldn't get the colors because he 12 didn't pay her. 13 Q I'm asking a very specific question. I'd like 14 you to try to answer it as directly as you can. Why were 15 there subcontractors from the construction of Strike the 16 Gold who still had not been paid a year after completion 17 of construction? 18 A I'm telling you. 19 Q So your answer to that is because Mr. Jayma 20 had not paid them for his office. 21 A You got it. 22 Q That makes no sense to me. Why would --- 23 A I was explaining it to you. 24 Q Please do. Please do. 25 A Did you get the decorator part?
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1 completed, the CO was issued in January of '07? 2 A Yes. 3 Q You said that a year later you called the bank 4 to get the money to pay some subs. 5 A Not a year later. 6 Q Well, January of '07 to January of '08 is a 7 year, isn't it, Mr. Wilson? What am I missing? 8 A And I said there was still bills to be paid and 9 most of them in my name. 10 Q You said there were subs to be paid. 11 A There were some subcontractors that needed to 12 be paid. 13 Q And why were there still subs that had not been 14 paid a year after the CO had been issued? 15 A Mr. Martens, Keith Jayma finished his own 16 mortgage office himself and did not pay the 17 subcontractors. Several of them were my subcontractors 18 that worked on the house. 19 Q I thought you told me that you did the work on 20 Mr. Jayma's mortgage office. 21 A No. I did the real estate office. 22 Q On his wife's office. Okay. I understand. 23 A Yeah, right. Jayma did the mortgage office. 24 Okay. So he doesn't pay the architect, Amy Johnson. He 25 had questions, and she wouldn't answer them. He didn't	1 Q I heard the decorator part. 2 A Didn't pay her. 3 Q For his office. What's that got to do with 4 Strike the Gold? 5 A She was the decorator on Strike the Gold. I 6 had her do the real estate office. He didn't pay her. 7 She wouldn't -- I didn't get the colors on the house. 8 Q Why didn't you pay her for the house? 9 A I did pay her on the house. He didn't pay her 10 for the real estate office. 11 Q Why would you be using the construction line for 12 the house to pay for his office? Please explain that. 13 A I'm telling you why we owed money. He didn't 14 pay the decorator, so she wouldn't give me the colors for 15 the house. And the house had a mirage of colors. 16 Q Was the house painted by the time the 17 certificate of occupancy was issued? 18 A It was, but he sold it in '08, and he wanted 19 the colors. 20 Q I hear what you're saying, but you're not 21 answering my question. 22 A I am. 23 Q No, sir, you're not. You're not answering it 24 in the slightest. My question for you is -- This all goes 25 back to when you found out that there was a \$30,000.00

