THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3891

Appellate Case No. 2018-000516

Athan Fokas ..... Respondent/Appellant,

v.

Phillip Ferderigos and Spiros Ferderigos ..... Appellants/Respondents.

RECORD ON APPEAL (VOLUME I)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No. 2015-CP-10-3891
Athan Fokas,	)	
	)	ORDER GRANTING DEFENDANTS'
Plaintiff,	)	MOTION FOR SUMMARY JUDGMENT
	)	PURSUANT TO SCRCP RULE 56
vs.	)	
	)	
Phillip Ferderigos and Spiros Ferderigos,	)	
	)	
Defendants.	)	

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THIS MATTER came before me for a hearing on Defendants Spiros and Phillip Ferderigos' Motions for Summary Judgment on December 11, 2017. Each of the Defendants filed their own Motion for Summary Judgment. Present in the Court were the following: Plaintiff Athan Fokas and his attorney Leslie Lenhardt, Esquire; Defendant Phillip Ferderigos and his attorneys Jennifer Thiem, Esquire, and Laura Robinson, Esquire; and Defendant Spiros Ferderigos and his attorneys M. Dawes Cooke, Jr., Esquire, and Stephanie Anthony, Esquire.

A. BACKGROUND

In his initial Complaint, Plaintiff alleged "Defendants communicated [defamatory] statements to their father ... [and] Plaintiff has been confronted with said statements by his mother ... who has identified them as the source of said statements." However, contrary to the allegations, Plaintiff's mother Irene Fokas submitted an affidavit and provided deposition testimony denying such allegations, which were the basis of the Plaintiff's original complaint. Thereafter, Plaintiff amended his Complaint to allege Defendants defamed Plaintiff by publishing alleged defamatory statements directly to Plaintiff's attorney, Stan Barnett[1]. Plaintiff further alleged it was his belief Defendants published the aforementioned defamatory statements to Plaintiff's sister Rania

[1] The record reveals that such alleged statements were allegedly made in a private meeting requested by Plaintiff's attorney to discuss possible resolution to threatened litigation by Plaintiff against Defendants.

Nikatos, who in turn repeated these statements to her mother (who is also Plaintiff's mother) Irene Fokas, who then repeated these statements to Plaintiff.

Specifically, in his Amended Complaint, Plaintiff alleges claims for defamation against Defendants for allegedly making the following statements regarding Plaintiff: "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds; (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds; (c) Falsely claiming damages to the building at 229 King Street were from a hurricane in 1998, when they were not." Plaintiff further alleged Defendants described Plaintiff as "dishonest and capable of doing anything for money."

The record is clear that, in the light most favorable to Plaintiff, there is no genuine issue of material fact and there is not a scintilla of evidence to support Plaintiff's allegation that Defendants published any unprivileged defamatory statement(s) to any third party about him. To the contrary, the record is clear Defendants never made any defamatory statement(s) to Plaintiff's sister Rania Nikatos regarding Plaintiff. Further, Plaintiff's mother Irene Fokas admitted under oath that she merely "guessed" and "figured" that the source of the alleged defamatory statement(s) was from Defendants. Defendants also presented sworn testimony from Plaintiff's own brother-in-law, Gerasimos Nikatos, that he (Gerasimos Nikatos) was the one who informed his wife Rania Nikatos (who is also Plaintiff's sister) about Plaintiff asking someone to set the fire at 229 King Street. Lastly, the record is clear that any alleged statement(s) published by either Defendant to Plaintiff's attorney Stan Barnett does not support a claim of defamation because Plaintiff's attorney is

Plaintiff's agent, who does not constitute a third party, and, in addition, any alleged statements to Plaintiff's attorney are privileged and/or were otherwise invited by Plaintiff's attorney.

B. STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56(c), SCRCP; Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. Id.

"Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the

plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; Germann v. New York Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

C. DEFAMATION JURISPRUDENCE

Under South Carolina law, "[t]he tort of defamation permits a plaintiff to recover for an injury to his reputation caused by the false statements of another." Banks v. St. Matthew Baptist Church, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013). To prove defamation, a plaintiff must show "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). "A communication is defamatory if it tends to impeach the honesty, integrity, virtue, or reputation...." Hubbard and Felix, The South Carolina Law of Torts 462 (2d ed. 1997).

"Defamatory communications take two forms: libel and slander." Erickson, 368 S.C. at 466, 629 S.E.2d at 664. "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." Id. "[A] statement may be actionable *per se*, in which case the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages." Id. Under the common law, slander is actionable *per se* only when it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a

crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 511 n.5, 506 S.E.2d 497, 502 n.5 (1998). "Or a statement may be not actionable *per se*, in which case nothing is presumed and the plaintiff must plead and prove both common law malice and special damages." Erickson, 368 S.C. at 465, 629 S.E.2d at 664. Common law malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, *i.e.*, with a conscious disregard of the plaintiff's rights. Padgett v. Sun News, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." Erickson, 368 S.C. at 466, 629 S.E.2d at 665.

In South Carolina, "[a] person makes a defamatory statement if the statement 'tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him.'" Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012) (citing Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 860, 860 (2002)). The tort of defamation permits "a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff." Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). Moreover, in South Carolina, Plaintiff must set forth facts sufficient to allege that the statements were unprivileged, the specificity of the alleged false statements, and *to whom* the alleged false statements were published. See McNeil v. SCDOC, 404 S.C. 186, 189, 743 S.E.2d 843, 844 (Ct. App. 2013). Part of alleging publication is to allege that the defamatory statements were actually published to another person. Id.; See also Williams v. Lancaster County School District, 369 S.C.

293 (2006).[2] Furthermore, in Williams v. Lancaster County School District, supra, in considering the sufficiency of circumstantial evidence in a defamation action, the Court held that where there is evidence to support that numerous people could have been responsible for the alleged defamatory statements and the alleged defamatory statements cannot only be possibly attributable to Defendant(s), the Plaintiff's attempt to establish defamation with indirect circumstantial evidence fails.

Lastly, in South Carolina, "[t]he courts favor compromise; accordingly, evidence relating to settlements is generally not admissible to prove liability." Commerce Center of Greenville, Inc. v. W. Powers McElveen & Associates, Inc., 347 S.C. 545, 558, 556 S.E.2d 718, 726 (Ct. App. 2001); Rule 408, SCRE; Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). Rule 408, SCRE, provides as follows:

> **Evidence** of (1) furnishing or offering or promising to furnish, or (2) accepting or **offering or promising** to accept, a valuable **consideration** in compromising or attempting **to compromise** a claim which was disputed as to either validity or amount, **is not admissible to prove liability** for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.** This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution (emphasis added).

Rule 408, SCRE (emphasis added). "This rule contemplates that the parties need to feel free to make certain assumptions for the purpose of settlement negotiations and that those statements

[2] In Williams, a father and mother filed a defamation action against the school district alleging the principal was responsible for a rumor that father was having an affair. As the Court noted, numerous individuals had knowledge of the incident at issue between the father and a secretary at the school. Id. at 304, 631 S.E.2d at 292. The father testified he could not say "any employee of the District had said he was having any affair" with the secretary. Id. As a result, the Court held any number of people could be responsible for the rumor, and, as a result, the father could not establish any defamatory statement actually published by the principal. Id.

are assumed by the author to be true only for the purpose of compromise negotiations." Fesmire v. Digh, 385 S.C. 296, 308-09, 683 S.E.2d 803, 809 (Ct. App. 2009). "The rule codifies the longstanding principle that evidence of conduct or statements made in compromise negotiations is not admissible." Id.; see also QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (Ct. App. 2004). There has been a trend to extend the protection to all statements made in compromise negotiations. 2 McCormick on Evidence § 266 (6th ed. 2006). South Carolina courts have excluded evidence related to efforts to schedule meetings to discuss settlement negotiations, let alone the content of those settlement meetings.[3]

Further, in regard to defamation actions, South Carolina recognizes absolute judicial privilege for communications involving preliminary steps leading to any judicial action. "When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice." See Pond Palace Partners, Inc. vs. Poole, 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002); see also Crowell v. Herring, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct. App. 1990) (stating "Historically there has been a tendency to restrict the absolute privilege to judicial proceedings, legislative proceedings and acts of state ... This is so, ostensibly because when a communication is absolutely privileged, no action will lie for its publication ... This, however, does not answer the question of whether there is or has been a tendency to restrict the definition of 'judicial proceeding' to exclude preliminary steps leading up to a formal judicial proceeding

[3] For example, in Commerce Center of Greenville, a contractor in a construction litigation case attempted to enter into evidence two letters from plaintiff related to settlement negotiations. Commerce Center of Greenville, 347 S.C. at 553, 556 S.E.2d at 722. The letters concluded with plaintiff's attempts to schedule a meeting to discuss proposed repairs and to "see if a resolution can be reached...without the necessity of continued litigation." Id. at 558, 556 S.E.2d at 725. The Court of Appeals found that the letters related to actual settlement negotiations or a "settlement relationship between the parties" because "[t]hese letters reference an attempt to schedule a meeting to resolve the case" and "an attempt to curb further litigation." Id. The Court of Appeals held that the letters were properly excluded from evidence by the trial court. Id. at 559, 556 S.E.2d at 726.

... We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it.").

D. FINDINGS OF FACT AND CONLUSIONS OF LAW

Based upon careful review of the record, drawing all reasonable inferences in favor of the Plaintiff, I make the following findings of fact and conclusions of law:

I find that no genuine issue of material facts exists that Defendants published any defamatory statements to any third party concerning the Plaintiff.

a. Rania Nikatos

No genuine issue of material fact exists and there is not a scintilla of evidence to support publication of any alleged defamatory statement(s) by Defendants to any third party, including Plaintiff's sister Rania Nikatos. The record is clear Defendants did not make any defamatory statement to Plaintiff's sister Rania Nikatos and the record is further clear Defendants were not the source of any alleged defamatory statement(s) Rania Nikatos may have heard regarding Plaintiff. To the contrary, Rania Nikatos submitted an affidavit and testified in her deposition that neither Defendant made any alleged defamatory statement(s) about Plaintiff to her. She further testified she has never heard from anyone that Defendants made any of the alleged defamatory statement(s) Plaintiff accuses them of making, and she testified she never told Irene Fokas (Rania and Plaintiff's mother) that Defendants made any alleged defamatory statement(s) about Plaintiff.[4]

[4] Further, Irene Fokas admits in her deposition testimony she never asked her daughter (Rania Nikatos) who the source of the alleged defamatory statements was, and Irene Fokas also admitted she merely "guessed" and "figured" the source was Defendants. Gerasimos Nikatos, however, attested in a sworn affidavit that it was he (Gerasimos) who informed Rania Nikatos about Plaintiff allegedly asking a contractor to set fire to the 229 King Street building.

In addition, the record is clear that Rania Nikatos' husband, Gerasimos Nikatos, submitted an affidavit asserting it was he (Gerasimos Nikatos) who informed Rania Nikatos that, sometime soon after the fire at 229 King Street, a contractor told him Plaintiff asked the contractor to set fire to 229 King Street. Gerasimos Nikatos further attested that he told his wife Rania Nikatos what the contractor told him.

b. Irene Fokas

No genuine issue of material fact exists and there is not a scintilla of evidence to support publication of any alleged defamatory statement(s) by Defendants to any third party, including Plaintiff's mother Irene Fokas. The record is clear Defendants did not make any defamatory statement to Plaintiff's mother Irene Fokas and Irene Fokas merely "assumed" and "figured" the source of the alleged defamatory statements was Defendants. Irene Fokas attested in both an affidavit and in her deposition that neither the Defendants (nor anyone in Defendants' family) has ever told her the alleged defamatory statement(s) alleged by Plaintiff. Irene Fokas further testified in her deposition she never asked her daughter who the source of these alleged defamatory statements was, but instead, Irene Fokas merely "guessed" and "figured" that the source of the alleged defamatory statements was Defendants. As such, Irene Fokas' speculation is not evidence of any defamation by Defendants.

c. Stan Barnett, Plaintiff's Attorney

No genuine issue of material fact exists and there is not a scintilla of evidence to support publication of any alleged defamatory statement(s) by Defendants to any third party, including any alleged statements to Plaintiff's attorney Stan Barnett. Further, the record is clear that any alleged defamatory statement(s) about Plaintiff by Defendants to Plaintiff's attorney Stan Barnett does not support a claim of defamation as a matter of law.

First, an action for defamation requires publication of an unprivileged defamatory statement to a third party. Plaintiff's attorney Stan Barnett is Plaintiff's agent and does not constitute a third party. See Rodgers v. Wise, 193 S.C. 5, 7 S.E.2d 517 (1940) ("We are satisfied that the sounder and better supported rules are, first, that communications made to a libeled party's attorneys, corresponding for him regarding the specific matter in connection with which the libelous matter is used, are not thereby given publication; ..."); see also Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005) (stating attorneys engaged in settlement negotiations within the scope of their representation of a party serve as agents for their clients).[5]

Second, and in the alternative, any alleged defamatory statement(s) allegedly published by Defendants to Plaintiff's attorney Stan Barnett is absolutely privileged and, thus, cannot serve as the basis for a defamation action as a matter of law. In South Carolina, "the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it." Crowell v. Herring, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct. App. 1990). When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice." Pond Palace Partners, Inc. vs. Poole, 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002).

[5] Furthermore, "[s]elf-publication of [an] allegedly defamatory statement may bar a plaintiff from recovery." Murray v. Holnam, Inc., 344 S.C. 129, 144-45, 542 S.E.2d 743, 751 (2001); David P. Chapus, Annotation, Publication of Allegedly Defamatory Matter by Plaintiff ("Self-Publication") As Sufficient to Support Defamation Action, 62 A.L.R.4th 616 (1988); see also 50 Am.Jur. 2d Libel and Slander § 241 (1995) (as a general rule, where a person communicates a defamatory statement only to person defamed and defamed person then repeats statement to others, publication of statement by person defamed, or "self-publication," will not support defamation action against originator of statements). "There is no publication where a Defendant communicates a statement directly to the Plaintiff, who then communicates it to a third party." Restatement of Torts 2d § 577, Comment m (1971).

The record is undisputed, and I hereby find, that Plaintiff's attorney Stan Barnett sent a letter on behalf of Plaintiff to Defendants threatening litigation for numerous causes of actions and damages and Stan Barnett requested Defendants meet with him "to try and work out a way forward" "so that any further conflict can be avoided." Defendant Spiros Ferderigos replied to Mr. Barnett welcoming a "conversation of resolving these issues" in the threatened lawsuit by Plaintiff because any such lawsuit by Plaintiff would be frivolous and would further result in countersuits against Plaintiff with numerous causes of action and well documented liability against Plaintiff for his behavior. Indeed, Plaintiff acknowledges in his memorandum to the Court that Plaintiff "retained Stan Barnett to communicate to Defendants that they were in breach of contract," and Mr. Barnett met with Defendants "to discuss whether there was a way for them to negotiate a way with Plaintiff to move forward...".

It was within the context of this private settlement negotiation meeting at the request of Plaintiff's counsel that Plaintiff alleges Defendants defamed Plaintiff to Plaintiff's attorney. Stan Barnett was an agent of Plaintiff and not a third party. This meeting requested by Plaintiff through his attorney Stan Barnett was a preliminary step leading to judicial action of an official nature and the meeting bears reasonable relationship to it. Plaintiff threatened litigation against Defendants and requested a meeting to try and resolve the issues to avoid further conflict. In agreeing to meet with Plaintiff's attorney Stan Barnett to discuss resolving the threats of litigation, Defendants further informed Plaintiff's counsel in writing there would be numerous counterclaims and well-documented liability against Plaintiff if Plaintiff filed a lawsuit against them. Additionally, the negotiations failed and the parties filed formal judicial proceedings against each other as was threatened by the parties in the aforementioned communications regarding the meeting. I find any alleged defamatory statement(s) that were allegedly made by Defendants against Plaintiff to

Plaintiff's attorney in this preliminary step (settlement/negotiation meeting) leading to formal judicial proceedings are absolutely privileged and, therefore, do not support a claim of defamation as a matter of law.[6]

Third, and in the alternative, any allegedly defamatory statements about Plaintiff allegedly published to Mr. Barnett do not constitute publication as they were invited by Plaintiff's agent, Mr. Barnett. It has long been settled in South Carolina that "a person cannot invite or provoke another to make a slanderous charge against him, and then sue such person for damages on account of such charge." Boling v. Clinton Cotton Mills, 163 S.C. 13, 163 S.E. 195, 199 (1931). "There is no such publication as will support an action where the defamatory matter is invited or procured by the plaintiff or by person acting for him in the matter." Id. "If the only publication that can be provided is one made by the defendant in answer to an application from the plaintiff, or some agent of the plaintiff, demanding explanation, such answer, if fair and relevant will be held privileged; for the plaintiff brought it on himself." Id. Attorneys engaged in settlement negotiations within the scope of their representation of a party serve as agents for their clients. See Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005). As set forth herein and in the record, Plaintiff, through his agent, cannot invite Defendants to meet and discuss how to resolve the issues between them and then allege Defendants defamed him by discussing those issues. I further find that any statements made during the private settlement negotiations held at Plaintiff's request do not support a claim of defamation in this matter.

I further find that no genuine issue of material fact exists and there is not a scintilla of evidence to support publication of any alleged defamatory statement(s) by Defendants to any third party through circumstantial evidence. Additionally, there were numerous individuals who were

[6] Additionally, and in the alternative, as the attorney for Plaintiff, Mr. Barnett's communications with Defendants were part of settlement negotiations and are inadmissible to prove liability pursuant to Rule 408, SCRE.

aware of the alleged rumored incidents besides Defendants, and any one of those people could have been responsible for the rumors alleged in Plaintiff's defamation claims. The alleged rumors could not be said to have only been possibly attributable to each Defendant.[7]

E. CONCLUSION

For the foregoing reasons, I hereby grant Defendants' Motion for Summary Judgment in this matter.

J. C. Nicholson, Jr., Judge
S.C. Circuit Court, Ninth Judicial Circuit

2/16/16

[7] See Williams v. Lancaster County School Dist., 369 S.C. 293, 298-99, 631 S.E.2d 286, 289-90 (2006), "Based on the evidence of record, there were numerous individuals who were aware of the bathroom incident besides Dr. Jordan. Any one of those people could have been responsible for the rumor of an illicit relationship between Philip and Cheryl. The record simply does not support the Williamses' assertion that the only individuals who had knowledge of the incident were Dr. Jordan and John Hardin. Further the Williamses have conceded that John Hardin had knowledge of the incident. Thus, the rumors cannot be said to have only been possibly attributable to Dr. Jordan, and the Williamses' argument concerning indirect evidence fails."

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891 ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT

2018 FEB 22 AM 10:40
CHARLESTON COUNTY CLERK OF COURT
BY

THIS MATTER came before me for hearing on Plaintiff Athan Fokas' Motion for Partial Summary Judgment as to the counterclaims by Defendants, Phillip and Spiros Ferderigos, on December 11, 2017. Specifically, Plaintiff moved for summary judgment as to the claims by these Defendants for defamation.

JCM

BACKGROUND

This case arises out of a controversy involving the parties to this case to expand an existing building the parties and the Defendants' brother, Jacob Ferderigos, own together, which is located at 229 King Street in downtown Charleston. Plaintiff filed a companion case in this Court captioned Athan Fokas v. Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, C/A No. 2015-CP-10-3919 ("Contract Case"), in which he alleged breach of a contract among himself, the Defendants and Jacob Ferderigos. The answers of Defendants in the Contract Case included counterclaims by Spiros and Phillip Ferderigos for defamation, in which they allege that Plaintiff published false and damaging statements against them. When the instant action was filed by Plaintiff for his own claims of defamation, Defendants filed answers and counterclaims, which

incorporated the counterclaims filed in the Contract Case. The statements Defendants allege were defamatory and were published to third parties are:

a. That Defendants did not agree to go forward with the plan to expand the building at 229 King Street because Phillip Ferderigos and/or Spiros Ferderigos were stubborn, jealous, and could not eat for free at the Old Towne Restaurant, which is located in the same building;

b. That either Phillip or Spiros Ferderigos do not have good business sense;

c. That either Phillip or Spiros Ferderigos are bad business people; and

d. That either Phillip or Spiros Ferderigos were accusing Athan Fokas of setting fire to 229 King Street sometime in 2009.

In their response to Plaintiff's motion, Defendant Spiros Ferderigos raised two additional statements by Plaintiff, not alleged in their pleadings or discovery responses, which he argues constitute defamation. These are that 1) Plaintiff sent text messages to Defendants and their brother Jacob after the instant case was filed stating that Spiros Ferderigos had lied in his deposition and 2) that Plaintiff recounted part of an affidavit filed in this case describing Spiros' threat to use his position as an assistant solicitor to cause Plaintiff to become the subject of a criminal charge if he pursued a breach of contract action.

STANDARD FOR SUMMARY JUDGMENT

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56(c), SCRCP; Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c), SCRCP, provides a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law." Furthermore, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). If there is a "scintilla of evidence" in the record which gives rise to a genuine issue of material fact, summary judgment should not be granted. Howle v. Woods, 231 S.C. 75, 97 S.E.2d 205 (1957).

However, the party opposing summary judgment has the burden of producing proof and not mere allegations in the face of proof submitted by the moving party. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is genuine issue of fact remaining for trial." Sides v. Greenville Hospital System, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; German v. N.Y. Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

ELEMENTS OF DEFAMATION

The tort of defamation permits a plaintiff to recover for an injury to his reputation caused by false statements by another. Banks v. St. Matthew Baptist Church, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013). To prove defamation, a plaintiff must show: (1) a false defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher

was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). "A communication is defamatory if it tends to impeach the honesty, integrity, virtue or reputation..." Hubbard and Felix, The South Carolina Law of Torts, 462 (2nd Ed. 1997).

A statement may be actionable *per se*, in which case the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages." Id. Under common law, slander is actionable *per se* only when it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime or moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; (5) unfitness in one's business or profession. Holtzscheiter v. Thomsan Newspapers, Inc., 332 S.C. 502, 511 n.5, 506 S.E.2d 497, 502, n. 5 (1998). "Or a statement may be not actionable *per se*, in which case nothing is presumed and the plaintiff must plead and prove both common law malice and special damages." Erickson, 368 S.C. at 465, 620 S.E.2d at 664. Common law malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, i.e. with a conscious disregard of the plaintiff's rights. Padgett v. Sun News, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." Erickson, 368 S.C. at 466, 629 S.E. 2d at 665.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There is no genuine issue of material fact on the record in this case as to the elements of defamation. There is no evidence that Plaintiff made defamatory statements to third parties. As to all but two of the statements Defendants allege to have been defamatory, such statements do not constitute defamation under South Carolina law. Furthermore, publication of any or all of the

alleged defamatory statements does not constitute defamation as the statements were made to a party in the companion breach of contract case and were made during the course of the disagreement which matured into the companion breach of contract case. As such, the defamatory statements were not defamation, but are protected by the litigation privilege.

Discovery has been completed in this case and included interrogatories and requests to produce to Defendants and the depositions of both. Defendants have failed to identify any person other than their brother and co-defendant in the Contract Case, Jacob Ferderigos, to whom any of the alleged defamatory statements were made or published. In their responses to interrogatories, Defendants acknowledged they had no specific information as to what third parties such statements were made by Plaintiff other than to their brother, but that they thought he might have made them to Plaintiff's mother, Irene Fokas, his father, Spiros Fokas, to his sister, Urania Nikatos, Kevin Carroll, and Justin Hansen. (Exh. C to Motions as to both Defendants). The Defendants made similar statements in their deposition testimony. (Exh. D to Motions as to both Defendants). Defendants noticed the deposition of Kevin Carroll in the Contract Case, but cancelled it and never rescheduled it. Neither Spiros Nikatos nor Rania Nikatos have provided any testimony that Plaintiff defamed Defendants in any way. Consistent with Defendants' lack of any evidence of publication, Irene Fokas was deposed in this case and denied any of the alleged statements were made to her by Plaintiff. (Exh. E to Motions as to both Defendants). Plaintiff has denied in his deposition and affidavit testimony making any such statements to third parties. (Exh. B, F to Motions as to both Defendants). Justin Hansen has denied by affidavit ever being told anything about the fire at 229 King Street or Defendants' accusations about the cause of the fire by Plaintiff. (Exh. G to Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment). The publication of the alleged statements Defendants claim "on information and belief" to have

occurred is not supported by even a scintilla of proof. In the absence of any evidence of publication to a third party which is not subject to the litigation privilege, Defendants' claims must fail as a matter of law.

Furthermore, the alleged statements, other than the two recently raised by Defendants and made by Plaintiff via text message regarding Spiros Ferderigos lying in his deposition and threatening to use his position as a solicitor simply are not defamation.

A statement is not necessarily defamatory simply because it is unfavorable. "It is true the complaint alleges that the publication tended to impeach the reputation of the plaintiff and to injure his business, but that bald allegation does not make the publication actionable, else a confessedly harmless act may be converted into a harmful act by a mere allegation. The inference of hurt arising out of a statement of facts in order to become actionable, must be such an inference as is established by the general consent of men, and the inference must be judged of by the court in the first instance. The language complained of by the plaintiff was naturally displeasing to him and was unquestionably of an unfavorable nature. However, it by no means follows that a publication which is unfavorable is also libelous." Dauterman v. State Record Co., 248 S.C. 512, 518, 154 S.E.2d 919, 922 (1967). "We point out that there is no allegation that the respondent lost any customers, or had any diminution in trade. There is no allegation of special damages for losses sustained by reason of the publication of the alleged libelous statement. In short, the complaint does not allege special damages." Costas v. Florence Printing Co., 237 S.C. 655, 663, 118 S.E.2d 696, 700 (1961). To hold libelous per se the mere statement that one has failed, or even that he was unable, to furnish bond- whether the amount required be large or small- would be carrying the law of libel beyond any precedent that has been called to our attention. Many a good citizen, if suddenly and unexpectedly arrested without reason for forearming himself against the contingency of such

arrest, would very likely be unable to give immediate bond, or perhaps might be reluctant to call in friends who would relieve his embarrassment, but enjoy his misadventure." Murphy v. News & Courier, 141 S.C. 51, 55, 139 S.E. 189, 190 (1927).

The following statements Defendants claim to be defamatory simply do not constitute defamation:

1) That Defendants did not agree to go forward with the plan to expand the building at 229 King Street because Phillip Ferderigos and/or Spiros Ferderigos were stubborn, jealous, and could not eat for free at the Old Towne Restaurant;
2) That either Phillip or Spiros Ferderigos do not have good business sense;
3) That either Phillip or Spiros Ferderigos are bad business people.

While these statements may have been unwelcome to Phillip and Spiros Ferderigos and critical of them, they are not defamation. None of these statements impugn Defendants' honesty, integrity or proficiency in their profession, which is the practice of law. A statement that they do not have good business sense in the context of the proposed commercial real estate development project to expand the building at 229 King Street is purely an opinion about that proposal and nothing more. Such a statement in no way reflects Defendants' proficiency as attorneys. It does not impeach their honesty or integrity. People can have different opinions about the wisdom of a development project, but a disagreement about the merits of a project or a partner's commitment to continue the project does not equate to defamation.

With regard to the fourth allegation that Plaintiff reported Phillip and Spiros Ferderigos were accusing Plaintiff of setting fire to 229 King Street, there is no proof whatsoever that Plaintiff communicated this claim to any third person. Further, the statement has only been made in the context of this lawsuit and is, therefore, privileged.

Defendants have made allegations of defamatory statements by Plaintiff but Defendants have not identified any person to whom these statements were made other than to their brother, Jacob Ferderigos, in the Contract Case. None of the individuals identified by the Defendants in discovery that Defendants thought Plaintiff "might" have made these statements to has come forward to say that Plaintiff made such statements to them. On the contrary, both Irene Fokas and Justin Hansen have offered sworn testimony that Plaintiff did not make the alleged statements to them. Those are the only third parties who have been identified as possible recipients of the alleged defamatory statements and none have corroborated Defendants' mere allegations. While the alleged statements may be critical of Defendants, they do not rise to the level of defamation merely because they upset Defendant or even criticize a business decision made. Moreover, Defendants have alleged no damages of any kind flowing from publication of the statements.

Even if these statements were determined to be defamation, all of the statements Plaintiff made in the form of text messages sent to Defendants and Jacob Ferderigos either related directly to the disputes between the Ferderigos brothers and Plaintiff and those disputes matured into the Contract Case or were made during the course of litigation. As such, the statements are covered by the litigation privilege and are absolutely privileged.

Any statement made as part of a judicial proceeding, in or out of court, is absolutely privileged under South Carolina law. Crowell v. Herring, 301 S.C. 424, 392S.E.2d 464 (Ct. App. 1990). In Crowell, a Veterans of Foreign Affairs court martial was determined to be a judicial proceeding and statements made during the course of the proceeding were absolutely privileged. "The trial court held the VFW court-martial was a judicial proceeding. Crowell does not appeal this finding, nor does he argue the defendants' statements were irrelevant to the issues he was eventually brought to trial on." Id. at 430, 467. "[T]he investigation of Crowell's alleged misdeeds

can be likened to a prosecutor gathering evidence, interviewing witnesses and preparing a case. Accordingly, we hold the statements made by Allen and Wilder during the course of their investigation of Crowell as trustees and as members of the investigatory committee, were absolutely privileged, inasmuch as the statements bore relation to the contemplated proceeding." Id. at 431, 467. See also Sriberg v. Raymond, 370 Mass. 105, 345 N.E.2d 882 (1976) (holding that an attorney writing to a defendant threatening litigation could not be sued for defamation given that the statements made were to the very defendant and addressed the very claims which were raised in the eventual litigation); and Mathis v. Kennedy, 67 N.W.2d 413 (1954) (concluding that statements made in a court of record having jurisdiction of a guardianship proceeding were absolutely privileged so long as "it has reference to or relation to or connection with the case before the court").

Defendants argue that Plaintiff's publication of any or all of the statements they claim to be defamatory to their brother, Jacob Ferderigos, satisfies the element of the cause of action for defamation of publication to a third party. The statements to Jacob Ferderigos were all in the form of text messages sent to Jacob and Defendants as part of a discussion and a disagreement over the development project to expand the building at 229 King Street. These discussions and disagreement resulted in the filing of the Contract Case. The statements concerning "eating for free" and that Phillip and Spiros Ferderigos were displaying bad business judgment by not going forward with the project at 229 King Street, even if defamatory, were made in the same disagreement that matured into the Contract Case and are directly within the scope of the issues surrounding Plaintiff's claims of breach of contract. The only statements Defendants complain of, which might otherwise give rise to a claim of defamation, are very clearly covered by the absolute litigation privilege. These are statements by Plaintiff via text message, accusing Defendant Spiros

Ferderigos of lying in his deposition taken in this case and the statement by Plaintiff recounting part of an affidavit in this litigation relating to Spiros' position as an assistant solicitor. The statements concerning Spiros Ferderigos' testifying falsely in his deposition are directly related to the discovery proceedings in this case. The statement that Spiros Ferderigos threatened to use his position as an assistant solicitor to cause Plaintiff to become the subject of a criminal investigation if he pursued his claim of breach of contract is directly related to the issues in the Contract Case and stem from an affidavit filed in this case. The statements Defendants complain of concerning Plaintiff's allegation that they were accusing him of arson and other insurance fraud actions also fall squarely within the absolute litigation privilege as they are directly related to the matters at issue in this case.

South Carolina also recognizes the doctrine of qualified privilege that protects from actions for defamation:

> A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without his privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation ... . The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits.

Conwell v. Spur Oil Co. of Western South Carolina, 240 S.C. 170, 125 S.E>2d 270, 274-275 (1962).

As Jacob Ferderigos shared the interests of Plaintiff, albeit with a different position being taken by him, Plaintiff's statements to him about matters related to the development project to expand the building at 229 King Street falls, if not under the protection of the absolute litigation privilege, then under the protection of qualified privilege. Consequently, Plaintiff's statements to Jacob Ferderigos are not actionable.

There is no evidence giving rise to a genuine issue of material fact regarding the counterclaims by Spiros and Phillip Ferderigos for defamation against Plaintiff and they should be, therefore, dismissed on summary judgment. Plaintiff's motion for partial summary judgment as to the counterclaims for defamation asserted by both Spiros Ferderigos and Phillip Ferderigos is hereby granted.

IT IS SO ORDERED.

J. C. Nicholson, Jr., Judge
Ninth Judicial Circuit

2/29, 2018
Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3891

Athan Fokas	Philip Ferderigos, et al
PLAINTIFF(S)	DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Amend filed on 12/29/15 and argued before the Court on 11/7/16 is **granted** except as to the allegation in Paragraph 23 that defamatory statements were published to members of their and Plaintiff's family, using the language "*including but not limited to.*" The Amended Complaint cannot allege that the statements were published to other unknown family members.

FILED
2016 NOV 08 PM 3:37
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge	2117 Judge Code	11/8/16 Date

SCRCP Form 4C

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

15-CP-10-3891

Athan Fokas)
Plaintiff(s))

vs.)

Philip Ferderigos and Spiros Ferderigos)
Defendant(s))

FILED
2015 JUL 14 AM 10:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(Please Print)
Submitted By: Stan Barnett
Address: 1037 Chuck Dawley Blvd., Suite 100
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SC Bar #: 533
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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: Stan Barnett **Date:** 7/15/15

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 CHARLESTON)) Athan Fokas,)) Plaintiff,)) v.)) Philip Ferderigos and Spiros) Ferderigos,)) Defendant(s).))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 15-CP-10-3891 **SUMMONS** (Defamation, Defamation Per Se) (Jury Trial Demanded)

FILED
2015 JUL 14 AM 10:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint upon the subscriber, Stan Barnett, of Smith, Bundy, Bybee & Barnett, P.C., Post Office Box 1542, Mt. Pleasant, South Carolina 29465-1542, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the complaint.

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

Mount Pleasant, South Carolina
July 15, 2015

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	Case No.: 15-CP-10-3891 **COMPLAINT** (Defamation, Defamation Per Se) (Jury Trial Demanded)

FILED
2015 JUL 14 AM 10:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW the Plaintiff who for his complaint against the Defendants named above alleges as follows:

1. Plaintiff is a citizen and resident of Charleston County.
2. Defendant, Philip Ferderigos, is a citizen and resident of Charleston County.
3. Defendant, Spiros Ferderigos, is a citizen and resident of Charleston County.
4. The parties are joint owners of a building located at 229 King Street in Charleston, South Carolina and are members of Old Towne Suites, LLC which operates a suites rental business from the second floor of said building.
5. The parties planned to expand the suites rental business by adding three floors to the building and brought that plan to the point of securing all necessary approvals and approval for a loan.
6. Shortly before closing on said loan was to occur, Defendants refused to go forward with the loan.

7. The disagreement that resulted from said refusal to close on the loan resulted in communications between the parties in which the possibility of a lawsuit was raised.

8. Defendants threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims.

9. None of the above accusations are true, Plaintiff never having participated in any way in either arson or insurance fraud.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

10. Paragraphs 1 – 9 are realleged herein

11. Defendants have published entirely false and defamatory statements about Plaintiff for the purposes of: a) injuring the personal and business reputation of both, and b) intimidating Plaintiff into refraining from pursuing legal action against them based on their refusal to go forward with the plan to expand the building and the suites rental business operated there, such defamatory statements including, but not limited to:

    a. Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds.

    b. Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds.

12. Upon information and belief, Defendants communicated the above statements to their father, Plaintiff's uncle, for the purpose of intimidating Plaintiff into refraining for demanding that they go forward with the plan to expand the suites rental business.

13. All of the statements are false and are known to Defendants to be false.

14. Plaintiff has been confronted with said statements by his mother, Defendants' aunt, who has identified them as the source of said statements.

15. Said statements had the effect of damaging the personal and business reputation of the Plaintiff and of falsely communicating to his family that Plaintiff was committing criminal acts and such statements are per se defamatory.

16. The Plaintiff has suffered loss of confidence of his family in his ability to manage the businesses in which he is engaged, including those related to the building at 229 King Street, by reason of said defamatory statements and has also suffered worry, extreme and painful embarrassment, humiliation and ridicule as the direct and proximate result of the above described defamatory statements.

17. By reason of said defamatory statements, the Plaintiff is entitled to recover from Defendants damages sufficient to compensate him for his actual damages from loss of confidence in his ability to manage said businesses and for the worry, embarrassment, humiliation and ridicule he has suffered as a result of said defamation as well as the attorneys fees and costs they have incurred in the pursuit of this action. In addition, the Plaintiffs are entitled to recover an amount of punitive damages sufficient to deter such action by Defendants in the future.

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and grant to Plaintiff:

1. Award judgment against Defendants for the actual damages to be paid Plaintiff he has suffered as the result of Defendants' actions alleged herein;

2. Award judgment against Defendants for an amount of punitive damages to be paid Plaintiff sufficient to deter Defendants from such actions as are alleged herein in the future;
3. Award judgment against Defendants for the attorneys fees and costs incurred by Plaintiff in pursuing this action; and
4. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Stan Barnett
Smith, Bundy, Bybee & Barnett, PC
P.O. Box 1542
Mount Pleasant, SC 29465
(843) 881-1623

July 15, 2015
Mount Pleasant, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No. 2015-CP-10-3891
Athan Fokas,	)	
	)	
Plaintiff,	)	
	)	**ANSWER OF DEFENDANT SPIROS FERDERIGOS AND COUNTERCLAIMS**
vs.	)	
	)	
Phillip Ferderigos and Spiros Ferderigos,	)	
	)	***Jury Trial Demanded***
Defendants.	)	
	)	

FILED
2015 OCT -1 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: STAN BARNETT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant, Spiros Ferderigos (hereinafter "Defendant"), answers the Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically and unconditionally admitted.

2. Defendant admits the allegations of Paragraphs 1, 2, and 3 of the Plaintiff's Complaint.

3. Defendant only admits Paragraph 4 to the extent that he owns a 1/6 interest in the real property located at 229 King Street in Charleston, South Carolina. Defendant also admits he is a member of Old Towne Suites, LLC, and that the parties operate a rental business from the

second and third floor of 229 King Street. Defendant denies the remainder of Paragraph 4 as characterized.

4. Defendant denies Paragraphs 5 and 6 as characterized. Defendant avers he, along with Phillip Ferderigos and Jacob Ferderigos, and Plaintiff, considered and investigated the possibility of, feasibility of, and his interest in a proposed project as further set forth in the case captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919. Further responding to Paragraph 6, Defendant admits Paragraph 6 only to the extent that Plaintiff and Jacob Ferderigos were supposed to get a personal loan for themselves which did not involve and/or affect Defendant and Phillip Ferderigos in any way whatsoever. Plaintiff failed to secure such a loan, resulting in Plaintiff's scheduled closing being canceled and Defendant refusing to sign incorrect loan documents that he never agreed to and/or outright rejected. Defendant denies all remaining allegations of Paragraph 5 and 6.

5. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies Paragraph 7 as characterized.

6. Defendant denies Paragraph 8.

7. Answering Paragraph 9, Defendant does not have personal knowledge to admit or deny said allegation.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

8. Defendant repeats and realleges his responses to Paragraphs 1 through 9 above as if set forth verbatim herein.

9. Defendant denies Paragraphs 11 and its sub-parts, 12, 13, 14, 15, 16, and 17 and demands strict proof hereof. Further answering Paragraph 13, Defendant is without personal

knowledge to know whether the alleged statements (which were never made by Defendant) in Plaintiff's Complaint are false.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

10. Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and Plaintiff's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

11. Plaintiff has failed to mitigate his damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Unclean Hands, Laches)

12. Plaintiff's claim may be barred by the doctrines of Waiver, Estoppel, Unclean Hands, and/or Laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third Parties)

13. Plaintiff's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under this Defendant's domain or control. Defendant did not publish any such statements concerning Plaintiff.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence and/or Assumption of the Risk)

14. Any damage suffered by the Plaintiff is a direct and proximate result of his own comparative and contributory negligence and/or assumption of the risk and Plaintiff's recovery

should be barred, or alternatively, reduced proportionately to Plaintiff's comparative negligence. Defendant did not publish any such statements concerning Plaintiff.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation of Additional Defenses)

15. The Defendant relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Answer to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

16. The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United Stated Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Plaintiff's claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A NINTH AFFIRMATIVE DEFENSE

17. Plaintiff's allegations against this Defendant may be barred by this Defendant's First Amendment rights.

FOR A TENTH AFFIRMATIVE DEFENSE

18. To the extent necessary to preserve such defense, the Defendant asserts the truth as an affirmative defense to Plaintiff's claims.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

19. To the extent necessary to preserve such defense, the Defendant asserts a common law and statutory, qualified and/or absolute privilege and/or any other applicable privilege as, at all times, the Defendant was acting in good faith and with reasonable cause based on the actions and admissions of the Plaintiff.