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Page 110 1 check that you allege your signature was forged upon. You 2 testified that in January of '08, I called the bank to get 3 a draw on the construction loan, and I was told by Ms. -- 4 whatever her name is. 5 A Eileen. 6 Q Ms. Eileen, that there's no money left in the 7 account, right? That's what we talked about, correct? 8 I asked you, and I'm asking you again, why were there subs 9 that who had not been paid a year after completion of the 10 house. That's all I want you to answer. I don't want 11 you to tell me about Mr. Jayma's office. I don't want 12 you to tell me about the decorator. I want you to tell 13 me why there were subs that were not paid a year after you 14 had your certificate of occupancy in your hand. 15 A And I'm answering that question. 16 Q And that's the only answer you can offer for 17 me is the one you've given? 18 A He didn't pay the plumber on his mortgage 19 office, Mel Deese. Mel Deese was the plumber on the 20 house. Keith Jayma cheated him out \$5,000.00. Mel, I've 21 got to finish this house. Mel wouldn't come back. 22 Q But the plumbing was done by the time the CO 23 issued. 24 A No, there was decorative stuff. 25 Q All right. Let's move on. We're not going to Page 111 1 get anywhere with this. Let's just move on. Exhibit 14. 2 Do you recognize Exhibit 14? 3 A Another handwritten letter. 4 Q Did you write this letter? 5 A Yes, I did. 6 Q Did you write it to Mr. Jayma? 7 A I'm going to assume I did. 8 Q Do you know when you wrote it? 9 A No, sir. 10 Q You wrote, I have been wondering how many 11 children's lives and families you have impacted, from the 12 education they'll end up getting to the homes they will 13 live in, by making all of those liar loans. Tell me what 14 you meant by that. 15 A Part of what I found out, how he was in the 16 mortgage lending business, and he was making these funky, 17 crazy loans, sub-prime lending. 18 Q I had a well-respected law firm contact you 19 to try and resolve our issues before a full-blown 20 investigation was started. I know you got their letter 21 because Michael Alvarez told me personally about your 22 reaction, among other things. That's the Nexsen Pruet 23 letter we're talking about, right? 24 A Yes. 25 Q The well-respected firm is Nexsen Pruet, and	Page 112 1 the letter we're talking about is the one we've already 2 marked as an exhibit to your deposition, correct? 3 A Yes. 4 Q Unfortunately, I was unable to pursue you in 5 court at that time. For over two years, I have been 6 dealing with the sub-prime mortgage shit you got me into. 7 A Yep. 8 Q So would it be accurate that you wrote this 9 letter at least two years after Nexsen Pruet sent its 10 letter in September of 2012? 11 A I don't know when I wrote it. 12 Q Well, didn't you say you had been dealing with 13 something for two years so you haven't been able to pursue 14 him in court. 15 A I wrote that, but I don't know the date. 16 Q Do you believe that was a truthful statement 17 when you wrote it? 18 A I don't recall. 19 Q Is it your pattern or practice to put untruthful 20 things in letters? 21 A I was really unhappy with Mr. Jayma and finding 22 out all the crooked stuff he'd done so --- 23 Q Was it your pattern or practice to put 24 untruthful statements in letters? 25 A I don't think it was my pattern to do that. Page 113 1 Q Was it your pattern to put what you believed 2 to be truthful in your letters? 3 A I would assume that I would try to be truthful. 4 Q So if you told him that for two years you've 5 been trying to get out of the sub-prime mortgage mess that 6 he go you into, you believe that was --- 7 A I don't know. It could've been a year. I 8 don't know. A year and one month. I don't know. 9 Q Are there any lawsuits against mortgage lenders? 10 If there are, I'd like to be included in one. From the 11 evidence I have received for you and others, I believe you 12 have exposed yourself in a full-blown fraud scheme, 13 committing mortgage fraud, bank fraud, business fraud, 14 insurance fraud, conspiracy and collusion to commit fraud, 15 in other words, a real fraudster. You've lied about the 16 facts, provided fake information, fraudulently misleading 17 and deliberately obtaining a loan and insurance for a 18 purpose other than what it was intended for. Did 19 you believe that to be a true statement at the time you 20 sent this letter? 21 A Yes. 22 Q You have concealed those improper practices from 23 me and the banks to deliberately deceive us. You have 24 unjustly enriched yourself. Why do you have to lie so 25 much? Did you believe those to be true statements at the