FOR A TWELFTH AFFIRMATIVE DEFENSE

20. To the extent necessary to preserve such defense, any actions or communications of the Defendant are conditionally privileged communication as the actions may be 1) in good faith; 2) involved an interest to be upheld; 3) was a statement limited in scope to this purpose; 4) was made in a proper occasion; and 5) publication was made in a proper manner to the proper parties, and the conditional privilege includes, but is not limited to, publication of judicial proceedings and public records, the fair comment defense, business or professional interest defense, self-defense or defense of others' defense and public duty or any other applicable defense or privilege that may apply.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Opinion)

21. To the extent necessary to preserve such defense, the Defendant asserts opinion as an affirmative defense to Plaintiff's claims.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

22. To the extent necessary to preserve such defense, the Defendant asserts lack of proximate cause as an affirmative defense to Plaintiff's claims.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIMS

23. Defendant repeats and realleges Paragraphs 1 through 169 (its Affirmative Defenses and all Counterclaims) as set forth in the Answer and Counterclaims captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919 as set forth fully verbatim herein.

24. Defendant alleges Exhibit 1 is a true and accurate copy of a letter signed by Dr. Fanouris Ferderigos, the Plaintiff's mother's brother (i.e., Plaintiff's uncle) which verifies that Plaintiff's mother admits Defendant's father never spoke to Plaintiff's mother concerning any of the issues upon which Plaintiff bases his frivolous defamation complaint. Plaintiff has been presented with such but continues to pursue his frivolous pleading in regard to defamation. Further, Defendant alleges Plaintiff has filed this frivolous pleading as a "fishing expedition," with no evidence to support any of his claims and for improper purposes.

WHEREFORE, having fully answered the Plaintiff's Complaint this Defendant prays that the same be dismissed with costs and for awards of actual and punitive damages for his Counterclaims and for sanctions and attorneys' fees and for such other and further relief as the court may deem just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
BARNWELL WHALEY PATTERSON & HELMS LLC
Post Office Drawer H
Charleston, South Carolina 29402
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANT/COUNTERCLAIMANT,
SPIROS FERDERIGOS

Dated: October 1, 2015
Charleston, South Carolina

15-3891

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of October, 2015, I mailed a copy of the foregoing Answer and Counterclaim to counsel of Record with sufficient postage, correctly addressed as follows:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, PC
P.O. Box 1542
Mt. Pleasant, SC 29465-1542

Richard A. Farrier, Esquire
K&L Gates LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

John A. Massalon, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

FILED
2015 OCT -1 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Barnwell, Whaley, Patterson & Helms, LLC

By: _____

August 21, 2015

Stan Barnett
Smith, Bundy, Byebee & Barnett, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, SC 29464

Dear Mr. Barnett,

My name is Dr. Fanouris Ferderigos and I am the uncle of the Plaintiff and Defendants in case number 15-CP-10-3891 that you have filed in Charleston County, South Carolina. Your lawsuit alleges that my sister, Irene Fokas (which is Plaintiff Athan Fokas' mother), confronted Athan Fokas about "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds. (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds." Your lawsuit alleges that Irene Fokas confronted Athan Fokas about these allegations, and Irene Fokas informed Athan Fokas that my brother, Stavros Ferderigos (which is Defendants' father), told her about the allegations stated above and set forth in your Complaint. Your lawsuit further alleges Irene Fokas informed Athan Fokas that Stavros Ferderigos identified Defendants (Phillip and Spiros Ferderigos) as the source of those statements.

This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever.

With Kindest Regards, I am

Dr. Fanouris Ferderigos

Cc: Dawes M. Cook (288 Meeting Street, Suite 200, Charleston, SC 29401)

Richard Farrier (134 Meeting Street, Charleston, SC 29401)

EXHIBIT
tabbies
1

BARNWELL WHALEY PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

October 1, 2015
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3919

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Answer and Counterclaims of the Defendant, Spiros Ferderigos, in the above-referenced matter. Please file the original and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing counsel for the Plaintiff of this communication with the Court and serving him with a copy of the Answer and Counterclaims. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Stanley E. Barnett, Esquire (via U.S. Mail and e-mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail and e-mail)
John A. Massalon, Esquire (via U.S. Mail and e-mail)

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
David S.Cox

William C. Helms, III'

* Registered patent attorney
' Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No. 2015-CP-10-3891
Athan Fokas,	)	
	)	
Plaintiff,	)	
	)	**ANSWER OF DEFENDANT PHILLIP FERDERIGOS AND COUNTERCLAIMS**
vs.	)	
	)	
Phillip Ferderigos and Spiros Ferderigos,	)	
	)	***Jury Trial Demanded***
Defendants.	)	
	)	

FILED
2015 OCT -1 PM 4:43
JULIE J. ARMSTRONG
CLERK OF COURT

TO: STAN BARNETT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant, Phillip Ferderigos (hereinafter "Defendant"), answers the Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically and unconditionally admitted.

2. Defendant admits the allegations of Paragraphs 1, 2, and 3 of the Plaintiff's Complaint.

3. Defendant only admits Paragraph 4 to the extent that he owns a 1/6 interest in the real property located at 229 King Street in Charleston, South Carolina. Defendant also admits he is a member of Old Towne Suites, LLC, and that the parties operate a rental business from the

second and third floor of 229 King Street. Defendant denies the remainder of Paragraph 4 as characterized.

4. Defendant denies Paragraphs 5 and 6 as characterized. Defendant avers he, along with Spiros Ferderigos and Jacob Ferderigos, and Plaintiff, considered and investigated the possibility of, feasibility of, and his interest in a proposed project as further set forth in the case captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919. Further responding to Paragraph 6, Defendant admits Paragraph 6 only to the extent that Plaintiff and Jacob Ferderigos were supposed to get a personal loan for themselves which did not involve and/or affect Defendant and Spiros Ferderigos in any way whatsoever. Plaintiff failed to secure such a loan, resulting in Plaintiff's scheduled closing being canceled and Defendant refusing to sign incorrect loan documents that he never agreed to and/or outright rejected. Defendant denies all remaining allegations of Paragraph 5 and 6.

5. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies Paragraph 7 as characterized.

6. Defendant denies Paragraph 8.

7. Answering Paragraph 9, Defendant does not have personal knowledge to admit or deny said allegation.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

8. Defendant repeats and realleges his responses to Paragraphs 1 through 9 above as if set forth verbatim herein.

9. Defendant denies Paragraphs 11 and its sub-parts, 12, 13, 14, 15, 16, and 17 and demands strict proof hereof. Further answering Paragraph 13, Defendant is without personal

knowledge to know whether the alleged statements (which were never made by Defendant) in Plaintiff's Complaint are false.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

10. Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and Plaintiff's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

11. Plaintiff has failed to mitigate his damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Unclean Hands, Laches)

12. Plaintiff's claim may be barred by the doctrines of Waiver, Estoppel, Unclean Hands, and/or Laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third Parties)

13. Plaintiff's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under this Defendant's domain or control. Defendant did not publish any such statements concerning Plaintiff.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence and/or Assumption of the Risk)

14. Any damage suffered by the Plaintiff is a direct and proximate result of his own comparative and contributory negligence and/or assumption of the risk and Plaintiff's recovery

should be barred, or alternatively, reduced proportionately to Plaintiff's comparative negligence. Defendant did not publish any such statements concerning Plaintiff.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation of Additional Defenses)

15. The Defendant relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Answer to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

16. The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United Stated Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Plaintiff's claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A NINTH AFFIRMATIVE DEFENSE

17. Plaintiff's allegations against this Defendant may be barred by this Defendant's First Amendment rights.

FOR A TENTH AFFIRMATIVE DEFENSE

18. To the extent necessary to preserve such defense, the Defendant asserts the truth as an affirmative defense to Plaintiff's claims.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

19. To the extent necessary to preserve such defense, the Defendant asserts a common law and statutory, qualified and/or absolute privilege and/or any other applicable privilege as, at all times, the Defendant was acting in good faith and with reasonable cause based on the actions and admissions of the Plaintiff.

FOR A TWELFTH AFFIRMATIVE DEFENSE

20. To the extent necessary to preserve such defense, any actions or communications of the Defendant are conditionally privileged communication as the actions may be 1) in good faith; 2) involved an interest to be upheld; 3) was a statement limited in scope to this purpose; 4) was made in a proper occasion; and 5) publication was made in a proper manner to the proper parties, and the conditional privilege includes, but is not limited to, publication of judicial proceedings and public records, the fair comment defense, business or professional interest defense, self-defense or defense of others' defense and public duty or any other applicable defense or privilege that may apply.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Opinion)

21. To the extent necessary to preserve such defense, the Defendant asserts opinion as an affirmative defense to Plaintiff's claims.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

22. To the extent necessary to preserve such defense, the Defendant asserts lack of proximate cause as an affirmative defense to Plaintiff's claims.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIMS

23. Defendant repeats and realleges Paragraphs 1 through 172 (its Affirmative Defenses and all Counterclaims) as set forth in the Answer and Counterclaims captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919 as set forth fully verbatim herein.

24. Defendant alleges Exhibit 1 is a true and accurate copy of a letter signed by Dr. Fanouris Ferderigos, the Plaintiff's mother's brother (i.e., Plaintiff's uncle) which verifies that Plaintiff's mother admits Defendant's father never spoke to Plaintiff's mother concerning any of the issues upon which Plaintiff bases his frivolous defamation complaint. Plaintiff has been presented with such but continues to pursue his frivolous pleading in regard to defamation. Further, Defendant alleges Plaintiff has filed this frivolous pleading as a "fishing expedition," with no evidence to support any of his claims and for improper purposes.

WHEREFORE, having fully answered the Plaintiff's Complaint this Defendant prays that the same be dismissed with costs and for awards of actual and punitive damages for his Counterclaims and for sanctions and attorneys' fees and for such other and further relief as the court may deem just and proper.

JURY TRIAL DEMANDED

K & L GATES, LLP

By: Richard Farrier/jst
Richard A. Farrier, Jr., Esquire
134 Meeting Street, Suite 200
Charleston, SC 29401
Richard.farrierjr@klgates.com
843-579-5619

Dated: 10/1/15
Charleston, South Carolina

15-3891

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of OCT., 2015, I mailed a copy of the foregoing Answer and Counterclaim to counsel of Record with sufficient postage, correctly addressed as follows:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, PC
P.O. Box 1542
Mt. Pleasant, SC 29465-1542

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402

John A. Massalon, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

FILED
2015 OCT -1 PM 4:43
JULIE J. ARMSTRONG
CLERK OF COURT

K & L Gates, LLP

By: Emily B. Hortes

(00553644.DOC.1)

August 21, 2015

Stan Barnett
Smith, Bundy, Byebee & Barnett, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, SC 29464

Dear Mr. Barnett,

My name is Dr. Fanouris Ferderigos and I am the uncle of the Plaintiff and Defendants in case number 15-CP-10-3891 that you have filed in Charleston County, South Carolina. Your lawsuit alleges that my sister, Irene Fokas (which is Plaintiff Athan Fokas' mother), confronted Athan Fokas about "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds. (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds." Your lawsuit alleges that Irene Fokas confronted Athan Fokas about these allegations, and Irene Fokas informed Athan Fokas that my brother, Stavros Ferderigos (which is Defendants' father), told her about the allegations stated above and set forth in your Complaint. Your lawsuit further alleges Irene Fokas informed Athan Fokas that Stavros Ferderigos identified Defendants (Phillip and Spiros Ferderigos) as the source of those statements.

This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever.

With Kindest Regards, I am

Dr. Fanouris Ferderigos

Cc: Dawes M. Cook (288 Meeting Street, Suite 200, Charleston, SC 29401)

Richard Farrier (134 Meeting Street, Charleston, SC 29401)

EXHIBIT
1

K&L GATES

K&L GATES LLP
134 MEETING STREET
SUITE 200
CHARLESTON, SC 29401
T 843.579.5600 F 843.579.5601 klgates.com

October 1, 2015

Jennifer H. Thiem
D 843.579.5638
F 843.579.5601
jennifer.thiem@klgates.com

VIA HAND DELIVERY

The Hon. Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St., #106
Charleston, SC 29401

Re: **Athan Fokas v. Philip Ferderigos and Spiros Ferderigos**
Case No. 2015-CP-10-3891

Athan Fokas v. Philip Ferderigos, Jacob Ferderigos and Spiros Ferderigos
Case No. 2015-CP-10-3919

Dear Ms. Armstrong:

Enclosed herewith please find the originals and copies of the following documents in the above-referenced matters:

1. Answer of Defendant Phillip Ferderigos and Counterclaims, and
2. Phillip Ferderigos' Answer, Affirmative Defenses and Counterclaims

Please file the originals and return filed-stamped copies to me via the bearer of this letter.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With kind regards, I remain.

Sincerely,

Jennifer H. Thiem

Enclosures
cc: Stan Barnett, Esq. (w/encls.)
Dawes Cooke, Esq. (w/encls.)
Jeremy Bowers, Esq. (w/encls.)
John Massalon, Esq. (w/encls.)
Richard A. Farrier, Jr., Esq.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros , Ferderigos, Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2015-CP-10-3891 **PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT SPIROS FERDERIGOS**

FILED
2016 MAY 31 AM 10:48
JULIE ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff who for his Reply to the Counterclaims of Defendant, Spiros Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.
2. Paragraphs 1-22, to the extent they are merely responsive, require no answer, but to the extent they are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.
3. In reply to Paragraph 23, Plaintiff repeats and realleges Paragraphs 1-31 as set forth in Plaintiff's Reply to the Counterclaims of Defendant Spiros Ferderigos captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919, including all affirmative defenses, as set forth fully verbatim herein.
4. Plaintiff admits only that portion of Paragraph 24 as alleges Exhibit 1 is an accurate copy of a letter signed by Dr. Fanouris Ferderigos, which alleges the statements included therein. All remaining allegations are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

5. The Counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND AFFIRMATIVE DEFENSE

6. The Plaintiff relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Reply to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR A THIRD AFFIRMATIVE DEFENSE

7. Defendant is not entitled to sanctions against the Plaintiff. Defendant's motion for summary judgment was denied and consequently under South Carolina law, Defendant is not entitled to have sanctions imposed.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

LENHARDT LAW FIRM, LLC.

Leslie S. Lenhardt
S.C. Bar No. 15858
R. Cody Lenhardt, Jr.
S.C. Bar No. 77039
1876 Wallenberg Blvd.
Charleston, SC 29407
(843) 371-5453

Attorneys for Plaintiff

May 31, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros , Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT PHILLIP FERDERIGOS**

FILED
2016 MAY 31 AM 10:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, the Plaintiff for who his Reply to the Counterclaims of Defendant, Phillip Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.
2. Paragraphs 1-22, to the extent they are merely responsive, require no answer, but to the extent they are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.
3. In reply to Paragraph 23, Plaintiff repeats and realleges Paragraphs 1-31 as set forth in Plaintiff's Reply to the Counterclaims of Defendant Phillip Ferderigos captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919, including all affirmative defenses, as set forth fully verbatim herein.
4. Plaintiff admits only that portion of Paragraph 24 as alleges Exhibit 1 is an accurate copy of a letter signed by Dr. Fanouris Ferderigos, which alleges the statements included therein. All remaining allegations are denied.

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5. The Counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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6. The Plaintiff relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Reply to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

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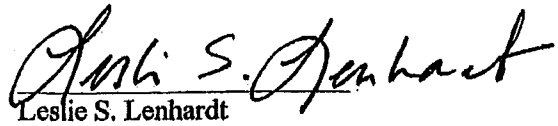
7. Defendant is not entitled to sanctions against the Plaintiff. Defendant's motion for summary judgment was denied and consequently under South Carolina law, Defendant is not entitled to have sanctions imposed.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

LENHARDT LAW FIRM, LLC.



Leslie S. Lenhardt
S.C. Bar No. 15858
R. Cody Lenhardt, Jr.
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1876 Wallenberg Blvd.
Charleston, SC 29407
(843) 371-5453

Attorneys for Plaintiff

May 31, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendants.	)	Case No.: 2015-CP-10-3891 **AMENDED COMPLAINT**

FILED
2017 FEB 24 PM 1:14
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Plaintiff who for his complaint against the Defendants named above alleges as follows:

1. Plaintiff is a citizen and resident of Charleston County.
2. Defendant, Phillip Ferderigos, is a citizen and resident of Charleston County.
3. Defendant, Spiros Ferderigos, is a citizen and resident of Charleston County.
4. The parties are joint owners of a building located at 229 King Street in Charleston, South Carolina and are members of Old Towne Suites, LLC, which operates a suites rental business from the second floor of said building.
5. The parties planned to expand the suites rental business by adding three floors to the building and had an agreement to do so and brought that plan to the point of securing all necessary approvals and approval for a loan.
6. Shortly before closing on said loan was to occur, Defendants refused to go forward with the agreement to close on the loan.
7. The disagreement that resulted from said refusal to close on the loan resulted in communications between the parties in which the possibility of a lawsuit was raised.

8. On February 2, 2015, counsel for the Plaintiff, Stanley E. Barnett, Esq., wrote a letter asserting the parties had a contract and suggesting a meeting to discuss whether the Defendants were going to go forward with their commitment to close on the loan. See Affidavit of Stanley E. Barnett, Esq., Exhibit A.

9. In response to Mr. Barnett's letter of February 2, 2015, Defendant Spiros Ferderigos responded by email and stated that if Plaintiff pursued a breach of contract claim, he would assert his own claims against Plaintiff. Exhibit A.

10. On February 17, 2015, prior to any action being filed in Circuit Court, Mr. Barnett met with the Defendants to discuss the issues surrounding the contract to obtain a loan for construction of the additional suites.

11. At that meeting, Defendants stated to Mr. Barnett that if the Plaintiff did not cease to pursue his rights regarding the contract the Defendants would accuse Plaintiff of the following:

    a. Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds;

    b. Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds;

    c. Falsely filing a claim, claiming damages to the roof of the building at 229 King Street were from a hurricane in 1998, when they were not.

12. Defendants described the Plaintiff as "dishonest and capable of doing anything for money." Exhibit A.

13. Mr. Barnett did not communicate these statements to anyone other than the Plaintiff, including Irene Fokas, Plaintiff's mother.

14. In April of 2015, the Plaintiff's mother, Irene Fokas, had discussions with her daughter, Urania (a/k/a Rania), regarding the allegations published by the Defendants.

15. Urania told Irene Fokas that the allegations made by the Defendants would be used to "destroy" the Plaintiff. See excerpts from deposition of Irene Fokas, Exhibits B, E and F.

16. In late April or early May of 2015, Irene Fokas confronted the Plaintiff with these allegations and stated it was her belief that the Defendants were preparing to use allegations of criminal conduct against him to "destroy" him if he did not cease to pursue his claims the Defendants were in breach of contract. Exhibit C.

17. On a trip to Greece in the summer of 2015, Irene was confronted by her brother, Fanouris, who told her to "ask Athan to stop the lawsuit because he's going to find his devil. Even if he says the truth, he's going to find his devil." Exhibit D.

18. Upon information and belief, Fanouris was referring to the defamatory statements published by the Defendants.

19. None of the accusations are true, the Plaintiff having never participated in any way in either arson or insurance fraud.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

20. Paragraphs 1-13 are realleged and incorporated as if fully stated herein.

21. Defendants have published to other persons in unprivileged communications entirely false and defamatory per se statements regarding the commitment of illegal acts about Plaintiff, with common law actual malice, for the purpose of: a) injuring the personal and business

reputation of both, and b) intimidating Plaintiff into refraining from pursuing legal action against them based on their refusal to go forward with the plan to expand the building and the suites rental business operated there, such defamatory statements including, but not limited to:

a. Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds;

b. Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds.

c. Falsely claiming damages to the building at 229 King Street were from a hurricane in 1998, when they were not

22. Defendants published the above false, unprivileged, and defamatory statements to the Plaintiff's attorney in an unprivileged meeting for the malicious purpose of intimidating Plaintiff into refraining from demanding that they go forward with the agreement to expand the suites rental business.

23. Upon information and belief, Defendants published the above statements to Urania Nikatos.

24. Upon information and belief, Urania Nikatos published these defamatory statements to her mother, Irene Fokas.

25. Irene Fokas has testified that she heard these defamatory statements from her daughter, Urania. Exhibits B, D, E, and F.

26. All of the statements are false and are known to the Defendants to be false.

27. The Plaintiff has been confronted with said statements by his mother, Defendants' aunt, who upon information and belief came to hear these falsehoods as the direct and proximate result of the publication of these falsehoods by Defendants.

28. Said statements had the effect of damaging the personal and business reputation of the Plaintiff and of falsely communicating to his family that Plaintiff was committing criminal acts and such statements are per se defamatory.

29. The Plaintiff has suffered damages, including but not limited to: loss of confidence of his family in his ability to manage the businesses in which he is engaged, including those related to the building at 229 King Street; and the Plaintiff also suffered worry, extreme and painful embarrassment, humiliation and ridicule as the direct and proximate result of the above described defamatory statements.

30. By reason of said defamatory statements, the Plaintiff is entitled to recover from Defendants damages sufficient to compensate him for his actual damages from loss of confidence in his ability to manage said business and for the worry, embarrassment, humiliation and ridicule he has suffered as a result of said defamation as well as the attorneys' fees and costs he has incurred in the pursuit of this action. In addition, the Plaintiff is entitled to incur an amount of punitive damages sufficient to deter such action by Defendants in the future.

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and grant to Plaintiff:

1. Award judgment against Defendants for the actual damages to be paid Plaintiff he has suffered as the result of Defendants' actions alleged herein in an amount to be determined by the trier of fact;

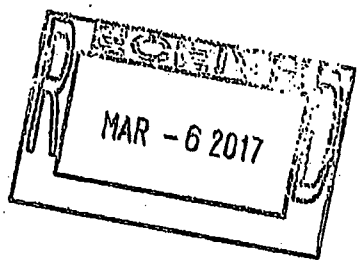
2. Award judgment against Defendants for an amount of punitive damages to be paid Plaintiff sufficient to deter Defendants from such actions as are alleged herein in the future;
3. Award judgment against Defendants for the attorneys' fees and costs incurred by Plaintiff in pursuing this action; and
4. Award such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Leslie S. Lenhardt
S.C. Bar No. 15858
Lenhardt Law Firm, LLC
1876 Wallenberg Blvd.
Charleston, SC 29407
(843)371-5453 ext. 702
Llenhardt@lenhardtlawfirm.com

February 23, 2017

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891



AFFIDAVIT OF STANLEY E. BARNETT

After being sworn, Affiant testified as follows:

1. I am Stan Barnett, an attorney in the law firm of Smith, Bundy, Bybee & Barnett, P.C. located in Mount Pleasant, S.C. and attorney for the Plaintiff in this case.

2. In the early part of this year, I was retained by Plaintiff to evaluate a disagreement he had with two of his cousins, the defendants named above, about what he contended was their agreement to proceed with an expansion of the building the own together at 229 King Street. The purpose of the expansion was to add three floors to the building so that more rental suites could be added to the existing vacation suites rental business they now operate together with a third cousin, Jacob Ferderigos.

3. The dispute arose when the defendants refused to go forward with closing on the loan to finance the expansion. In response to a letter I wrote to them explaining that in my opinion there was a contract and that they were putting themselves in breach of that contract, I was contacted by Philip Ferderigos who agreed to meet with me along with his brother, Spiros, to discuss the issues.

Exhibit A

4. My calendar and my notes show that I went to Philip's office on February 17, 2015 at 5 p.m. and met with he and Spiros. I also emailed Athan when I returned home that evening. My recollection is that the meeting took an hour or so. At the inception of the meeting, Philip wanted to discuss issues related to the founding of the restaurant by his father and Plaintiff's father, who were brothers in law. He also wanted to talk about a side disagreement with Plaintiff over family members of all four owners of the Old Towne Restaurant continuing to eat for free. I refused to discuss eating in the restaurant and tried to get our discussion to the issues surrounding the expansion of the building.

5. After some discussion of their position on whether there was a contract or not, both Philip and Spiros informed me that Plaintiff had committed a number of insurance frauds including: 1) claiming an injury was work related, when it was, in fact, from a skiing fall; 2) claiming damages to the building at 229 King Street were from a hurricane in 1998, when they were not; and 3) hiring a man to set fire to the second story of the building and filing an insurance claim for the cost to repair the damages that resulted. They generally described Plaintiff as dishonest and capable of doing anything for money. They cautioned me that he was not a "good" person. Both of them said that if he pressed any legal claim against them related to his position that they were in breach of contract, that they would raise these and "other" examples of malfeasance in response. They suggested these might constitute breaches of fiduciary duty with respect to the LLC that operates the business in building. Spiros made reference to the fact that he is an assistant solicitor and wondered if he had any responsibility due to the fact that these were serious crimes they were alleging.

6. I informed Plaintiff of all the aspects of my discussions with his cousins including the allegations of insurance fraud and arson they made to me.

7. Failing to find any willingness to negotiate a way to move forward with the building expansion or to have Defendants recant their allegations against Plaintiff, I filed two lawsuits, one for defamation against Philip and Spiros for publishing the allegations described above so that they reached the ears of Plaintiff's mother, and one for the breach of contract related to the building.

8. On August 25, 2015, I received a letter from a Fanouri Ferderigos claiming to be the brother of Plaintiff's mother and that he had been in Greece with her and Defendants' father. He claimed that Plaintiff's mother denied to him that she ever discussed any of the allegations described above with Plaintiff. Shortly after receiving this letter, I received letters from each of the Defendants' lawyers demanding that I dismiss the defamation suit with prejudice pursuant to my responsibilities under Rule 11.

9. I discussed all of these letters with Plaintiff. Shortly thereafter he spoke to his mother and related to me that conversation as well as at least one other with her since. Plaintiff asked that I contact his sister, Urania, who lives in the Charleston area, as someone who had knowledge of what his mother knew and said about the above allegations by Defendants.

10. I spoke to Urania three times, twice on August 31 and once on September 1, 2015.. She confirmed to me that during a trip with her mother this summer to a doctor, her mother told her that she had been told that Plaintiff had hired someone to set fire to the building at 229 King Street and expressed worry that this allegation would cause harm to her son. Urania did not say if her mother related who told her about these allegations and did not remember her mentioning any of the other allegations which were related to me by Defendants on February 17 in Philip's office.

11. In my opinion, when Plaintiff related to me what he describes in his affidavit as what his mother had informed him – that she had been told the same allegations which Defendants made

to me on February 17, I had reasonable cause to believe that Defendants were the source of this defamation. My conversations with Urania on August 31 and September 1 have confirmed by original conclusion that there is reasonable cause to believe that Defendants have published defamatory statements as alleged in the complaint in this action.

12. Attached hereto are my notes prepared the day after my meeting on February 17, 2015 with Spiros and Philip Ferderigos and copies of emails between them and I in advance of the meeting and my email to Athan Fokas noting I had returned home from the meeting on February 17.

FURTHER AFFIANT SAYETH NOT.

Stanley E. Barnett
STANLEY E. BARNETT

SWORN TO before me
this 10th day of Sept 2015.
Cindy M. Broome
Notary Public for South Carolina
My Commission Expires on: 11/26/23

Meeting: Tuesday, Feb 17, 2015 5-6 p.m
Philip and Spiros Terderigar — at Philip's office

Meeting scheduled last week week Philip & discuss the agreement to expand the Old Towne Bldg.

Both Philip and Spiros deny having an agreement, but wanted to talk about the situation.

Mtg began w/ Philip going back to 1994 the restaurant began and showing Athan's father died letter to Sam the Greek. Added that he and now Athan Sole heir father's Spice Receipts.

Then wanted to complain about Athan changing arrangement where families eat for free at Old Towne. Told them he needed to talk about the agreement to add Dental Suites — Kept coming back to the food.

(2)

Both say they never agreed to mortgage their part of the bldg — Spiros went on about being a state employee + reading bldg as an asset.

Both said they wanted go forward w/ the deal but would only talk about it if Athan gave up his claims of breach of contract Round & round.

Philip said + didn't know Athan "a bad person" "do anything for money" "not honest"

Spiros — holding a thick file — said he only dealt w/ Athan in writing "now" They said if Athan pursued claims against them — would never settle — would go to jury. Said would pursue claims against Athan Said had proof that Athan

① Hired some guy to get
Kirby & Sue Goldring to
collect the insurance money —
Spiros says something about
the "dead man's Statute"
I don't get

② Filed a claim for worker's
comp. for an injury actually
suffered skiing
to bldg

③ Filed a damage claim after a
hurricane in 1998 when there
were no winds sufficient to
cause damage from that storm

Philip repeated I did not know
what Athan was capable of

Spiros wondered "if I should
do something about these things"
since "I am an assistant
solicitor"

Both said there were all breaches
of Athan's "fiduciary duty" to
the corporation that rule the
Mutual Premises — OR the most

(4)

them as co-owners of the bldg - not clear to me

I said they were getting appraisal get in the way + all + Cassius needed to meet and figure out how to go make $ money.

Both said they would meet to do that but needed an agreement to outline what they were doing - that I then would report to Dillon and get back to them.

Peter - Wed Feb 18

Stan Barnett

From: Stan Barnett
Sent: Thursday, February 05, 2015 9:19 AM
To: 'Phillip Ferderigos'
Subject: RE: Letter re Old Towne Suites Agreement

That's fine of course. Athan has given me quite a stack as well.

From: Phillip Ferderigos [mailto:pferderigos@barnwell-whaley.com]
Sent: Wednesday, February 04, 2015 4:07 PM
To: Stan Barnett
Subject: RE: Letter re Old Towne Suites Agreement

Stan, I have a stack of emails and texts that I am reviewing that I think you need to see. I request your indulgence in providing me with additional time to respond to your email/letter. If at all possible, I would appreciate the weekend, so I can organize it for you and our discussions will be more fruitful.

Is that acceptable to you? Let me know, thanks, Phillip.

Phillip S. Ferderigos, Esq.
Member

BARNWELL WHALEY PATTERSON & HELMS LLC 75 YEARS

288 Meeting St., Ste 200 (29401)
PO Drawer H
Charleston, SC 29402
Phone: (843) 577-7700
Facsimile: (843) 577-7708

Email: pferderigos@barnwell-whaley.com

From: Phillip Ferderigos
Sent: Tuesday, February 03, 2015 10:02 AM
To: 'Stan Barnett'
Subject: RE: Letter re Old Towne Suites Agreement

I appreciate it. Thanks, Phillip.

Phillip S. Ferderigos, Esq.
Member

BARNWELL WHALEY PATTERSON & HELMS LLC 75 YEARS

288 Meeting St., Ste 200 (29401)
PO Drawer H
Charleston, SC 29402

Phone: (843) 577-7700
Facsimilie: (843) 577-7708

Email: pferderigos@barnwell-whaley.com

From: Stan Barnett [mailto:stanleyb@s3blaw.com]
Sent: Tuesday, February 03, 2015 10:01 AM
To: Phillip Ferderigos
Subject: RE: Letter re Old Towne Suites Agreement

Certainly that is fine.

From: Phillip Ferderigos [mailto:pferderigos@barnwell-whaley.com]
Sent: Tuesday, February 03, 2015 8:38 AM
To: spiros ferderigos
Cc: Stan Barnett
Subject: Re: Letter re Old Towne Suites Agreement

Stan, I concur with Spiro's sentiments. I was at the doctors office with my son yesterday when I received your disturbing email/letter. As I have to work today, is it acceptable if I respond back to you later on today or tomorrow?

Thanks, Phillip.

Sent from my iPhone

On Feb 3, 2015, at 8:31 AM, spiros ferderigos <spirosferderigos@gmail.com> wrote:

> Stan,
>
> I am in receipt of your email and I would be willing to meet with you. I do not welcome Athan to participate in our meeting. In my opinion, it is clear from your letter that Athan has not provided you with accurate information nor all of the written correspondence which directly contradicts the assertions in your letter. I highly recommend that you confer with Athan, prior to our meeting, to receive all of that correspondence as any communications between Athan and me have been in writing.
>
> For example, I have no idea where Athan has come up with the notion that we have had an "agreement" since 2013. It is well documented in an email from Athan dated September 9, 2014 that the estimated cost of the proposed project was not even provided to me (or my brothers) until that date (September 9, 2014). Furthermore, it is my opinion that Athan has repeatedly breached his legal duties to me in numerous ways including, but not limited to defamation, threats and repeatedly changing the material terms of how we discussed moving forward. This has resulted in severe damages to me and my family.

I invite the conversation of resolving these issues, because if Athan wants to file a frivolous lawsuit against me (as a result of his inability to provide accurate information regarding the proposed project); I will respond with my countersuits, based in legal reality, with numerous causes of action and well documented liability against Athan for his behavior. I will send you a separate email with the date and times I am available.

Spiros Ferderigos

Stan Barnett

From: Stan Barnett
ent: Friday, February 20, 2015 2:24 PM
To: 'Athan Fokas'
Subject: RE: Meeting

Philip has offered to draft a waiver and I asked him to go ahead. It may be objectionable but it's a start. Lets you and I arrange a time to come in and go over all this crap they through at me Tuesday night while we wait to see this waiver.

-----Original Message-----
From: Athan Fokas [mailto:athanfokas@gmail.com]
Sent: Thursday, February 19, 2015 10:47 AM
To: Stan Barnett
Subject: Re: Meeting

Any headway on setting up a meeting?

Sent from my iPhone

> On Feb 17, 2015, at 6:48 PM, Stan Barnett <stanleyb@s3blaw.com> wrote:
>
> I forgot to take your phone number with me. Wanted to give you a summary of the meeting. If you get this give me about 30 min to eat something. I just got home and call me. 843 708 4887. We should get. Ack together for a longer meeting but I can give you the highlights. They are ready to meet and talk to you.

Sent from my iPhone

met with me and the other attorneys telling us that your daughter Rania had relayed these statements about Mr. Fokas setting the fire and filing insurance claims?

THE INTERPRETER: The interpreter would like to hear that again.

MR. BOWERS: Sure.

THE INTERPRETER: I have the first part. I need to hear from Rania on.

Q. That Rania had told you that there were allegations that Athan Fokas had set the fire at Old Towne and filed false insurance claims.

A. What Rania told me, that they are going to say things about my son, that he started the fire and that he did things so they can destroy him, that they have so much to say against him that he's not going to survive it.

Q. Okay. Do you -- do you recall telling Phillip and Spiros' attorneys that Rania told you those things?

A. The day we went to the office?

Q. Yes, ma'am.

A. I don't think they asked me for this.

THE WITNESS: No.

Q. Do you recall Rania denying telling you

that -- denying that she had made those statements to you about Athan Fokas?

A. Yes, yes. She denied -- I remember she denied it because this is very difficult for her. It may cause problems with her husband. But not that day.

Q. Okay. So you remember Rania denying it, but not that day?

A. That, yes. That day -- that day we did not speak of that. It was to sign the papers.

Q. Has Rania always denied making those statements?

A. When I -- when I came back from Greece, yes. When I came -- when I came back from Greece, yes. She told me she didn't say these things, but I know why; but before I left for Greece, she was afraid for her brother. She said he should start -- stop this because they're going to go after him, and they're going to destroy him.

Q. Okay. Do you recall the statement that you signed on October 28?

A. Yes.

Q. Is everything in that statement correct and true?

A. The other day --

THE WITNESS: The other day I had to come here to the office, to Phillip and Spiros.

THE INTERPRETER: The interpreter did not hear what you said or understand.

A. I came late, around 12; and the next day I received a paper saying that I had to go to the office where Spiros -- Spiros is. I asked them to cancel it or to reschedule because I came from a very long trip, but they did not do it.

Q. And the day of the week that you returned, was it a Friday?

A. I don't remember exactly.

Q. Okay. Okay. All right. Mrs. Fokas, did you -- before you went to Greece, did you discuss with your son Athan --

A. Yes.

Q. -- some allegations that you heard had been made about him?

A. Yes.

Q. And what were those allegations?

A. He was playing Tavli with his father. I told my -- my son to be very careful. I heard that they're going to come after you, and they're going to -- they're going to say things against

you.

They're going to say things about you about the insurance. They're going to say that you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.

Q. You said a fire. Was there a specific place that he was accused of starting a fire?

MS. THIEM: Objection.

A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.

Q. And who was -- who were the people that you thought might accuse your son of these things?

MR. BOWERS: Object to the form.

A. His cousin. They were accusing him. They were going to destroy him.

Q. What are their names?

A. Spiros and Phillip Ferderigos.

MR. BARNETT: Do you want to chat with me?

MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

Q. Okay. And did he say which sons told him this?

A. I did not ask him. I did not ask.

Q. Okay. Did you speak to Fanouris about this same lawsuit?

A. Fanouris told me many times, "Ask Athan to stop the lawsuit because he's going to find his devil. Even if he says the truth, he's going to find his devil."

Q. What -- what did you mean by -- what does that mean, do you think?

MR. BOWERS: Object to the form.

A. That they will always find -- they will always come out as a -- right because they're attorneys. They know what they're doing.

Q. Did he say that things that were not the truth would be said?

MR. BOWERS: Object to the form.

A. He said many people are in jail, and they are innocent.

Q. Did he say that in this dispute between Athan and his cousins that his cousins would say things that were not true?

MR. HASTIE: Object to the form.

MR. BOWERS: Object.

told me; but I told him to be very, very careful with them.

Q. And when did Rania tell you these things?

A. April. I don't know. We spoke for hours about these things, and she's very afraid for her brother.

Q. Where did this conversation occur?

A. We were in the car and the house many times.

THE WITNESS: Many times.

Q. So there were multiple conversations with Rania?

A. Yes. Because -- because she was -- she was afraid for her brother, and she wanted Athan to stop this.

Q. And these conversations occurred in April?

A. I don't remember exactly. Probably March or April.

Q. Was anyone else present for these conversations other than Rania?

A. No, no.

Q. What were the exact words that Rania used?

A. That she's afraid for her brother, that has -- that her cousins will destroy him. And even though he -- Athan may be right or correct, they would make it into lies.

Q. Did Rania tell you that Phillip and Spiros were saying Athan set Fokas (SIC) to the building at 229 King Street?

THE INTERPRETER: Say that again. Did Rania say?

Q. Did Rania tell you that Phillip and Spiros were telling people that Athan set Fokas -- that Athan Fokas set fire to 229 King Street?

A. She was telling me. She wasn't saying that Athan was saying to others. To be very -- to stop everything, to be very careful because his cousins are going to go after him.

MR. BOWERS: I think I may have worded that question very badly. So I'm going to try to rephrase it. Okay?

THE INTERPRETER: Sure. Thank you.

Q. Did Rania tell you during these conversations in April or May that Phillip and Spiros were telling people that Athan Fokas set fire to 229 King Street?

Q. Yes.

A. I heard that they wanted to destroy him, and they're going to find a way to do it.

Q. Okay. And who said that?

A. When my --

THE INTERPRETER: I need the answer again. I'm sorry. She said a lot.

MS. THIEM: Okay.

THE INTERPRETER: The interpreter did not get all that. You want to ask her the question again, please?

MS. THIEM: Yes.

Q. Are you aware of any accusations made by Phillip, Jacob, or Spiros that Athan has done anything illegal?

A. Not that he has done, but they would like choose it.

Q. Okay. And who made those statements?

A. My daughter said it. He has to be careful because they -- a lot they're going to say. They're going to accuse him.

Q. Okay. And all of that came from your daughter?

A. Yes.

Q. Okay. And other than those statements,

LENHARDT
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Charleston, S.C. 29407
Phone 843.371.5453

Leslie S. Lenhardt
ATTORNEY AT LAW
LLENHARDT@LENHARDTLAWFIRM.COM

February 23, 2017

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street Suite 106
Charleston, SC 29401-2258

Re: Case No. 2015-CP-10-3891
Athan Fokas v. Phillip Ferderigos and Spiros Ferderigos

Dear Ms. Armstrong:

Please find enclosed an Amended Complaint in the above-referenced case, which is being filed pursuant to the presiding Judge's Order of November 9, 2016. Please file the original, clock the copy and return the copy to my office in the enclosed self addressed stamped envelope.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions regarding this request.

Sincerely,

Lenhardt Law Firm, LLC

Leslie S. Lenhardt

Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No. 2015-CP-10-3891
Athan Fokas,	)	
Plaintiff,	)	
vs.	)	**ANSWER AND COUNTERCLAIMS OF DEFENDANT SPIROS FERDERIGOS TO PLAINTIFF'S AMENDED COMPLAINT**
Phillip Ferderigos and Spiros Ferderigos,	)	
Defendants.	)	

FILED
2017 MAR 16 AM 10:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: LESLIE LENHARDT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant, Spiros Ferderigos (hereinafter "Defendant"), answers the Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Amended Complaint not hereinafter specifically and unconditionally admitted.

2. Defendant admits the allegations of Paragraphs 1, 2, and 3 of the Plaintiff's Amended Complaint.

3. Answering Paragraph 4 of the Plaintiff's Amended Complaint, Defendant admits he owns a 1/6 interest in 229 King Street in Charleston, South Carolina. Defendant also admits he is a member of Old Towne Suites, LLC. Defendant denies any remaining allegations

contained in Paragraph 4 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

4. Defendant denies Paragraphs 5 and 6 of the Plaintiff's Amended Complaint as characterized and demands strict proof thereof.

5. Defendant admits the allegations of Paragraph 7 of the Plaintiff's Amended Complaint only to the extent that Plaintiff and Stanley Barnett, Plaintiff's counsel at the time, threatened a frivolous lawsuit against Defendant. Defendant denies the remaining allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint as characterized and craves reference to the documentation exchanged between the parties.

6. Answering Paragraph 8 of the Plaintiff's Amended Complaint, Defendant denies the allegations contained in this paragraph as characterized and craves reference to the letter sent by Plaintiff's counsel Stanley Barnett, not Stanley Barnett's affidavit that contains Mr. Barnett's "interpretations" of what was contained in said letter. In Mr. Barnett's letter, Mr. Barnett threatened litigation against this Defendant and requested a meeting in order to attempt to negotiate, settle and resolve the false allegations of Plaintiff Athan Fokas which Mr. Barnett was asserting against this Defendant. Defendant denies any remaining allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

7. Answering Paragraph 9 of the Plaintiff's Amended Complaint, Defendant craves reference to the email from Spiros Ferderigos, which speaks for itself and advises Stanley Barnett of the meritless allegations of Plaintiff Athan Fokas and further advising that Plaintiff Athan Fokas was liable to the Defendant. Defendant denies any remaining allegations of

Paragraph 9 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

8. Answering Paragraph 10 of the Plaintiff's Amended Complaint, Defendant denies this paragraph as characterized and further avers that after Mr. Barnett had threatened litigation which lacked any merit, Mr. Barnett, agent and counsel of Plaintiff, and Defendant Phillip Ferderigos and Spiros Ferderigos met for a closed door settlement conference and settlement negotiations concerning the meritless allegations of his client. Defendant denies any remaining allegations of Paragraph 10 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

9. Answering Paragraph 11 of the Plaintiff's Amended Complaint and its sub-parts, Defendant denies the allegations contained in said paragraph and its sub-parts and demands strict proof thereof.

10. Answering Paragraph 12 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof.

11. Answering Paragraph 13 of the Plaintiff's Amended Complaint, Defendant does not have sufficient information or knowledge to answer the allegations contained in said paragraph, and Defendant denies and demands strict proof hereof.

12. Answering Paragraph 14 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof. See Exhibit A, Affidavit of Rania Nikatos attesting that Defendants never published any alleged defamatory statement to her and that she never told anyone that Defendants published any alleged defamatory statement to her.

13. Answering Paragraph 15 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof. See Exhibit A, Affidavit of Rania Nikatos attesting that she never said any such thing to Plaintiff's mother (Irene Fokas). Also, Plaintiff's citation of the excerpts from the deposition of Plaintiff's mother (Irene Fokas) Exhibits B, E, and F are in bad faith as Plaintiff is well aware that Plaintiff's mother (Irene Fokas) testified that she speculated and "guessed" that Defendants told these defamatory statements to her daughter and that she never even asked her daughter who made the alleged defamatory statements to her against Plaintiff. See Exhibit B, deposition testimony of Irene Fokas:

Q. And where did you learn that these allegations might be made.

A. Unfortunately, I learned these things from my daughter.

Q. Did your daughter tell you who she was talking about that might make these –

A. I never ask. I never asked her, but I figured that – I figured they might be them because she – they have – they do work with their cousins. She was hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys were going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. And at the time you heard that from your daughter, she did not say that she heard Philip, Spiros, or Jacob say those things?

A. She didn't say 'cause I no ask. I did not ask her. I did not ask her, but I thought that they work together. I guess that's where she heard it.

Accordingly, Plaintiff knows that his mother's (Irene Fokas) deposition testimony is conjecture, speculation, and "made up," and Plaintiff's citation of such false testimony is in bad faith. Defendant further refers the Plaintiff to the Affidavit and deposition testimony of Rania Nikatos, the Plaintiff's sister, which sets forth that the Plaintiff's mother's "speculation" is not accurate and Rania Nikatos never told her mother what her mother speculates.

14. Answering Paragraph 16 of the Plaintiff's Amended Complaint, Defendant does not have sufficient information to admit or deny this paragraph as Defendant was not present for any alleged communication between Plaintiff's mother and Plaintiff and therefore demands strict proof thereof. Plaintiff, is, however, aware of Plaintiff's mother's deposition testimony in which, upon information and belief, Plaintiff's mother defamed Defendant. Upon information and belief, based on Irene Fokas's deposition testimony, she testified that she told the Plaintiff (her son) that this Defendant was going to make defamatory statements about Plaintiff, and Plaintiff's mother (Irene Fokas) further admitted in her deposition testimony that what she told Plaintiff was just her speculation, admitting in her deposition testimony that she merely "guessed" and "figured" that said statements would be made by this Defendant.

15. Answering Paragraph 17 of the Plaintiff's Amended Complaint, Defendant does not have sufficient information to admit or deny said paragraph and therefore demands strict proof thereof.

16. Answering Paragraph 18 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof.

17. Answering Paragraph 19 of the Plaintiff's Amended Complaint, Defendant does not have personal knowledge to admit or deny said allegation and therefore demands strict proof thereof.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

18. Answering Paragraph 20 of the Plaintiff's Amended Complaint, Defendant repeats and realleges his responses to Paragraphs 1 through 19 of the Plaintiff's Amended Complaint above as if set forth verbatim herein.

19. Answering Paragraph 21 of the Plaintiff's Amended Complaint, and its sub-parts, Defendant denies all allegations contained in said paragraph and demands strict proof hereof.

20. Answering Paragraph 22 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof hereof.

21. Answering Paragraph 23 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof hereof. See Exhibit A, Affidavit of Rania Nikatos (Plaintiff's sister) refuting Plaintiff's allegation and evidencing Plaintiff's bad faith in making such allegation.

22. Answering Paragraph 24 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof hereof. See Exhibit A, Affidavit of Rania Nikatos (Plaintiff's sister) refuting Plaintiff's allegation and evidencing Plaintiff's bad faith in making such allegation.

23. Answering Paragraph 25 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph as characterized and demands strict proof hereof. As

set forth in more detail in Paragraph 13 above, Irene Fokas, the Plaintiff's mother, testified that her daughter (Rania Nikatos) told her about certain accusations which Irene Fokas assumed were from Defendants Phillip or Spiros Ferderigos. In her deposition testimony, Irene Fokas, Plaintiff's mother herself, admitted that she never asked her daughter who made the alleged defamatory statements, and Irene Fokas admits to speculating that it might have been Phillip or Spiros Ferderigos because they work with Rania Nikatos. Phillip and/or Spiros Ferderigos do not work with Rania Nikatos. Moreover, Rania Nikatos has submitted an Affidavit (attached hereto as Exhibit A) and testified under oath that her mother's speculation is wrong and that she never told her mother that Phillip or Spiros Ferderigos said anything concerning the Plaintiff Athan Fokas. The Plaintiff's insistence on quoting his mother's testimony, which she admits is based upon hearsay and based upon speculation, is in bad faith. See Exhibit A, Affidavit of Rania Nikatos and See Answer Paragraph 13 herein, citing Plaintiff's mother's deposition testimony that she just "guessed" or "figured" the defamatory statements came from Defendants.

24. Answering Paragraph 26 of the Plaintiff's Amended Complaint, Spiros Ferderigos is without sufficient knowledge to know whether the alleged statements (which were never made by Spiros Ferderigos) in Athan Fokas' Amended Complaint are false and therefore demands strict proof thereof.

25. Answering Paragraphs 27, 28, 29 and 30 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraphs and demands strict proof thereof.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

26. Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and Plaintiff's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

27. Plaintiff has failed to mitigate his damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Unclean Hands, Laches)

28. Plaintiff's claim may be barred by the doctrines of Waiver, Estoppel, Unclean Hands, and/or Laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third Parties)

29. Plaintiff's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under this Defendant's domain or control. Defendant did not publish any such statements concerning Plaintiff.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence and/or Assumption of the Risk)

30. Any damage suffered by the Plaintiff is a direct and proximate result of his own comparative and contributory negligence and/or assumption of the risk and Plaintiff's recovery should be barred, or alternatively, reduced proportionately to Plaintiff's comparative negligence. Defendant did not publish any such statements concerning Plaintiff.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation of Additional Defenses)

31. The Defendant relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Answer to assert any

such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

32. The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a Court might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is

neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United Stated Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Plaintiff's claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A NINTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(First Amendment Rights)

33. Plaintiff's allegations against this Defendant may be barred by this Defendant's First Amendment rights and absolute/qualified privilege.

FOR A TENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Truth)

34. To the extent necessary to preserve such defense, the Defendant asserts the truth as an affirmative defense to Plaintiff's claims.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Qualified & Absolute Privilege)

35. To the extent necessary to preserve such defense, the Defendant asserts a common law and statutory, qualified and/or absolute privilege and/or any other applicable privilege as, at all times, the Defendant was acting in good faith and with reasonable cause based on the actions and admissions of the Plaintiff.

FOR A TWELFTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Conditional Privilege)

36. To the extent necessary to preserve such defense, any actions or communications of the Defendant are conditionally privileged communication as the actions may be 1) in good faith; 2) involved an interest to be upheld; 3) was a statement limited in scope to this purpose; 4) was made in a proper occasion; and 5) publication was made in a proper manner to the proper parties, and the conditional privilege includes, but is not limited to, publication of judicial proceedings and public records, the fair comment defense, business or professional interest defense, self-defense or defense of others' defense and public duty or any other applicable defense or privilege that may apply.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Opinion)

37. To the extent necessary to preserve such defense, the Defendant asserts opinion as an affirmative defense to Plaintiff's claims.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Lack of Proximate Cause)

38. To the extent necessary to preserve such defense, the Defendant asserts lack of proximate cause as an affirmative defense to Plaintiff's claims.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

39. Plaintiff's claims may be barred by the Statute of Frauds.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIMS
(Frivolous Proceedings and Abuse of Process)

40. Defendant repeats and realleges Paragraphs 1 through 169 (its Affirmative Defenses and Counterclaims) as set forth in the Answer and Counterclaim captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919 as set forth fully verbatim herein.

41. The Complaint filed in this current action constitutes a frivolous pleading under the South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code Ann. § 15-36-10 (2005), in the following particulars to wit:

(a) A reasonable attorney in the same circumstances would believe that the Plaintiff's claim "was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law"; and

(b) A reasonable attorney presented with the same circumstances would believe that the initiation of this civil cause "was intended merely to harass or injure the other party"; and

(c) A reasonable attorney presented with the same circumstances would believe the pleading is frivolous and was brought for a purpose other than proper adjudication of the claim; and

(d) The pleading makes frivolous arguments not supported by the facts.

42. Spiros Ferderigos respectfully asks this Honorable Court to sanction the Plaintiff for this frivolous pleading pursuant to S.C. Code Ann. § 15-36-10 (G) (2005), and specifically, Spiros Ferderigos prays for the following relief:

(a) That the Plaintiff pay reasonable costs and attorneys' fees to defend this action and for punitive damages; and

(b) That the Plaintiff pay a reasonable fine to the Court.

43. Athan Fokas has employed the legal process for some purpose other than that for which it was intended by the law to effect – the improper use of regularly issued process.

44. Athan Fokas has commenced an action and caused process to issue without justification and is also misusing or misapplying the legal process for an end other than that which it was designed to accomplish.

45. Athan Fokas is using the process for improper reasons with (1) an ulterior purpose and (2) has done willful acts in the use of the process not proper in the regular conduct of the proceeding to attempt to force Spiros Ferderigos to provide a mortgage for Athan Fokas' benefit, to attempt to force Spiros Ferderigos to enter into agreements he never agreed to and otherwise rejected, and to sign incorrect loan documents by filing what Spiros Ferderigos believes to be frivolous lawsuits.

46. As a direct and proximate result of Athan Fokas' actions, Spiros Ferderigos has been injured. Accordingly, Spiros Ferderigos is entitled to actual, consequential, and punitive damages as determined by the Court.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays: (1) the claims against Defendant be dismissed with prejudice; (2) the Court award Defendant his costs and attorneys' fees; (3) for awards of actual and punitive damages for his Counterclaims; and (4) for such other and further relief as the court may deem just and proper.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
P.O. Drawer H
Charleston, SC 29402
Phone: 843-577-7700
Facsimile: 843-577-7708
ATTORNEYS FOR SPIROS FERDERIGOS

CO-COUNSEL:
Joseph R. Weston, EsquireStephanie A. Anthony, Esquire
WESTON LAW FIRM, P.A.
761 Johnnie Dodds Blvd., Suite #100 (29464)
Post Office Box 1992
Charleston, South Carolina 29465-1992

Dated: March 16, 2017
Charleston, South Carolina

15-3891

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2017, I mailed a copy of the foregoing Answer and Counterclaims to Plaintiff's Amended Complaint to counsel of Record with sufficient postage, correctly addressed as follows:

Leslie S. Lenhardt, Esquire
Lenhardt Law Firm, LLC
1876 Wallenberg Blvd.
Charleston, SC 29407

Richard A. Farrier, Jr., Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

Joseph R. Weston, Esquire
Stephanie A. Anthony, Esquire
761 Johnnie Dodds Blvd., Suite #100 (29464)
Post Office Box 1992
Charleston, South Carolina 29465-1992

J. Drayton Hastie, III, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, SC 29201

FILED
2017 MAR 16 AM 10:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Barnwell Whaley Patterson & Helms, LLC

By: Cheryl D. Lessard

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS, Plaintiff, vs. PHILLIP FERDERIGOS and SPIROS FERDERIGOS, Defendant,	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3891 AFFIDAVIT OF RANIA NIKATOS

NOW COMES RANIA NIKATOS, OF FULL AGE, BEING DULY SWORN, DEPOSES AND SAYS AS FOLLOWS:

1. That Phillip and/or Spiros Ferderigos have never told me that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed false insurance claim(s).

2. That I have never heard Phillip and/or Spiros Ferderigos say that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

3. That I never told Irene Fokas that I have ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

4. That I have never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

5. That I am making this statement freely, voluntarily, and under sound mind.

AND FURTHER DEPONENT SAYETH NOT.

11/20/15
Date

Rania Nikatos

EXHIBIT
A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

On this 20th day of November, 2015, before me personally appeared Rania Nikatos, to me known to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

Notary Public for South Carolina
My commission expires: 9/21/2022

JULIE CRAIG
Notary Public, South Carolina
My Commission Expires
September 21, 2022

Q. This discussion you had with your son, do you remember what month this was?
A. I don't remember exactly. Could have been April or May.
Q. Okay. It was in the spring.
THE WITNESS: Uh-huh, in the spring.
A. Yes.
Q. And where did you learn that these allegations might be made?
MR. BOWERS: Object to the form.
A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.
It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

Q. Did your son ask you where you learned about this?
A. Yes. My son asked me, and I told him, "You'll never find out. I want you to be very careful. Don't -- don't get involved with them because --
THE INTERPRETER: The interpreter didn't get the last word. Something about the truth.
A. Because they will find -- they will be right because they're attorneys. They can change things.
Q. What do you mean "change things"?
A. Even though you may say the truth, they may said you said -- you lied.
My -- my daughter was very afraid that they're going to destroy him, and when I heard these things, I got sick. And I told him, "No matter how right you may be, you're not going to find justice."
Q. Did your daughter tell you who she was talking about that might make these --
THE WITNESS: I never ask.
A. I never asked her, but I figured that -- I figured they might be them because she -- they have -- they do work with their cousins. She was hearing these things, but I never asked her, "Where did you find this stuff? Where did you hear it?"
Q. You referred -- you said "them." "She worked with them," I think you said.
A. Yes.
THE INTERPRETER: I'm telling her to

EXHIBIT B

came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

00048

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

00049

building the additional rental units at 229 King Street?

A. Yes. What lawsuit is that?

Q. That would be a second lawsuit filed by Athan Fokas against Phillip and Spiros.

THE WITNESS: Yeah. I want -- I want to know who -- for what?

THE INTERPRETER: I didn't get that.

THE WITNESS: I want to know --

A. I want to know what type of lawsuit is it?

Q. Are you aware that the second lawsuit is your son, Athan Fokas, trying to force Phillip and Spiros to build the additional rental units at 229 King Street?

A. That's the problem, and it's been two-and-a-half years. They wanted to do it, and now

was afraid for her brother, that they want to destroy him.

Q. And at the time you heard that from your daughter, she did not say that she heard Phillip, Spiros, or Jacob say those things?

THE WITNESS: She didn't say 'cause I no ask.

A. I did not ask her.

MS. THIEM: I'm sorry. Miss Translator, can you say that again? Interpreter.

THE INTERPRETER: The only thing I got was, "I did not ask her." I'm not sure if she said something else.

A. I did not ask her, but I thought that they work together. I guess that's where she heard it.

Q. Okay. And I -- you may have clarified this already, but I wanted to confirm when you mentioned that you were being prepared by Stan Barnett for the internet, you meant deposition, correct?

A. I don't understand what you mean.

00090

Q. You used the word "internet." When you met with Stan Barnett, you talked about the internet. You meant you were discussing the deposition?

THE INTERPRETER: She says, "I said something about the internet?"

Q. You did.

THE WITNESS: I say?

Q. You meant --

THE WITNESS: What I say for internet?

Q. That's what I wanted to clarify. So when you -- when you met with Stan Barnett, the purpose of your meeting was to prepare for this deposition, right?

A. Yes. Yes. It was to talk about how this thing was going to happen today.

Q. All right. And he explained to you what to expect?

A. Yes. That he will ask questions, and there will be other attorneys that will ask questions.

MS. THIEM: All right. That's all the questions I have.

THE WITNESS: Thank you. Thank you,

A. Thank you very much.

00091

MR. BARNETT: And I have no questions.

THE WITNESS: Thank you, too.

MR. BARNETT: Madam Interpreter, before we let you go, the court reporter -- well, since I don't represent her, I don't mind explaining,

BARNWELL WHALEY PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

March 16, 2017
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3891

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Answer and Counterclaims of the Defendant, Spiros Ferderigos, to the Plaintiff's Amended Complaint in the above-referenced matter. Please file the original and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing counsel for the Plaintiff of this communication with the Court and serving her with a copy of the Answer and Counterclaims to the Plaintiff's Amended Complaint. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Leslie Lenhardt, Esquire (via U.S. Mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail)
Joseph R. Weston, Esquire (via U.S. Mail)
J. Drayton Hastie, III, Esquire (via U.S. Mail)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No. 2015-CP-10-3891
Athan Fokas,	)	
Plaintiff,	)	**ANSWER OF DEFENDANT PHILLIP FERDERIGOS TO AMENDED COMPLAINT AND COUNTERCLAIMS**
vs.	)	
Phillip Ferderigos and Spiros Ferderigos,	)	
Defendants.	)	

FILED
2017 MAR 20 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

TO: LESLIE LENHARDT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant, Phillip Ferderigos (hereinafter "Defendant"), answers the Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Amended Complaint not hereinafter specifically and unconditionally admitted.

2. Defendant admits the allegations of Paragraphs 1, 2, and 3 of the Plaintiff's Amended Complaint.

3. Answering Paragraph 4 of the Plaintiff's Amended Complaint, Defendant admits he owns a 1/6 interest in 229 King Street in Charleston, South Carolina. Defendant also admits he is a member of Old Towne Suites, LLC. Defendant denies any remaining allegations

contained in Paragraph 4 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

4. Defendant denies Paragraphs 5 and 6 of the Plaintiff's Amended Complaint as characterized and demands strict proof thereof.

5. Defendant admits the allegations of Paragraph 7 of the Plaintiff's Amended Complaint only to the extent that Plaintiff and Stanley Barnett, Plaintiff's counsel at the time, threatened a frivolous lawsuit against Defendant. Defendant denies the remaining allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint as characterized and craves reference to the documentation exchanged between the parties.

6. Answering Paragraph 8 of the Plaintiff's Amended Complaint, Defendant denies the allegations contained in this paragraph as characterized and craves reference to the letter sent by Plaintiff's counsel Stanley Barnett, not Stanley Barnett's affidavit that contains Mr. Barnett's "interpretations" of what was contained in said letter. In Mr. Barnett's letter, Mr. Barnett threatened litigation against this Defendant and requested a meeting in order to attempt to negotiate, settle and resolve the false allegations of Plaintiff Athan Fokas which Mr. Barnett was asserting against this Defendant. Defendant denies any remaining allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

7. Answering Paragraph 9 of the Plaintiff's Amended Complaint, Defendant craves reference to the email from Spiros Ferderigos, which speaks for itself and advises Stanley Barnett of the meritless allegations of Plaintiff Athan Fokas and further advising that Plaintiff Athan Fokas was liable to the Defendant. Defendant denies any remaining allegations of

Paragraph 9 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

8. Answering Paragraph 10 of the Plaintiff's Amended Complaint, Defendant denies this paragraph as characterized and further avers that after Mr. Barnett had threatened litigation which lacked any merit, Mr. Barnett, agent and counsel of Plaintiff, and Defendant Phillip Ferderigos and Spiros Ferderigos met for a closed door settlement conference and settlement negotiations concerning the meritless allegations of his client. Defendant denies any remaining allegations of Paragraph 10 of the Plaintiff's Amended Complaint inconsistent with this response and demands strict proof thereof.

9. Answering Paragraph 11 of the Plaintiff's Amended Complaint and its sub-parts, Defendant denies the allegations contained in said paragraph and its sub-parts and demands strict proof thereof. Defendant further avers the substance set forth in "closed door settlement negotiations meeting at Stanley Barnett's request" provided in discovery to this Defendant's deposition testimony as to what was said at the settlement conference between Stanley Barnett and Defendant.

10. Answering Paragraph 12 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph as characterized and demands strict proof thereof. Defendant further avers the substance set forth in "closed door settlement negotiations meeting at Stanley Barnett's request" and to this Defendant's deposition testimony provided in discovery as to what was said at the settlement conference between Stanley Barnett and Defendant.

11. Answering Paragraph 13 of the Plaintiff's Amended Complaint, Defendant does not have sufficient information or knowledge to answer the allegations contained in said paragraph, and Defendant denies and demands strict proof hereof.

12. Answering Paragraph 14 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof. See Exhibit A, Affidavit of Rania Nikatos attesting that Defendants never published any alleged defamatory statement to her and that she never told anyone that Defendants published any alleged defamatory statement to her.

13. Answering Paragraph 15 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof. See Exhibit A, Affidavit of Rania Nikatos attesting that she never said any such thing to Plaintiff's mother (Irene Fokas). Also, Plaintiff's citation of the excerpts from the deposition of Plaintiff's mother (Irene Fokas) Exhibits B, E, and F are in bad faith as Plaintiff is well aware that Plaintiff's mother (Irene Fokas) testified that she speculated and "guessed" that Defendants told these defamatory statements to her daughter and that she never even asked her daughter who made the alleged defamatory statements to her against Plaintiff. See Exhibit B, deposition testimony of Irene Fokas:

> Q. And where did you learn that these allegations might be made.
>
> A. Unfortunately, I learned these things from my daughter.
>
> Q. Did your daughter tell you who she was talking about that might make these –
>
> A. I never ask. I never asked her, but I figured that – I figured they might be them because she – they have – they do work with their cousins. She was hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys were going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. And at the time you heard that from your daughter, she did not say that she heard Philip, Spiros, or Jacob say those things?

A. She didn't say 'cause I no ask. I did not ask her. I did not ask her, but I thought that they work together. I guess that's where she heard it.

Accordingly, Plaintiff knows that his mother's (Irene Fokas) deposition testimony is conjecture, speculation, and "made up," and Plaintiff's citation of such false testimony is in bad faith. Defendant further refers the Plaintiff to the Affidavit and deposition testimony of Rania Nikatos, the Plaintiff's sister, which sets forth that the Plaintiff's mother's "speculation" is not accurate and Rania Nikatos never told her mother what her mother speculates.

14. Answering Paragraph 16 of the Plaintiff's Amended Complaint, Defendant does not have sufficient information to admit or deny this paragraph as Defendant was not present for any alleged communication between Plaintiff's mother and Plaintiff and therefore demands strict proof thereof. Plaintiff, is, however, aware of Plaintiff's mother's deposition testimony in which, upon information and belief, Plaintiff's mother defamed Defendant. Upon information and belief, based on Irene Fokas's deposition testimony, she testified that she told the Plaintiff (her son) that this Defendant was going to make defamatory statements about Plaintiff, and Plaintiff's mother (Irene Fokas) further admitted in her deposition testimony that what she told Plaintiff was

just her speculation, admitting in her deposition testimony that she merely "guessed" and "figured" that said statements would be made by this Defendant.

15. Answering Paragraph 17 of the Plaintiff's Amended Complaint, Defendant does not have sufficient information to admit or deny said paragraph and therefore demands strict proof thereof.

16. Answering Paragraph 18 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof thereof.

17. Answering Paragraph 19 of the Plaintiff's Amended Complaint, Defendant does not have personal knowledge to admit or deny said allegation and therefore demands strict proof thereof.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

18. Answering Paragraph 20 of the Plaintiff's Amended Complaint Defendant repeats and realleges his responses to Paragraphs 1 through 19 of the Plaintiff's Amended Complaint above as if set forth verbatim herein.

19. Answering Paragraph 21 of the Plaintiff's Amended Complaint, and its sub-parts, Defendant denies all allegations contained in said paragraph and demands strict proof hereof.

20. Answering Paragraph 22 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof hereof.

21. Answering Paragraph 23 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof hereof. See Exhibit A, Affidavit of Rania Nikatos (Plaintiff's sister) refuting Plaintiff's allegation and evidencing Plaintiff's bad faith in making such allegation.

22. Answering Paragraph 24 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph and demands strict proof hereof. See Exhibit A, Affidavit of Rania Nikatos (Plaintiff's sister) refuting Plaintiff's allegation and evidencing Plaintiff's bad faith in making such allegation.

23. Answering Paragraph 25 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraph as characterized and demands strict proof hereof. As set forth in more detail in Paragraph 13 above, Irene Fokas, the Plaintiff's mother, testified that her daughter (Rania Nikatos) told her about certain accusations which Irene Fokas assumed were from Defendants Phillip or Spiros Ferderigos. In her deposition testimony, Irene Fokas, Plaintiff's mother herself, admitted that she never asked her daughter who made the alleged defamatory statements, and Irene Fokas admits to speculating that it might have been Phillip or Spiros Ferderigos because they work with Rania Nikatos. Phillip and/or Spiros Ferderigos do not work with Rania Nikatos. Moreover, Rania Nikatos has submitted an Affidavit (attached hereto as Exhibit A) and testified under oath that her mother's speculation is wrong and that she never told her mother that Phillip or Spiros Ferderigos said anything concerning the Plaintiff Athan Fokas. The Plaintiff's insistence on quoting his mother's testimony, which she admits is based upon hearsay and based upon speculation, is in bad faith. See Exhibit A, Affidavit of Rania Nikatos and See Answer Paragraph 13 herein, citing Plaintiff's mother's deposition testimony that she just "guessed" or "figured" the defamatory statements came from Defendants.

24. Answering Paragraph 26 of the Plaintiff's Amended Complaint, Phillip Ferderigos is without sufficient knowledge to know whether the alleged statements (which were never made by Phillip Ferderigos) in Athan Fokas' Amended Complaint are false and therefore demands strict proof thereof.

25. Answering Paragraphs 27, 28, 29 and 30 of the Plaintiff's Amended Complaint, Defendant denies all allegations contained in said paragraphs and demands strict proof thereof.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

26. Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and Plaintiff's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

27. Plaintiff has failed to mitigate his damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO.
(Waiver, Estoppel, Unclean Hands, Laches)

28. Plaintiff's claim may be barred by the doctrines of Waiver, Estoppel, Unclean Hands, and/or Laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third Parties)

29. Plaintiff's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under this Defendant's domain or control. Defendant did not publish any such statements concerning Plaintiff.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence and/or Assumption of the Risk)

30. Any damage suffered by the Plaintiff is a direct and proximate result of his own comparative and contributory negligence and/or assumption of the risk and Plaintiff's recovery

should be barred, or alternatively, reduced proportionately to Plaintiff's comparative negligence. Defendant did not publish any such statements concerning Plaintiff.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation of Additional Defenses)

31. The Defendant relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Answer to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

32. The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a court might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United Stated Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Plaintiff's claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A NINTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(First Amendment Rights)

33. Plaintiff's allegations against this Defendant may be barred by this Defendant's First Amendment rights and absolute/qualified privilege.

FOR A TENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Truth)

34. To the extent necessary to preserve such defense, the Defendant asserts the truth as an affirmative defense to Plaintiff's claims.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Qualified & Absolute Privilege)

35. To the extent necessary to preserve such defense, the Defendant asserts a common law and statutory, qualified and/or absolute privilege and/or any other applicable privilege as, at all times, the Defendant was acting in good faith and with reasonable cause based on the actions and admissions of the Plaintiff.

FOR A TWELFTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Conditional Privilege)

36. To the extent necessary to preserve such defense, any actions or communications of the Defendant are conditionally privileged communication as the actions may be 1) in good faith; 2) involved an interest to be upheld; 3) was a statement limited in scope to this purpose; 4) was made in a proper occasion; and 5) publication was made in a proper manner to the proper parties, and the conditional privilege includes, but is not limited to, publication of judicial proceedings and public records, the fair comment defense, business or professional interest

defense, self-defense or defense of others' defense and public duty or any other applicable defense or privilege that may apply.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO (Opinion)

37. To the extent necessary to preserve such defense, the Defendant asserts opinion as an affirmative defense to Plaintiff's claims.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO (Lack of Proximate Cause)

38. To the extent necessary to preserve such defense, the Defendant asserts lack of proximate cause as an affirmative defense to Plaintiff's claims.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO (Statute of Frauds)

39. Plaintiff's claims may be barred by the Statute of Frauds.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIMS (Frivolous Proceedings and Abuse of Process)

40. Defendant repeats and realleges Paragraphs 1 through 172 (its Affirmative Defenses and Counterclaims) as set forth in the Answer and Counterclaim captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919 as set forth fully verbatim herein.

41. The Complaint filed in this current action constitutes a frivolous pleading under the South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code Ann. § 15-36-10 (2005), in the following particulars to wit:

(a) A reasonable attorney in the same circumstances would believe that the Plaintiff's claim "was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law"; and

(b) A reasonable attorney presented with the same circumstances would believe that the initiation of this civil cause "was intended merely to harass or injure the other party"; and

(c) A reasonable attorney presented with the same circumstances would believe the pleading is frivolous and was brought for a purpose other than proper adjudication of the claim; and

(d) The pleading makes frivolous arguments not supported by the facts.

42. Phillip Ferderigos respectfully asks this Honorable Court to sanction the Plaintiff for this frivolous pleading pursuant to S.C. Code Ann. § 15-36-10 (G) (2005), and specifically, Phillip Ferderigos prays for the following relief:

(a) That the Plaintiff pay reasonable costs and attorneys' fees to defend this action and for punitive damages; and

(b) That the Plaintiff pay a reasonable fine to the Court.

43. Athan Fokas has employed the legal process for some purpose other than that for which it was intended by the law to effect – the improper use of regularly issued process.

44. Athan Fokas has commenced an action and caused process to issue without justification and is also misusing or misapplying the legal process for an end other than that which it was designed to accomplish.

45. Athan Fokas is using the process for improper reasons with (1) an ulterior purpose and (2) has done willful acts in the use of the process not proper in the regular conduct of the proceeding to attempt to force Phillip Ferderigos to provide a mortgage for Athan Fokas' benefit, to attempt to force Phillip Ferderigos to enter agreements he never agreed to and otherwise had rejected, and to sign incorrect loan documents by filing what Phillip Ferderigos believes to be frivolous lawsuits.

46. As a direct and proximate result of Athan Fokas' actions, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by the court.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint this Defendant prays that: (1) the claims against Defendant be dismissed with prejudice; (2) the Court award Defendant its costs and attorneys' fees; (3) for awards of actual and punitive damages for Defendant's Counterclaims; and (4) for such other and further relief as the court may deem just and proper.

By: _____

Richard A. Farrier, Jr. Esquire
K & L Gates, LLP
134 Meeting Street, Suite 200
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AND
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803.234.5416

ATTORNEYS FOR PHILLIP FERDERIGOS

Dated: March 16, 2017
Charleston, South Carolina

2015-CP-10-3891

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2017, I mailed a copy of the foregoing Answer to Amended Complaint to counsel of Record with sufficient postage, correctly addressed as follows:

Leslie S. Lenhardt, Esquire
Lenhardt Law Firm, LLC
1876 Wallenberg Blvd.
Charleston, SC 29407

M. Dawes Cook, Jr. Esquire
Jeremy E. Bowers, Esquire
Barnwell, Whaley, Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402
843-577-7700

FILED
2017 MAR 20 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

By: _____
J. Drayton Hastie III

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
ATHAN FOKAS, Plaintiff, vs. PHILLIP FERDERIGOS and SPIROS FERDERIGOS, Defendant.	CASE NO.: 2015-CP-10-3891 **AFFIDAVIT OF RANIA NIKATOS**

NOW COMES RANIA NIKATOS, OF FULL AGE, BEING DULY SWORN, DEPOSES AND SAYS AS FOLLOWS:

1. That Phillip and/or Spiros Ferderigos have never told me that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed false insurance claim(s).

2. That I have never heard Phillip and/or Spiros Ferderigos say that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

3. That I never told Irene Fokas that I have ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

4. That I have never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

5. That I am making this statement freely, voluntarily, and under sound mind.

AND FURTHER DEPONENT SAYETH NOT.

11/20/15
Date

Rania Nikatos

EXHIBIT
A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

On this 20th day of November, 2015, before me personally appeared Rania Nikatos, to me known to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

Notary Public for South Carolina
My commission expires: 9/21/2022

JULIE CRAIG
Notary Public, South Carolina
My Commission Expires
September 21, 2022

Q. This discussion you had with your son, do you remember what month this was?
A. I don't remember exactly. Could have been April or May.
Q. Okay. It was in the spring.
THE WITNESS: Uh-huh, in the spring.
A. Yes.
Q. And where did you learn that these allegations might be made?
MR. BOWERS: Object to the form.
A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.
It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

00011

Q. Did your son ask you where you learned about this?
A. Yes. My son asked me; and I told him, "You'll never find out. I want you to be very careful. Don't -- don't get involved with them because --
THE INTERPRETER: The interpreter didn't get the last word. Something about the truth.
A. Because they will find -- they will be right because they're attorneys. They can change things.
Q. What do you mean "change things"?
A. Even though you may say the truth, they may said you said -- you lied.
My -- my daughter was very afraid that they're going to destroy him; and when I heard these things, I got sick. And I told him, "No matter how right you may be, you're not going to find justice."
Q. Did your daughter tell you who she was talking about that might make these --
THE WITNESS: I never ask.
A. I never asked her, but I figured that -- I figured they might be them because she -- they have -- they do work with their cousins. She was

00012

hearing these things, but I never asked her, "Where did you find this stuff? Where did you hear it?"
Q. You referred -- you said "them." "She worked with them," I think you said.
A. Yes.
THE INTERPRETER: I'm telling her to

EXHIBIT B

came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

00048

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan..

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

00049

building the additional rental units at 229 King Street?

A. Yes. What lawsuit is that?

Q. That would be a second lawsuit filed by Athan Fokas against Phillip and Spiros.

THE WITNESS: Yeah. I want -- I want to know who -- for what?

THE INTERPRETER: I didn't get that.

THE WITNESS: I want to know --

A. I want to know what type of lawsuit is it?

Q. Are you aware that the second lawsuit is your son, Athan Fokas, trying to force Phillip and Spiros to build the additional rental units at 229 King Street?

A. That's the problem, and it's been two-and-a-half years. They wanted to do it, and now

was afraid for her brother, that they want to destroy him.

Q. And at the time you heard that from your daughter, she did not say that she heard Phillip, Spiros or Jacob say those things?

THE WITNESS: She didn't say 'cause I no ask.

A. I did not ask her.

MS. THIEM: I'm sorry. Miss Translator, can you say that again? Interpreter.

THE INTERPRETER: The only thing I got was, "I did not ask her." I'm not sure if she said something else.

A. I did not ask her, but I thought that they work together. I guess that's where she heard it.

Q. Okay. And I -- you may have clarified this already, but I wanted to confirm when you mentioned that you were being prepared by Stan Barnett for the Internet, you meant deposition; correct?

A. I don't understand what you mean.

Q. You used the word "Internet." When you met with Stan Barnett, you talked about the Internet. You meant you were discussing the deposition?

THE INTERPRETER: She says, "I said something about the internet?"

Q. You did.

THE WITNESS: I say?

Q. You meant --

THE WITNESS: What I say for internet?

Q. That's what I wanted to clarify. So when you -- when you met with Stan Barnett, the purpose of your meeting was to prepare for this deposition; right?

A. Yes. Yes. It was to talk about how this thing was going to happen today.

Q. All right. And he explained to you what to expect?

A. Yes. That he will ask questions, and there will be other attorneys that will ask questions.

MS. THIEM: All right. That's all the questions I have.

THE WITNESS: Thank you. Thank you.

A. Thank you very much.

MR. BARNETT: And I have no questions.

THE WITNESS: Thank you, too.