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Page 114 1 time you wrote this letter? 2 A Yes. 3 Q The truth may take a lot of time and money to 4 uncover, but it hasn't gone anywhere. All the evidence 5 and all the documentation is still there. Did you believe 6 those to be true statements at the time you wrote this 7 letter? 8 A Yes. 9 Q First Charter has documented the stated purpose 10 and reason for the loan. First Charter has documented the 11 stated purpose and reason they released the final check to 12 you and in my construction company's name. 13 A That's a good letter. 14 Q Nothing there was done right? Did you believe 15 those to be true statements at the time you wrote this 16 letter? 17 A Yes. 18 Q Somehow you were able to convince someone to 19 issue that check to you. Is this the check that we were 20 talking about that you said you got in January of 2008? 21 A The forged check, yes. 22 Q That's the one that is marked as Exhibit 12 to 23 your deposition. That's the check you're referring to, 24 correct? 25 A Yes.	Page 116 1 First Charter. He got the loan at SunTrust. 2 Q I am prepared to retain an attorney and start 3 a full-blown investigation on all your deceptive 4 activities and shady entanglements. Did you believe that 5 was what you intended to do at the time you wrote this 6 letter? 7 A I was thinking about it. 8 Q Every Monday I've been working on my document 9 books about you and your lies. Tell me what you meant 10 by that? 11 A I had discovered another forged document. I 12 discovered the forged check, still waiting on him to 13 pay me. 14 Q What was the other forged document other than 15 the check? 16 A He forged a bank signature card in my name. 17 Q A bank signature card for what? 18 A Joint checking account. 19 Q When did you discover that? 20 A I don't know the exact date. 21 Q Was it before the house was finished? 22 A That I discovered it? 23 Q Yes, sir. 24 A I don't recall, but I've got it. I've got 25 the document.
Page 115 1 Q Someone removed my signature from the 2 construction contract that I furnished to you as a 3 licensed general contractor. Tell me what you meant by 4 that? 5 A I could have signed it, and the copy he gave 6 to me didn't have my signature. I don't think I would 7 have signed it without him signing it. So that may be 8 inaccurate. 9 Q All of this supposedly orchestrated at your 10 direction for each and every bank and loan officer you 11 dealt with. I don't know how you did it all. It will 12 have to come out in discoveries and depositions. Do you 13 believe those to be true statements at the time you wrote 14 this letter? 15 A Yes. 16 Q I can get documentation and evidence from a 17 thorough investigation of all the bank records and from 18 the loan officers you dealt with directly, starting 19 first with Joannah Thompson. Who is Joannah Thompson? 20 A She's the loan officer that got him approved 21 for the 25 acre loan. 22 Q For the \$194,000.00 loan? 23 A No. Well, it wasn't going to be \$194,000.00. 24 It became \$194,000.00, but he didn't use Joannah. He 25 did something else. Joannah Thompson was 25 acres at	Page 117 1 Q And what prompted you to go to the bank to 2 look at the signature card on the checking account? 3 A I didn't go to the bank, and I really don't 4 know how I got that document. 5 Q Have you produced that document in discovery? 6 A I believe you have that document. 7 Q You said, every Monday I have been working on 8 my document books about you and your lies. What document 9 books are you talking about that you were working on? 10 Mr. Cook - Can we go off the record for 11 one second. 12 Mr. Martens - Sure. 13 (Off the Record) 14 Q Tell me what document books you're talking about 15 in this letter. 16 A I just created notebooks in a binder. 17 Q Where are those? 18 A My attorney has them. 19 Q You've given those to your attorney. When did 20 you start putting those books together? 21 A As I was finding out about all the forgeries 22 and the fraud. 23 Q Everything you have done has been documented 24 and recorded. I have developed three legal boxes full. 25 Do you have three legal boxes of documents?