MR. BARNETT: Madam Interpreter, before we let you go, the court reporter -- well, since I don't represent her, I don't mind explaining.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros , Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT SPIROS FERDERIGOS**

FILED
2017 APR 26 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff for who his Reply to the Counterclaims of Defendant in his Answer of Defendant Philip Ferderigos to Amended Complaint and Counterclaims, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.
2. Paragraphs 1-39, to the extent they are merely responsive, require no answer, but to the extent they are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.
3. In reply to Paragraph 40, Plaintiff repeats and realleges Paragraphs 1-31 as set forth in Plaintiff's Reply to the Counterclaims of Defendant Phillip Ferderigos captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919, including all affirmative defenses, as set forth fully verbatim herein.
4. Plaintiff denies all allegations as set forth in Paragraph 41. For a further defense, a reasonable attorney would conclude there is a good faith argument in this case as well as genuine issues of material fact. The law in South Carolina has been clear that publication of defamatory

statements may be proven by circumstantial evidence. See Duckworth v. First National Bank of S.C., 254 S.C. 563, 176 S.E.2d 297 (1970). Further, defamatory statements both may be made to a party's attorney and exceed the scope of a settlement discussion. See Woodward v. South Carolina Farm Bureau Ins. Co., 282 S.E.2d 599 (1981) (finding defamatory statements were made to a party's attorney and holding that a party must not exceed the scope of a qualified privilege such as a settlement discussion). Plaintiff craves reference to Exhibits A of the Amended Complaint (Affidavit of Stanley Barnett) and Mr. Barnett's Affidavit alleges that the Defendants made defamatory per se statements to him. Plaintiff craves reference to Exhibit B (transcript except of Irene Fokas), Exhibit C (transcript of Irene Fokas), Exhibit D (transcript of Irene Fokas), Exhibit E (transcript of Irene Fokas), and Exhibit F (transcript of Irene Fokas), all of which are attached to Plaintiff's Amended Complaint. Exhibits B through F of the Amended Complaint show Irene Fokas alleges that her daughter Urania Nikatos told her the same allegations that were made by the Defendants to Mr. Barnett and that Urania said that the Defendants were going to "destroy" the Plaintiff. Exhibit D also alleges that Irene Fokas' brother Fanouris told her that the Plaintiff would "find his devil" if he did not drop the litigation pending against the Defendants.

5. Plaintiff denies all allegations as set forth in Paragraph 42.
6. Plaintiff denies all allegations as set forth in Paragraph 43.
7. Plaintiff denies all allegations as set forth in Paragraph 44.
8. Plaintiff denies all allegations as set forth in Paragraph 45.
9. Plaintiff denies all allegations as set forth in Paragraph 46.

FOR A FIRST AFFIRMATIVE DEFENSE

10. The Counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND AFFIRMATIVE DEFENSE

11. The Plaintiff relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Reply to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR A THIRD AFFIRMATIVE DEFENSE

12. This Court has already entered a denial of summary judgment in this case. See Order of Judge Nicholson filed April 21, 2016, attached hereto as **Exhibit A** to this Reply. The Defendants are relying on the same evidence in their Answer and Counterclaims to the Amended Complaint; and, therefore, the presence of a genuine issue of material fact is the law of the case and sanctions cannot be imposed. See attached Affidavit of Emma Ruth Brittain, attached hereto as **Exhibit B** to this Reply. The claim for sanctions does not allege with specificity the allegations in the Complaint that are frivolous, merely that the pleading as a whole is frivolous. The Defendants should be barred by the issues of claim and issue preclusion based on the law of the case.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

LENHARDT LAW FIRM, LLC.

Leslie S. Lenhardt
S.C. Bar No. 15858
1876 Wallenberg Blvd.
Charleston, SC 29407
(843) 371-5453

Attorneys for Plaintiff

April 25, 2017

FORM 4

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

FILED
2016 APR 21 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3891

Athan Fokas	Philip Ferderigos, et al
PLAINTIFF(S)	DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on Defendants' Motions for Summary Judgment filed on February 5, 2016 and February 12, 2016 and argued before the Court on March 31, 2016. Upon review, Defendants' Motions for Summary Judgment are **denied**, viewing the evidence in favor of the non-moving party and finding that there is a scintilla of evidence at issue.

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

2117
Judge Code

4/21/16
Date

SCRCP Form 4C

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2015-CP-10-3891
Athan Fokas,	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF EMMA RUTH BRITTAIN**
vs.	)	**IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS**
Phillip Ferderigos and Spiros Ferderigos,	)	
	)	
Defendants,	)	
	)	

FILED
2016 MAR 29 PM 1:55
JULIE J. ARMSTRONG
CLERK OF COURT

Now comes Emma Ruth Brittain and states under oath the following in opposition to Defendants' "Motion for Summary Judgment and for Sanctions" against the Plaintiff and Plaintiff's counsel in the above referenced action.

1. I am submitting this Affidavit as an expert witness on behalf of the Plaintiff Athan Fokas and Plaintiff's counsel in opposition to the Defendants' Motion for Summary Judgment and for sanctions. I am a member of the law firm of Thomas & Brittain, P.A., located in Myrtle Beach, South Carolina.

2. My qualifications to provide expert testimony include the following: I am a 1980 graduate of the University of South Carolina School of Law. I have been a member of the South Carolina Bar since November 12, 1980, and I am also a member of the American Bar and Federal Bar Associations. I have been recognized as a Certified Specialist in Employment and Labor Law by the South Carolina Supreme Court since 2005, and I served on the Specialization Advisory Board for Employment and Labor Law from 2010 through 2015. I served on the South Carolina Resolution of Fee Disputes Board from approximately 1995 to 2013, and served as the Chairman of the Executive Council of the South Carolina Fee Disputes Board for the years 2010 through 2013. I served as President of the Horry County Bar Association in 1991.

EXHIBIT B

3. My experience includes defense of employment and litigation matters that have involved defamation claims, and routinely advise business and corporate clients (including for-profit and non-profit entities), and public sector entities regarding liability issues related to and avoidance of defamation claims. I have delivered presentations to human resource and other interest groups, colleges, and public and private sector entities on topics that included the topic of defamation and avoiding defamation and other tort based claims.

4. I have been admitted to practice before the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, the United States Supreme Court and the United States Court of Federal Claims.

5. I have served in the South Carolina Supreme Court's Lawyer Mentoring Program. I have been recognized by the *South Carolina Super Lawyers* publication since 2008. My Peer Review Rating with Martindale Hubbell is Rated AV Preeminent.

DOCUMENTS REVIEWED:

6. I have reviewed the following documents:

a. Athan Fokas' Complaint for Defamation (Case No.: 2015-CP-10-3891);

b. Letter to Stanley Barnett from Dr. Fanourias Ferderigos dated August 21, 2015;

c. Answer of Defendant Spiros Ferderigos and Counterclaims dated October 1, 2015;

d. Answer of Defendant Phillip Federigos and Counterclaims filed October 1, 2015;

e. E-mail correspondence between Stanley Barnett and Richard A. Farrier, Jr., on April 7 through 8, 2015;

f. E-mail correspondence between Stanley Barnett and Jeremy Bowers on October 27, 2015;

g. Letter to M. Dawes Cook, Jr., and Richard A. Farrier, Jr., from Stanley Barnett dated October 29, 2015;

h. E-mail correspondence between Stanley Barnett, Richard A. Farrier, Jr., and M. Dawes Cook on October 30, 2015;

i. Athan Fokas' Amended Complaint dated December 18, 2015;

j. E-mail correspondence between Stanley Barnett and M. Dawes Cook on January 8, 2016;

k. Notice of Motion and Motion for Summary Judgment on behalf of Defendant Phillip Ferderigos dated February 12, 2016 (Case No.: 2015-CP-10-3891);

l. Affidavit of Athan Fokas dated September 10, 2015;

m. Affidavit of Stanley E. Barnett, dated September 10, 2015;

n. Affidavit of Irene Fokas dated October 28, 2015;

o. Affidavit of Rania Nikatos dated November 20, 2015;

p. Affidavit of Gerasimos Nikatos filed December 7, 2015;

q. The Deposition of Irene Fokas taken November 19, 2015;

r. The Affidavit of Nathan M. Crystal in Support of Defendants' Motion for Summary Judgment and for Sanctions dated February 11, 2016;

SUMMARY OF OPINION:

7. In my opinion sanctions are not appropriate in this case because a reasonable attorney, in Mr. Barnett's position, having personally heard Defendants make the accusatory statements about the Plaintiff and subsequently having relied on his client's statement that these were the same statements his mother had heard, would have reason to believe that a claim for defamation exists under South Carolina law. Further, based on my review of the record, it is my

opinion that Plaintiff has acted as a reasonable attorney under the circumstances; that the record reflects a reasonable basis in law and fact for the action; and that Mr. Barnett neither brought this action with the intention of harassing or injuring Defendants nor to delay the legal process.

STATEMENT OF THE FACTS:

Based on the information available to me, I understand the facts to be as follows:

8. This case involves a dispute between Plaintiff, Athan Fokas, and his cousins, Defendant Phillip and Spiros Ferderigos, regarding a challenged verbal agreement whereby the parties would construct three additional floors to the building the parties jointly own in Charleston, South Carolina. (Affidavit of Stanley E. Barnett, ¶ 2).

9. On January, 2015, Plaintiff hired Attorney Stanley Barnett as counsel regarding this contract dispute. (Affidavit of Stanley E. Barnett, ¶2).

10. On February 17, 2015, Mr. Barnett met with Phillip Ferderigos and Spiros Ferderigos to discuss their refusal to move forward with the expansion in violation of their alleged verbal agreement with Plaintiff. (Affidavit of Stanley Barnett, ¶ 4). During this meeting, Spiros and Phillip Ferderigos told Mr. Barnett that if Plaintiff did not drop his claim for breach of contract they would accuse him of arson as well as two other instances of insurance fraud: (1) a workers compensation claim for an injury that allegedly occurred while skiing, and (2) a claim for roof damage from a hurricane in 1998 that allegedly was not severe enough to cause roof damage. (Affidavit of Stanley E. Barnett, ¶¶ 4, 5). According to Mr. Barnett's Affidavit, Spiros Ferderigos, an attorney, also stated that as an Assistant Solicitor, he may take action to investigate and perhaps prosecute Plaintiff. Id.

11. According to Plaintiff's Affidavit, Plaintiff was confronted by his mother, Irene Fokas, on three occasions, regarding the accusatory statements. In March or April of 2015, Ms.

Fokas told Plaintiff that she had heard the same accusatory statements about Plaintiff that Phillip and Spiros Ferderigos had communicated to Mr. Barnett during the February 17, 2015, meeting. (Affidavit of Athan Fokas, ¶¶ 6, 7, 8). Ms. Fokas did not reveal who told her this information. Id.

12. Irene Fokas and relatives in her family's generation returned to Greece and stayed from May through October of 2015. (Affidavit of Athan Fokas, ¶ 5). While they were in Greece, the defamation action at issue was filed. Ms. Fokas testified that during this time, her brother, Fanouris told her that Plaintiff should "stop a lawsuit because he is going to find his devil even if he says the truth, he's going to find his devil . . . that they always find . . . they always come out as a . . . because they are attorneys. They know what they are doing .. . . he said many people are in jail and they are innocent." (Irene Fokas Deposition, pp. 14-15). Defendants are both attorneys.

13. According to his testimony, Mr. Barnett spoke with Rania Nikatos, Ms. Fokas' daughter and Plaintiff's sister, three times in late Summer, 2015. Ms. Nikatos told him that during a doctor's visit with her mother, Ms. Fokas, that summer, Ms. Fokas told Ms. Nikatos that she had heard Plaintiff had hired someone to set fire to the building at 229 King Street and expressed worry to Ms. Nikatos that this allegation would cause harm to her son. (Affidavit of Stanley E. Barnett, ¶ 10).

14. Rania Nikatos later testified that she had "never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street and/or that Athan Fokas has filed any false insurance claims." (Affidavit of Rania Nikatos ¶ 4).

15. On the Saturday that Irene Fokas returned from Greece, she was served with a

deposition subpoena by Spiros Ferderigos' attorney. (Deposition of Irene Fokas, p. 18, lines 13-18). The deposition was scheduled for the following Wednesday, October 28th at 9:00 a.m.

16. On Tuesday, Ms. Fokas asked that the deposition be rescheduled because she was tired from her international travels. (Deposition of Irene Fokas, p. 19, lines 2-4) ("I asked him to please cancel it and reschedule it for a few days later because I was tired, but [Defendants] said no.").

17. On October 28, 2015, Ms. Fokas arrived with Plaintiff at Barnwell Whaley, Defendant's law firm, where, instead of commencing the scheduled deposition, Phillip Ferderigos, Spiros Ferderigos, and their attorneys took Ms. Fokas into a room and asked her to sign an Affidavit in English; Phillip Ferderigos is aware that Ms. Fokas cannot read English. (Deposition of Irene Fokas, p. 21, lines 22-25). Ms. Fokas' daughter, Rania Nikatos, translated the Affidavit for Ms. Fokas. (Deposition of Irene Fokas, p. 21, lines 18-19). Ms. Fokas testified at her deposition that she was told that if she did not sign the statement, she would have to wait at the office three or four more hours. (Deposition of Irene Fokas, p. 24, lines 2-5). Ms. Fokas testified that she did not want to wait three or four hours because she had already been at the office for two or three hours. (Deposition of Irene Fokas, p. 24, lines 5-8).

18. When no resolution to the case was reached, Mr. Barnett noticed Irene Fokas' deposition and took it on November 19th. At the deposition, Ms. Fokas testified that Phillip and Spiros Ferderigos were accusing Plaintiff of insurance fraud involving the skiing injury and the fire. (Deposition of Irene Fokas, p. 8, lines 2-20). When asked who she thought would accuse Plaintiff of these things, Ms. Fokas responded:

A.: His cousin. They were accusing him. They were going to destroy him.
Q.: What are their names?
A.: Spiros and Phillip Ferderigos.

(Deposition of Irene Fokas, p. 8, lines 13-20).

19. Ms. Fokas testified that her daughter, Rania Nikatos, told her that Ms. Nikatos' cousins would make these accusatory statements about Plaintiff. (Deposition of Irene Fokas, p. 12, lines 22-24; p. 13, lines 1-4). Specifically, she testified as follows:

Q.: When your daughter said that these things might be – these allegations might be made against your son and that it would destroy him.
A.: She was very afraid, and I was very afraid.
Q.: Yes. Did your daughter say that it was one person or multiple people that would do these things?
A.: She said her cousins will do it. Her cousins.

(Deposition of Irene Fokas, p. 12, lines 16-25 – p. 13, lines 1-4). Id.

20. Ms. Fokas testified that although Rania Nikatos did not tell her who had communicated the accusatory statements to her, she did not even think to ask Ms. Nikatos who told her this information because she knew that Ms. Nikatos works with Phillip and Spiros Ferderigos. (Deposition of Irene Fokas, p. 89, lines 17-19).

21. Ms. Fokas also testified that she told Plaintiff about the accusatory statements; specifically, she told Plaintiff that "they are accusing you of insurance [fraud]." (Deposition of Irene Fokas, p. 67, lines 16-18). She also testified she heard that "they wanted to destroy him and they are going to find a way to do it," that her cousin "will turn words in such a way so that they can win." (Deposition of Irene Fokas, p. 80, lines 2-3; p. 81, lines 4-17)

22. In response to Irene Fokas' testimony at her deposition, Mr. Barnett moved to amend his Complaint, revising Paragraph 12 to read:

> "Upon information and belief, Defendant communicated the above statements to members of Plaintiff's family for the malicious purpose of intimidating Plaintiff into refraining or demanding that they go forward with the plan to expand the suites and rental business."

(Amended Complaint, ¶ 12).

OPINION:

23. South Carolina law is well established that a lawyer shall not bring or defend a claim which a reasonable attorney in the same circumstances would deem frivolous. *See* S.C. Code Ann. § 15-36-10 (2014) and Rule 11, SCRCP.

24. Significantly, Mr. Barnett had personal knowledge that Defendants had made the statements described in Paragraph 6 above; according to Mr. Barnett's Affidavit, Defendants Spiros and Phillip Ferderigos published these statements to Mr. Barnett during their February 17, 2015 meeting.

25. In my opinion, a reasonable attorney in Mr. Barnett's position, having heard the described accusatory statements directly from the Defendants—the same statements his client informed him that Ms. Fokas, his mother had heard—would have reason to believe that Plaintiff's claim was warranted under the existing South Carolina law regarding defamation.

26. Shortly after the February 17, 2015, meeting, Plaintiff confirmed to Mr. Barnett that he had heard from Ms. Fokas (his mother) that Defendants were publishing the same statements to other family members. Ms. Fokas' deposition substantiates the information that Plaintiff provided to Mr. Barnett: she testified that she heard these accusatory statements from her daughter, and had reason to believe that Defendants—who work with her daughter—were the individuals responsible for making these defamatory statements.

27. Even if Mr. Barnett had not had personal knowledge of the Defendants' publication of these statements, it is my opinion that he would have been justified in relying on his client's statements regarding the matter. South Carolina law is well established that, with one exception not applicable here, an attorney is *not* precluded from relying solely on his client's statement of the facts. *See Ex Parte Gregory*, 378 S.C. 430, 439, 663 S.E.2d 46, 51 (2008) ("The

concurrence indicates that we have imposed an additional duty upon an attorney by creating a blanket rule that an attorney is precluded from obtaining a reasonable belief in the merits of the case based solely on information related to him by a client. However, we have not created such a blanket rule. Our conclusion that an attorney must conduct a reasonable investigation beyond what is related to the attorney by his client is limited to the situation where a client is alleging conversion against his or her formal attorney for misappropriation of client funds or legal malpractice.").

28. Contrary to Defendants' contention, Plaintiff's defamation claim is not frivolous merely because the evidence in the record at this time is circumstantial. South Carolina law is well established that circumstantial evidence may be sufficient to prove a claim for defamation. *See Duckworth v. First Nat. Bank*, 254 S.C. 563, 176 S.E.2d 297 (1970) (whether there was publication was a question for the jury where there was circumstantial evidence that customers were near enough to hear the alleged statement of defendant bank officer asking plaintiff who he was trying to swindle); *Wilhoit v. WCSC, Inc.*, 293 S.E. 34, 358 S.C.2d 397 (Ct. App. 1987) (circumstantial evidence was sufficient to support a jury's finding in favor of plaintiff in a defamation suit where a television station aired five times a news story about the sentencing of a convicted embezzler simultaneously with a picture of the plaintiff, even though there was no testimony of record that a third party had heard the broadcast, or that a third party would have understood the defendant's remarks to be about the plaintiff).

29. In my opinion, a reasonable attorney with Mr. Barnett's personal knowledge—statements made by the Defendants directly to him which were confirmed by his client's statement of the facts—would have reason to believe that his claim was warranted under existing law.

30. Moreover, based on my review of the documents available, it is my professional opinion that Mr. Barnett brought this action for reasons based on merit and facts as presented to him by the Defendants, as well as other witnesses, and did not bring this action with the intention of harassing the Defendants, or with the intention of delaying legal proceedings.

31. Further, in my opinion, Plaintiff's continuation of this action is not meritorious. Although the record reflects conflicting testimony, it is my opinion that a reasonable attorney would proceed with the lawsuit and allow a jury to decide the credibility of the witnesses and the weight of the evidence at hand[1]. *See Jandrt ex rel . Brueggeman v. Jerome Foods, Inc.*, 227 WIS. 2d 531, 597 N.W.2d 744 (WI. 1999) (holding that a claim is not frivolous merely because there was a failure of proof or because the claim was later proved to be erroneous).

32. In my opinion, Mr. Barnett has and is acting as a reasonable attorney under the circumstances and has demonstrated that he is proceeding with the action in good faith by moving to amend Plaintiff's Complaint to more closely reflect the facts Irene Fokas established in her deposition, and that neither a summary judgment motion nor sanctions are appropriate in this matter under existing South Carolina case law.

FURTHER AFFIANT SAYETH NOT.

Emma Ruth Brittain

Emma Ruth Brittain

SWORN to before me this

28 day of March, 2016.

Kimberly Warren Nobles

Notary Public for South Carolina
My Commission Expires: 2/5/2023

[1] Notably, in my opinion, Irene Fokas' Affidavit may have been offered under duress. See Deposition of Irene Fokas (p. 24, lines 2-8).

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891 **CERTIFICATE OF SERVICE**

FILED
2016 MAR 29 PM 1:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of the Affidavit of Emma Ruth Brittain in Opposition to Defendants' Motion for Summary Judgment and for Sanctions were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 29th day of March, 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **CERTIFICATE OF SERVICE**

FILED
2017 APR 26 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT

I, Leslie S. Lenhardt, hereby certify that true and correct copies of Plaintiff's Reply to the Counterclaims of Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 25th day of April, 2017, addressed as follows:

Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

J. Drayton Hastie, III, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 665
Columbia, SC 29201

Leslie S. Lenhardt

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros , Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891 **PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT PHILLIP FERDERIGOS**

FILED
2017 APR 26 AM 11:36
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff for who his Reply to the Counterclaims of Defendant in his Answer of Defendant Philip Ferderigos to Amended Complaint and Counterclaims, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.
2. Paragraphs 1-39, to the extent they are merely responsive, require no answer, but to the extent they are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.
3. In reply to Paragraph 40, Plaintiff repeats and realleges Paragraphs 1-31 as set forth in Plaintiff's Reply to the Counterclaims of Defendant Phillip Ferderigos captioned Athan Fokas vs. Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos, Case No. 2015-CP-10-3919, including all affirmative defenses, as set forth fully verbatim herein.
4. Plaintiff denies all allegations as set forth in Paragraph 41. For a further defense, a reasonable attorney would conclude there is a good faith argument in this case as well as genuine issues of material fact. The law in South Carolina has been clear that publication of defamatory

statements may be proven by circumstantial evidence. See Duckworth v. First National Bank of S.C., 254 S.C. 563, 176 S.E.2d 297 (1970). Further, defamatory statements both may be made to a party's attorney and exceed the scope of a settlement discussion. See Woodward v. South Carolina Farm Bureau Ins. Co., 282 S.E.2d 599 (1981) (finding defamatory statements were made to a party's attorney and holding that a party must not exceed the scope of a qualified privilege such as a settlement discussion). Plaintiff craves reference to Exhibits A of the Amended Complaint (Affidavit of Stanley Barnett) and Mr. Barnett's Affidavit alleges that the Defendants made defamatory per se statements to him. Plaintiff craves reference to Exhibit B (transcript except of Irene Fokas), Exhibit C (transcript of Irene Fokas), Exhibit D (transcript of Irene Fokas), Exhibit E (transcript of Irene Fokas), and Exhibit F (transcript of Irene Fokas), all of which are attached to Plaintiff's Amended Complaint. Exhibits B through F of the Amended Complaint show Irene Fokas alleges that her daughter Urania Nikatos told her the same allegations that were made by the Defendants to Mr. Barnett and that Urania said that the Defendants were going to "destroy" the Plaintiff. Exhibit D also alleges that Irene Fokas' brother Fanouris told her that the Plaintiff would "find his devil" if he did not drop the litigation pending against the Defendants.

5. Plaintiff denies all allegations as set forth in Paragraph 42.

6. Plaintiff denies all allegations as set forth in Paragraph 43.

7. Plaintiff denies all allegations as set forth in Paragraph 44.

8. Plaintiff denies all allegations as set forth in Paragraph 45.

9. Plaintiff denies all allegations as set forth in Paragraph 46.

FOR A FIRST AFFIRMATIVE DEFENSE

10. The Counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND AFFIRMATIVE DEFENSE

11. The Plaintiff relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Reply to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

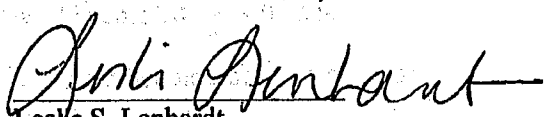
FOR A THIRD AFFIRMATIVE DEFENSE

12. This Court has already entered a denial of summary judgment in this case. See Order of Judge Nicholson filed April 21, 2016, attached hereto as **Exhibit A** to this Reply. The Defendants are relying on the same evidence in their Answer and Counterclaims to the Amended Complaint; and, therefore, the presence of a genuine issue of material fact is the law of the case and sanctions cannot be imposed. See attached Affidavit of Emma Ruth Brittain, attached hereto as **Exhibit B** to this Reply. The claim for sanctions does not allege with specificity the allegations in the Complaint that are frivolous, merely that the pleading as a whole is frivolous. The Defendants should be barred by the issues of claim and issue preclusion based on the law of the case.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

LENHARDT LAW FIRM, LLC.



Leslie S. Lenhardt
S.C. Bar No. 15858
1876 Wallenberg Blvd.
Charleston, SC 29407
(843) 371-5453

Attorneys for Plaintiff

April 25, 2017

FORM 4

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

FILED
2016 APR 21 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3891

Athan Fokas	Philip Ferderigos, et al
PLAINTIFF(S)	DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on Defendants' Motions for Summary Judgment filed on February 5, 2016 and February 12, 2016 and argued before the Court on March 31, 2016. Upon review, Defendants' Motions for Summary Judgment are **denied**, viewing the evidence in favor of the non-moving party and finding that there is a scintilla of evidence at issue.

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge — 2117 Judge Code — 4/21/16 Date

SCRCP Form 4C

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2015-CP-10-3891
Athan Fokas,	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF EMMA RUTH BRITTAIN IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS**
vs.	)	
	)	
Phillip Ferderigos and Spiros Ferderigos,	)	
	)	
Defendants,	)	
	)	

FILED
2016 MAR 29 PM 1:55
JULIE J. ARMSTRONG
CLERK OF COURT

Now comes Emma Ruth Brittain and states under oath the following in opposition to Defendants' "Motion for Summary Judgment and for Sanctions" against the Plaintiff and Plaintiff's counsel in the above referenced action.

1. I am submitting this Affidavit as an expert witness on behalf of the Plaintiff Athan Fokas and Plaintiff's counsel in opposition to the Defendants' Motion for Summary Judgment and for sanctions. I am a member of the law firm of Thomas & Brittain, P.A., located in Myrtle Beach, South Carolina.

2. My qualifications to provide expert testimony include the following: I am a 1980 graduate of the University of South Carolina School of Law. I have been a member of the South Carolina Bar since November 12, 1980, and I am also a member of the American Bar and Federal Bar Associations. I have been recognized as a Certified Specialist in Employment and Labor Law by the South Carolina Supreme Court since 2005, and I served on the Specialization Advisory Board for Employment and Labor Law from 2010 through 2015. I served on the South Carolina Resolution of Fee Disputes Board from approximately 1995 to 2013, and served as the Chairman of the Executive Council of the South Carolina Fee Disputes Board for the years 2010 through 2013. I served as President of the Horry County Bar Association in 1991.

EXHIBIT B

3. My experience includes defense of employment and litigation matters that have involved defamation claims, and routinely advise business and corporate clients (including for-profit and non-profit entities), and public sector entities regarding liability issues related to and avoidance of defamation claims. I have delivered presentations to human resource and other interest groups, colleges, and public and private sector entities on topics that included the topic of defamation and avoiding defamation and other tort based claims.

4. I have been admitted to practice before the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, the United States Supreme Court and the United States Court of Federal Claims.

5. I have served in the South Carolina Supreme Court's Lawyer Mentoring Program. I have been recognized by the *South Carolina Super Lawyers* publication since 2008. My Peer Review Rating with Martindale Hubbell is Rated AV Preeminent.

DOCUMENTS REVIEWED:

6. I have reviewed the following documents:

a. Athan Fokas' Complaint for Defamation (Case No.: 2015-CP-10-3891);

b. Letter to Stanley Barnett from Dr. Fanourias Ferderigos dated August 21, 2015;

c. Answer of Defendant Spiros Ferderigos and Counterclaims dated October 1, 2015;

d. Answer of Defendant Phillip Federigos and Counterclaims filed October 1, 2015;

e. E-mail correspondence between Stanley Barnett and Richard A. Farrier, Jr., on April 7 through 8, 2015;

f. E-mail correspondence between Stanley Barnett and Jeremy Bowers on October 27, 2015;

g. Letter to M. Dawes Cook, Jr., and Richard A. Farrier, Jr., from Stanley Barnett dated October 29, 2015;

h. E-mail correspondence between Stanley Barnett, Richard A. Farrier, Jr., and M. Dawes Cook on October 30, 2015;

i. Athan Fokas' Amended Complaint dated December 18, 2015;

j. E-mail correspondence between Stanley Barnett and M. Dawes Cook on January 8, 2016;

k. Notice of Motion and Motion for Summary Judgment on behalf of Defendant Phillip Ferderigos dated February 12, 2016 (Case No:: 2015-CP-10-3891);

l. Affidavit of Athan Fokas dated September 10, 2015;

m. Affidavit of Stanley E. Barnett, dated September 10, 2015;

n. Affidavit of Irene Fokas dated October 28, 2015;

o. Affidavit of Rania Nikatos dated November 20, 2015;

p. Affidavit of Gerasimos Nikatos filed December 7, 2015;

q. The Deposition of Irene Fokas taken November 19, 2015;

r. The Affidavit of Nathan M. Crystal in Support of Defendants' Motion for Summary Judgment and for Sanctions dated February 11, 2016;

SUMMARY OF OPINION:

7. In my opinion sanctions are not appropriate in this case because a reasonable attorney, in Mr. Barnett's position, having personally heard Defendants make the accusatory statements about the Plaintiff and subsequently having relied on his client's statement that these were the same statements his mother had heard, would have reason to believe that a claim for defamation exists under South Carolina law. Further, based on my review of the record, it is my

opinion that Plaintiff has acted as a reasonable attorney under the circumstances; that the record reflects a reasonable basis in law and fact for the action; and that Mr. Barnett neither brought this action with the intention of harassing or injuring Defendants nor to delay the legal process.

STATEMENT OF THE FACTS:

Based on the information available to me, I understand the facts to be as follows:

8. This case involves a dispute between Plaintiff, Athan Fokas, and his cousins, Defendant Phillip and Spiros Ferderigos, regarding a challenged verbal agreement whereby the parties would construct three additional floors to the building the parties jointly own in Charleston, South Carolina. (Affidavit of Stanley E. Barnett, ¶ 2).

9. On January, 2015, Plaintiff hired Attorney Stanley Barnett as counsel regarding this contract dispute. (Affidavit of Stanley E. Barnett, ¶ 2).

10. On February 17, 2015, Mr. Barnett met with Phillip Ferderigos and Spiros Ferderigos to discuss their refusal to move forward with the expansion in violation of their alleged verbal agreement with Plaintiff. (Affidavit of Stanley Barnett, ¶ 4). During this meeting, Spiros and Phillip Ferderigos told Mr. Barnett that if Plaintiff did not drop his claim for breach of contract they would accuse him of arson as well as two other instances of insurance fraud: (1) a workers compensation claim for an injury that allegedly occurred while skiing, and (2) a claim for roof damage from a hurricane in 1998 that allegedly was not severe enough to cause roof damage. (Affidavit of Stanley E. Barnett, ¶¶ 4, 5). According to Mr. Barnett's Affidavit, Spiros Ferderigos, an attorney, also stated that as an Assistant Solicitor, he may take action to investigate and perhaps prosecute Plaintiff. Id.

11. According to Plaintiff's Affidavit, Plaintiff was confronted by his mother, Irene Fokas, on three occasions, regarding the accusatory statements. In March or April of 2015, Ms.

Fokas told Plaintiff that she had heard the same accusatory statements about Plaintiff that Phillip and Spiros Ferderigos had communicated to Mr. Barnett during the February 17, 2015, meeting. (Affidavit of Athan Fokas, ¶¶ 6, 7, 8). Ms. Fokas did not reveal who told her this information. Id.

12. Irene Fokas and relatives in her family's generation returned to Greece and stayed from May through October of 2015. (Affidavit of Athan Fokas, ¶ 5). While they were in Greece, the defamation action at issue was filed. Ms. Fokas testified that during this time, her brother, Fanouris told her that Plaintiff should "stop a lawsuit because he is going to find his devil even if he says the truth, he's going to find his devil . . . that they always find . . . they always come out as a . . . because they are attorneys. They know what they are doing .. . . he said many people are in jail and they are innocent." (Irene Fokas Deposition, pp. 14-15). Defendants are both attorneys.

13. According to his testimony, Mr. Barnett spoke with Rania Nikatos, Ms. Fokas' daughter and Plaintiff's sister, three times in late Summer, 2015. Ms. Nikatos told him that during a doctor's visit with her mother, Ms. Fokas, that summer, Ms. Fokas told Ms. Nikatos that she had heard Plaintiff had hired someone to set fire to the building at 229 King Street and expressed worry to Ms. Nikatos that this allegation would cause harm to her son. (Affidavit of Stanley E. Barnett, ¶ 10).

14. Rania Nikatos later testified that she had "never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street and/or that Athan Fokas has filed any false insurance claims." (Affidavit of Rania Nikatos ¶ 4).

15. On the Saturday that Irene Fokas returned from Greece, she was served with a

deposition subpoena by Spiros Ferderigos' attorney. (Deposition of Irene Fokas, p. 18, lines 13-18). The deposition was scheduled for the following Wednesday, October 28th at 9:00 a.m.

16. On Tuesday, Ms. Fokas asked that the deposition be rescheduled because she was tired from her international travels. (Deposition of Irene Fokas, p. 19, lines 2-4) ("I asked him to please cancel it and reschedule it for a few days later because I was tired, but [Defendants] said no.").

17. On October 28, 2015, Ms. Fokas arrived with Plaintiff at Barnwell Whaley, Defendant's law firm, where, instead of commencing the scheduled deposition, Phillip Ferderigos, Spiros Ferderigos, and their attorneys took Ms. Fokas into a room and asked her to sign an Affidavit in English; Phillip Ferderigos is aware that Ms. Fokas cannot read English. (Deposition of Irene Fokas, p. 21, lines 22-25). Ms. Fokas' daughter, Rania Nikatos, translated the Affidavit for Ms. Fokas. (Deposition of Irene Fokas, p. 21, lines 18-19). Ms. Fokas testified at her deposition that she was told that if she did not sign the statement, she would have to wait at the office three or four more hours. (Deposition of Irene Fokas, p. 24, lines 2-5). Ms. Fokas testified that she did not want to wait three or four hours because she had already been at the office for two or three hours. (Deposition of Irene Fokas, p. 24, lines 5-8).

18. When no resolution to the case was reached, Mr. Barnett noticed Irene Fokas' deposition and took it on November 19th. At the deposition, Ms. Fokas testified that Phillip and Spiros Ferderigos were accusing Plaintiff of insurance fraud involving the skiing injury and the fire. (Deposition of Irene Fokas, p. 8, lines 2-20). When asked who she thought would accuse Plaintiff of these things, Ms. Fokas responded:

A.: His cousin. They were accusing him. They were going to destroy him.
Q.: What are their names?
A.: Spiros and Phillip Ferderigos.

(Deposition of Irene Fokas, p. 8, lines 13-20).

19. Ms. Fokas testified that her daughter, Rania Nikatos, told her that Ms. Nikatos' cousins would make these accusatory statements about Plaintiff. (Deposition of Irene Fokas, p. 12, lines 22-24; p. 13, lines 1-4). Specifically, she testified as follows:

> Q.: When your daughter said that these things might be – these allegations might be made against your son and that it would destroy him –
> A.: She was very afraid, and I was very afraid.
> Q.: Yes. Did your daughter say that it was one person or multiple people that would do these things?
> A.: She said her cousins will do it. Her cousins.

(Deposition of Irene Fokas, p. 12, lines 16-25 – p. 13, lines 1-4). Id.

20. Ms. Fokas testified that although Rania Nikatos did not tell her who had communicated the accusatory statements to her, she did not even think to ask Ms. Nikatos who told her this information because she knew that Ms. Nikatos works with Phillip and Spiros Ferderigos. (Deposition of Irene Fokas, p. 89, lines 17-19).

21. Ms. Fokas also testified that she told Plaintiff about the accusatory statements; specifically, she told Plaintiff that "they are accusing you of insurance [fraud]." (Deposition of Irene Fokas, p. 67, lines 16-18). She also testified she heard that "they wanted to destroy him and they are going to find a way to do it," that her cousin "will turn words in such a way so that they can win." (Deposition of Irene Fokas, p. 80, lines 2-3; p. 81, lines 4-17)

22. In response to Irene Fokas' testimony at her deposition, Mr. Barnett moved to amend his Complaint, revising Paragraph 12 to read:

> "Upon information and belief, Defendant communicated the above statements to members of Plaintiff's family for the malicious purpose of intimidating Plaintiff into refraining or demanding that they go forward with the plan to expand the suites and rental business."

(Amended Complaint, ¶ 12).

OPINION:

23. South Carolina law is well established that a lawyer shall not bring or defend a claim which a reasonable attorney in the same circumstances would deem frivolous. *See* S.C. Code Ann. § 15-36-10 (2014) and Rule 11, SCRCP.

24. Significantly, Mr. Barnett had personal knowledge that Defendants had made the statements described in Paragraph 6 above; according to Mr. Barnett's Affidavit, Defendants Spiros and Phillip Ferderigos published these statements to Mr. Barnett during their February 17, 2015 meeting.

25. In my opinion, a reasonable attorney in Mr. Barnett's position, having heard the described accusatory statements directly from the Defendants—the same statements his client informed him that Ms. Fokas, his mother had heard—would have reason to believe that Plaintiff's claim was warranted under the existing South Carolina law regarding defamation.

26. Shortly after the February 17, 2015, meeting, Plaintiff confirmed to Mr. Barnett that he had heard from Ms. Fokas (his mother) that Defendants were publishing the same statements to other family members. Ms. Fokas' deposition substantiates the information that Plaintiff provided to Mr. Barnett: she testified that she heard these accusatory statements from her daughter, and had reason to believe that Defendants—who work with her daughter—were the individuals responsible for making these defamatory statements.

27. Even if Mr. Barnett had not had personal knowledge of the Defendants' publication of these statements, it is my opinion that he would have been justified in relying on his client's statements regarding the matter. South Carolina law is well established that, with one exception not applicable here, an attorney is *not* precluded from relying solely on his client's statement of the facts. *See Ex Parte Gregory*, 378 S.C. 430, 439, 663 S.E.2d 46, 51 (2008) ("The

concurrence indicates that we have imposed an additional duty upon an attorney by creating a blanket rule that an attorney is precluded from obtaining a reasonable belief in the merits of the case based solely on information related to him by a client. However, we have not created such a blanket rule. Our conclusion that an attorney must conduct a reasonable investigation beyond what is related to the attorney by his client is limited to the situation where a client is alleging conversion against his or her formal attorney for misappropriation of client funds or legal malpractice.").

28. Contrary to Defendants' contention, Plaintiff's defamation claim is not frivolous merely because the evidence in the record at this time is circumstantial. South Carolina law is well established that circumstantial evidence may be sufficient to prove a claim for defamation. *See Duckworth v. First Nat. Bank*, 254 S.C. 563, 176 S.E.2d 297 (1970) (whether there was publication was a question for the jury where there was circumstantial evidence that customers were near enough to hear the alleged statement of defendant bank officer asking plaintiff who he was trying to swindle); *Wilholt v. WCSC, Inc.*, 293 S.E. 34, 358 S.C.2d 397 (Ct. App. 1987) (circumstantial evidence was sufficient to support a jury's finding in favor of plaintiff in a defamation suit where a television station aired five times a news story about the sentencing of a convicted embezzler simultaneously with a picture of the plaintiff, even though there was no testimony of record that a third party had heard the broadcast, or that a third party would have understood the defendant's remarks to be about the plaintiff).

29. In my opinion, a reasonable attorney with Mr. Barnett's personal knowledge—statements made by the Defendants directly to him which were confirmed by his client's statement of the facts—would have reason to believe that his claim was warranted under existing law.

30. Moreover, based on my review of the documents available, it is my professional opinion that Mr. Barnett brought this action for reasons based on merit and facts as presented to him by the Defendants, as well as other witnesses, and did not bring this action with the intention of harassing the Defendants, or with the intention of delaying legal proceedings.

31. Further, in my opinion, Plaintiff's continuation of this action is not meritorious. Although the record reflects conflicting testimony, it is my opinion that a reasonable attorney would proceed with the lawsuit and allow a jury to decide the credibility of the witnesses and the weight of the evidence at hand[1]. *See Jandrt ex rel . Brueggeman v. Jerome Foods, Inc.*, 227 WIS. 2d 531, 597 N.W.2d 744 (WI. 1999) (holding that a claim is not frivolous merely because there was a failure of proof or because the claim was later proved to be erroneous).

32. In my opinion, Mr. Barnett has and is acting as a reasonable attorney under the circumstances and has demonstrated that he is proceeding with the action in good faith by moving to amend Plaintiff's Complaint to more closely reflect the facts Irene Fokas established in her deposition, and that neither a summary judgment motion nor sanctions are appropriate in this matter under existing South Carolina case law.