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Pages 118..121

Page 118 1 A I do, and I've put them in the binders. 2 Q Is that the same binders, the Monday binders 3 you're talking about? 4 A You'll have to repeat that question. 5 Q Are the three legal boxes of documents, are 6 those the same documents that you're referring to as the 7 binders that you've been putting together on every Monday? 8 A Yes. 9 Q I just have to get my attorney to put it all 10 together. Who was your attorney at the time you wrote 11 this letter? 12 A I had not retained an attorney. 13 Q So you didn't have an attorney when you wrote 14 this letter? 15 A I don't think I had retained an attorney at 16 that time. 17 Q I wish I could but when I searched First 18 Charter to find out why they had issued a check to you 19 without me knowing about it or signing an affidavit and 20 in my company's name, they said at first it wasn't done 21 right. And then they said they could not talk about it 22 without me filing a lawsuit. Tell me who you talked to at 23 First Charter that said you had to file a lawsuit before 24 they talked to you about this check? 25 A I talked to Eileen Vargosko. She said none of	Page 120 1 A To see how the case came out. We asked for 2 documentation. I didn't know Jayma had gone to the 3 bank and convinced somebody to get that money. We don't 4 know how he got it. That's got to come out. How did 5 he get this check? How did he convince First Charter 6 to issue a check in my company name, and Jayma signed 7 my name on it. 8 Q It might take an all out investigation to 9 determine how and who you deceived and tricked into doing 10 what they did for you, and who forged my name on First 11 Charter's check. I want to make clear. We're talking 12 about the check that you received in January of '08. 13 A Yes. 14 Q Two felonies were committed in forging my name 15 on that \$30,000.00 check. Do you believe that to be true? 16 A Well, I got the information from his wife. She 17 told me about what -- She's not a lawyer. I was just 18 using the information she gave me. 19 Q What information did you get from Mr. Jayma's 20 wife? 21 A I asked her if she recognized my signature on 22 it, and she said, no, but she recognized Jayma's on there. 23 Q When did you talk to Mr. Jayma's wife? 24 A Before I wrote this letter, but I don't know 25 when I wrote the letter.
Page 119 1 the affidavits had been signed by Keith Jayma, as owner, 2 that the bills had been paid. They will not release the 3 money, the final money, unless those documents are signed 4 and notarized, and there was a penalty on the affidavits. 5 Q When did you talk to her? 6 A The day before I got the check. She sent me 7 the check. 8 Q So in January of '08? 9 A When I got the check. 10 Q Exhibit 12 says you got the check on January 11 29 of '08. 12 A Okay. 13 Q So in January of '08 she told you there were 14 irregularities related to the affidavits? 15 A Yes, wasn't done right, no affidavits were 16 signed, and she could not talk to me about it. She said 17 I can send you anything that has your signature on it. 18 I said, well, send it to me. 19 Q First Charter may have some liability along 20 with yours. 21 A Yeah. 22 Q Why did you not sue First Charter in this 23 lawsuit? 24 A I've been waiting to. 25 Q Waiting for what?	Page 121 1 Q You have hidden and concealed all this for 2 a very long time. That check carries a lot of leverage. 3 Do you believe that to be true at the time you wrote this 4 letter? 5 A Yes. 6 Q You deliberately concealed the fact that you 7 immediately contracted with Carolina Home Buyers Realty 8 and placed the home on the market for sale with your wife 9 and Jason Wisglow. Tell me what you meant by that. 10 A In his letters to me, he's claiming it was a 11 second home, primary residence. I said, no, this was a 12 speculative built home to be sold. He immediately put 13 the house on the market. He took it off the market to 14 fraud the bank and the insurance company. He pulled the 15 signs out of the yard so they wouldn't know it was for 16 sale, but it was always for sale, from the beginning of 17 construction until it was sold. 18 Q How did that affect you? 19 A Well, I didn't know that was going on. 20 Q You didn't now what was going on? 21 A The mortgage fraud. I thought he financed it 22 as a speculative built home to be sold. I didn't know he 23 had financed it as a second home. 24 Q When did you discover that? 25 A They sent me a letter.