FURTHER AFFIANT SAYETH NOT.

Emma Ruth Brittain

Emma Ruth Brittain

SWORN to before me this

28 day of March, 2016.

Kimberly Warren Nobles

Notary Public for South Carolina

My Commission Expires: 2/15/2023

[1] Notably, in my opinion, Irene Fokas' Affidavit may have been offered under duress. See Deposition of Irene Fokas (p. 24, lines 2-8).

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891 **CERTIFICATE OF SERVICE**

FILED
2016 MAR 29 PM 1:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of the Affidavit of Emma Ruth Brittain in Opposition to Defendants' Motion for Summary Judgment and for Sanctions were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 29th day of March, 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **CERTIFICATE OF SERVICE**

FILED
2017 APR 26 AM 11:36
JULIE J. ARMSTRONG
CLERK OF COURT

I, Leslie S. Lenhardt, hereby certify that true and correct copies of Plaintiff's Replies to the Counterclaims of Phillip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 26th day of April, 2017, addressed as follows:

Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
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Barnwell Whaley Patterson & Helms
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Leslie S. Lenhardt

I N D E X

HEARING Page 3

EXHIBITS
NO. DESCRIPTION MARKED

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CERTIFICATION OF TRANSCRIPT Page 34

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)
	)
Athan Fokas,	) 2015-CP-10-03891
	)
PLAINTIFF,	) TRANSCRIPT OF RECORD
	)
VS:	)
	)
Phillip Ferderigos and Spiros Ferderigos,	)
	)
DEFENDANTS.	)

December 11, 2017

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson, Jr.

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

Leslie S. Lenhardt, Esquire
For the Plaintiff

M. Dawes Cooke, Jr., Esquire
and Stephanie Anthony, Esquire
For the Defendant Spiros Ferderigos

Laura W. Robinson, Esquire
and Jennifer Hess Thiem, Esquire
For the Defendant Phillip Ferderigos

Orig. Certified Transcript Provided For: Jeremy E. Bowers

Phyllis Norton, CVR-Master, *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

THE COURT: All right. If we could for the record state who is here representing who, please.

MS. LENHARDT: Your Honor, Leslie Lenhardt for the plaintiff Athan Fokas.

MR. COOKE: Dawes Cooke for the defendant Spiros Ferderigos.

MS. ROBINSON: Laura Robinson for defendant Phillip Ferderigos.

THE COURT: For which one; Phillip?

MS. ROBINSON: Phillip.

THE COURT: Okay.

MS. THIEM: Your Honor, Jennifer Thiem also for Phillip Ferderigos.

MS. ANTHONY: Stephanie Anthony for Spiros Ferderigos.

THE COURT: Okay. We have got four motions. Are they all still outstanding?

MR. COOKE: Yes, Your Honor.

THE COURT: Whose motion is it?

MR. COOKE: Well, ours I think is the first one just in time. It is a motion for summary judgment by Spiros Ferderigos.

THE COURT: Okay. I will be glad to hear you.

MR. COOKE: Thank you, Your Honor. This is not the first time we have been here on this case.

THE COURT: Which case is this?

MR. COOKE: This is the slander case.

THE COURT: Okay.

MR. COOKE: And it is the slander case brought by Athan against Spiros and Phillip Ferderigos. And the allegations of the complaint essentially are that they defamed him by telling people that he burned down the Old Towne Restaurant and that he committed insurance fraud by claiming that he was disabled from a work-related accident when it was really something else, and also made a fraudulent claim regarding a roof leak situation.

So you may -- if it sounds familiar it is because we actually moved for summary judgment last year on the original complaint. Your Honor denied it then saying that it was very confusing and that there could be a scintilla of evidence in there somewhere.

The plaintiffs then -- you said we should flush it out through discovery to find out exactly what their allegation was and when did they say what to whom.

In June of this year they moved to amend the complaint and we objected to it on the basis that they were seeking to make it less definite rather than more definite.

And this is the one -- do you remember originally the claim was that these statements were made to Athan

Ferderigos' mother.

THE COURT: Mother, right?

MR. COOKE: Who would be their aunt.

THE COURT: And the daughter -- her daughter had some affidavit.

MR. COOKE: That is exactly right.

THE COURT: Okay.

MR. COOKE: All right. That is pretty good. I was going to start with the way we have always started which is to hand up the family tree. Do you want to see that?

THE COURT: Yeah, I might as well.

(WHEREUPON, document provided to the court.)

THE COURT: Thank you, sir.

MR. COOKE: Thank you.

THE COURT: What the companion case this is or ---

MR. COOKE: Summary judgment was granted on that. And you are a little ahead of me. But you are exactly right. We had a defamation counterclaim in the underlying case.

THE COURT: Right.

MR. COOKE: And you granted summary judgment on ---

THE COURT: On both of them if I remember correctly.

MR. COOKE: The main claim and the counterclaim. But that -- that's going to come with regard to their motion for summary judgment about our defamation

counterclaim in this case.

THE COURT: Okay.

MR. COOKE: But I am getting a little ahead of myself.

THE COURT: Be they all -- the defamation is all one in the same, right?

MR. COOKE: Yes.

THE COURT: By the same parties.

MR. COOKE: Right.

THE COURT: Okay.

MR. COOKE: Right. So -- all right. So ---

THE COURT: So I am doing -- if I did that in this other case what precludes me from doing it in this case?

MR. COOKE: Nothing. And that is -- but that is their motion ---

THE COURT: I understand.

MR. COOKE: And that is what we were going to tell you then that even though we are taking the same position you ruled against us on that case and chances are you would probably rule against us on this one.

But this -- but you have not yet ruled on the plaintiff's slander claims against our folks ---

THE COURT: Okay.

MR. COOKE: --- since they amended the complaint. And the amended complaint -- do you remember you said

that they are not allowed to say included but not limited to; they had to be very specific about who ---

THE COURT: Right.

MR. COOKE: --- the statements were supposedly made to. So they have narrowed it down ---

THE COURT: Who, when, and where.

MR. COOKE: Right. And so they have now narrowed it down to the statement was made to Stan Barnett who was Mr. Fokas' attorney. And it was made during a negotiation settlement conference prior to the lawsuit being filed.

And also they said and upon information and belief it was made to Rania -- or Urania is her full name, which is Athan Focas' sister, who was the daughter of the Irene Fokas.

THE COURT: Okay.

MR. COOKE: So I am going to address that one first. We have addressed that one in a lot of detail previously. And essentially there is no evidence whatsoever Ms. Fokas, the one who supposedly told Athan that she had heard that these guys were making that kind of statement or were going to make that kind of statement about him if he filed a lawsuit, she said that she heard it from her daughter, Athan's sister.

She didn't -- she assumed --- she testified in her

deposition that she assumed but did not know that the sister -- or that her daughter had heard it from these defendants.

The daughter has given an affidavit and been deposed, and she said she didn't get it from them. In fact, she thought she got it from her mother. But she did not get it from him. She never heard them say it, never heard anybody say they said it.

What she did hear was from her husband. And we have got an affidavit from him too that we previously submitted, Gerassimos Nikatos, who said that a contractor by the name of Kahages had told him that Athan had tried to hire him to burn the restaurant down.

And we have got -- and we submitted previously an affidavit from the husband Gerassimos where he said that he had gotten that information from this contractor and had told his wife about it, or Rania. So we now have at least an idea of where it could have come from if it didn't come from these guys.

And we have absolutely in over two years of litigation not a single person has ever testified other than Mr. Barnett that they ever heard Spiros or Phillip ever say those things about Athan.

I mentioned to you at the last hearing, by the way, that Athan did tell the fire marshal that he probably did

start the fire but on -- by accident. He was drilling a hole in the roof. He left to go get some supplies. While he was gone he got a call from somebody saying your restaurant is on fire.

And in fact it looks like it did start in the area where he was working. And he told the fire marshal that he was sawing up there and it was possible that he hit a nail or overheated the wood or something to cause it to catch on fire.

So the word has been out there that he may have started the fire at least by accident. But the alleged defamatory statement was Spiros and/or Phillip telling people specifically, Rania or Mr. Barnett, that he had intentionally set the fire and that he had otherwise committed insurance fraud.

And they have denied it. They have been deposed. They deny ever saying it to anybody other than bringing it up in their conversation with Mr. Barnett as something that they were concerned about.

They never said it to Rania. They never said it to Rania's mother. They never said it to their own mother, their own family, or anybody. And not a single person in two-and-a-half years of litigation has testified otherwise.

Now there is a motion to continue this on the idea

that they would like to get yet another affidavit from Athan's mother. And she was unavailable to them. And we have proposed it. And Your Honor denied it and said you would leave the record open to get that.

THE COURT: I said I would leave the record open for them to get the affidavit.

MR. COOKE: Right.

THE COURT: If I remember correctly. Is that correct?

MR. COOKE: Now I would submit if they do get an affidavit it meets all the criteria of a sham affidavit. It is filed after a motion for summary judgment based on prior testimony and a prior affidavit.

So if somehow she says something that is different than what she said previously in her previous affidavit or in her testimony we would absolutely ---

THE COURT: I would allow you to bring that forward ---

MR. COOKE: Right.

THE COURT: --- if it is different from what is in her affidavit.

MR. COOKE: Right. Now the only thing that is new now is that they are alleging that the defamation was made to Mr. Fokas' attorney, Stan Barnett, during a settlement conference that he had requested.

And, Your Honor, that would be absolutely privileged. First of all under rules of evidence it is not even admissible because it is part of a settlement negotiation.

But even if it somehow met an exception to that there are at least two cases in South Carolina that say that it would be absolutely frivolous.

The first is the case of Pond Place Partners versus Poole in which the court held that a lis pendens filed in connection therein in anticipation of a lawsuit was absolutely frivolous.

And the court goes through -- would you like me to hand up a copy of the case?

THE COURT: No, that is okay.

MR. COOKE: Okay. The court goes through an analysis and says that when a communication is absolutely privileged no action lies for its publication no matter what the circumstances under which it is published; i.e., an action will not lie even if the report is made with malice. The absolute privilege covers anything that may be said in relation to the matter at issue whether it be in the pleadings, in affidavits, or in open court. And they are citing Prosser for that.

But then they go in and they analyze some other case law, and they come to this conclusion. They said -- they

cite this case from another jurisdiction: The absolute privilege attaching to judicial proceedings and reses communications between counsel, statements made by counsel to a prospective witness, arguments or statements by counsel in course of proceeding, any statements made by a witness in the course of proceedings, and even statements in the course of negotiation of a settlement.

And then they cite a case called Rogers versus Wise which is a 1940 South Carolina case. It says in Rogers versus Wise the South Carolina Supreme Court found that an attorney's allegedly libelous and slanderous statements which were first dictated to a stenographer and then included in a letter to another attorney were absolutely privileged.

And they quote -- and I have got the Rogers case here too. The quote says: If attorneys cannot freely and frankly discuss their clients' business between themselves by word of mouth when they are face to face or by letter when separated and thereby evaluate and determine the clients' rights then it seems to me that the rights of all clients before the courts are seriously endangered and the administration of justice is handicapped. I therefore hold that as a matter of law such a letter under such circumstances is privileged and that the writing and mailing of it is not a publication.

That was -- that was the trial judge, but that was affirmed ---

THE COURT: Let me ask you one question. When was the statement -- I know it -- I know it was during some type of negotiation settlement conference or -- when was it made to Mr. Barnett? Refresh my memory. Was it informal with the lawyers, was it during mediation, or when was it made -- allegedly made?

MR. COOKE: It was in a meeting between Mr. Barnett and Mr. -- the two Mr. Ferderigos.

THE COURT: Okay. All right.

MR. COOKE: And the meeting was called for the purpose of trying to resolve this alleged breach of contract that Mr. Fokas was ---

THE COURT: All right. My second question to you, on the cases that you have read would that particular proceeding include -- be included, those settlement negotiations? Because it sounds like reading the cases that was during a trial or deposition or some formal process within the court system or the operation of the court system.

MR. COOKE: Right; well, there is a case ---

THE COURT: So I mean would that be included in those cases factually?

MR. COOKE: Yes, it would. And I think the case

that is probably most closely on point is I believe it is Crowell versus Herring.

Yes. And in that case the court said -- it is at 301 South Carolina 424. In that one it said that defamatory statements made even in the course of the investigation preceding litigation would be frivolous. It says ---

THE COURT: Okay. All right. Go ahead. But that answers the question. Thank you.

MR. COOKE: And then in the Rogers case they made an additional finding that I think was dispositive, and that is that a statement made to another person's lawyer is not even a publication. It was just like making the statement to the lawyer.

It says we are satisfied that the sounder and better supported rules are, first, that communications made to a libeled party's attorneys corresponding for him regarding the specific matter in connection with which the libelous matter is used are not thereby given publication; and, second, that the incidental dictation of such a communication to employ a stenographer is not a publication. That is not involved in this case, but that was an allegation in the Rogers case.

So that is our position is that, as we argued before, they have now had to narrow their complaint down

to specifically who, what, when, and where; and the two people that allegedly the statements were made to were Rania -- and she has absolutely denied it. And they have denied it. And there is no evidence that she ever told anybody even that they had made the statements to her. And the other is with Mr. Barnett.

And there is disagreement about what they said at that meeting, but there is agreement that they discussed that issue and that this was going to come out in the event that there was litigation.

And there is litigation, and it did -- and it has come out. And so it is absolutely privileged as a negotiation.

THE COURT: Okay, Mr. Cooke. Thank you so very much.

MR. COOKE: Thank you.

THE COURT: Yes, ma'am.

MS. LENHARDT: Your Honor, may it please the court. First of all, I wanted to address Crowell versus Herring. My reading of that case, Your Honor, is that it was involving a Veterans of Foreign Affairs court-martial and that that was determined to be a judicial proceeding and that anything happened during the course of that proceeding was privileged.

So I don't -- I don't know of a case where ---

THE COURT: What about the investigation in the case -- Mr. Cooke said it was during the course of an investigation on a case that was privileged.

MS. LENHARDT: But I think that was after the court-martial had been instituted. I think it -- I would ---

THE COURT: Do you mean the investigation was after the court-martial trial?

MS. LENHARDT: No. No, no, no. Not after the trial, but after the litigation was commenced.

THE COURT: Well, if -- so your position is is has -- the litigation has to be -- has to be commenced before the privilege attaches?

MS. LENHARDT: That is what -- that would be my position.

THE COURT: Okay.

MS. LENHARDT: Your Honor, but I -- and I haven't seen a brief from the other side on this issue. And, you know, I certainly would love the opportunity to be able to address the arguments that they are making today. However -- anyway, so I believe that it is -- that the meeting that occurred in February of 2015 was not part of the judicial proceeding ---

THE COURT: Well, let me ask you this. The theory behind all of these privileges, whether it is -- whether

you are correct about the litigation or whether you are not correct about the litigation, is for the attorneys to sit down and discuss things and say what they need to say about each other's clients to try to get things resolved and not have litigation as a result of what was said.

Why wouldn't that apply to a settlement negotiation prior to litigation, that theory? Because that is the theory behind all of the cases.

MS. LENHARDT: Well, that meeting -- that meeting was a discussion to discuss whether or not there was a contract, the party -- the defendant's counsel was not present. It was just Mr. Barnett and the parties.

They did not have any compromised discussions in the meeting. All they talked about was why there wasn't a contract and then made these threats against my client to Mr. Barnett.

And the law in South Carolina is is if you exceed the scope of the purpose of a meeting even if it is a settlement discussion then defamation will not be protected.

But what we are saying -- and Mr. Barnett has filed two affidavits in support of this position. He filed one back in 2015; and he filed one just recently, that their statements that Mr. Fokas committed insurance fraud and arson had nothing to do with the discussions about

whether or not there was a contract.

So when you exceed the scope of such a meeting then you cannot claim any privilege for defamatory statements.

THE COURT: Well, is your position litigation has to be ongoing before you have the meeting; or are you conceding he can have the meeting without litigation, prior litigation -- prior to litigation as long as you have a specific scope of the meeting?

MS. LENHARDT: I don't think ---

THE COURT: I mean which is it?

MS. LENHARDT: Well, I think it ---

THE COURT: You can't have both.

MS. LENHARDT: Your Honor, if it is -- if it is -- if you do conclude that it is settlement discussions then those statements did exceed the scope of the discussion.

THE COURT: Okay.

MS. LENHARDT: I would say that a meeting that occurred months before litigation was filed, when their counsel wasn't present and there wasn't any real discussion, ---

THE COURT: As you well know, lawyers negotiate -- I won't say all lawyers, but the vast majority of lawyers negotiate before suit is filed.

With someone -- whoever is on the opposing party it is a routine process, is it not?

MS. LENHARDT: They do.

THE COURT: So my question to you is why shouldn't that be protected?

MS. LENHARDT: The meeting or the statement?

THE COURT: The statement, period. Whatever was said.

MS. LENHARDT: Well, under Rule 408 that's -- they are alleging that Rule 408 kicks it out and also that there is judicial privilege.

Under Rule 408 you can offer evidence of conduct during that meeting for another purpose other than to prove liability of a claim or -- or invalidity of a claim.

And we are not offering evidence to what was said in that meeting for the purpose of proving that there was a contract. It is a separate claim for defamation. So I don't think Rule 408 covers -- covers this.

And then I think the law in South Carolina you must look at the scope, and if it is not in any way related to the subject matter for which you are there for to discuss then defamation will not lie. I mean -- or it will.

In Woodward -- the Woodward case, South Carolina, Woodward versus South Carolina Farm Bureau Insurance Company, that was a settlement trying to settle a claim and the party talked to the plaintiff's attorney and

defamed him and they said when you are exceeding the scope of what they were trying to resolve then you are liable for defamation.

So we feel like we have a good-faith basis to allege that Mr. Barnett was the recipient of these defamatory statements.

THE COURT: Okay. Anything else?

MS. LENHARDT: Well, and just with regard to the circumstantial evidence I think that Ms. Fokas maintains -- and I have set forth in my memo all of the sites in the transcript of her deposition where she maintained that she heard from Rania that her cousins were planning to destroy Athan with these allegations. And she -- now I understand Rania denies that. But that is a question of fact whether or not Irene was telling the truth or Rania was telling the truth. But she heard these things. And they are the same statements that were said to Mr. Barnett.

THE COURT: When do you think you will be able to get the affidavit? I mean I am not trying to pressure you for time; but for my planning purposes a week, ten days, a month? When will she -- I think you said she is in Greece or ---

MS. LENHARDT: She was scheduled to come back from Greece tomorrow.

THE COURT: So you can get it by January the 15th or ---

MR. FOKAS: There was a death and a casket. And the casket couldn't get it over to Greece. My father's brother passed away.

THE COURT: I understand. I am just saying when ---

MR. FOKAS: So we are waiting to ---

THE COURT: --- tell me when.

MS. LENHARDT: January 15th.

THE COURT: Can you get it done by January 15th?

MS. LENHARDT: Yes, Your Honor.

THE COURT: All right. Now will that give y'all -- February 1st give you sufficient time to respond?

MR. COOKE: Yes, Your Honor.

THE COURT: I am going to put that in a temporary order you have got until January 15th to produce -- I am going to leave the record open for the affidavit. And then they have until February the 1st to respond to that affidavit, okay.

MS. LENHARDT: Yes, sir.

THE COURT: And I will leave the record open for them to respond. I just want to make sure that is clear so we can set some guidelines so y'all will have a target date, okay.

MS. LENHARDT: Yes, sir.

THE COURT: If something happens and you have got to extend it, that is fine. I would be happy to do that for you, okay.

MS. LENHARDT: Thank you.

THE COURT: I am not going to extend it to June, okay. But some reasonable period of time. I mean she is elderly, and I want to accommodate for the best I can.

MS. LENHARDT: Thank you.

THE COURT: All right. Anything else?

MS. LENHARDT: No, Your Honor.

THE COURT: Be glad to hear you in reply.

MR. COOKE: Your Honor, the Crowell case I think is just directly on point when it is clear it said ---

THE COURT: Do you have a copy of that, that one case?

MR. COOKE: Yes.

THE COURT: He has already folded it up, so I will take the paper copy.

(WHEREUPON, document provided to the court.)

THE COURT REPORTER: Mr. Cooke, would you spell that, please.

MR. COOKE: Crowell, C-R-O-W-E-L-L, against Herring, H-E-R-R-I-N-G.

So right where it says number two it says historically there has been a tendency to restrict the

absolute privilege to judicial proceedings, legislative proceedings, and acts of the state. This is so ostensively because when a communication is absolutely privileged no action will lie for its publication.

THE COURT: What about exceeding the scope of the meeting?

MR. COOKE: What about -- that -- I think she is talking about qualified privilege. That doesn't -- that doesn't apply when it is absolutely privileged. In absolute privilege it doesn't matter what your intent is, how false it was, or what you said.

It says: This however does not answer the question of whether there is or has been a tendency to restrict the definition of judicial proceeding to exclude preliminary steps leading up to a former judicial proceeding.

It says: We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it including a preliminary step -- including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it.

So all it has got to do is have some relation to it.

In this particular case Mr. -- and we submitted these documents in connection with their motion to amend.

So they are in the record.

But Mr. Barnett specifically invited the defendants to meet to participate in a closed-door meeting to discuss their alleged breach of contract and to, quote, try to work out a way forward so as to accomplish the goals of the agreement which are to the mutual benefit of all four of you and so that other further conflict can be avoided.

And the response Spiros Ferderigos said in his e-mail he said that should the plaintiff file suit against him that he would, quote, countersue with numerous causes of action and well-documented liability against plaintiff for his behavior. Closed quote.

Clearly the thrust of the meeting and even according to Mr. Barnett's affidavit the statement -- the allegedly defamatory statement was made was to the effect is if Athan brings this lawsuit we are going to bring all of these things out about him.

And so that is clearly what the whole purpose of the meeting was was to discuss the rights of the clients. And it is exactly what the Rogers court said which is that those are the exact kind of conversations, even if they are defamatory, that lawyers need to be able to have them with each other about their clients.

THE COURT: Okay. Thank y'all very much. What is

next?

MS. LENHARDT: We have -- we have filed the motion for summary judgment ---

THE COURT: Okay.

MS. LENHARDT: --- as well. And, Your Honor, you did in the companion contract case see defendants alleged by counterclaim that Athan had defamed them. And they incorporated those counterclaims in this defamation case.

In the contract case you granted summary judgment for those claims. And so we feel like you should be able to do that in this case as well.

To refresh your recollection, the allegations were that the defendants did not go forward with the project because they could not eat for free at Old Towne Restaurant, that the defendants don't have good business sense, that the defendants are bad business people, and that defendants were accusing plaintiff of setting fire to 229 King Street.

And then at the hearing there were two other statements that were alleged to have been made by my client. One was stating that Spiros lied in his deposition after this litigation was commenced.

And the other one is the statement -- and this -- repeating the statement in Mr. Barnett's affidavit where he says that Spiros threatened to use his position as an

assistant solicitor to pursue a charge of arson.

And in your order you concluded that the four statements, the first four that I read to you, are not defamation, that they are simply just not defamatory. They don't -- they are not false defamatory statements, not -- not -- there was not enough privileged publication to a third-party, and the defendant was at fault -- the defendant was not at fault, and there is no injury or harm.

So those are -- those are not defamatory per se. And they are not -- just because someone has an opinion that they are bad business people -- and they are not business people; they are attorneys. So they are not -- it is not impugning their profession, as you said in your order. And eating for free is not a defamatory statement.

Even if you were going to change your mind about ---

THE COURT: Well, I am going to give Mr. Cooke a chance to change my mind in a second when you are finished.

MS. LENHARDT: Even if you were to change your mind about the ---

THE COURT: Why don't we let you do it in reply. Let's see what he has got to say, okay, ---

MS. LENHARDT: Okay.

THE COURT: --- if you don't mind. I don't mean to cut you off; but I remember the order, okay, now that you mentioned it.

Go ahead, Mr. Cooke, or whoever is going to make the argument. I am sorry.

MR. COOKE: Well, Your Honor ---

THE COURT: Or maybe it is not you. I don't know.

MR. COOKE: Well, we may -- we may both. But, Your Honor, I will agree that the issues before the court are the same that this court has already ruled on.

I really didn't come expecting to change your mind. I came expecting to preserve the record.

THE COURT: I understand. I am just giving you the opportunity to change my mind and preserve the record, okay.

MR. COOKE: Right.

THE COURT: And I want to extend that courtesy to you.

MR. COOKE: Well, and I appreciate ---

THE COURT: I have changed my mind on occasions, okay.

MR. COOKE: No, I understand that. And, Your Honor, I believe the argument that we made in the last case was that some of the alleged defamatory statements were made outside the -- outside of the actual litigation. For

example, a statement that he had accused Spiros of lying in his deposition. He accused him of -- of -- if you -- proven that you have lied in your deposition I think that may be grounds for disbarment. And then that was published I believe also to Phillip.

So but I believe Your Honor ruled in that case that if it is sufficiently related to the litigation that it would be frivolous.

THE COURT: All right.

MR. COOKE: And so having just argued about how broad the absolute privilege is I ---

THE COURT: You are going to narrow it down now, huh?

MR. COOKE: I am hard-pressed to change your mind ---

THE COURT: Okay.

MR. COOKE: --- on what you ruled. But that was clearly that was obviously honestly not made as part of the litigation. It was made outside of the litigation. But Your Honor ruled in that case that it would be covered as well.

THE COURT: Okay. Anything else? Is there anybody else?

MS. THIEM: Yes, Your Honor, Jennifer Thiem. Can you hear me okay from standing right here? I'm sorry,

let me get by the microphone.

And I agree. I agree with what Dawes has already argued and understand the posture that we are in. But wanted to -- and we have also submitted a memo to Your Honor and had that filed. So I incorporate that as well.

But there have been some additional discussion and statements that I want to pass up and also add to the record. If I may approach.

THE COURT: That's fine.

(WHEREUPON, document presented to the court.)

THE COURT: Thank you, ma'am. You want to mark them? Or have ---

MS. THIEM: Yes, please.

THE COURT: Okay. Have you had them filed or ---

MS. THIEM: We have not ---

THE COURT: Have you filed them with the clerk?

MS. THIEM: No, but I can do so.

THE COURT: Well, I can just mark them as a court exhibit if you want me to.

MS. THIEM: That would be great. Thank you.

THE COURT: Unless you want to file it with the clerk.

MS. THIEM: That would be great.

THE COURT: All right.

MS. THIEM: So we highlighted the language here.

But it is an extension of some of the allegations of the other ---

THE COURT: Hold on. Let her get a chance to mark it.

(WHEREUPON, Court's Exhibit 1, discussion and statements, marked for identification.)

THE COURT: Go ahead.

MS. THIEM: So this is an extension of one of the -- some of the statements that we claimed were defamation in the first instance and the counterclaims.

And you will see the highlighted language here: Keeping with Greek tradition the firstborn is supposed to be taking care of the family but you and Phillip keep trying unjustly to take things away from Jacob. It seems that it is a common practice with the Ferderigos family starting with your own family kicking his own mother out of her own house. I wouldn't doubt it if you try to take everything from your brother Jacob if you could.

So just there were allegations that some statements were made about trying to keep some of the siblings down; Phillip, you don't want the other brothers to have more income than you; or you always have to kind of be the top dog.

And so that is just an extension of that that I wanted to provide for the record.

THE COURT: Okay. Anything else?

MS. THIEM: That is it, Your Honor.

THE COURT: Okay. Thanks very much.

MS. THIEM: Thank you.

THE COURT: Anybody else?

MS. ROBINSON: Your Honor, I am Laura Robinson here for Phillip Ferderigos on his motion for summary judgment. Everything that Dawes said we add ditto too.

But I did want to point out in case it hadn't been made explicit that Stan Barnett is not a third-party. He is an agent of the party. He is not a third-party. So for defamation purposes as a matter of law he is not of a third-party. And that was the only thing I was going to add.

THE COURT: Okay. All right. Anything else? Does that cover them all?

MR. COOKE: One moment, Your Honor. I'm sorry.

THE COURT: All the motions?

MS. THIEM: Your Honor, I am sorry; one other thing to add to the record. In the plaintiff's opposition brief to -- or I guess the motion in support of summary judgment, the memo in support of summary judgment they outline defamatory statements and why they can or can't be defamation. And one of the arguments pertains to privilege.

And there is an argument that certain statements made that were heard by Phillips' brother - Phillip is my client - so Phillips' brothers, were not defamation because they were privileged because they were -- dealt with the litigation, but at a time I wanted to point out that there was not any litigation pending.

So this kind of goes to the privilege argument of whether you have to have litigation pending or it can predate the litigation.

And so in one of their brief that they handed up in support of this case they are arguing privilege and there hadn't been a litigation filed. In the other brief they are claiming there is no privilege because there hasn't been litigation filed. So I just wanted to point that out for the record.

THE COURT: Well, has any case addressed that particular issue on whether they have to have a case pending or not ---

MS. THIEM: I think ---

THE COURT: --- for the privilege to attach?

MS. THIEM: I think Mr. Cooke has already outlined the cases that ---

THE COURT: I ---

MS. THIEM: We don't have anything to add to those.

THE COURT: Pardon?

MS. THIEM: I don't have anything to add to those cases.

THE COURT: Don't have anything that -- to add. Okay.

MS. THIEM: That is right.

THE COURT: Anything else?

All right. Thank y'all very much.

(WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on December 11, 2017. Court reporter in attendance at hearing, Joyce Rueger; court reporter preparing transcript, Phyllis Norton.

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

Phyllis Norton

PHYLLIS NORTON, CVR

Date: April 16, 2018

Certified Transcript Provided For: Jeremy E. Bowers

Certification Reference #041618 Original

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2015-CP-10-3891
Athan Fokas)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
Philip Ferderigos and Spiros Ferderigos)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533 Address: 1037 Chuck Dawley Blvd., Ste. 100-F, Mt. Pleasant, SC 29464 Phone: 843/881-1623Fax 843/881-4406 E-mail: stanleyb@s3blaw.comOther: ____	M. Dawes Cooke, Jr., Bar No. ____ Address: 288 Meeting Street, Charleston, SC 29401 Phone: 843/577-7700 Fax____ E-mail: ____Other: ____

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

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion to Amend Complaint
Estimated Time Needed: ____ Court Reporter Needed: ☑ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☑ Form Motion/Order

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

Stan Barnett 12/17/15
Signature of Attorney for ☑ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **MOTION TO AMEND COMPLAINT**

FILED
2015 DEC 29 PM 3:38
JULIE J. ARMSTRONG
CLERK OF COURT

TO: Joseph R. Weston, Esq. and M. Dawes Cooke, Jr., Esq, Attorneys for Defendant Spiros Ferderigos and Richard A. Farrier, Jr., Esq. and J. Drayton Hastie, Esq., III, Attorneys for Defendant Philip Ferderigos:

NOW COMES the Plaintiff who moves pursuant to S.C.R.C.P. 15(a) for leave to file the attached Amended Complaint in this action. The amendment is intended to modify the allegations related to the manner in which the defamation alleged was communicated ultimately to Plaintiff's mother, Irene Fokas. The modifications are based on a statement she executed at Defendants' request and on her deposition in this case.

Defendants' counsel were asked by Plaintiff's counsel is they consented to the requested amendment, but have not responded. It is assumed for purposes of the Rule 11 duty to consult that the Defendants do not consent to the amendment.

Respectfully submitted,

Stan Barnett
Smith, Bundy, Bybee & Barnett, PC
P.O. Box 1542
Mount Pleasant, SC 29465
(843) 881-1623

December 18, 2015
Mount Pleasant, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891 **AMENDED COMPLAINT** (Defamation, Defamation Per Se) (Jury Trial Demanded)

COMES NOW the Plaintiff who for his amended complaint against the Defendants named above alleges as follows:

1. Plaintiff is a citizen and resident of Charleston County.
2. Defendant, Philip Ferderigos, is a citizen and resident of Charleston County.
3. Defendant, Spiros Ferderigos, is a citizen and resident of Charleston County.
4. The parties are joint owners of a building located at 229 King Street in Charleston, South Carolina and are members of Old Towne Suites, LLC which operates a suites rental business from the second floor of said building.
5. The parties planned to expand the suites rental business by adding two floors to the building and brought that plan to the point of securing all necessary approvals and approval for a loan.
6. Shortly before closing on said loan was to occur, Defendants refused to go forward with the loan.

SCCA/233 (11-02)

7. The disagreement that resulted from said refusal to close on the loan resulted in communications between the parties in which the possibility of a lawsuit was raised.

8. Defendants threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims.

9. None of the above accusations are true, Plaintiff never having participated in any way in either arson or insurance fraud.

FOR A FIRST CAUSE OF ACTION
(Defamation and Defamation Per Se)

10. Paragraphs 1 – 9 are realleged herein

11. Defendants have published to other persons entirely false and defamatory statements about Plaintiff for the purposes of: a) injuring the personal and business reputation of both, and b) intimidating Plaintiff into refraining from pursuing legal action against them based on their refusal to go forward with the plan to expand the building and the suites rental business operated there, such defamatory statements including, but not limited to:

a. Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds.

b. Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds.

12. Upon information and belief, Defendants communicated the above statements to members of their and Plaintiff's family for the malicious purpose of intimidating Plaintiff

into refraining for demanding that they go forward with the plan to expand the suites rental business.

13. All of the statements are false and are known to Defendants to be false.

14. Plaintiff has been confronted with said statements by his mother, Defendants' aunt, who upon information and belief came to hear these falsehoods as the direct and proximate result of the publication of these falsehoods by Defendants.

15. Said statements had the effect of damaging the personal and business reputation of the Plaintiff and of falsely communicating to his family that Plaintiff was committing criminal acts and such statements are per se defamatory.

16. The Plaintiff has suffered loss of confidence of his family in his ability to manage the businesses in which he is engaged, including those related to the building at 229 King Street, by reason of said defamatory statements and has also suffered worry, extreme and painful embarrassment, humiliation and ridicule as the direct and proximate result of the above described defamatory statements.

17. By reason of said defamatory statements, the Plaintiff is entitled to recover from Defendants damages sufficient to compensate him for his actual damages from loss of confidence in his ability to manage said businesses and for the worry, embarrassment, humiliation and ridicule he has suffered as a result of said defamation as well as the attorneys fees and costs they have incurred in the pursuit of this action. In addition, the Plaintiffs are entitled to recover an amount of punitive damages sufficient to deter such action by Defendants in the future.

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and grant to Plaintiff:

1. Award judgment against Defendants for the actual damages to be paid Plaintiff he has suffered as the result of Defendants' actions alleged herein;
2. Award judgment against Defendants for an amount of punitive damages to be paid Plaintiff sufficient to deter Defendants from such actions as are alleged herein in the future;
3. Award judgment against Defendants for the attorneys fees and costs incurred by Plaintiff in pursuing this action; and
4. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Stan Barnett
Smith, Bundy, Bybee & Barnett, PC
P.O. Box 1542
Mount Pleasant, SC 29465
(843) 881-1623

December 18, 2015
Mount Pleasant, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **CERTIFICATE OF SERVICE**

FILED
2015 DEC 29 PM 3:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Motion to Amend Complaint were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 17th day of December, 2015, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Joseph R. Weston, Esquire
Weston Law Firm, P.A.
761 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464

J. Drayton Hastie III, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, SC 29201

Cindy Grooms

Cindy Grooms

Mt. Pleasant, South Carolina

SMITH, BUNDY, BYBEE & BARNETT, P.C.
ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED. ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT

M. BRENT MCDONALD

STAN BARNETT
stanleyb@s3blaw.com
Direct Line (843) 513-1033

December 17, 2015

Julie J. Armstrong
Charleston County Clerk of Court
Judicial Center, 106
100 Broad Street
Charleston, SC 29401

Re: Athan Fokas v. Philp Ferderigos, and Spiros Ferderigos
C/A No.: 2015-CP-10-3891

Dear Ms. Armstrong:

Enclosed for filing, please find the original and one copy of Plaintiff's Motion to Amend Complaint along with a $25.00 filing fee in the above-referenced matter. Please file the original and return a file-stamped copy to me in the self-addressed, stamped envelope provided.

In the event you have any questions, please do not hesitate to contact my office.

With kindest personal regards, I remain

Sincerely,

Stan Barnett

SEB:cmg
Enclosures

cc: M. Dawes Cook, Jr., Esquire
Richard A. Farrier, Jr., Esquire
Joseph R. Weston, Esquire
J. Drayton Hastie, III, Esquire
Mr. Athan Fokas

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Athan Fokas, ☐ Plaintiff v. Phillip Ferderigos And Spiros Ferderigos, ☒ Defendant.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2015-CP-10-3891 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Stanley E. Barnett, Esquire, Bar No. Address: Smith Bundy Bybee & Barnett, P.C. 1037 Chuck Dawley Blvd. Building F, Suite #100 Mt. Pleasant, SC 29464 phone: (843) 881-1623 fax: (843) 881-4406 e-mail: stanleyb@s3blaw.com other:	Jeremy E. Bowers, Esquire, Bar No. 74838 Address: Barnwell Whaley Patterson & Helms, LLC 288 Meeting Street, Suite #200 (29402) P.O. Drawer H Charleston, SC 29402 phone: (843) 577-7700 fax: (843) 577-7708 e-mail: jbowers@barnwell-whaley.com other:

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

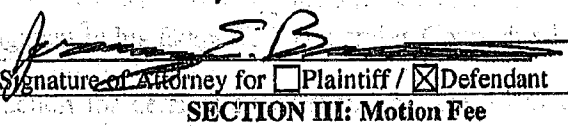
SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed:30 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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



Signature of Attorney for ☐Plaintiff / ☒Defendant — February 4, 2016 Date submitted

SECTION III: Motion Fee

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

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: _____

SCCA/233 (11-03)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

FILED
2016 FEB -5 AM 10: 17
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3891
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS and SPIROS FERDERIGOS, Defendants.	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT SPIROS FERDERIGOS**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, SPIROS FERDERIGOS (hereinafter referred to as "Mr. Ferderigos"), by and through his undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment in favor of Mr. Ferderigos. This Honorable Court should grant summary judgment in favor of Mr. Ferderigos as to all of the Plaintiffs' causes of action pursuant to Rule 56, SCRCP, because there exist no genuine issues of material fact and Mr. Ferderigos is entitled to summary judgment on all causes of action filed as part of the Plaintiff's Complaint and proposed Amended Complaint. Mr. Ferderigos moves for summary judgment for the following reasons: (1) no evidence exists that Mr. Ferderigos published any defamatory statement about the Plaintiff at all, let alone statements related to setting fire at Old Towne Restaurant or filing false insurance claims; and (2) all evidence demonstrates that the alleged statements related to the Plaintiff setting fire at Old Towne Restaurant or filing false insurance claims originated from other sources.

Mr. Ferderigos bases this Motion for Summary Judgment upon the pleadings, deposition testimony, affidavits, any documents in the court file, the applicable law, and any memorandum of law to be submitted to the Court. Mr. Ferderigos reserves the right to supplement this Motion with additional memoranda, affidavits, and other documents in support of the arguments contained herein.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR DEFENDANT SPIROS FERDERIGOS

- AND -

WESTON LAW FIRM, P.A.

BY: _____ SAP w/ permission

Joseph R. Weston, Esquire
Stephanie A. Phillips, Esquire
761 Johnnie Dodds Blvd., Suite #100 (29464)
Post Office Box 1992
Charleston, South Carolina 29465-1992
PHONE: (843) 881-4995
FACSIMILE: (866) 777-2495
ATTORNEYS FOR DEFENDANT SPIROS FERDERIGOS

February 4, 2016
Charleston, South Carolina

15-891

Certificate of Service

I hereby certify that the foregoing NOTICE OF MOTION and MOTION FOR SUMMARY JUDGMENT was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd.
Building F, Suite #100
Mt. Pleasant, SC 29464

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates LLP
134 Meeting Street, Suite #200
Charleston, SC 29401

J. Drayton Hastie, III, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, SC 29201

FILED
2016 FEB -5 AM 10: 17
JULIE J. ARMSTRONG
CLERK OF COURT

This the 4th day of February 2016.

Cheryl LeGrand
Legal Secretary

BARNWELL WHALEY PATTERSON & HELMS LLC | 75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

February 4, 2016
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3891

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Notice of Motion and Motion for Summary Judgment being filed by Defendant, Spiros Ferderigos, in the above-referenced matter. Also, enclosed find the Motion Information Form and Cover Sheet as well as a check in the amount of Twenty-Five Dollars ($25.00) for the motion filing fee. Please file the original and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing all counsel of record of this communication with the Court and serving them with a copy of the Motion. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Stanley E. Barnett, Esquire (via U.S. Mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail)
J. Drayton Hastie, III, Esquire (via U.S. Mail)
Joseph R. Weston, Esquire (via U.S. Mail)

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
David S. Cox

William C. Helms, III'

* Registered patent attorney
' Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS Plaintiff, vs. PHILLIP FERDERIGOS AND SPIROS FERDERIGOS Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3891 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: Stanley E. Barnett Smith, Bundy, Bybee & Barnett P. O. Box 1542 Mt. Pleasant, SC 29465-1542 Phone (843) 881-1623 Fax: (843) 881-4406 E-mail: stanleyb@s3blaw.com	Defendant's Attorney: Richard A. Farrier, Jr., Bar No. 1962 Jennifer A. Thiem, Bar No. 73739 Address: K&L Gates LLP 134 Meeting Street, Suite 200, Charleston, SC 29407 Phone: (843) 577-5619 Fax: (843) 579-5601 E-mail: richard.farrier@klgates.com Other: jennifer.thiem@klgates.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 on Behalf of Defendant Phillip Ferderigos
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant — February 12, 2016 Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
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JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3891
ATHAN FOKAS, Plaintiff, v. PHILLIP FERDERIGOS and SPIROS FERDERIGOS, Defendants.	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, PHILLIP FERDERIGOS (hereinafter referred to as "Phillip"), by and through his undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment in his favor. This Honorable Court should grant summary as to Plaintiff's sole cause of action for defamation pursuant to Rule 56 SCRCP because no genuine issues of material fact exist as to the sole claim filed in Plaintiff's Complaint and proposed Amended Complaint.

ARGUMENT SUMMARY

Summary judgment is warranted because the sole basis for publication of the statement by Phillip which is alleged to be defamatory has been conclusively disproven by Plaintiff's discovery.

ARGUMENT

Phillip moves for summary judgment for the following reasons: (1) no evidence exists that he published any defamatory statement about Plaintiff at all, let alone statements related to Plaintiff setting fire at Old Towne Restaurant or filing false insurance claims; and (2) all evidence demonstrates that the alleged statements related to the Plaintiff setting fire at Old Towne Restaurant or filing false insurance claims originated from other sources, not Phillip.

Plaintiff's Complaint and Motion to Amend his Complaint are based on the notion that Plaintiff's mother's admitted speculation about her nephew, Phillip, can somehow create a cause of action of defamation against Phillip in her son's favor. Simply put, Plaintiff's mother, Irene Fokas (hereinafter "Irene"), has testified under oath that, with reckless disregard to the truth, she assumed that Phillip must have been the source of allegedly defamatory comments about her son (Plaintiff) and she then told Plaintiff that Phillip defamed him. Such baseless accusations, admittedly based on wild speculation, cannot support a claim for defamation.

Specifically, a timetable of Plaintiff's unfounded allegations and his mother's wild conjecture is quite revealing. Plaintiff's original Complaint alleges a defamation claim against Phillip based on speculation from "double" hearsay. In his original Complaint, Plaintiff alleges defamation in the following paragraphs:

> "8. Defendants threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims.
>
> 11. Defendants have published entirely false and defamatory statements about Plaintiff for the purposes of: a) injuring the personal and business reputation of both, and b) intimidating Plaintiff into refraining from pursuing legal action against them based on their refusal to go forward with the plan to expand the building and the suites rental business operated there, such defamatory statements including, but not limited to:
>
> a. Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds.

> b. Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds.
>
> 12. Upon information and belief, Defendants communicated the above statements to their father, Plaintiff's uncle [Phillip's father] for the purpose of intimidating Plaintiff into refraining for demanding that they go forward with the plan to expand the suites rental business.
>
> 14. Plaintiff has been confronted with said statements by his mother, Defendant's aunt, who has identified them [Phillip] as the source of said statements."[1] (Emphasis added).

However, soon after the original Complaint was filed, it became clear that the allegations were false on their face. (See Letter from Dr. Fanouris Ferderigos (Irene's brother and uncle to Plaintiff), wherein Irene readily admitted to him (and everyone) that Phillip's father did not tell her anything about Phillip or the Plaintiff, attached as Exhibit A.) After receiving this letter, on or about August 27, 2015, Phillip requested Plaintiff's counsel to contact his client's mother directly to verify that the allegations he alleged were false.[2]

For months, Plaintiff's counsel chose not to contact Irene, but he waited until the day before her duly noticed deposition. At this initial meeting, the day before her deposition, Irene confirmed that the central factual allegation of the Plaintiff was erroneous. After speaking with Irene, however, Plaintiff's counsel attempted to unilaterally cancel the duly noticed deposition. (See Email exchange from Stan Barnett, attached as Exhibit B.) Nevertheless, at the noticed deposition, Irene requested that she provide an Affidavit instead of giving testimony. She then reviewed, revised, and executed her sworn Affidavit which directly refutes the allegations of Plaintiff. (See Affidavit of Irene Fokas, attached as Exhibit C.)

As an initial matter, Irene's sworn Affidavit disproves Plaintiff's defamation claim. In relevant parts, her Affidavit sets forth clearly:

[1] Such factual allegations contain the only alleged facts purporting to support the defamation claim against Phillip.
[2] Pellucidly, Plaintiff's counsel had an ethical duty to contact Plaintiff's mother directly before he filed his original defamation Complaint. He failed to do so.

"My brother Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts.

Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false."

Plaintiff and Plaintiff's counsel were present in the room when Irene reviewed, revised, and executed her Affidavit.[3] Afterwards, Plaintiff noticed and proceeded to take the deposition of his own mother, Irene. At her deposition, she again testified that her Affidavit was correct, but it was her daughter Rania Nikatos who allegedly told her that Phillip had defamed Plaintiff; however, she readily admitted that she assumed that the accusations against Plaintiff must have come from Phillip or one of his brothers because she admitted she never asked her daughter who made such accusations against her son, but she assumed it was Phillip.[4]

As such, Irene again disproved her son's allegations when she again testified under oath in her deposition that her Affidavit was accurate. She admitted that she never spoke with Defendant's father (Stavros Ferderigos) about the alleged defamatory statements (see Dep. Tr. of Irene Fokas at 41:8-19), that Irene allegedly learned about these alleged defamatory statements from her daughter Rania Nikatos (see id. at 10:13-17; 48:1-4), that Irene never asked her daughter, Rania, whom Rania had heard the alleged defamatory statements from (see id. at 11:1-12:3; 89:6-19), and that Irene only "guessed" that the source of the defamatory statements was

[3] Rather than dismiss his claim for defamation at such juncture, as Plaintiff knew the same to be based upon a falsehood, Plaintiff continued, and, to this day, still continues his claim for which no basis in fact or law exists.

[4] In essence, Irene testified under oath that she, in fact, had defamed Phillip by informing her son that Phillip had said things about her son when she had no evidence to support such statements to her son.

EXHIBIT D

from Phillip and that Irene "figured" the alleged defamatory statements "might" be from Phillip. (see id. 89:17-19; 11:20-25), said pages collectively attached as Exhibit D. [5]

In contrast, Rania Nikatos (Plaintiff's sister) (hereinafter "Rania") has submitted her sworn Affidavit refuting her own mother's false assumptions. In her sworn Affidavit, Rania attests that Phillip or Spiro never made any defamatory comments to her concerning the Plaintiff. Indeed, Rania attests, under oath, she never told her mother anything about Phillip at all. (See Rania Affidavit, attached as Exhibit E.) Moreover, it appears the accusations originated with another individual who told Gerasimos Nikatos, Rania's husband, that Plaintiff had started the fire at Old Towne. (See Affidavit of Gerasimos Nikatos, attached as Exhibit F.)

Even though Plaintiff has these Affidavits and is well aware that the his own sister has sworn and verified that Phillip did not defame or discuss the Plaintiff in any way to her [in other words, that Plaintiff's factual allegations in the Complaint, as well as the Motion to Amend, are unfounded and based on Irene's speculation], Plaintiff has now filed a Motion to Amend his Complaint to assert that Irene's Affidavit/deposition support his defamation claim, despite the fact that Irene has already testified under oath that she has no evidence to support any of her statements to her son, but she merely assumed Phillip must have been the individual who made statements about her son. (See Affidavit of Nathan M. Crystal In Support of Defendants' Motion for Summary Judgment and for Sanctions, attached as Exhibit G.)

Plaintiff's unfounded Complaint, based upon Plaintiff's mother's unfounded speculation, is nothing more than an obvious, misguided attempt to harass Phillip. Based on the above

[5] Based on his mother's unfounded and wild conjecture, which Plaintiff knew and currently knows is based on pure speculation, Plaintiff filed his defamation lawsuit against Phillip. In her Affidavit and in her deposition, however, Irene testified that her daughter Rania Nikatos (Plaintiff's sister) allegedly told her that someone made defamatory statements about Plaintiff; however, Irene admits she never asked her daughter who actually made those statements. Incredibly, Plaintiff's mother also admitted that she assumed Phillip must have made such statements.

Affidavits and sworn deposition testimony of Irene, Plaintiff's defamation claim, which is admittedly premised on unsubstantiated hearsay to begin with, should be dismissed.

Phillip bases this Motion for Summary Judgment upon the pleadings, deposition testimony, Affidavits, any documents filed with this motion and with the court, the applicable law, and any memorandum of law to be submitted to the Court. Phillip reserves the right to supplement this Motion with additional memoranda, Affidavits, and other documents in support of the arguments contained herein.

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ATTORNEYS FOR PHILLIP FERDERIGOS

February 12, 2016
Charleston, South Carolina

August 21, 2015

Stan Barnett
Smith, Bundy, Byebee & Barnett, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, SC 29464

Dear Mr. Barnett,

My name is Dr. Fanouris Ferderigos and I am the uncle of the Plaintiff and Defendants in case number 15-CP-10-3891 that you have filed in Charleston County, South Carolina. Your lawsuit alleges that my sister, Irene Fokas (which is Plaintiff Athan Fokas' mother), confronted Athan Fokas about "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds. (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds." Your lawsuit alleges that Irene Fokas confronted Athan Fokas about these allegations, and Irene Fokas informed Athan Fokas that my brother, Stavros Ferderigos (which is Defendants' father), told her about the allegations stated above and set forth in your Complaint. Your lawsuit further alleges Irene Fokas informed Athan Fokas that Stavros Ferderigos identified Defendants (Phillip and Spiros Ferderigos) as the source of those statements.

This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever.

With Kindest Regards, I am

Dr. Fanouris Ferderigos

Cc: Dawes M. Cook (288 Meeting Street, Suite 200, Charleston, SC 29401)

Richard Farrier (134 Meeting Street, Charleston, SC 29401)

EXHIBIT
A

From: Stan Barnett [mailto:stanleyb@s3blaw.com]
Sent: Tuesday, October 27, 2015 2:56 PM
To: Jeremy Bowers
Cc: Farrier, Jr., Richard A.; Stan Barnett; sphillips@westonlawfirm.com; Athan Fokas
Subject: Re: Irene Fokas Deposition

I have just left Irene Fokas. She asked me to let you all know that she does not believe she is able to do the deposition tomorrow. The trip was quite long. And she is concerned about the flooding in the morning. I believe her concerns are valid and the deposition should be cancelled for tomorrow. We can discuss an alternate date.

Sent from my IPhone

EXHIBIT
B

From: Stan Barnett [mailto:stanleyb@s3blaw.com]
Sent: Tuesday, October 27, 2015 3:25 PM
To: Stan Barnett
Cc: Jeremy Bowers; Farrier, Jr., Richard A.; sphillips@westonlawfirm.com; Athan Fokas
Subject: Re: Irene Fokas Deposition

I should have added that I took the liberty of telling Mrs Fokas that she shouldn't worry about tomorrow. Presumably your clients would not want to cause her undue distress.

Sent from my iPhone

I, Irene Fokas, hereby solemnly swear and attest to the following:

My brother Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts.

Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false.

I have read this statement and understand its contents.

Irene Fokas

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28TH DAY OF OCTOBER, 2015.

Notary Public in and for South Carolina.
My Commission expires 7/30/21.

EXHIBIT
C

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS

DATE: NOVEMBER 19, 2015

TIME: 9:37 A.M.

LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
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APPEARANCES

ON BEHALF OF THE PLAINTIFF:
SMITH BUNDY BYBEE & BARNETT, PC
BY: STAN BARNETT, ESQ.
1037 Chuck Dawley Boulevard, Building F
Mount Pleasant, SC 29464

ON BEHALF OF THE DEFENDANT PHILLIP FERDERIGOS:
VERNIS & BOWLING OF BOWLING
BY: J. DRAYTON HASTIE III, ESQ.
1401 Main Street, Sutie 655
Columbia, SC 29201
K&L GATES
BY: JENNIFER H. THIEM, ESQ.

EXHIBIT
D
ALL-STATE LEGAL®

134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF THE DEFENDANT SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS,LLC
BY: JEREMY E. BOWERS, ESQ.
288 Meeting Street, Suite 200
Charleston, SC 29401
WESTON LAW FIRM, PA
BY: STEPHANIE PHILLIPS, ESQ.
761 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29465

ALSO
PRESENT: Athan Fokas
Phillip Ferderigos
Eleni Hatzis, Interpreter, appearing
via teleconference

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you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.
Q. You said a fire. Was there a specific place that he was accused of starting a fire?
MS. THIEM: Objection.
A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.
Q. And who was -- who were the people that you thought might accuse your son of these things?
MR. BOWERS: Object to the form.
A. His cousin. They were accusing him. They were going to destroy him.
Q. What are their names?
A. Spiros and Phillip Ferderigos.
MR. BARNETT: Do you want to chat with me?
MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

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Drayton Hastie. There are multiple parties, multiple defendants.
Obviously, standard objection to the form. Is it your preference that we all chirp "objection to the form," or is it okay with you that an objection to the form will stand for all parties?
MR. BARNETT: Certainly. That's -- that's perfectly all right, yes. That's perfectly all right.
MR. HASTIE: So an objection will stand for --
MR. BARNETT: Keep it simple.
MR. HASTIE: Yeah. Exactly. I didn't want to --
MR. BARNETT: Okay. I don't think we need to translate that for her.
MR. HASTIE: No. That's fine.
MR. BARNETT: Just an agreement with us. I do want to interpret this, Madam Interpreter.
THE INTERPRETER: Yes.
Q. I forgot to say to you, Miss Fokas, that there may be some objections. That has nothing to do with your answer. It's lawyer

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technicalities.
A. Okay.
Q. You didn't seem bothered by it.
Okay. All right. Let's go forward.
A. Okay.

Q. This discussion you had with your son, do you remember what month this was?
A. I don't remember exactly. Could have been April or May.
Q. Okay. It was in the spring.
THE WITNESS: Uh-huh, in the spring.
A. Yes.
Q. And where did you learn that these allegations might be made?
MR. BOWERS: Object to the form.
A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.
It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

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Q. Did your son ask you where you learned about this?
A. Yes. My son asked me; and I told him, "You'll never find out. I want you to be very careful. Don't -- don't get involved with them because --
THE INTERPRETER: The interpreter didn't get the last word. Something about the truth.
A. Because they will find -- they will be right because they're attorneys. They can change things.
Q. What do you mean "change things"?
A. Even though you may say the truth, they may said you said -- you lied.
My -- my daughter was very afraid that they're going to destroy him; and when I heard these things, I got sick. And I told him, "No matter how right you may be, you're not going to find justice."
Q. Did your daughter tell you who she was talking about that might make these --
THE WITNESS: I never ask.
A. I never asked her, but I figured that -- I figured they might be them because she -- they have -- they do work with their cousins. She was

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hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"
Q. You referred -- you said "them." "She worked with them," I think you said.
A. Yes.
THE INTERPRETER: I'm telling her to

A. Okay.
Q. "Dear, Mr. Barnett. My name is Dr. Fanouris Ferderigos, and I am the uncle of the plaintiff and defendants in Case No. 15-CP-10-3891 that you have filed in Charleston County, South Carolina."
Is there anything incorrect so far?
THE INTERPRETER: Is that a question for Miss Fokas?
MR. BOWERS: Yes, please.
A. I do not understand -- I don't know any dates or numbers.
Q. Okay. Fair enough.
"Your lawsuit alleges that my sister, Irene Fokas, which is plaintiff, Athan Fokas's, mother, confronted Athan Fokas about, A), hiring someone to set a fire to the second floor of the building at 229 King Street for the purpose of

collecting insurance proceeds; B), falsely claiming in an insurance claim" --
A. Is my brother saying that I said these things?
Q. Yes.
A. He's saying I said these things?
Q. That she -- he is saying that you, Irene Fokas, confronted your son Athan about these things, that the lawsuit alleges that.
A. I was -- I was saying what my daughter told me. We were afraid of what my -- what the cousins were saying.
Q. Do you know what the allegations of the defamation lawsuit are filed by Athan Fokas?
A. I believe that they're accusing him for setting a fire and for insurance.
Q. Do you know who filed that lawsuit? Who started that lawsuit?
MR. BOWERS: I'm sorry. That's a question for Ms. Fokas. Did we lose her again?
MR. BARNETT: Is her number still showing?
MR. BOWERS: It's still showing. Madam Interpreter, did you happen to hit mute, by chance?

MS. PHILLIPS: The line went down.
MR. BOWERS: Yeah. Now she's gone.
(Pause in proceedings.)
THE INTERPRETER: So the last question?
MR. BOWERS: You ready to start?
THE WITNESS: Uh-huh. Yeah.
BY MR. BOWERS:
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan focus set

fire to 229 King Street?
A. No. Never. Never.
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas hired someone to set fire to 229 King Street?
A. Not with Stavros. Never.
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas filed false insurance claims?
A. No.
Q. Did you tell your brother Fanouris that Stavros and you never talked about those things?
A. Yes. I talked to him.
Q. And do you -- do you know whether or not Fanouris communicated that to your son's attorney?

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A. I have no idea.
Q. Since October 28 have you talked to anyone about Dr. Fanouris's letter?
A. No. I speak to him every day, but we do not speak about this thing.
Q. Have you spoken to Dr. Fanouris about the lawsuits other than what you told Mr. Barnett?
A. Dr. Fanouris here, no. In Greece he asked me.
He asked me. He told me that Stavros was very upset, and he -- Stavros told me he thinks. I told him no. He asked me who told you? Somebody else? And I will never tell you who it is.
And I told him that someone told me that Athan should be very careful. His cousins are doing these things, and he's going to be hurt; and I did not tell him who told me.
Q. And is that person who told you Rania?
A. Yes. My son asked me who told you these things?
THE WITNESS: And I say I never say to you who told me but --
A. I told him I will never tell you who

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told me; but I told him to be very, very careful with them.
Q. And when did Rania tell you these things?
A. April. I don't know. We spoke for hours about these things, and she's very afraid for her brother.
Q. Where did this conversation occur?
A. We were in the car and the house many times.
THE WITNESS: Many times.

came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

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Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

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building the additional rental units at 229 King Street?

A. Yes. What lawsuit is that?

Q. That would be a second lawsuit filed by Athan Fokas against Phillip and Spiros.

THE WITNESS: Yeah. I want -- I want to know who -- for what?

THE INTERPRETER: I didn't get that.

THE WITNESS: I want to know --

A. I want to know what type of lawsuit is it?

Q. Are you aware that the second lawsuit is your son, Athan Fokas, trying to force Phillip and Spiros to build the additional rental units at 229 King Street?

A. That's the problem, and it's been two-and-a-half years. They wanted to do it, and now

EXHIBIT B

and then Phillip started saying he doesn't want apartments.
Q. Why didn't Phillip want apartments?
A. I -- I'm looking for that. I'm looking for that, but I cannot find -- find the answer. I don't understand because it would have made -- all three of them would have made a lot of money, and I'm thinking. Maybe because Athan is getting half, and three of them are getting one-third each. Or it's stubbornness. Phillip said no, and now they're standing by that. That's what I believe.
Q. Do you understand that we're here today because of a lawsuit your son filed?
A. Maybe they -- they did a lawsuit.
THE INTERPRETER: The interpreter does not understand her answer. You want to ask your question again?
MS. THIEM: Sure.
Q. Do you understand that we're here today because of a lawsuit that your son filed against Spiros and Phillip?
A. Yes. But -- but if Phillip, Spiros, and Iakovos had a lawsuit, I would have been here as

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well.
Q. That's your opinion.
A. I think so.
Q. Okay. You don't have any way to know that that would definitely be true.
A. I believe that they would do anything possible.
Q. In your son's complaint that he filed with the Court, he attributed statements to you and said that you identified his cousins as saying certain things.
Are you aware of that?
A. Yes. I know my son because I was -- I was afraid that they're going to do damage to him. Bad things.
Q. But, in fact, you did not -- you never heard the cousins say anything about your son.
A. Not me.
Q. Okay. And Rania told you these things.
A. Yes.
Q. So to the extent that Athan's complaint says that you heard these things directly, that's not true.
A. But I -- I heard those things, and I was telling him. I heard them.

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Q. Okay. But you didn't hear those from Spiros, Jacob, or Phillip.
A. No. I heard them from my daughter. She

was afraid for her brother, that they want to destroy him.

Q. And at the time you heard that from your daughter, she did not say that she heard Phillip, Spiros, or Jacob say those things?

THE WITNESS: She didn't say 'cause I no ask.

A. I did not ask her.

MS. THIEM: I'm sorry. Miss Translator, can you say that again? Interpreter.

THE INTERPRETER: The only thing I got was, "I did not ask her." I'm not sure if she said something else.

A. I did not ask her, but I thought that they work together. I guess that's where she heard it.

Q. Okay. And I -- you may have clarified this already, but I wanted to confirm when you mentioned that you were being prepared by Stan Barnett for the internet, you meant deposition; correct?

A. I don't understand what you mean.

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Q. You used the word "internet." When you met with Stan Barnett, you talked about the internet. You meant you were discussing the deposition?

THE INTERPRETER: She says, "I said something about the internet?"

Q. You did.

THE WITNESS: I say?

Q. You meant --

THE WITNESS: What I say for internet?

Q. That's what I wanted to clarify. So when you -- when you met with Stan Barnett, the purpose of your meeting was to prepare for this deposition; right?

A. Yes. Yes. It was to talk about how this thing was going to happen today.

Q. All right. And he explained to you what to expect?

A. Yes. That he will ask questions, and there will be other attorneys that will ask questions.

MS. THIEM: All right. That's all the questions I have.

THE WITNESS: Thank you. Thank you.

A. Thank you very much.

00091

MR. BARNETT: And I have no questions.

THE WITNESS: Thank you, too.

MR. BARNETT: Madam Interpreter, before we let you go, the court reporter -- well, since I don't represent her, I don't mind explaining.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2015-CP-10-3891
ATHAN FOKAS,)	
)	
Plaintiff,)	
)	AFFIDAVIT OF
vs.)	RANIA NIKATOS
)	
PHILLIP FERDERIGOS and)	
SPIROS FERDERIGOS,)	
)	
Defendant.)	

NOW COMES RANIA NIKATOS, OF FULL AGE, BEING DULY SWORN, DEPOSES AND SAYS AS FOLLOWS:

1. That Phillip and/or Spiros Ferderigos have never told me that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed false insurance claim(s).

2. That I have never heard Phillip and/or Spiros Ferderigos say that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

3. That I never told Irene Fokas that I have ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

4. That I have never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

5. That I am making this statement freely, voluntarily, and under sound mind.

AND FURTHER DEPONENT SAYETH NOT.

11/20/15
Date

Rania Nikatos

EXHIBIT
E
ALL-STATE LEGAL®

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

On this 20th day of November, 2015, before me personally appeared Rania Nikatos, to me known to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

Notary Public for South Carolina

My commission expires: 9/21/2022

JULIE CRAIG
Notary Public, South Carolina
My Commission Expires
September 21, 2022

AFFIDAVIT OF GERASIMOS NIKATOS

FILED
2015 DEC -7 AM 8:33
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME Gerasimos Nikatos, who, duly sworn, deposes and says:

1. I am a fifty percent owner of North Towne Restaurant with Athan Fokas, who owns the other fifty percent. I am also fifty percent owner of Eat-A-Pita with Iakovos Ferderigos, who owns the other fifty percent.

2. Athan Fokas is my brother-in-law. I am married to his sister, Rania Nikatos.

3. I have no interest in Old Towne Restaurant or Zeus Restaurant.

4. North Towne Restaurant would sell food for catering events and festivals, in addition to serving customers at North Towne Restaurant's physical location.

5. North Towne Restaurant is now closed.

6. North Towne Restaurant is its own entity, separate and apart from Old Towne Restaurant.

7. North Towne Restaurant and Old Towne Restaurant were completely separate other than sharing advertising space and allowing the two restaurants to borrow inventory in emergency situations when one of the restaurants temporarily ran out of product to keep the restaurant running for the day. Specifically, North Towne Restaurant never did the following:

   a. Send North Towne Restaurant inventory to Old Towne Restaurant to be stored;

   b. Sell left over North Towne Restaurant cooked and un-cooked food/inventory to Old Towne Restaurant;

   c. Cook North Towne Restaurant orders at Old Towne Restaurant;

   d. Obtain North Towne Restaurant orders over the phone, have Old Towne Restaurant cook the food, and then sell the food cooked at Old Towne Restaurant as a North Towne Restaurant product;

   e. Have Old Towne Restaurant employees, on Old Towne Restaurant payroll, cook North Towne Restaurant orders at Old Towne Restaurant;

8. North Towne would not sell left over inventory from festivals and split the proceeds of the sales between North Towne and Old Towne.

9. Even in emergency situations, North Towne Restaurant would borrow inventory from Zeus Restaurant first since Iakovos Ferderigos had no interest in North Towne Restaurant. It was only if there was an emergency and both North Towne Restaurant and Zeus Restaurant were out of the same urgently needed inventory that Old Towne Restaurant would be contacted.

10. North Towne Restaurant did not mix, and had no need to mix, Old Towne Restaurant with North Towne Restaurant because North Towne Restaurant had its own physical building with a full kitchen, staff and inventory to handle all of North Towne Restaurant catering, festival and physical location needs. North Towne Restaurant and Old Towne Restaurant did not share their

ALL-STATE LEGAL
EXHIBIT
F

assets. North Towne Restaurant had its own separate inventory for its business and Old Towne Restaurant had its own separate inventory for its business. Iakovos Feridigos was kind enough on limited occasions to allow North Towne Restaurant to borrow necessary inventory it ran out of in emergency situations; and I was kind enough in limited situations to allow Old Towne Restaurant to borrow inventory from North Towne in emergency situations. However, North Towne Restaurant could not shop through Old Towne Restaurant's inventory like it was North Towne Restaurant's personal grocery store.

11. That sometime soon after the fire at 229 King Street, a Greek contractor named Manoli Kelagias told me and Iakovos that Athan Fokas asked him to set fire to 229 King Street.

12. Manoli told me that he could not believe that Athan Fokas would ask him to do that.

13. The second I got home that day, I told my wife, Rania Nikatos, what Manoli told me. And I have never told anyone else about this matter until after Athan Fokas' defamation lawsuit concerning this matter was filed.

FURTHER AFFIANT SAYETH NOT.

Gerasimos Nikatos

Sworn to and subscribed before me
this 2 day of Dec., 2015.

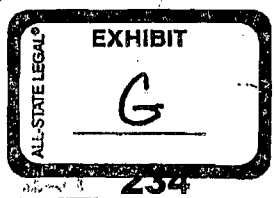
Christen Cochran
Notary Public
My Commission expires: 5/27/2025

CHRISTEN COCHRAN NOTARY PUBLIC MY COMMISSION EXPIRES 5/27/2025 SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH
COUNTY OF CHARLESTON	)	JUDICIAL CIRCUIT
Athan Fokas	)	Case No. 15-CP-10-3891
Plaintiff	)	
vs.	)	AFFIDAVIT OF NATHAN M. CRYSTAL
Phillip Ferderigos and Spiros Ferderigos	)	IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS
Defendants	)	

Now comes Nathan M. Crystal and states under oath the following in support of defendants' motions for summary judgment and for sanctions against the Plaintiff and Plaintiff's counsel in the above-styled action.

1. I am offering this affidavit as an expert witness on behalf of the Defendants' motions for summary judgment and for sanctions. My qualifications to give expert testimony include the following: I am Class of 1969 Professor of Professional Responsibility and Contract Law Emeritus at the University of South Carolina School of Law and Adjunct Professor of Professional Responsibility at NYU School of Law. I have taught professional responsibility and related subjects for almost 40 years. I am the author or coauthor of three books on Professional Responsibility and Legal Ethics, along with numerous articles in this field. One of my books is THE ANNOTATED SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT (2013 ed.) (2016 ed. forth coming) (with Dean Robert Wilcox), a comprehensive treatment of professional ethics in this state. I write a bimonthly column on legal ethics for the *South Carolina Lawyer* entitled "Ethics Watch." I was a member of the South Carolina Bar's Ethics Advisory Committee for more than 15 years and have authored a number of opinions that were adopted by the Committee



on issues of legal ethics. I was appointed by the President of the South Carolina Bar as chair of the committee from 2002-2003. I also represented the South Carolina Bar in its petition to the Supreme Court in 1990 to adopt the South Carolina Rules of Professional Conduct. I have delivered more than 100 speeches, presentations, and continuing legal education programs to law firms, bar organizations, and other groups, both in South Carolina and nationally. I serve as a member of the New York City Bar Ethics Advisory Committee. I have appeared as an expert witness by way of testimony, deposition, or affidavit in more than 100 cases involving questions of professional responsibility and legal ethics. I have served as an ethics consultant to and expert witness for lawyers and law firms in South Carolina and nationally for more than 40 years. I am one of the founding members of Crystal & Giannoni-Crystal, LLC, a law firm with offices in Charleston, New York City, and Washington, DC, which principally focuses on ethics and professional responsibility (in addition to international law). In 2014 I was recognized by the *South Carolina Lawyers Weekly* for one of its "Leadership in Law" awards. I have been selected by my peers for inclusion in *The Best Lawyers in America*© 2015 and 2016 in the fields of Ethics and Professional Responsibility Law. Attached is the most recent copy of my resume.

DOCUMENTS REVIEWED

2. I reviewed the following documents:

- Athan Fokas's Complaint for Defamation (Case No. 15-CP-10-3891);

- Athan Fokas's Complaint for Breach of Contract (Case No. 2015-CP – 10-3919);

- Defendant Phillip Ferderigos' Answer and Counterclaims in the Defamation Action of October 1, 2015;

- Defendant Phillip Ferderigos' Answer and Counterclaims in the Contract Action of October 1, 2015, with numerous Exhibits going to A to Z, in addition to Exhibit AA ("Ferderigos Exhibits");

- Letter of Dr. Fanouris Ferderigos to Stanley Barnett (copied Dawes Cook and Richard Farrier) of August 21, 2015 (Ferderigos Exhibit no. 1);

- Letter of Dawes Cooke to Stanley Barnett of August 27, 2015, and Letter of Richard Farrier to Stanley Barnett of August 27, 2015, (Ferderigos Exhibit no. 2);

- Various emails between counsel for the parties regarding Ms. Fokas's deposition, settlement offers, and related matters;

- Affidavit of Irene Fokas of October 28, 2015 (Greek Translation attached) (Ferderigos Exhibit no. 3);

- Extract of Deposition of Irene Fokas (Ferderigos Exhibits no. 6-8);

- Affidavit of Rania Nikatos (Ferderigos Exhibit no. 9);

- Affidavit of Gerasimos Nikatos of December 2, 2015 (Ferderigos Exhibit no. 10);

- Full Deposition of Irene Fokas November 19, 2015;

- Thread concerning proposed order, including motion and order (Ferderigos Exhibit no. 11);

- Motion to amend the Complaint in Defamation Action (Case No.: 2015-CP-10-3891);

- Letter of Richard Farrier to Stanley Barnett of January 8, 2016, demanding dismissal of the Defamation Action for being without factual basis and providing sanctions' safe harbor notice.

SUMMARY OF OPINION

3. Based on information available to me, the only factual basis for the defamation complaint in this case was plaintiff Athan Fokas's statement to Mr. Barnett that his mother, Irene Fokas, told Mr. Fokas, that the defendants' father, Stavros Ferderigos, told her that the defendants made the defamatory statements alleged in the complaint to him. Based on the information available to me, neither plaintiff Fokas, nor Mr. Barnett did any investigation into the veracity of this statement before filing the complaint. In my opinion, a lawyer and his client have an obligation to make a reasonable investigation into the facts before filing a complaint. Mr. Barnett's reliance on plaintiff Fokas's statement as the basis for filing the complaint does not constitute a reasonable investigation. Plaintiff Fokas's statement to Mr. Barnett was double hearsay lacking in factual specificity and of doubtful believability on its face. Therefore, in my opinion, Plaintiff Athan Fokas and his attorney Stanley Barnett should be sanctioned for filing a frivolous defamation claim against the defendants under the South Carolina Civil Proceedings Sanctions Act and South Carolina Rule of Civil Procedure ("SCRCP") 11.

Since the filing of the case, plaintiff and his counsel have received affidavits and deposition testimony showing that no one has heard the defendants make the defamatory statement alleged in the complaint. In particular, Irene Fokas has stated in both an affidavit and deposition testimony that it is not true that Stavros Ferderigos told her that the defendants made these statements. In fact, the only information that I have seen connecting the plaintiff to the fire at 229 King Street came from Irene Fokas's son-in-law, Gerasimos Nikatos, who stated that a Greek contractor, Manoli Kehagias, had told him that plaintiff Alan Fokas asked him to set fire to 229 King Street. I understand that plaintiff and his counsel have not presented any evidence to show that defendants made the defamatory statements set forth in the complaint. On the other

hand, defendants and their counsel have provided plaintiff and his counsel, Mr. Barnett, with evidence from Mr. Fokas's own family showing that the defendants did not make the statements alleged in the complaint. Based on this uncontradicted evidence, defendants have demanded that plaintiff and his counsel withdraw the complaint. They have refused to do so and continue to assert the frivolous allegations in the original complaint, now by seeking court approval to amend the complaint, but without any evidence supporting their allegations, and without identification of any specific person to whom the alleged statements were published. In my opinion a party and that party's counsel have an obligation not to continue to engage in frivolous filings. Plaintiff Fokas and his counsel Mr. Barnett should be sanctioned for continuing to assert these claims despite receiving information during discovery showing that defendants never made the defamatory statements that plaintiff alleges. This lawsuit was frivolous when it was filed and it is even more frivolous now.

I hold all of these opinions to a reasonable degree of professional certainty for the reasons set forth below.

STATEMENT OF FACTS

Based on the materials I have reviewed, I understand the facts to be as follows:

4. Athan Fokas is the owner of a 50% interest in the property located at 229 King Street; the other 50% is owed by three brothers -- Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos. Phillip Ferderigos's Answer in the Contract Action ¶61. The Old Towne Restaurant, which is owned equally by Athan Fokas and Jacob Ferderigos, leases the first floor of 229 King Street. (Phillip Ferderigos's Answer in the Contract Action ¶62).

5. In 2009 a fire burned down the property at 229 King Street. During the restoration the owners converted the second floor and third floor into luxury short-term rentals. Phillip

Ferderigos's Answer in the Contract Action ¶63. The development of those suites was paid in cash by Athan Fokas and the Ferderigos. (Phillip Ferderigos's Answer in the Contract Action ¶64).

6. This defamation litigation arises out of a contract dispute between Athan Fokas and three Ferderigos brothers over the further development of luxury rental suites at 229 King Street.

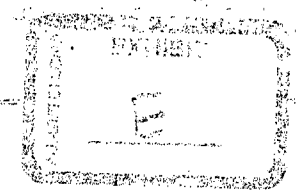
7. Athan Fokas alleges that in early 2014 he and his cousins entered into an oral agreement to further develop rental units at 229 King Street with the parties splitting the cost pursuant to their percentages of ownership. (Complaint in the Contract Action ¶¶12 and 13).

8. The defendant brothers Ferderigos deny the existence of this alleged agreement; they contend that there was only an agreement to investigate the possibility and feasibility of the development of the building. (Answer of Phillip Ferderigos ¶4).

9. Athan Fokas alleges that, after he secured the necessary approval and a loan commitment from a bank (Complaint in the Contract Action ¶14), the brothers Ferderigos reneged on their promise and refused to go forward with the development. (Complaint in the Contract Action ¶21).

10. Instead, the Ferderigos brothers argue that the parties disagreed about method of financing, security, and personal guarantees for the project. (Phillip Ferderigos's Answer in the Contract Action ¶¶50, 51, 71, and 78).

11. Because of these disagreements the closing of a loan for development of the property never took place. After the closing was off, Plaintiff sent numerous emails to the Ferderigos brothers threatening litigations unless they signed the mortgage and informing them



that he had found a lawyer who would represent him in litigation on a contingent fee. (Phillip Ferderigos's Answer in the Contract Action ¶117).

12. This dispute resulted in a breach of contract action by Athan Fokas against the three Ferderigos brothers. On July 14, 2015, Athan Fokas sued Phillip and Spiros Ferderigos for defamation ("Defamation Action"), alleging that the two brothers published entirely false and defamatory statements about Plaintiff including, but not limited to:

> a. Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds.
> b. Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds. (Complaint ¶11).

13. Plaintiff alleged that "Defendants communicated the above statements to their father [Stavros Ferderigos,] Plaintiff's uncle" (Complaint ¶12) and that "Plaintiff has been confronted with said statements by his mother [Irene Fokas], Defendants' aunt, who has identified them as the source of said statements." (Complaint ¶14).

14. On August 21, 2015, Dr. Fanouris Ferderigos, brother of Irene Fokas (and uncle of both Athan Fokas and the Ferderigos brothers) wrote to Stanley Barnett, Athan Fokas's lawyer stating that

> on August 18, 2015, my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations ... [of Athan Fokas' Complaint in the Defamation Action] and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claim. Irene Fokas further told me she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever. Letter of Dr. Fanouris Ferderigos of August 21, 2015.

15. On October 28, 2015, in lieu of a deposition, Irene Fokas issued an affidavit in which she swore that her brother

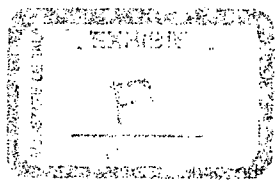
> Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the ... [Athan Fokas' allegations in the Defamation Action]. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts. Irene Fokas's Affidavit.

The affidavit also states:

> Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false. Irene Fokas's Affidavit.

16. On October 29, (the day after the issuance of Irene Fokas's Affidavit), Stanley Barnett, the lawyer for Athan Fokas, sent a settlement proposal to the lawyers for the Ferderigos brothers, specifying that "Mrs. Fokas was very interested in trying to convince your clients to let this case go on the terms I am now formally proposing." Stanley Barnett's letter to Dawse Cook (attorney for Spiros Ferderigos) and Richard Farrier (attorney for Phillip Ferderigos), October 29, 2015.

17. The proposed settlement agreement included Plaintiff's agreement to dismiss with prejudice the Defamation Action (Plaintiff's Draft Settlement Agreement at ¶¶1 and 2), Defendants' delaration that they have no knowledge of Plaintiff committing the acts described in the allegations of the Defamation Action (Plaintiff's Draft Settlement Agreement at ¶3), Defendants' agreement not to "pursue any action or seek any relief from any other party or their attorneys or any other person based on the filing of the claims by Plaintiff and the couterclaim by Defendants and they agree that all parties shall bear their own attorneys fees and costs." (Plaintiff's Draft Settlement Agreement at ¶5).