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1 Q What was SunMark Homes and who paid the LLC 2 fees? You even had a business card printed with your name 3 on it as a homebuilder. I don't care for your fabrication 4 of lies, facts and/or figures. Do you believe those to 5 be true statements at the time you wrote this letter? 6 A Yes. 7 Q I will let the law determine whose facts and 8 figures are right. Did you believe that to be -- was that 9 your intention at the time you wrote this letter. 10 A Yes. 11 Q The house was always listed for sale by you. It 12 was just always listed in the wrong area by Diana Jayma 13 and Jason Wisglow. Tell me what you meant by that? 14 A From the day when we started construction in 15 October of '05, she put it on the market. I believe she 16 had the chart and the MLS number, and I don't know if 17 that's her number or not. In November of '05, it was 18 listed for sale. They always have an area in Multiple 19 Listing Service where the home is being built. For two 20 years, Diana and Jason had it in 10-4. 21 Q How was that Keith Jayma's fault? 22 A He was supposed to selling the house. 23 Q What area was it supposed to be listed in? 24 A 10-1. 25 Q Tell me how that was fraud?	1 A From my brain. 2 Q Yes. Let's look at that. Show me where your 3 name appears on Exhibit 7 as a co-borrower. 4 A Not on Exhibit 7. It's on the application as 5 co-borrower. 6 Q Your testimony is that you were a co-borrower on 7 the million dollar loan that was used to build this house? 8 A My testimony is that Keith Jayma had me sign 9 as a co-borrower, and it's got his little arrow and it 10 says sign, and that there was my signature, and his is 11 above me. You should have that document. 12 Q I'll look for it. 13 Mr. Martens - I'm trying to wrap it up. 14 Mr. Cook - On that point, I'm not 15 pressing you, are you trying to wrap it up 16 today? 17 Mr. Martens - Yes, we'll finish. 18 Mr. Cook - Okay. We'll be glad to come 19 back if you want. I was just going off your 20 stack, and it looks like you're about halfway 21 through. 22 Whereupon - A recess was taken. 23 Q You say, no wonder the First Charter draw 24 inspector freaked out when he saw Jason's for sale sign 25 in the yard. This house isn't supposed to be for sale.
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1 A Any -- It was mortgage fraud. The house was for 2 sale. She listed it for sale from day one. Now, he took 3 the sign -- He had someone pull the sign up. I don't know 4 who. It was to deceive the bank and the insurance 5 company, how he insured it, the purpose of insuring the 6 home for his second home or for a spec home. 7 Q How do you know that he did that to defraud the 8 bank? 9 A We're going to have to ask him that. 10 Q How do you know that he did that? 11 A I know about the bank fraud because he puts in 12 his letter to me, I must now sell my second home that's 13 financed. The house wasn't supposed to be financed as a 14 second home ever. So I've got the bank fraud, but the 15 insurance fraud, we're going to have to ask him. I know 16 he had the sign taken up. I thought someone was stealing 17 the signs. 18 Q Your name wasn't ever on any of the loans, 19 right? 20 A Oh, yes, my name was on the loan, co-borrower, 21 and you have that document. 22 Q On the million dollar, co-borrower -- You seem 23 quite proud of pointing that out. 24 A It just came to me. 25 Q Well, let's look at that.	1 Tell me about that. 2 A I had called in a draw inspection, and the 3 bank officer came out. I don't think it was Jason's 4 for sale sign. I think it was Diana Jayma's for sale 5 sign. I believe he said, this isn't a spec house to be 6 sold. 7 Q He said that to you? 8 A In front of me, yes. 9 Q Do you remember when that was? 10 A No. 11 Q Before completion? 12 A In the early stages. 13 Q Early stages of construction. 14 Whereupon - Document marked as Exhibit 15. 15 Q Who took this photograph, Exhibit 15? 16 A I did. 17 Q When did you take it? 18 A Well, I loaded it down so I do know that the day 19 I took it -- and I see the progression on the house. 20 Q Is that the house in the background with the 21 Tyvek? 22 A (Indicating) 23 Q So that was obviously during construction. 24 A Early construction. 25 Q Why did you take that picture?

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1 A To be honest, I think I took it of the Hispanic 2 fellow because he was getting my water. 3 Q Any other reason? 4 A At that time, that was the only reason. Looking 5 back now, I see it has Diana Jayma's name. There's a 6 for sale sign during early construction. 7 Q And that for sale sign was in the front yard? 8 A It's in the front yard. 9 Q Did you understand that the house wasn't 10 supposed to be for sale? 11 A No. The house was always for sale. 12 Q At some point during the construction, the 13 draw inspector said, this house isn't supposed to be for 14 sale. 15 A Right. 16 Q Did that concern you when he said that? 17 A The flag didn't go off at that time. I didn't 18 know what he was doing behind my back. I recall that --- 19 I didn't know he had financed it as his second home. 20 Q Continuing on to Page 5 you say, the money from 21 my land was for Mark and his girls, your quote to 22 Joannah Thompson as to the stated purpose of that loan. 23 It will be easy to prove in court and one of the very 24 first things to prove. Tell me what you meant by that? 25 A That's on the 25 acre loan that he got	1 loan when --- 2 A I was. 3 Q With your money? 4 A With our joint checking account money. 5 Q Mr. Wilson, how much money did you take 6 out of your pocket to pay a single payment on this 7 mortgage? Zero, right? 8 A The \$31,000.00 check, I used to pay bills on 9 the house. If he paid me the \$250.00 a week payment from 10 the time I started construction until the house was sold, 11 he would owe me money. 12 Q Let me ask this question again. How much money 13 did you take out of your personal account to make any 14 payments on the loans that were used for the construction 15 of this house? 16 A I just told you. I made payments on it from 17 that \$15,000.00. 18 Q What 15? You didn't say anything about 19 \$15,000.00. 20 A The \$31,000.00 check from Louise Hemphill, I 21 paid bills for the house. 22 Q I thought you told me that was partnership 23 money. That should have been used for bills for the 24 house, right? That wasn't your money. You told me 25 earlier that was partnership money.
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1 approved for. He emailed and said, Keith, got you 2 approved. He told Joannah Thompson the reason for the 3 loan was for Mark and his girls. 4 Q Didn't the money go to Mark and his girls? 5 A Some of it did. 6 Q So what's wrong with that? 7 A I think he accused me of spending the money on 8 personal things. 9 Q Didn't you? 10 A I did, clothes, toiletries, food. 11 Q On Page 6 you say, you fire sold the house using 12 my farm as your safety net. Tell me what you meant by 13 that. 14 A That's what he told me he was going to do. He 15 said he didn't care what he sold it for. He'd tried to 16 sell it for 1.89 million. He tried it at 1.6, 1.5, and 17 he ended up selling it for 1.24. I had nothing to do 18 with it. As a partner, I should have had something to do 19 with the sales price. 20 Q Don't you think the market had something to do 21 with it, too? 22 A The market did turn down. There again, he 23 should have sold it. 24 Q When the market turned down, who was holding 25 the loan? Who was making the interest payments on the	1 A But I was to get paid \$250.00 a week, and I 2 used that money. 3 Q Other than that, did you take any money out of 4 a bank account that you held in your name and make any 5 of the payments for the construction of this house? 6 A Used my van as collateral. I made a loan to 7 make payments. 8 Q Did you take any money out of any account in 9 your personal name, savings account, money market 10 account, sell securities, did you take any of Mark 11 Wilson's funds and use them to pay any of the loans on 12 this construction project? 13 A Mr. Martens, I just said, I used my land to 14 --- 15 Q I'm going to assume your answer is no. 16 A I put up my 63 acres. 17 Q I'm well aware of that. My question has nothing 18 to do with whether your land was put or not put up. My 19 question is, did you take any of your personal funds and 20 use it to pay any of these loans? 21 A No. 22 Q Who was paying these loans while the house 23 went unsold? You were using Mr. Jayma's money, weren't 24 you? 25 A I wasn't, he did.