18. Both Phillip and Spiros Ferderigos, through their respective lawyers, rejected the Settlement Agreement, because the Plaintiff asked for reciprocal concessions when instead the Defamation Action should be dismissed without conditions since the "complaint [of the Defamation Action] unambiguously hinges on the testimony of [Irene Fokas] ... that Stavros Ferderigos made very specific statements to her. [Irene Fokas] has now unequivocally refuted those allegations" (Dawes Cooke's letter of October 30, 2015) and that "the defamation case is without basis. The suit should be dismissed, today, without condition" (Richard Farrier's email of October 30, 2015).

19. Stan Barnett, lawyer for Athan Fokas, answered that "the complaint is clearly broader than the allegation about Irene Fokas." (Stan Barnett's email to Richard Farrier and Dawes Cook of October 30, 2015).

20. On October 30, 2015, Richard Farrier, lawyer for Phillip Ferderigos, asked Stan Barnett to specify who was the person to whom the alleged defamatory statements were published ("If there is some other person to whom you believe defematory statements were published, I would be pleased to know the identify of that person" (email of Richard Farrier to Stan Barnett of October 30, 2015).

21. That very same day, Stan Barnett replied, basically refusing to give that information and accusing the Ferderigos brothers' lawyers of bad faith: "If I had some idea that I was any longer dealing with lawyers in good faith, I would be glad to sit down and discuss this case. I don't have that assurance. . . . I will go forward doing what is unfortunately necessary." (Stan Barnett's email of October 30, 2015, to Richard Farrier and Dawes Cook).

22. On November 19, 2015, Irene Fokas was also deposed in the Defamation Action. After being read the letter of Dr. Fanouris Ferderigos, Ms. Fokas (through an interpreter) stated the following:

> Q. Did you ever speak with Stavros Ferderigos about allegations that Athan focus set fire to 229 King Street?
> A. No. Never. Never
> Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas hired someone to set fire to 229 King Street?
> A. Not with Stavros. Never.
> D. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas filed false insurance claims?
> A. No.
> Q. Did you tell your brother Fanouris that Stavros and you never talked about these things?
> A. Yes. I talked to him. *Irene Fokas's Deposition 0041 at 8-22.*

> A. And I told him [Fanouris] that someone told me that Athan should be very careful. His cousins are doing these things, and he's going to be hurt; and I did not tell him who told me.
> Q. And is that person who told you Rania?
> A. Yes. *Irene Fokas's Deposition 0042 at 16-20*

> Q. And when did Rania tell you these things?
> A. April. I don't know. We spoke for hours about these things, and she's very afraid for her brother. *Irene Fokas's Deposition 0043 at 3-7.*

> Q. Did your daughter tell you who she was talking about that might make these --
> THE WITNESS: I never ask.
> A. I never asked her, but I figured that – I figured they might be them because she – they have – they do work with their cousins. She was hearing these things; but I never asked her, "Where do you find this stuff? Where did you hear it?
> Q. You referred – you said "them." "She worked with them," I think you said.
> A. Yes. *Irene Fokas's Deposition 00011 at 20-25 and 000 at 1-6.*

> Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?
> A. I told him that the guys are going to accuse you for the fire.
> Q. Who told you that the guys were going to do that?
> A. I told you earlier. I learned these things form my daughter. *Irene Fokas's Deposition 00047 at 22-25 and 00048 at 1-4*

> Q. And at the time you heard that from your daughter, she did not say that she heard Phillip, Spiros, or Jacob say those things?

EXHIBIT C

THE WITNESS: She didn't say 'cause I no ask.'
A. I did not ask her. *Irene Fokas's Deposition 00089 at 6-10.*

A. I did not ask her, but I thought that they work together. I guess that's where she heard it. *Irene Fokas's Deposition 00089 at 17-19.*

23. Apparently, she had not said this version of the story before because she did not want to involve her daughter: "I would not say anything for a year-and-a-half because my daughter – my daughter was involved." (Irene Fokas's Deposition 10 at 18-20).

24. In the deposition, Ms. Fokas also confirmed that the statement in her affidavit was true: "Yes, it is true; and I'm telling you now my brother never – we never talked about these things. My brother never told me anything," (Id. 33 at 14-16), and that she had had an opportunity to have the English version of the affidavit explained to her by her daughter Rania before signing and to have it later translated in Greek. (Irene Fokas's Deposition 34:19-35:7). She also confirmed that she had been prepared for the Deposition by Stan Barnett: "Q. … [W]hen you met with Stan Barnett, the purpose of your meeting was to prepare for this deposition; right? A. Yes. Yes. It was to talk about how this thing was going to happen today." (Irene Fokas's Deposition 90 at 12-16).

25. On November 20, 2015, Rania Nikatos (sister of Athan Fokas) rendered an affidavit swearing:

> 1. That Phillip and/or Spiros Ferderigos have never told me that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed false insurance claim(s).
>
> 2. That I have never heard Phillip and/or Spiros Ferderigos say that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).
>
> 3. That I never told Irene Fokas that I have ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to

[1] See Restatement (Second) of Torts § 577 (1977) (Publication to family members)

229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

4. That I have never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

26. On December 2, 2015, Gerasimos Nikatos, husband of Rania Nikatos, issued an affidavit stating:

11. That sometime soon after the fire at 229 King Street, a Greek contractor named Manoli Kehagias told me and Iakovos that Athan Fokas asked him to set fire to 229 King Street.

12. Manoli told me that he could not believe that Athan Fokas would ask him to do that.

13. The second I got home that day, I told my wife, Rania Nikatos, what Manoli told me. And I have never told anyone else about this matter until after Athan Fokas' defamation lawsuit concerning this matter was filed.

27. On December 17, 2015, Plaintiff moved to modify the complaint in the defamation action, changing the person to whom the defamatory statements were published from Stavros Ferderigos to "other persons": "Defendants have published to other persons entirely false and defamatory statements about Plaintiff. . . ." (Plaintiff Amended Complaint ¶11). The amended complaint went on to allege that "Plaintiff has been confronted with said statements by his mother, Defendants' aunt, who upon information and belief came to hear these falsehoods as the direct and proximate result of the publication of these falsehoods by Defendants." (Plaintiff Amended Complaint ¶14).

28. On January 8, 2016, Richard Farrier, counsel for Phillip Ferderigos wrote to Stanley Barnett, counsel for Athan Fokas, refusing to consent to amend the complaint in the Defamation Action, demanding dismissal of the action because the defamation claim was "without any factual basis," and providing notice of defendant's intention to seek sanctions.

OPINION

29. A lawyer has a duty not to bring frivolous litigation. Rule 3.1 of the South Carolina Rules of Professional Conduct (SCRPC) provides: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." (Emphasis added).

30. The South Carolina Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq. ("Sanction Act") provides that an attorney may be sanctioned for filing "a frivolous pleading, motion, or document." Id. §15-36-10(4)(a).

31. Rule 11 of the South Carolina Rules of Civil Procedure provides:

> The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. . .
>
> If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. (Emphasis added)

32. In determining whether conduct is frivolous, the analysis is objective, not subjective. The 1993 amendment to Federal Rule 11, on which South Carolina Rule of Civil Procedure 11 is based, eliminated the "empty-head, pure-heart" justification for frivolous arguments. See the Advisory Committee's Notes to the 1993 amendment to FRCP 11. Similarly, the standard in South Carolina is objective. The Sanction Act repeatedly states that the standard is that of a "reasonable attorney in the same circumstances."

33. The Advisory Committee Notes to Rule 11 of the Federal Rules of Civil Procedure set forth factors to consider in determining whether a filing is frivolous:

> Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar. (Emphasis added).

34. An attorney has a duty to undertake a reasonable investigation before filing suit. See James F. Flanagan, SOUTH CAROLINA CIVIL PROCEDURE 85 (3RD ED.). In *Ex Parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008) the Supreme Court affirmed the trial court's award of sanctions when plaintiff's counsel brought a conversion claim and related causes of action against plaintiff's former attorney without doing an adequate investigation into the matter. The Court affirmed the lower court's award of sanctions for a frivolous lawsuit because plaintiff's counsel failed to conduct an adequate investigation before filing suit. In particular, the court focused on the following factors in determining frivolousness:

(a) Gregory had time to investigate the conduct of the defendant's lawyer;

(b) He failed to make inquiries that would have produced information about the validity of any claims against the defendant;

(c) He relied on his client's unsubstantiated statements that the defendant attorney had taken his client's funds and went so far as to make these accusations to a reporter even though he lacked any basis other than his client's statements for making these allegations.

35. As the court found in *Gregory* an attorney cannot rely only on the statements of his client when determining whether a claim is frivolous. In *Jandrt v. Jerome Foods*, 597 N.W.2d 744 (Wis. 1999), the court stated:

> Attorneys do not have an unfettered right to rely on either the investigation of a referring attorney or on client statements for the factual basis of a claim. . . .

> It is also true, as the [law firm] contends, that an attorney may rely upon his or her client for the factual basis of a claim when the client's statements are objectively reasonable. . . . However, as is true of reliance on information provided by a referring attorney, reliance on a client is not without limitation. In deciding whether he or she may rely solely on a client for the facts that are at the foundation of a claim, "the attorney should determine if the client's knowledge is direct or hearsay and check closely the plausibility of the client's account-particularly if the information is secondhand." . . . When an attorney must rely on his client, as [the law firm] here stated that it needed to, the attorney should question his client closely and not accept the client's version on faith alone. . . . The circuit court did not erroneously exercise its discretion in making this finding. The authority that an attorney may rely on a client for information rests in notes to Rule 11 which instruct that whether an attorney's inquiry is reasonable may depend upon "whether he had to rely on a client for information as to the facts underlying the pleading . . . ." Advisory Committee Note, 97 F.R.D. at 199. The fact at issue here was whether ammonia or CO[2] could cause the plaintiffs' birth defects. The [law firm] did not need to rely upon [the client] for the physician's statement as a basis for causation. Unlike the situations in which a client's statement could not be verified without discovery, [the client's] could have been. The [law firm] could have contacted [the client's doctor] to determine whether he did have an opinion as to causation and it chose not to, citing strategic reasons for not doing so. The circuit court believed that this was an unreasonable action, and its finding is not clearly erroneous given the [law firm's] lack of any other evidence of causation.

See also *Miller v. Badgley*, 753 P.2d 530, 539 (Wash. Ct. App. 1988) (An attorney's "blind reliance" on a client, however, will seldom constitute a reasonable inquiry).

36. The duty not to engage in frivolous filings is a continuing one. A lawyer may be sanctioned for continuing a claim that the lawyer learns is frivolous even if the claim may not have been frivolous when brought. A leading case on this principle is *Jandrt v. Jerome Foods*, supra, where the court held that the plaintiffs' counsel were subject to sanction for continuing a lawsuit for more than nine months after they learned that defendant's plant was not the cause of birth defects suffered by the plaintiffs. The court held that counsel was not subject to sanction for the original filing of a frivolous lawsuit because it was necessary to engage in discovery to determine causation. But the court did award sanctions for continuing a frivolous lawsuit.

> However, under [the Wisconsin statute on frivolous conduct] a party is not relieved of its responsibility to ensure that an action is well-grounded in fact and law once an action is commenced. A party's responsibility for the factual basis of a claim is on-going. Once a party knows or should have known that a claim is not supported by fact or law, it must dismiss or risk sanctions. 597 N.W.2d at 760.

In *Jandrt* the court found that the plaintiffs' lawyers engaged in frivolous conduct by continuing their tort action for nine months after filing without making any effort to determine causation. They did not hire an expert on causation, nor did they seek to use sources of information about causation other than discovery that were readily available to them.

37. The South Carolina Supreme Court has also sanctioned lawyers for violation of the duty not to continue a frivolous proceeding. See *Holmes v. E. Cooper Cmty. Hosp. Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2013), where the court affirmed the circuit court's award of sanctions against the plaintiff, who was also an attorney, for violation of S.C. Code §15-36-10(C)(1) for continuing litigation against the defendant Hospital when she had made the same unsuccessful legal arguments in the case before the court that she had made in prior litigation. The Sanctions Act specifically provides for the award of sanction when "(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party." (Emphasis added). In addition the Sanction Act provides for sanctions for "(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts." Id. §15-36-10(C)(1).

38. Sanctions under Rule 11 and the Sanctions Act may be awarded against both counsel for a party and the party who is represented. See the emphasized text of SCRCP 11 above; see also *In re Gregory*, finding that a represented party was subject to sanctions under the Sanctions Act. Thus, in this case both attorney Barnett and plaintiff Fokas are subject to sanctions for their conduct in this matter. They both failed to investigate the facts before bringing

the defamation action, and they both received evidence from plaintiff's family that the defamation suit is ungrounded. Yet, they still refuse to dismiss this claim.

39. An example of a case imposing sanction on counsel for failing to conduct a reasonable investigation before filing a defamation claim is *Mohammed v. Union Carbide Corp.*, 606 F. Supp. 252 (E.D. Mich. 1985). In that case the plaintiff conceded at his deposition that he had no evidence of defamation by the defendant, and he failed to offer any evidence in response to defendant's motion for summary judgment. In response to the motion for sanctions plaintiff still failed to come forward with any evidence of defamation. In finding that the plaintiff's counsel had failed to conduct a reasonable investigation before filing the defamation claims, the court emphasized that complex cases may involve investigative difficulties, but this is not true with claims for defamation, "which by definition are notorious, public acts." The court went on to conclude that "Plaintiff's failure to conduct any investigation whatsoever into these claims is apparent from the present record, and this failure requires the court to impose sanctions under Rule 11." The court went on to impose sanctions against both the plaintiff and the plaintiff's attorney. Id. at 261-262. For another case imposing sanction for frivolous conduct in a defamation case, see *Grasso v. Mathew,* 564 N.Y.S.2d 576 (App. Div. 1991).

40. In my opinion a reasonable attorney in Mr. Barnett's position would not file a defamation action against two lawyers (Phillip and Spiros Ferderigos are both members of the South Carolina bar) based solely on his client's statement that his mother, Irene Fokas, told him that the two defendants had made defamatory statements about him to their father, Stavros Ferderigos, without at least (1) interviewing Irene Fokas or Stavros Ferderigos (or both) or obtaining verification that the statements were made to the father, (2) determining and consulting with the client about whether other evidence of publication could be developed before filing, (3)

engaging in legal analysis to determine when and if a defamatory statement by a child to a parent about a another member of the family amounts to publication,[1] and (4) determining the burden of proof that would apply in such a case.

41. It is my understand that Mr. Barnett relied on statements from his client, Mr. Fokas, that Mr. Fokas's mother told him that the Ferderigos brothers made the defamatory statements referenced in the complaint to their father. I understand that Mr. Barnett relied solely on his client's information. He did not contact Ms. Fokas or obtain verification from her as to what she told her son, or what her brother, Stavros Ferderigos, told her about any statement his sons made to him. He did not contact or obtain verification from Stavros Ferderigos that any such statements were made to him. He did not do any investigation to determine if these alleged statements were made to anyone else.

42. In analyzing whether Mr. Barnett filed a frivolous defamation action, I note that all of the factors discussed by the court in *Gregory* supra support an award of sanctions. Barnett had time to investigate. There was no upcoming statute of limitations or other deadline that necessitated filing without further investigation. Barnett made no inquiries or investigation into the truth or falsity of his client's statements about what his mother said. He relied completely on his client's unsubstantiated statements about the defamation, which statements were on their face double hearsay.

43. In my opinion Mr. Barnett did not act as a reasonable attorney under the circumstances with regard to his investigation before filing the defamation action on behalf of Mr. Fokas against the Ferderigos brothers and should be subject to sanctions for filing this frivolous action.

---

[1] See Restatement (2d) of (Torts) §597, discussing the scope of a conditional privilege for publication to family members.

44. Mr. Barnett has now received the following materials in connection with this lawsuit:

(a) Affidavit of Irene Fokas of October 28, 2015 (Greek Translation attached) (Ferderigos Exhibits no. 3);
(b) Extract of Deposition of Irene Fokas (Ferderigos Exhibits no. 6-8);
(c) Affidavit of Rania Nikatos (Ferderigos Exhibit no. 9);
(d) Affidavit of Gerasimos Nikatos December 2, 2015 (Ferderigos Exhibit no. 10);
(e) Full Deposition of Irene Fokas, November 19, 2015;
(f) Letter from Dr. Fanouris Ferderigos of August 21, 2015.

45. These documents all show that no one has ever heard the Ferderigos defendants make the defamatory statements set forth in the complaint. In particular, Ms. Irene Fokas denies that her brother, Stavros Ferderigos (the defendants' father), ever told her that the defendants made these statements. In addition, Ms. Fokas has sworn under oath in her affidavit that no one has ever told her that the defendants made these allegedly defamatory statement. Moreover, the affidavit from Gerasimos Nikatos, Ms. Fokas's son-in-law, indicates that based on information he received from a contractor, Manoli Kehagias, the allegedly defamatory statements may be at least in part truthful.

46. In my opinion, when confronted with these materials, a reasonable attorney in the position of Mr. Barnett would not continue the defamation action against the defendants. In particular, a reasonable attorney would not attempt to amend the complaint to make vague allegations of defamation -- "Defendants have published to other persons entirely false and defamatory statements about Plaintiff. . . ." (Plaintiff Amended Complaint ¶11) -- when the attorney had no additional evidence to support the allegations of the amended complaint and all of the evidence available to the attorney showed that the amended complaint had no factual merit.

47. In my opinion, when confronted with these materials, a reasonable attorney in the position of Mr. Barnett would advise his client to promptly dismiss the defamation action and would not attempt to use the existence of the frivolous lawsuit in an attempt to obtain benefits for his client through a settlement agreement.

48. In my opinion, Mr. Barnett did not act (and he is not acting) as a reasonable attorney under the circumstances in continuing the defamation action, in refusing to dismiss the action, in filing a motion to amend the complaint on behalf of Mr. Fokas against the Ferderigos brothers, and in using the frivolous action to attempt to obtain benefits for his client through a settlement agreement.

49. Courts have broad authority to award sanctions for frivolous conduct by attorneys and parties. Section 15-36-10(B)(2) provides that "(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances." (emphasis added). In addition, section E(7) provides that a court in awarding sanctions can take into account "other factors the court considers just, equitable, or appropriate under the circumstances." (emphasis added).

50. Sections (G) and (H) provide guidance for sanctions:

> (G) Sanctions may include:
>
> (1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court; or

(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(H) If the court imposes a sanction on an attorney in violation of the provisions of this section, the court shall report its findings to the South Carolina Commission of Lawyer Conduct.

Further the affiant sayeth not.

Nathan M. Crystal

Sworn to and subscribe before me

Notary Public

This 11 day of Feb, 2016

DENISE MATEO
Notary Public - State of New York
No. 01MA6292020
Qualified in Bronx County
My Commission Expires Nov. 4, 2017

Curriculum Vitae of Nathan M. Crystal

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email: nmcrystal@cgcfirm.com

1. ***Education***

   (a) B.S., University of Pennsylvania, 1968
   (b) J.D., Emory Law School, 1971 (with honors)
   (c) L.L.M., Harvard Law School, 1976

2. ***Employment***

   (a) Founding Member, Crystal & Giannoni-Crystal, LLC, with offices in Charleston, New York City, and Washington, DC, 2011-
   (b) Class of 1969 Professor Emeritus of Professional Responsibility and Contract Law, University of South Carolina, 2008-
   (c) Distinguished Research Scholar, Charleston School of Law, 2012-2014
   (d) Distinguished Visiting Professor of Law, Charleston School of Law, 2008-2012
   (e) Class of 1969 Professor of Professional Responsibility and Contract Law, University of South Carolina, 1999-2008
   (f) Roy Webster Professor of Professional Responsibility and Contract Law, University of South Carolina, 1991-1999
   (g) Associate Dean and Professor of Law, University of South Carolina, 1987-1992
   (h) Professor of Law, University of South Carolina, 1982-1987
   (i) Associate Professor of Law, University of South Carolina, 1979-82
   (j) Assistant Professor of Law, University of South Carolina, 1976-79
   (k) Director of Legal Methods Program, Harvard Law School, 1975-76
   (l) Teaching Fellow, Harvard Law School, 1974-75
   (m) Associate, Nall, Miller & Cadenhead, Atlanta, Georgia, 1971-74

3. ***Courses Taught***: Contracts, Criminal Procedure, International Business Transactions, Mass Torts, Professional Responsibility, Sales, Taxation, Uniform Commercial Code. I have also taught a seminar, Lawyers and Justice, in the Honors College at the University of South Carolina.

4. ***Publications***

BOOKS

ANNOTATED SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT (S.C. Bar 2016 ed. forthcoming) (with Professor Robert M. Wilcox), app. 500 p. Annual update posted online at http://www.scbar.org/CLE/AnnotatedSCRulesofProfessionalConduct.aspx

PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION (Aspen Law & Business, 5th ed. 2012), app. 700 pp. (first edition published by Little Brown & Co. 1996). The book is used at more than 30 schools around the country.

Teacher's Manual to accompany Professional Responsibility: Problems of Practice and the Profession, app. 300 pages.

PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS (with Charles Knapp and Harry G. Prince of Hastings College of Law) (Aspen Law & Business 8th ed. 2016 fothcoming app. 1100p. The book is used at more than 80 law schools around the country. Our publisher tells us that it is either the first or second most widely adopted contracts book in the country.

RULES OF CONTRACT LAW: SELECTIONS FROM THE UNIFORM COMMERCIAL CODE, THE CISG, THE RESTATEMENT (SECOND) OF CONTRACTS, AND THE UNIDROIT PRINCIPLES, with Material on Contract Drafting (with Charles Knapp and Harry G. Prince) (Aspen Law & Business, 2016 ed.), 300 p.

Teacher's Manual to accompany Problems in Contract Law (with Charles Knapp and Harry G. Prince) (Aspen Law & Business 8th ed. 2016 forthcoming), app. 300 pages.

AN INTRODUCTION TO PROFESSIONAL RESPONSIBILITY (Aspen Law & Business, 1998), 529 pages.

MAJOR ARTICLES

Using Occam's Razor to Solve International Attorney-Client Privilege Choice of Law Issues: An Old Solution to a New Problem, 41 N.C. Journal of Int'l L. & Comm. Regulation (forthcoming 2016) (with Francesca Giannoni-Crystal)

"Something's got to give" - Cloud Computing, as applied to lawyers – comparative approach US and EU and practical proposals to overcome differences (with Francesca Giannoni-Crystal), Opinio Juris in Comparitone, Vol. I, n.I (2014)

Should Lanterns [of Rule 11] Shine, the Holy Face [of Forum Selection Clause Challenges] ... Would Wither up, in Intern. Litig. Vol. 29, issue #1 (June 2013) (with Francesca Giannoni-Crystal)

Inadvertent Production of Privileged Information in Discovery in Federal Court: The Need for Well-Drafted Clawback Agreements, 64 S. Car. L. Rev. 581 (2013)

"One, No one and One Hundred Thousand". . . Which Ethical Rule to Apply? Conflict of Ethical Rules in International Arbitration (with Francesca Giannoni-Crystal), 32 Mississippi C. L. Rev. 283 (2013)

Enforceability of Forum Selection Clauses: A "Gallant Knight" Still Seeking Eldorado, (with Francesca Giannoni-Crystal), 8 S.C. J. Int'l. L. & Bus 203 (2012)

Understanding *Akzo Nobel*: A Comparison of the Status of In-House Counsel, the Scope of the Attorney-Client Privilege, and Discovery in the U.S. and Europe, (with Francesca Giannoni-Crystal), *Global Jurist*: Vol. 11: Iss. 1 (Topics) (2011), Article 1, http://www.bepress.com/gj/vol11/iss1/1

Contract Enforceability During Economic Crisis: Legal Principles and Drafting Solutions, (with Francesca Giannoni-Crystal), *Global Jurist*: Vol. 10: Iss. 3 (Advances) (2010), Article 3, http://www.bepress.com/gj/vol10/iss3/art3

Ethical Responsibility and Legal Liability of Lawyers for Failure to Institute or Monitor Litigation Holds, 43 Akron L. Rev. 715 (2010)

Using the Concept of a "Philosophy of Lawyering" in Teaching Professional Responsibility, 51 St. Louis L. J. 1235 (2007)

Enforceability of Advance Waivers of Conflicts of Interest, 38 St. Mary's L.J. 859 (2007)

False Testimony by Criminal Defendants: Still Unanswered Ethical and Constitutional Questions, 2003 Ill. L. Rev. 1529

History of Efforts to Define Lawyers' Professional Obligations in OXFORD COMPANION TO AMERICAN LAW (Oxford University Press 2002)

Core Values: False and True, 70 Fordham L. Rev. 747 (2001) (listed in the Social Science Network Electronic Library)

The Incompleteness of the Model Rules and the Development of Professional Standards, 52 Mercer L. Rev. 839 (2001)

Developing a Philosophy of Lawyering, 14 Notre Dame J.L. Ethics & Pub. Poly 75 (2000)

The Lawyer's Duty to Disclose Material Facts in Contract or Settlement Negotiations, 87 Ky. L.J. 1055 (1998-1999) (reprinted in the *Defense Law Journal*; listed in the Social Science Network Electronic Library)

Limitations on Zealous Representation in an Adversarial System, 32 Wake Forest L. Rev. 671 (1997) (listed in the Social Science Network Electronic Library)

Scienter in Professional Liability Cases (with Professor John Freeman), 42 So. Car. L. Rev. 783 (1991)

Disqualification of Counsel for Unrelated Matter Conflicts of Interest, 4 Geo. J. Leg. Ethics 273 (1990)

An Empirical View of Relational Contracts Under Article Two of the Uniform Commercial Code, 1988 N.Y.U. Ann. Sur. of Am. Law 293

Confidentiality under the Model Rules of Professional Conduct, 30 Kan. L. Rev. 215

(1982) Consumer Product Warranty Litigation in South Carolina, 31 So. Car. L. Rev. 293

(1980) Ethical Problems in Marital Practice, 30 S. Car. L. Rev. 321 (1979)

Codification and the Rise of the Restatement Movement, 54 Wash. L. Rev. 239 (1979)

OTHER PUBLICATIONS

Essay on Teaching Methodologies for Professional Responsibility in TEACHING THE LAW SCHOOL CURRICULUM by Steven Friedland and Gerald Hess (Carolina Academic Press 2004)

South Carolina Legal Ethics (with Professor Robert M. Wilcox of USC Law School), published on the Internet and in CD rom as part of the American Legal Ethics Library sponsored by Cornell Law School, app. 150 pages.

Litigation Ethics: Course Material for Continuing Education ch. 5, Contacts with Employees and Misdirected Communications (ABA Sec. of Litig. 2000) (with Rebecca Laffitte)

SHORTER ARTICLES

"Ethics Watch" columns (bimonthly) for The South Carolina Lawyer. I have written more than 30 articles since I began writing this column in 2008. See www.nathancrystal.com for a list of many of the articles.

South Carolina Rules of Professional Conduct: Conflicts of Interest, South Carolina Lawyer (March/April 1991)

South Carolina Rules of Professional Conduct: Provisions on Confidentiality, South Carolina Lawyer (Sept./Oct. 1990)

South Carolina Rules of Professional Conduct: Provisions on Legal Fees and Client Relations, South Carolina Lawyer (March/April 1990)

The Malpractice Implications of Specialization, Transcript (Nov. 1988)

Is Any Code of Ethics Really Necessary?, Virginia Law Weekly (Feb. 11, 1983)

5. ***Other Scholarly Activities***

(a) Organizer of Conference on the Commercialization of the Legal Profession held in Charleston, South Carolina in May, 1993. The papers and proceedings from the conference are published in 45 S.C.L. Rev. #5 (1994).

(b) Co-chaired with Professor Charles Knapp of N.Y.U. Law School "Conference on Contract Law: From Theory to Practice," held at N.Y.U. Law School in May, 1988. The proceedings of the conference were published in the N.Y.U. Annual Survey of American Law.

(c) Organizer of Charles Knowlton Law and Liberal Arts Interdisciplinary Seminar at the University of South Carolina. Speakers in the series: Professor Jarislav Pelikan (Yale), Professor Ronald Dworkin (N.Y.U. and Oxford), Professor Stephen Jay Gould (Harvard), Professor Richard Epstein (Chicago), Professor Lani Guinier (Pennsylvania), Professor Garry Wills (Northwestern University), Professor Maria Rosa Menocal (Yale); Professor G. Edward White (Virginia); Professor Martha Nussbaum (Chicago); Professor Eric Kandel (Columbia). I have also been a member of two other distinguished speaker committees at the University: The Schoeman Lectureship, cosponsored by the Law School and the Philosophy Department, and the Solomon/Tenenbaum Lecture Series.

6. ***Visitorships and Lectures, Appointments, Professional Activities, Speeches, General Public Service, and University Service***

VISITORSHIPS AND LECTURES

Distinguished Professor, Tianjin University, Tianjin China, July 2011

Distinguished Lecturer, University of Arkansas, Little Rock, October 2008

Visiting Professor of Law, University of Luiss, Rome, Fall 2006

Parsons Visiting Scholar, University of Sydney, Australia, Summer 2006

Visiting Professor of Law, Scuola Superiore, Pisa, Italy, Spring 2005

Visiting Professor, Charleston School of Law, Charleston, SC, Summers 2005, 2006, 2007, 2008

Distinguished Visiting Professor of Law, Suffolk Law School, Fall 2003

Visiting Professor of Law, Hastings College of Law, Fall 2001

Visiting Professor of Law, Florida State College of Law, Summer, 2001

Distinguished Lecturer, University of Indiana, Indianapolis School of Law, April 2001

APPOINTMENTS

Appointed by President of South Carolina Bar as Chair of the bar International Law Committee, 2013-2014

Appointed by President of South Carolina Bar as Chair of the bar's Ethics Advisory Committee, 2002-2003

Hearing Examiner for Southern Association of Colleges and Schools, 1999-

Chapter 11 Examiner appointed by the United States Bankruptcy Court for the District of South Carolina in In re TJN, Inc. (1994) and In Re Seabrook Island Ocean Club Chapter 11 (1990)

Retained (pro bono) by the South Carolina Bar to draft and present the Bar's petition to the South Carolina Supreme Court seeking adoption of the South Carolina Rules of Professional Conduct, 1989. The Supreme Court adopted the new rules effective September 1, 1990.

PROFESSIONAL ACTIVITIES

Director, Center for Law, the Legal Profession and Public Policy, University of South Carolina Law School, 1991-1999

Reporter for special committee formed by the South Carolina Law Institute to draft a proposed statute to regulate lobbying, 1990. I drafted a report and proposed legislation for the committee. The work of the committee influenced changes in South Carolina government ethics laws.

South Carolina Bar representative on the Board of Palmetto Legal Services, Inc. 1990-1996

Member, South Carolina Bar Professional Responsibility Committee, for a number of years

Member, South Carolina Ethics Advisory Committee, 1981-85; 1993-. While a member of the committee, I have authored or coauthored a number of ethics advisory opinions. Appointed as Chair 2002-2003

Conceived plan for and initiated Law School's voluntary pro bono program. While I take credit for the idea of the program, the success of the program is attributable to the untiring efforts of its director, Pam Robinson.

SPEECHES

Frequent lecturer on matters of professional ethics at continuing legal education seminars. I speak an average of five times a year to both national and state organizations, including the following:

American Bar Association Center for Professional Responsibility
American Bar Association Family Law Section
American Bar Association Intellectual Property Section
American Bar Association International Law Section
American Board of Professional Liability Attorneys
Conference of Federal and State Appellate Staff Attorneys
Corporate Counsel Seminars sponsored by Jackson, Lewis, Schnitzler & Krupman
In-house law firm ethics seminars for a number of major firms in the state
Law School programs including ones sponsored by Georgia, Illinois, Mercer, and Suffolk
Mealy's Conference on Toxic Torts
Nelson Mullins Center on Professionalism
North Carolina and South Carolina Assn. of Patent, Copyright, and Trademark lawyers
Protection and Advocacy for People with Disabilities, Inc.
Rand Institute
Southeastern Association of American Law Schools
South Carolina Bankruptcy Law Assn.
South Carolina Defense Lawyers Assn.
South Carolina Health Lawyers Assn.
South Carolina Trial Lawyers Assn.
United States Department of Justice
Various bar association groups including the South Carolina Bar and the Georgia Bar
In addition, I have spoken frequently at CLE sessions organized by a number of firms throughout the state.

GENERAL PUBLIC SERVICE

Chair, Committee for Concert in Celebration of 50th Anniversary of State of Israel, Koger Center, March 31, 1998

Cofounder and Treasurer, Montessori Elementary School of Columbia (1983-1994) and Montessori Middle School of Columbia (1989-1999)

Member of Board of Directors and Board of Education of Beth Shalom Synagogue, for a number of years

UNIVERSITY SERVICE

I served on the University of South Carolina Tenure and Promotions committee, Conflict of Interest Committee, and as a faculty senator. In addition, as noted above, I have served on several committees that bring speakers to the University.

7. ***Honors***

(a) Selected by his peers for inclusion in *The Best Lawyers in America*© 2015, 2016 in the fields of Ethics and Professional Responsibility Law.
(b) Selected for 2014 Leadership in Law Award by the South Carolina Lawyers Weekly.
(c) Outstanding Faculty Publication Award, University of South Carolina: 2000; 1999 (with Professor Richard Seamon), 1994, 1988 (with Professor Patrick Hubbard)
(d) Outstanding Faculty Member Award, University of South Carolina, 2005-06, 1982-83 (with Professor Eldon Wedlock).
(e) G.G. Dowling Award, University of South Carolina, 2004, presented to the faculty member who best exhibits integrity, scholarship, and concern for others
(f) Order of the Coif
(g) Who's Who in American Law
(h) Editor-in-Chief, Journal of Public Law (now Emory Law Journal), 1970-71

8. ***Consulting***

I have represented lawyers and law firms and served as an expert witness in cases involving professional ethics, including disqualification, malpractice, and disciplinary matters. I have been selected to arbitrate legal disputes. I have appeared as counsel or cocounsel in the following reported cases:

Rubashkin v. United States, #11-1203 (Supreme Court 2012) (on behalf of Amicus Curiae, The Aleph Institute and the National Association of Criminal Defense Lawyers)

Hall's Reclamation, Inc. v. APAC Carolina, Inc., 103 F.3d 117 (4th Cir. 1996) (unpublished opinion available at 1996 WL 726857)

In re Bowen, 469 S.E.2d 46 (S.C. 1996)

In re Jennings, 468 S.E.2d 869 (S.C. 1996)

Home Ins. Co. v. Bowers, 39 F.3d 1177 (4th Cir. 1995)

Rutherford v. Rutherford, 414 S.E.2d 157 (S.C. 1992), rev'g, 401 S.E.2d (S.C. App. 1991) (pro bono)

In re Bell, 405 S.E.2d 825 (S.C. 1991)

In re Bowers, 400 S.E.2d 134 (S.C. 1991) (pro bono)

In re Rentiers, 374 S.E. 2d 672 (S.C. 1988)

In re Warner, 335 S.E.2d 90 (S.C. 1985)

In re Delgado, 306 S.E.2d 591 (1983), cert. denied, 464 U.S. 1057 (1984) (amicus curiae on behalf of the National Association of Criminal Defense Lawyers)

Tuloka Affiliates, Inc. v. Moore, 268 S.E.2d 293 (S.C. 1980) (pro bono)

Fortson v. Weeks, 208 S.E.2d 68 (Ga. 1974) (amicus curiae)

Willis v. American National Stores, 350 F. Supp. 173 (N.D.Ga. 1972) (pro bono)

I have also appeared in unreported cases before the United States Court of Appeals for the District of Columbia, the United States Court of Appeals for the Fourth Circuit, and the Georgia Supreme Court.

9. ***Bar Memberships***

(a) Georgia, 1972
(b) Massachusetts, 1976 (retired)
(c) South Carolina, 1980
(d) New York, 2012
(e) District of Columbia, 2015

Revised January 6, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-10-3891

ATHAN FOKAS,

Plaintiff,

v.

PHILLIP FERDERIGOS and SPIROS FERDERIGOS,

Defendants.

CERTIFICATE OF SERVICE

FILED
2016 FEB 12 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT

I, the undersigned, of the law office of K&L Gates LLP do hereby certify that I have served counsel in this action with a copy of **Notice of Motion and Motion for Summary Judgment on Behalf of Defendant Phillip Ferderigos** by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Stanley E. Barnett, Esq.
Smith, Bundy, Bybee & Barnett
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VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: **Athan Fokas v. Philip Ferderigos and Spiros Ferderigos**
Case No. 2015-CP-10-3891

Dear Ms. Armstrong:

Enclosed herewith please find the original and one copy of a Notice of Motion and Motion for Summary Judgment on behalf of Defendant Phillip Ferderigos. Also enclosed is a Motion Cover Sheet and a check in the amount of $25.00 for your filing fee. We have also enclosed for filing the original and one copy of the Affidavit of Nathan M. Crystal in Support of Defendants' Motion for Summary Judgment and for Sanctions. Please file the originals of these documents and return the file-stamped copies *via* the bearer of this letter.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With kind regards, I remain.

Sincerely,

Jennifer H. Thiem

Enclosures
cc: Stanley E. Barnett, Esq.
M. Dawes Cooke, Jr., Esq.
Jeremy Bowers, Esq.
Joseph R. Weston, Esq.
J. Drayton Hastie, III, Esq.
Richard A. Farrier, Jr., Esq
(all via email and first class mail, w/encl.)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3891
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS and SPIROS FERDERIGOS, Defendants.	**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT SPIROS FERDERIGOS**

FILED
2016 MAR 28 PM 3:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY BS

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

Defendant, SPIROS FERDERIGOS (hereinafter referred to as "Spiros"), by and through his undersigned counsel, hereby submits this memorandum of law in support of his Motion for Summary Judgment.

PLAINTIFF'S ALLEGATIONS & PROCEDURAL HISTORY

The parties are involved in two lawsuits. One lawsuit (Civil Action No. 2015-CP-10-3919) involves a dispute about their underlying investigation into the possibility of, feasibility of, and their interest in constructing an entirely new, separate, and free-floating building above 229 King Street (Old Towne Restaurant) to be used for rental units. Plaintiff also filed the instant action (Civil Action No. 2015-CP-10-3891) which involves allegations that Defendants published defamatory statements about Plaintiff, particularly with regard to setting fire to Old Towne Restaurant and filing false insurance claims. Plaintiff alleges that he and Defendants "planned to expand the suites rental business by adding three floors to the building and brought that plan to the point of securing all necessary approvals and approval for a loan." Complaint, ¶ 5 (C/A No. 2015-CP-10-3891). Plaintiff further alleges that Spiros "refused to go forward with

the loan," and, as a result, there were "communications between the parties in which the possibility of a lawsuit was raised." Complaint, ¶¶ 6 - 7 (C/A No. 2015-CP-10-3891). He then alleges that Defendants "threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims." Complaint, ¶ 8 (C/A No. 2015-CP-10-3891). Plaintiff alleges that Defendants made defamatory statements that Plaintiff hired someone to set fire to the second floor of 229 King Street and that Plaintiff filed a false workers' compensation claim. Complaint, ¶ 11(a), (b) (C/A No. 2015-CP-10-3891).