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1 Q That's right. He was carrying the cost of this 2 house while it remained unsold. 3 A Right. 4 Q And that's why he reduced the price of the house 5 because he had these carrying costs that he was carrying, 6 and you weren't, right? 7 A Why didn't he sell it earlier? It was in the 8 wrong area. 9 Q When you factor in -- I think your testimony 10 earlier today was that, we would split the profits on the 11 sale of the house, right? 12 A Yes. 13 Q And I asked you, what are profits, and you said, 14 that's the difference between what you sell house for and 15 the cost you have in it, right? 16 A Right. 17 Q And all the interest payments, all those 18 carrying costs, those are costs, right? 19 A Yes. 20 Q And they would come out before profits. 21 A Right. 22 Q I think you've answered this question for me. 23 You testified you didn't make any payments to repay the 24 million dollar loan for the construction of Strike the 25 Gold?	1 A I would be shocked. 2 Q Did you know that's the truth? 3 A No. 4 Q Do you feel any obligation to pay back any 5 portion of that \$194,000.00 loan that Mr. Jayma has been 6 carrying for the last 10 years? 7 A When you talked about who was included in this 8 lawsuit, my attorney included SunTrust in April of '08. 9 In May of '08, one month later, they satisfied the 10 mortgage in full. 11 Q I'm going to represent to you -- You can find 12 out for yourself, but for purposes of this deposition 13 I'm representing to you, and I want you to assume this is 14 true. I want you to assume that it is true because that's 15 what I'm telling you is true. That the only reason that 16 loan has been paid off on that 63 acres is because Mr. 17 Jayma now has \$194,000.00 credit line against his personal 18 home. 19 A I don't believe that to be true. 20 Q I'm telling you it's true, Mr. Wilson. 21 A I don't believe it. 22 Q Fine. If it were true, don't you feel some 23 obligation to repay a portion of that? 24 A If it's not true that SunTrust satisfied that 25 mortgage in full -- satisfied it and paid it in full
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1 A No. You've got to ask me that again. 2 Q That's all right. I don't think I need to. 3 Have you made any payments toward the \$194,000.00 that 4 Mr. Jayma took out on the 63 acres? 5 A I made the interest payments. 6 Q Where did you get the money to make the 7 interest payments? 8 A From the \$194,000.00. 9 Q So you used that money that was borrowed to 10 make the interest payments? 11 A Right. 12 Q Do you how much you owed on that \$194,000.00 13 loan? 14 A It's been paid in full. 15 Q Would it surprise you to know that that loan 16 has been transferred to Mr. Jayma's personal residence? 17 A I would be shocked if that mortgage was not 18 paid and satisfied in full in May of 2012. 19 Q Why? 20 A Because I've seen the satisfaction of mortgage 21 from SunTrust. 22 Q Would you be shocked to know that the reason 23 it was paid in full in May of 2012 was the bank required 24 Mr. Jayma to take a \$194,000.00 loan out on his own house 25 to pay it off?	1 because of my attorney's efforts -- I would have to look 2 at -- I don't believe it. I just don't believe it. 3 Q So you're calling me a liar? 4 A I'm not calling you a liar. I'm just saying 5 I don't believe it. He could borrow whatever he wanted 6 to on his home. He could borrow \$200,000.00, \$300,000.00, 7 \$500,000.00. That doesn't have anything to do with the 8 \$194,000.00 and my 63 acres. 9 Q If the only reason that loan got paid off on 10 those 63 acres is because Mr. Jayma went and borrowed 11 \$194,000.00 against his house and wrote a check for it, 12 you don't feel any obligation to pay any portion of that 13 back? 14 A Part of his trickery and forgery and fraud is 15 --- He could put a \$194,000.00 equity line against his 16 house. 17 Q How would that be an advantage to him? How 18 would that defraud you? 19 A He might have needed money. Well, I'm not 20 saying he defrauded me in that respect. I'm saying 21 SunTrust satisfied the mortgage because of my lawsuit, 22 not because Jayma got an equity line. 23 Q Mr. Wilson, what are you claiming you're out 24 in this case? 25 A Oh, we don't have a clue until Jayma produces

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1 his taxes and shows how much he took in deductions for 2 interest, expenses, taxes, homeowner's association. 3 Q So you don't know how much your claim is for? 4 A Not totally, no. 5 Q And this case has been going on since 2012? 6 A Yes. 7 Q And this case is --- 8 A He hasn't produced the documents we asked for 9 in 2012. 10 Q So you don't have a clue what you're asking 11 for? 12 A I can only round out the interest because I did 13 make the interest payments every month. It escalated as 14 I took construction draws. I would say those expenses 15 are in the 150 range. 16 Q And that's how much you think you would be 17 owed? 18 A No. No. There's taxes, homeowner's association 19 fees --- 20 Q But you don't pay taxes. 21 A Property tax on the house, \$7,000.00 a year. 22 Q What would you do with the tax deduction if 23 you don't file tax returns? How would that be of any 24 benefit to you? 25 A I'm not going to take the deduction. Jayma	1 owed. 2 A We can't determine it until he produces the 3 information. 4 Q You didn't use any of your money to pay any 5 of these loans. 6 A By collateralizing my land I did. 7 Q You didn't make any of the interest payments on 8 the \$194,000.00 line of credit. 9 A Yes, I did. 10 Q Mr. Wilson, we're talking in circles now. 11 You've already said you didn't and now you're saying you 12 did. 13 A I did write the interest payments on the joint 14 -- the partnership checking, the interest on the 15 \$194,000.00. 16 Q I get that. I get that you physically wrote 17 the checks. 18 A Right. 19 Q We've been through that about 100 times today. 20 My question is -- Well, I think you've said none of that 21 was your money. You didn't put any of that money in, 22 right? 23 A It came from me putting up my 63 acres. 24 Q Other than putting up the 63 acres, which was 25 your idea, you didn't make any contribution at all, did
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1 took the deductions. 2 Q What's wrong with that? 3 A He can take them, but if he took them, he 4 enriched himself above and beyond. If he took \$150,000.00 5 worth of interest deduction on his taxes to decrease his 6 tax liability. 7 Q How does that hurt you? 8 A It didn't hurt me. It helped him. 9 Q So how does that wrong --- 10 A It ought to be part of the profit in the house. 11 If he took the deduction, what did I get? I didn't get 12 that. I'm a partner. 13 Q You only take a deduction if there's loss, 14 right? 15 A No. He could take -- Expensing the house, he 16 took all the deductions for interest. It's substantial, 17 I think. \$150,000.00 plus in interest expenses alone, 18 I don't know because he won't furnish the information. 19 Q He paid them all, right? 20 A Well, I paid them. He took them on his taxes. 21 I'm sure --- 22 Q He paid them using his money. 23 A Our money. It was my checking account. Had 24 my name on it for two years. 25 Q I want to be clear. You don't know what you're	1 you? 2 A No. 3 Mr. Martens - I think that's all I have. 4 Thank you. 5 Court Reporter - Mr. Cook, in what form 6 do you want your copy, electronic or paper? 7 Mr. Cook - They give us a chance to read 8 through -- I would say paper. 9 Court Reporter - So E-Tran? 10 Mr. Cook - Just because my client doesn't 11 have a computer. He would like to read it. 12 Court Reporter - He wants to read and 13 sign. And you want the paper copy? 14 Mr. Cook - Please. 15 Whereupon - Deposition concluded at 4:56 16 P.M. 17 18 19 20 21 22 23 24 25

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1 SUBSCRIPTION OF DEPONENT 2 State of _____) 3 County of _____) 4 5 I, Mark Wilson, do hereby certify that I have 6 this day read the foregoing deposition and do hereby 7 declare that the same is a true and accurate transcript of 8 the proceedings had at the time and place herein 9 designated (except for the notations as indicated on the 10 attached errata sheet, if any). 11 12 Dated: _____ 13 14 Mark Wilson 15 Sworn to and subscribed before me 16 this ____ day of _____, 2017. 17 18 _____ 19 Notary Public 20 My Commission Expires: _____ 21 22 23 24 25		1 CERTIFICATE OF REPORTER 2 State of South Carolina) 3 County of York) 4 5 I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public 6 for the State of South Carolina, do hereby certify that I 7 placed under oath the aforesaid deponent; that I reported 8 the foregoing proceedings at the time and place herein 9 designated and that the foregoing pages are a true, 10 accurate and correct transcript of the aforesaid 11 proceedings. 12 I further certify that I am not a relative, employee, 13 attorney or counsel of any of the parties, nor relative or 14 employee of such attorney or counsel, nor in anyway 15 interested in the event of said cause. 16 17 In witness my hand and official seal this the 12th 18 day of July, 2017, in the City of Rock Hill, County of 19 York, State of South Carolina 20 <i>Shirley Dallas-Gerrald</i> 21 Shirley Dallas-Gerrald, CVR-CM 22 Court Reporter/Notary Public 23 My Commission Expires: 24 8-18-2021 25	
1 ERRATA SHEET 2 3 Page Line 4 5 6 7 8 9 10 11 12 13 14 15 The above changes were noted by me on this Errata Page 16 before signing of the attached Subscription of Deponent. 17 I have retained a copy of this Errata Page for my records. 18 A copy of this page and Subscription of Deponent is to be 19 attached to the original transcript. 20 21 Dated: 22 Deponent: 23 24 25			



EXHIBIT

15 Wilson



GENERAL LITIGATION SUPPORT
85 YEARS OF
TRADITION & EXCELLENCE

7-7-17

P. 264-

Exhibit 15 of Appellant's deposition, July 5, 2017

Exhibit 15 admitted into evidence at Appellant's deposition by attorney Martens shows the home "FOR SALE" by Diana Jayma during early construction, March 19, 2006. In the affidavit of Keith Jayma, September 30, 2016, Respondent testifies, #4: "The house was finally completed in April 2007, and I began to aggressively market it for sale...." Fact: the home was placed in Multiple Listing Service for sale on November 14, 2005 by agent 95132, Office 8179 for \$1,560,000 MLS #556953. As of July 10, 2006, Diana Jayma was advertising the home with 8180 square feet for sale at \$1,890,000. She just had it advertised as being in the wrong area, for two years, area 10/4.

Respondent also testifies, #8: "Closing occurred on or about September 12, 2008." This is almost one and a half years after Respondent's aggressive marketing began and almost three years since Diana Jayma listed the home for sale. Respondent was responsible for selling the home.



"FOR SALE"

Diana Jayma

March 19, 2006

Keith Jayma's fax

April 9, 2007,

"I will not be

able to use this property as a 2nd home
as it was

FOR SALE

Diana Jayma

financed. It must
be sold due to cost
involved.