In the initial Complaint filed by Plaintiff, he alleges that these statements were communicated by the Defendants to *their father* who in turn relayed the statements to Plaintiff's *mother* (Defendants' aunt) for purposes "of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Complaint, ¶ 12 (C/A No. 2015-CP-10-3891). In the proposed Amended Complaint[1], Plaintiff now alleges a

[1] Spiros opposes Plaintiff's Motion to Amend Complaint because Plaintiff's proposed amendment would be futile. The South Carolina Court of Appeals upheld the dismissal of a similar complaint for defamation that lacked factual allegations. In McNeil v. SCDOC, a former employee sued the South Carolina Department of Corrections for due process violations, negligence, defamation, and civil conspiracy after her termination. McNeil v. SCDOC, 404 S.C. 186, 189, 743 S.E.2d 843, 844 (Ct. App. 2013). The employee was a captain at the Kirkland Reception and Evaluation Center which maintained custody of and provided care for inmates and prisoners incarcerated by the state. Id. During the employee's shift, an inmate, who was a known suicide risk, committed suicide after being denied his request for his medication. Id. SCDOC terminated the employee "because of alleged negligence in her duties at the time of the inmate's death and falsification of documents after his suicide." Id. The trial court dismissed the defamation claim for failure to allege sufficient facts to state a claim upon which relief could be granted. The employee argued that she pled SCDOC "made and published statements that insinuated she was unfit in her business and profession," but the Court of Appeals upheld the dismissal of the employee's defamation action as follows:

> McNeil did not allege any of SCDC's statements were unprivileged, and she did not set forth with any specificity what the alleged false statements were. She also did not allege any of the statements were published to a third party or that SCDC made the alleged statements. Additionally, she did not assert to whom SCDC made the alleged statements. Therefore, we find McNeil's allegations do not support an action for defamation, and the trial court did not err in dismissing her cause of action.

Id. at 195, 743 S.E.2d at 848. Similarly, Plaintiff's proposed Amended Complaint that only states that Defendants published these allegedly defamatory statements to unidentified family members fails as a matter of law.

much vaguer publication, namely that "Defendants communicated the above statements to *members of their and Plaintiff's family* for the malicious purpose of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business."[2] Proposed Amended Complaint, ¶ 12 (C/A No. 2015-CP-10-3891). While Plaintiff does not identify any of these family members by name, he continues to allege that he has been confronted with these statements *only by his mother* who "came to hear these falsehoods as a direct and proximate result of the publication of these falsehoods by Defendants." Proposed Amended Complaint, ¶ 14 (C/A No. 2015-CP-10-3891).

On October 1, 2015, Spiros filed an Answer and Counterclaims to Plaintiff's defamation action. In his Answer, Spiros denied making any of the statements alleged by Plaintiff in his Complaint and stated that he was "without personal knowledge to know whether the alleged statements (which were never made by Defendant) in Plaintiff's Complaint are false." Answer and Counterclaims, ¶ 9 (C/A No. 2015-CP-10-3891). As part of his counterclaim, Spiros incorporated his Answer and Counterclaims asserted in the lawsuit related to the new building filed against him by Plaintiff (discussed above). Specifically, Spiros also asserted a cause of action for the initiation of frivolous proceedings based on the lack of any evidence to support Plaintiff's defamation claim.

SWORN TESTIMONY AND AFFIDAVITS

A. Dr. Fanouris Ferderigos' Statement

As stated above, in the initial Complaint, Plaintiff alleged that Defendants communicated defamatory statements about him to their father who in turn relayed the statements to Plaintiff's mother (Defendants' aunt) for purposes "of intimidating Plaintiff into refraining for (sic)

[2] The remaining allegations in the proposed Amended Complaint are substantially similar to those set forth in the original Complaint filed by Plaintiff.

demanding that they go forward with the plan to expand the suites rental business." Complaint, ¶ 12 (C/A No. 2015-CP-10-3891). However, shortly after the case had been filed, Plaintiff had been put on notice that his central substantive allegation was not true. As a part of the Answer and Counterclaim, Spiros attached as an exhibit a letter from Dr. Fanouris Ferderigos to Plaintiff's counsel. Exhibit #1: Letter of Dr. Fanouris Ferderigos, dated August 21, 2015. This letter had previously been sent to Plaintiff's counsel in August. In the letter, Dr. Ferderigos, the uncle of Plaintiff and Defendants, stated Plaintiff's mother denied that Defendants' father ever discussed with her the topics of Plaintiff being involved with the fire at 229 King Street or the filing of false insurance claims. Exhibit #1: Letter of Dr. Fanouris Ferderigos, dated August 21, 2015.

B. Mrs. Irene Fokas Affidavit

Despite the letter from Dr. Ferderigos, Plaintiff persisted with his allegations and defamation action against Defendants. As a result, Spiros noticed the deposition of Plaintiff's mother, Irene Fokas. Prior to being deposed, Mrs. Fokas requested that she be allowed to provide an affidavit, and defense counsel allowed her to do so. In Mrs. Fokas' Affidavit, she stated that her brother never told her "anything about any statements Spiros or Phillip Ferderigos made regarding [her] son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act."[3] Exhibit #2: Affidavit of Irene Fokas, dated October 28, 2015. Mrs. Fokas swore under oath that no one in the Ferderigos family told her that either Defendant made any defamatory comments about her son. Exhibit #2: Affidavit of Irene Fokas, dated October 28, 2015. Despite Dr. Ferderigos' letter (which disputed Plaintiff's original

[3] Mrs. Fokas had an opportunity to have her affidavit translated into Greek before its execution. Further, Mrs. Fokas consulted with Plaintiff and Plaintiff's counsel before executing her Affidavit. She also executed the Affidavit in the presence of Plaintiff and Plaintiff's counsel.

allegation that Defendant's father told Mrs. Fokas that Defendants made these statements about Plaintiff) being sent to Plaintiff's counsel on August 21, 2015, Mrs. Fokas also swore that Plaintiff's counsel never contacted her to discuss the allegations in the Complaint until October 27, 2015. Exhibit #2: Affidavit of Irene Fokas, dated October 28, 2015.

C. Mrs. Irene Fokas Deposition Testimony

Even with the letter of Dr. Ferderigos and the Affidavit of Mrs. Fokas contradicting Plaintiff's central substantive allegation of his Complaint, Plaintiff still persisted with his allegations and noticed the deposition of Mrs. Fokas. During the deposition, Mrs. Fokas confirmed her refutation of Plaintiff's central substantive allegation and again admitted under oath that Defendants' father never spoke to her about allegations that Plaintiff set fire to 229 King Street, hired someone to set fire to 229 King Street, or filed false insurance claims. Exhibit #3: Deposition of Irene Fokas, p. 41, lines 8 – 18 and p. 33, lines 7 – 16. In fact, Mrs. Fokas admitted that neither Spiros nor Phillip made any defamatory statements about her son to her or to anyone that she was aware of. Exhibit #3: Deposition of Irene Fokas, p. 47, line 22 – p. 48, line 4. Instead, Mrs. Fokas testified that her daughter, Rania Nikatos, told her that Defendants would accuse Plaintiff of setting fire to 229 King Street. Exhibit #3: Deposition of Irene Fokas, p. 47, line 22 – p. 48, line 4 and p. 11, line 20 – p. 12, line 3. Mrs. Fokas confirmed on several occasions that her daughter, Rania Nikatos, was the sole source of this information. However, Mrs. Fokas admitted that her daughter never told her where she heard these statements and that she never asked her daughter where she learned these things. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3. Rather, Mrs. Fokas testified that she *assumed* her daughter heard them from Defendants because "they do work with their cousins."[4] Exhibit #3: Deposition

[4] Interestingly, Plaintiff's mother's assumptions underlying her speculation are also erroneous as these Defendants do *not* work with her daughter Rania Nikatos or her son-in-law/daughter's husband Gerasimos Nikatos.

of Irene Fokas, p. 11, line 20 – p. 12, line 3 and p. 89, line 6 - 19. As a result, Mrs. Fokas not only refuted Plaintiff's central substantive allegation, but she also denied Defendants ever published defamatory statements about Plaintiff. Further, she denied anyone, including Rania Nikatos, ever telling her that Defendants published defamatory statements about Plaintiff.

D. Rania Nikatos Affidavit

On November 20, 2015, Rania Nikatos, Plaintiff's sister, provided an Affidavit wherein she denied ever hearing Defendants state that Plaintiff set fire to 229 King Street, that Plaintiff hired someone to set fire to 229 King Street, or that Plaintiff filed false insurance claims. Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015. Mrs. Nikatos also confirmed Ms. Fokas' testimony by stating that she never told Mrs. Fokas that she "ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s)." Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015. Mrs. Nikatos also stated that she never heard anyone tell her that Phillip and/or Spiros made any of these comments about Plaintiff. Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015.

E. Gerasimos Nikatos Affidavit

Finally, Gerasimos Nikatos, Rania's husband, provided an affidavit stating that he heard from a contractor named Manoli Kehagias that Plaintiff asked Mr. Kehagias to set fire to 229 King Street. Exhibit #5: Affidavit of Gerasimos Nikatos, dated December 2, 2015. Mr. Nikatos further stated that he immediately informed his wife, Rania, what Mr. Kehagias had told him.

Exhibit #5: Affidavit of Gerasimos Nikatos, dated December 2, 2015. Mr. Nikatos' Affidavit "closes the loop" on how these allegations about Plaintiff setting fire to 229 King Street

originated with a contractor and got to Mrs. Fokas and ultimately Plaintiff. Nowhere in this chain of events is Spiros involved or is there even a scintilla of evidence that Defendants made any defamatory statements in any way, shape, or form.

Despite all this information and sworn testimony, Plaintiff not only continues to persist with his allegations, but he also asks this Honorable Court to allow him to amend his complaint to be *vaguer* more than eight (8) months into this litigation. Specifically, Plaintiff seeks to amend his complaint to allege that "Defendants communicated the above statements **to members of their and Plaintiff's family** for the malicious purpose of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Proposed Amended Complaint, ¶ 12 (C/A No. 2015-CP-10-3891) (emphasis added). Again, importantly, Plaintiff does *not* allege the identity of these unidentified "family members" but does allege that he was confronted with these allegations only by his mother. Plaintiff and his counsel have refused to inform Defendants or Defendants' counsel who these alleged other "family members" are that heard Defendants publish these allegedly defamatory statements. Exhibit #6: E-Mails Between Richard Farrier, Jr., and Stanley E. Barnett, dated October 30, 2015. Instead, Plaintiff wants to rely on vague generalities that Defendants published these allegedly defamatory statements in an effort to continue this litigation *without any factual basis* which is evidenced by Plaintiff's refusal to provide the names of these individuals either to counsel or in the proposed amended complaint. Based upon the foregoing testimony, rather than allow Plaintiff to proceed with this litigation, Spiros respectfully asks this Honorable Court to grant summary judgment on the grounds that Plaintiff has failed to put forth any evidence that Spiros has published any defamatory statement about Plaintiff to anyone.

STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56(c), SCRCP; Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. Id. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315

S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; Germann v. New York Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

ARGUMENT

Spiros has moved for summary judgment on the following grounds: (1) no evidence exists that Spiros published any defamatory statement about Plaintiff at all, let alone statements related to setting fire at Old Towne Restaurant or filing false insurance claims; and (2) all evidence demonstrates that the alleged statements related to Plaintiff setting fire at Old Towne Restaurant or filing false insurance claims originated from other sources.

I. Defamation Jurisprudence

Under South Carolina law, "The tort of defamation permits a plaintiff to recover for an injury to his reputation caused by the false statements of another." Banks v. St. Matthew Baptist Church, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013). To prove defamation, a plaintiff must show "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). "A communication is defamatory if it tends to impeach the honesty, integrity, virtue, or reputation...." Hubbard and Felix, The South Carolina Law of Torts 462 (2d ed. 1997).

"Defamatory communications take two forms: libel and slander." Erickson, 368 S.C. at 466, 629 S.E.2d at 664. "Slander is a spoken defamation while libel is a written defamation or

one accomplished by actions or conduct." Id. "[A] statement may be actionable *per se*, in which case the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages." Id. Under the common law, slander is actionable *per se* only when it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 511 n.5, 506 S.E.2d 497, 502 n.5 (1998). "Or a statement may be not actionable *per se*, in which case nothing is presumed and the plaintiff must plead and prove both common law malice and special damages." Erickson, 368 S.C. at 465, 629 S.E.2d at 664 (emphasis added). Common law malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, *i.e.*, with a conscious disregard of the plaintiff's rights. Padgett v. Sun News, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." Erickson, 368 S.C. at 466, 629 S.E.2d at 665.

II. There is no evidence that Spiros published defamatory statements about Plaintiff.

Plaintiff has put forth no evidence that Spiros published any defamatory statements about Plaintiff, and, as a result, this Honorable Court should grant Spiros summary judgment. More than eight (8) months into this litigation, Plaintiff has failed to identify a single person to whom these allegedly defamatory statements were published by Defendants. Plaintiff originally alleged that Defendants published these defamatory statements to their father who in turn relayed them to Plaintiff's mother, but Mrs. Fokas' testimony clearly demonstrates that such allegation is wholly unsupportable and erroneous; indeed, the opposite has been proven true.

Mrs. Fokas, whom Plaintiff originally alleged heard Defendants' father inform her that Defendants published these allegedly defamatory statements to him, testified that she heard these allegedly defamatory statements from her daughter, Rania Nikatos, and does not know who told these things to Rania. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3 and p. 89, line 6 - 19. In fact, Mrs. Fokas never asked her daughter where she learned about these alleged statements and allegations about Plaintiff's involvement in the fire at 229 King Street. Instead, Mrs. Fokas testified that she *assumed* her daughter heard these statements from Defendants, despite never asking her daughter. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3 and p. 89, line 6 - 19. Mrs. Fokas' testimony clearly shows that her daughter never told her that either Defendant made these allegedly defamatory statements, and it is wholly insufficient for Plaintiff to rely upon Mrs. Fokas' conjecture as to the ultimate source of these allegedly defamatory statements. Mrs. Fokas testified that she never heard either Defendant say that Plaintiff was involved in the fire at 229 King Street or filed false insurance claims. All Mrs. Fokas knows is that she believes her daughter made statements to her and she subjectively believed/assumed the statements came from Defendants. However, Plaintiff cannot in good faith rely upon Mrs. Fokas' admitted speculation to allege that Defendants published these allegedly defamatory statements given Mrs. Fokas admissions that she *assumed* the source of the allegations and given the affidavits submitted by the Plaintiff's own family members in this case.

Rania Nikatos' sworn affidavit confirms her mother's testimony that she never told her mother that either Defendant made these allegedly defamatory statements. Exhibit #7: Affidavit of Rania Nikatos, dated November 20, 2015. In fact, Mrs. Nikatos swore that she never heard either Defendant make these allegedly defamatory statements about Plaintiff. Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015.

Similarly, Mr. Nikatos' sworn affidavit demonstrates the actual source of these allegedly defamatory statements to be a contractor who claimed Plaintiff asked him to set fire to 229 King Street. Exhibit #5: Affidavit of Gerasimos Nikatos, dated December 2, 2015. Mr. Nikatos then informed his wife about these allegations from the contractor, and Mrs. Nikatos purportedly then informed her mother, who in turn relayed the statements to Plaintiff, her son. Nowhere in this sequence of events does either Defendant publish any defamatory statement about Plaintiff to anyone, including any family member of Plaintiff or Defendants. To date, Plaintiff and Plaintiff's counsel have not alleged or provided the identity of any person who allegedly heard either Defendant publish any of these allegedly defamatory statements. The reason Plaintiff and his counsel cannot identify any such person is quite simple: no such person exists.

Recall, Plaintiff does not allege in either his original Complaint or his proposed Amended Complaint that any family member other than his mother confronted him about allegations that he was involved in the fire at 229 King Street. He alleges **only** that his mother confronted him about these allegations and that his mother "came to hear these falsehoods as a direct and proximate result of the publication of these falsehoods by Defendants." Complaint, ¶ 14 (C/A No. 2015-CP-10-3891); Proposed Amended Complaint, ¶ 14 (C/A No. 2015-CP-10-3891). Plaintiff's mother has testified that her **only** source of this information is her daughter, Rania, and Rania has provided a sworn affidavit that she never heard either Defendant make these allegedly defamatory statements and that she never heard anyone say that either Defendant made these allegedly defamatory statements. Plaintiff's mother further admits under oath that she does not know the source of these alleged defamatory statements but that she merely *assumed* it came from Defendants. As a result, the only evidence in this case shows without question that these allegedly defamatory statements originated with a contractor who claimed Plaintiff asked him to

The remaining allegations in the proposed Amended Complaint are substantially similar to those set forth in the original Complaint filed by Plaintiff.

set fire to 229 King Street and then such information was relayed to Mr. Nikatos, Mrs. Nikatos, Mrs. Fokas, and ultimately Plaintiff. Defendants had no involvement whatsoever in this chain of events or in any publication of these allegedly defamatory statements to anyone in this chain of events; more importantly, given the sworn testimony in this case, Plaintiff and his counsel know that they are unable in good faith to allege, let alone prove by a preponderance of the evidence, any such publication by Defendants.

As no one, including any family member of Plaintiff or Defendants, has testified that he or she has heard either Defendant publish any defamatory statement about Plaintiff, Plaintiff cannot prove a cause of action for defamation against either Defendant.[5] As none of the family members alleged to have known about these allegedly defamatory statements heard either Defendant make these statements and Plaintiff refuses to identify any other person who he claims to have heard either Defendant make these allegedly defamatory statements about Plaintiff, this Honorable Court should grant Spiros' Motion for Summary Judgment.

III. The evidence demonstrates that the alleged statements were published by other sources.

Not only does the uncontroverted evidence demonstrate that neither Defendant published or made these allegedly defamatory statements about Plaintiff, but the evidence proves that these allegedly defamatory statements about Plaintiff were published by someone else entirely. As more fully discussed above, the evidence demonstrates that persons other than Defendants made these allegedly defamatory statements about Plaintiff and that Defendants had no involvement whatsoever in the chain of events leading to those statements reaching Plaintiff.

[5] The evidence ascertained in this case only demonstrates that Mr. Nikatos heard a contractor claim Plaintiff asked him to set fire to 229 King Street, that Mr. Nikatos relayed this information to his wife, that Mrs. Nikatos purportedly relayed this information to her mother, and that her mother relayed this information to Plaintiff. Plaintiff clearly alleges that his mother, Mrs. Fokas, is the one who confronted him about these allegations, and Mrs. Fokas has testified that her sole source of this information was her daughter and that Mrs. Fokas *assumed* that it came from Defendants. However, Mrs. Fokas' daughter provided a sworn affidavit that she never heard either Defendant publish any of these allegedly defamatory statements, proving her mother's speculation to be wrong.

Plaintiff alleges that his mother confronted him about allegations that he participated in the fire at 229 King Street or filed false insurance claims and that Defendants were the source of that information. Complaint, ¶ 14 (C/A No. 2015-CP-10-3891); Proposed Amended Complaint, ¶ 14 (C/A No. 2015-CP-10-3891). However, in her sworn-to Affidavit and deposition, Mrs. Fokas admitted that neither Spiros nor Phillip made any defamatory statements about her son to her or to anyone that she was aware of. Exhibit #3: Deposition of Irene Fokas, p. 47, line 22 – p. 48, line 4. Instead, Mrs. Fokas testified that her daughter, Rania Nikatos, told her that Defendants would accuse Plaintiff of setting fire to 229 King Street. Exhibit #3: Deposition of Irene Fokas, p. 47, line 22 – p. 48, line 4 and p. 11, line 20 – p. 12, line 3. Mrs. Fokas confirmed on several occasions that her daughter, Rania Nikatos, was the sole source of this information. However, importantly, Mrs. Fokas admitted that her daughter never told her *from whom* she heard those statements and that she never asked her daughter *who* told her those statements. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3 and p. 89, line 6 - 19. Mrs. Fokas admits that she merely *assumed* her daughter heard such statements from Defendants because "they do work with their cousins." Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3 and p. 89, line 6 - 19. As a result, not only did Mrs. Fokas never hear either Defendant publish a defamatory statement about Plaintiff, she is not aware of anyone hearing either Defendant publish a defamatory statement about Plaintiff.

Similarly, Rania Nikatos' sworn testimony, by affidavit, is that she never heard either Defendant state that Plaintiff set fire to 229 King Street, that Plaintiff hired someone to set fire to 229 King Street, or that Plaintiff filed false insurance claims. Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015. Rania Nikatos also stated that she never "heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King

Interestingly, Plaintiff's mother's assumptions underlying her speculation are also erroneous as these Defendants do not work with his daughter, Rania Nikatos, or her son-in-law/daughter's husband Gerasimos Nikatos.

Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s)." Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015.

Finally, Gerasimos Nikatos, Rania's husband, provided an affidavit stating that he heard from a contractor named Manoli Kehagias that Plaintiff asked him to set fire to 229 King Street. Exhibit #5: Affidavit of Gerasimos Nikatos, dated December 2, 2015. Mr. Nikatos further stated that he immediately informed his wife, Rania, what Mr. Kehagias had told him. Exhibit #5: Affidavit of Gerasimos Nikatos, dated December 2, 2015.

When one considers the sworn testimony of Irene Fokas, Rania Nikatos, and Gerasimos Nikatos, it is clear and unequivocal where the alleged defamatory statements about Plaintiff started and how they eventually got relayed to Plaintiff. The only evidence in this case demonstrates that Mr. Nikatos heard a contractor claim Plaintiff asked him to set fire to 229 King Street, that Mr. Nikatos relayed this information to his wife (Mrs. Rania Nikatos), that Mrs. Nikatos purportedly relayed this information to her mother (Mrs. Irene Fokas), and that her mother relayed this information to Plaintiff. Nowhere in this chain of events are Defendants involved concerning any defamatory statements about Plaintiff setting fire to 229 King Street or filing false insurance claims.[6] These statements were made by other individuals within Plaintiff's

[6] Instead, the evidence demonstrates that Plaintiff heard these allegations about his involvement in the fire at 229 King Street from his mother, Irene Fokas. Complaint, ¶ 14 (C/A No. 2015-CP-10-3891); Proposed Amended Complaint, ¶ 14 (C/A No. 2015-CP-10-3891). Mrs. Fokas provided a sworn Affidavit and later testified that she allegedly heard these allegations about Plaintiff's involvement in the fire at 229 King Street from her daughter, Rania Nikatos. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3. However, Mrs. Fokas does not know who allegedly told her daughter, Rania Nikatos, about these allegations and merely *assumed* that these allegations came from Defendants. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3 and p. 89, line 6 - 19. Rania Nikatos' Affidavit states that she never told her mother, Irene Fokas, that either Defendant stated that Plaintiff was involved in any way in the fire at 229 King Street. Exhibit #4: Affidavit of Rania Nikatos, dated November 20, 2015. Gerasimos Nikatos, Rania's husband, also provided an Affidavit stating that he heard from a contractor named Manoli Kehagias that Plaintiff asked him to set fire to 229 King Street and that he informed his wife about these allegations from Mr. Kehagias. Exhibit #5: Affidavit of Gerasimos Nikatos Dated December 2, 2015. Again, nowhere in the relay of these allegations from Mr. Kehagias to Plaintiff is there any evidence that either Defendant publish any defamatory statement about Plaintiff.

own family, and none of these family members learned about these allegations from either Defendant. The only evidence in this case about the alleged defamatory statements proves that these statements were made by people other than Defendants.

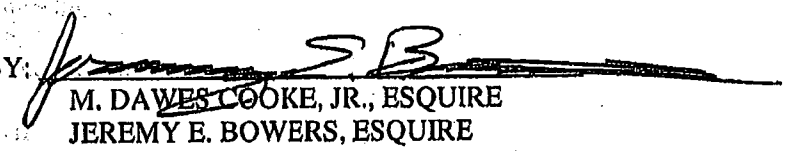
CONCLUSION

Plaintiff has the burden of proof to create a genuine issue of material fact in order to avoid summary judgment; here, in striking contrast, Spiros has already disproved Plaintiff's false and unfounded allegations with Plaintiff's own purported witnesses – his own mother, his own sister, and his own brother-in-law. As a Defendant, Spiros has no burden of proof at this juncture; yet, Plaintiff's allegations asserted in his original Complaint (and attempted to be asserted in his proposed Amended Complaint) have already been, as a matter of law, proven false. For these reasons as set forth in this memorandum, Spiros is entitled to summary judgment.

Based upon the arguments discussed above, this Honorable Court should grant Spiros' Motion for Summary Judgment. The uncontroverted evidence not only fails to create a genuine issue of material fact but also *disproves* Plaintiff's baseless allegations against Spiros. No evidence exists that Spiros published any defamatory statement about Plaintiff at all, let alone statements related to setting fire at Old Towne Restaurant or filing false insurance claims. Instead, all the evidence discovered in this case demonstrates that the alleged statements related to the Plaintiff setting fire at Old Towne Restaurant or filing false insurance claims originated from other sources, and Defendants had no involvement whatsoever in any publication of those allegedly defamatory statements. Incredibly, having Plaintiff's false claims disproved within weeks of the filing of his Complaint for defamation, Plaintiff has refused *and still refuses* to voluntarily dismiss his baseless defamation action against Spiros. There is absolutely no factual basis for Plaintiff to continue with this litigation, and for these reasons, Spiros respectfully asks

this Honorable Court to grant summary judgment and dismiss Plaintiff's defamation cause of action.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
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Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR DEFENDANT SPIROS FERDERIGOS

March 28, 2016
Charleston, South Carolina

2015-CP-10-3891

Certificate of Service

I hereby certify that the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd.
Building F, Suite #100
Mt. Pleasant, SC 29464

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates LLP
134 Meeting Street, Suite #200
Charleston, SC 29401

J. Drayton Hastie, III, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, SC 29201

FILED
2016 MAR 28 PM 3:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This the 28th day of March 2016.

Cheryl Reynaud
Legal Secretary

August 21, 2015

Stan Barnett
Smith, Bundy, Byebee & Barnett, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, SC 29464

Dear Mr. Barnett,

My name is Dr. Fanouris Ferderigos and I am the uncle of the Plaintiff and Defendants in case number 15-CP-10-3891 that you have filed in Charleston County, South Carolina. Your lawsuit alleges that my sister, Irene Fokas (which is Plaintiff Athan Fokas' mother), confronted Athan Fokas about "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds. (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds." Your lawsuit alleges that Irene Fokas confronted Athan Fokas about these allegations, and Irene Fokas informed Athan Fokas that my brother, Stavros Ferderigos (which is Defendants' father), told her about the allegations stated above and set forth in your Complaint. Your lawsuit further alleges Irene Fokas informed Athan Fokas that Stavros Ferderigos identified Defendants (Phillip and Spiros Ferderigos) as the source of those statements.

This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever.

With Kindest Regards, I am

Dr. Fanouris Ferderigos

Cc: Dawes M. Cook (288 Meeting Street, Suite 200, Charleston, SC 29401)
Richard Farrier (134 Meeting Street, Charleston, SC 29401)

EXHIBIT 1

I, Irene Fokas, hereby solemnly swear and attest to the following:

My brother Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts.

Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false.

I have read this statement and understand its contents.

Irene Fokas

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28TH DAY OF OCTOBER, 2015.

Notary Public for South Carolina.
My Commission expires 3/30/21.

EXHIBIT
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I, Irene Fokas, hereby solemnly swear and attest to the following:

My brother Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts.

Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false.

I have read this statement and understand its contents.

Irene Fokas

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28TH DAY OF OCTOBER, 2015.

Notary Public for South Carolina.
My Commission expires 3/30/21.

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS
DATE: NOVEMBER 19, 2015
TIME: 9:37 A.M.
LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA
REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

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APPEARANCES

ON BEHALF OF THE PLAINTIFF:
SMITH BUNDY BYBEE & BARNETT, PC
BY: STAN BARNETT, ESQ.
1037 Chuck Dawley Boulevard, Building F
Mount Pleasant, SC 29464

ON BEHALF OF THE DEFENDANT PHILLIP FERDERIGOS:
VERNIS & BOWLING OF BOWLING
BY: J. DRAYTON HASTIE III, ESQ.
1401 Main Street, Suite 655
Columbia, SC 29201

K&L GATES
BY: JENNIFER H. THIEM, ESQ.

EXHIBIT #3

134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF THE DEFENDANT SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS,LLC
BY: JEREMY E. BOWERS, ESQ.
288 Meeting Street, Suite 200
Charleston, SC 29401
WESTON LAW FIRM, PA
BY: STEPHANIE PHILLIPS, ESQ.
761 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29465

ALSO
PRESENT: Athan Fokas
Phillip Ferderigos
Eleni Hatzis, Interpreter, appearing via teleconference

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I N D E X

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ELENI HATZIS,
The Interpreter, was first duly sworn by the court reporter to translate Greek to English and English to Greek.

IRENE FOKAS,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BARNETT:

Q. Okay. Before I ask you some questions, Miss Fokas, I want to make a couple of introductory statements that our rules require me to make.

All right. First of all, you've been sworn. I know you will tell the truth.

A. Yes.

Q. But I'm not sure that you will understand me after I have been interpreted to you. If I ask a question that you don't understand, you just tell me. My feelings will not be hurt.

THE WITNESS: Okay.

A. Okay.

Q. Please do not guess what you think I mean if I have asked a question that you just

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don't understand.

A. Okay.

Q. All right. And if you -- if you feel the need to take a break, just let us know. You are the boss, as well as the court reporter. The two of you are in charge here --

THE WITNESS: Okay.

Q. -- no matter what it may look like.

A. Okay.

Q. And I want to -- before I forget, which I am inclined to do sometimes, I want to thank you for being as accommodating with scheduling this as you have been. I appreciate that.

THE WITNESS: Okay.

THE INTERPRETER: That was for the reporter?

MR. BARNETT: That was for Mrs. Fokas.

Q. Okay. And with that, let's get started.

All right. Miss Fokas, you have -- do you have two brothers?

THE WITNESS: Yes.

A. Yes.

Q. Tell us their names, if you would.

A. Stavros Ferderigos. Fanouris Ferderigos.

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Q. And where do they live?

Q. This discussion you had with your son, do you remember what month this was?
A. I don't remember exactly. Could have been April or May.
Q. Okay. It was in the spring.
THE WITNESS: Uh-huh, in the spring.
A. Yes.
Q. And where did you learn that these allegations might be made?
MR. BOWERS: Object to the form.
A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.
It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

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Q. Did your son ask you where you learned about this?
A. Yes. My son asked me; and I told him, "You'll never find out. I want you to be very careful. Don't -- don't get involved with them because --
THE INTERPRETER: The interpreter didn't get the last word. Something about the truth.
A. Because they will find -- they will be right because they're attorneys. They can change things.
Q. What do you mean "change things"?
A. Even though you may say the truth, they may said you said -- you lied.
My -- my daughter was very afraid that they're going to destroy him; and when I heard these things, I got sick. And I told him, "No matter how right you may be, you're not going to find justice."
Q. Did your daughter tell you who she was talking about that might make these --
THE WITNESS: I never ask.
A. I never asked her, but I figured that -- I figured they might be them because she -- they have -- they do work with their cousins. She was

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hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"
Q. You referred -- you said "them." "She worked with them," I think you said.
A. Yes.
THE INTERPRETER: I'm telling her to

know. I asked what would happen if I don't sign? And they said to me, "You have to wait 3 or 4 hours to do what you're doing today." And I had no -- I didn't feel like waiting for another 3 or 4 hours.

Q. Is that the only reason that you signed the written statement?

A. No. It was to clear things up with my brother, that I don't have anything against my brother.

Q. And the -- you signed it because the statement is, in fact, true; correct?

A. Yes, it is true; and I'm telling you now my brother never -- we never talked about these things. My brother never told me anything.

When we went to Greece -- the -- the -- when we went to Greece, a week later I spoke to Stavros. He was very upset. He said, "Your son is suing, and it has to do with a building. He's been waiting for two-and-a-half years to start this building. They're not fair, and he's going to go after them." That's what my brother said.

Q. That was after the lawsuit had already been filed?

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A. This is before. Much before.

Q. I thought that you said that when you went back to Greece, your -- that Stavros was upset because Athan had already sued Phillip and Spiros.

A. The -- the lawsuit started after my other brother came also. This -- I went in May. That's when he told me about this, that my son is going after his son; and he was upset about that. My other son -- my other brother came in July.

Q. Okay. Going back to your written statement, did you have an opportunity to review that with your son before signing it?

A. Yes. I signed it in Greek, but my son does not understand Greek as I understand Greek.

Q. But you had an opportunity to review it with him before signing it?

A. Yes. The English one.

Q. And did you have an opportunity to review your statement with your daughter Rania before signing it?

A. Rania explained it to me. She explained to me when it was in English; but then when it was in Greek, I could read it.

Q. And you had the opportunity to have it

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translated to Greek; correct?

A. Yes.

Q. And you spoke with a Greek translator to

A. Okay.
Q. "Dear, Mr. Barnett. My name is Dr. Fanouris Ferderigos, and I am the uncle of the plaintiff and defendants in Case No. 15-CP-10-3891 that you have filed in Charleston County, South Carolina."
Is there anything incorrect so far?
THE INTERPRETER: Is that a question for Miss Fokas?
MR. BOWERS: Yes, please.
A. I do not understand -- I don't know any dates or numbers.
Q. Okay. Fair enough.
"Your lawsuit alleges that my sister, Irene Fokas, which is plaintiff, Athan Fokas's, mother, confronted Athan Fokas about, A), hiring someone to set a fire to the second floor of the building at 229 King Street for the purpose of

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collecting insurance proceeds; B), falsely claiming in an insurance claim" --
A. Is my brother saying that I said these things?
Q. Yes.
A. He's saying I said these things?
Q. That she -- he is saying that you, Irene Fokas, confronted your son Athan about these things, that the lawsuit alleges that.
A. I was -- I was saying what my daughter told me. We were afraid of what my -- what the cousins were saying.
Q. Do you know what the allegations of the defamation lawsuit are filed by Athan Fokas?
A. I believe that they're accusing him for setting a fire and for insurance.
Q. Do you know who filed that lawsuit? Who started that lawsuit?
MR. BOWERS: I'm sorry. That's a question for Ms. Fokas. Did we lose her again?
MR. BARNETT: Is her number still showing?
MR. BOWERS: It's still showing. Madam Interpreter, did you happen to hit mute, by chance?

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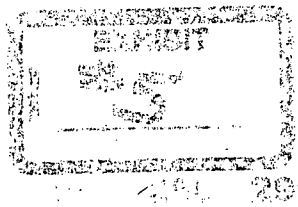
MS. PHILLIPS: The line went down.
MR. BOWERS: Yeah. Now she's gone.
(Pause in proceedings.)
THE INTERPRETER: So the last question?
MR. BOWERS: You ready to start?
THE WITNESS: Uh-huh. Yeah.
BY MR. BOWERS:
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan focus set



fire to 229 King Street?
A. No. Never. Never.
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas hired someone to set fire to 229 King Street?
A. Not with Stavros. Never.
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas filed false insurance claims?
A. No.
Q. Did you tell your brother Fanouris that Stavros and you never talked about those things?
A. Yes. I talked to him.
Q. And do you -- do you know whether or not Fanouris communicated that to your son's attorney?

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A. I have no idea.
Q. Since October 28 have you talked to anyone about Dr. Fanouris's letter?
A. No. I speak to him every day, but we do not speak about this thing.
Q. Have you spoken to Dr. Fanouris about the lawsuits other than what you told Mr. Barnett?
A. Dr. Fanouris here, no. In Greece he asked me.
He asked me. He told me that Stavros was very upset, and he -- Stavros told me he thinks. I told him no. He asked me who told you? Somebody else? And I will never tell you who it is.
And I told him that someone told me that Athan should be very careful. His cousins are doing these things, and he's going to be hurt; and I did not tell him who told me.
Q. And is that person who told you Rania?
A. Yes. My son asked me who told you these things?
THE WITNESS: And I say I never say to you who told me but --
A. I told him I will never tell you who

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told me; but I told him to be very, very careful with them.
Q. And when did Rania tell you these things?
A. April. I don't know. We spoke for hours about these things, and she's very afraid for her brother.
Q. Where did this conversation occur?
A. We were in the car and the house many times.
THE WITNESS: Many times.

or Spiros ever said anything to Mr. Barnett?
A. No.
Q. Is everything that you know about what was told to Mr. Barnett, did that come from your son, Athan Fokas, or Mr. Barnett himself?
MR. BOWERS: And that might have been worded very poorly; and if it is, please ask me to rephrase it, Madam Interpreter.
THE INTERPRETER: Yes. Please rephrase it, yes.
Q. Everything that you know about what Stanley Barnett has been told came from either

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Athan Fokas or Mr. Barnett; correct?
A. Don't understand.
Q. Okay. Are you aware of any statements that Phillip or Spiros have made to Athan's lawyer?
A. I heard --
THE INTERPRETER: The interpreter wants to hear her answer again. I don't understand what she's saying.
MR. BOWERS: Okay.
A. I heard that the guys had told the attorney.
MR. BOWERS: I'm sorry. Could you get her to rephrase that answer 'cause I'm not sure that I understand.
THE INTERPRETER: I know.
I heard from where.
A. That Phillip and Spiros, they're going to accuse Athan for this and this and that.
Q. And what is "this, this, and that"?
A. Whatever my daughter told me. The things she was afraid for her brother.
Q. But you're not aware of what those things are?
A. Accusations against Athan.

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Q. Does she -- do you know what the specifics of the accusations are?
A. For fire, insurance, things like that.
Q. But Rania did not tell you these things.
A. Not for the attorney.
Q. Who told you these things?
A. Either the attorney or my son.
Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?
A. No. I said I was -- I was forced to say this to my son when he came here.
Q. Today?
A. Not today. When I came back -- when I

EXHIBIT

came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

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Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

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building the additional rental units at 229 King Street?

A. Yes. What lawsuit is that?

Q. That would be a second lawsuit filed by Athan Fokas against Phillip and Spiros.

THE WITNESS: Yeah. I want -- I want to know who -- for what?

THE INTERPRETER: I didn't get that.

THE WITNESS: I want to know --

A. I want to know what type of lawsuit is it?

Q. Are you aware that the second lawsuit is your son, Athan Fokas, trying to force Phillip and Spiros to build the additional rental units at 229 King Street?

A. That's the problem, and it's been two-and-a-half years. They wanted to do it, and now

was afraid for her brother, that they want to destroy him.
Q. And at the time you heard that from your daughter, she did not say that she heard Phillip, Spiros, or Jacob say those things?
THE WITNESS: She didn't say 'cause I no ask.
A. I did not ask her.
MS. THIEM: I'm sorry. Miss Translator, can you say that again? Interpreter.
THE INTERPRETER: The only thing I got was, "I did not ask her." I'm not sure if she said something else.
A. I did not ask her, but I thought that they work together. I guess that's where she heard it.
Q. Okay. And I -- you may have clarified this already, but I wanted to confirm when you mentioned that you were being prepared by Stan Barnett for the internet, you meant deposition; correct?
A. I don't understand what you mean.

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Q. You used the word "internet." When you met with Stan Barnett, you talked about the internet. You meant you were discussing the deposition?
THE INTERPRETER: She says, "I said something about the internet?"
Q. You did.
THE WITNESS: I say?
Q. You meant --
THE WITNESS: What I say for internet?
Q. That's what I wanted to clarify. So when you -- when you met with Stan Barnett, the purpose of your meeting was to prepare for this deposition; right?
A. Yes. Yes. It was to talk about how this thing was going to happen today.
Q. All right. And he explained to you what to expect?
A. Yes. That he will ask questions, and there will be other attorneys that will ask questions.
MS. THIEM: All right. That's all the questions I have.
THE WITNESS: Thank you. Thank you.
A. Thank you very much.

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MR. BARNETT: And I have no questions.
THE WITNESS: Thank you, too.
MR. BARNETT: Madam Interpreter, before we let you go, the court reporter -- well, since I don't represent her, I don't mind explaining.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
ATHAN FOKAS, Plaintiff, vs.	CASE NO.: 2015-CP-10-3891 **AFFIDAVIT OF RANIA NIKATOS**
PHILLIP FERDERIGOS and SPIROS FERDERIGOS, Defendant.	

NOW COMES RANIA NIKATOS, OF FULL AGE, BEING DULY SWORN, DEPOSES AND SAYS AS FOLLOWS:

1. That Phillip and/or Spiros Ferderigos have never told me that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed false insurance claim(s).

2. That I have never heard Phillip and/or Spiros Ferderigos say that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

3. That I never told Irene Fokas that I have ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

4. That I have never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

5. That I am making this statement freely, voluntarily, and under sound mind.

AND FURTHER DEPONENT SAYETH NOT.

11/20/15
Date

Rania Nikatos

EXHIBIT #4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

On this 20th day of November, 2015, before me personally appeared Rania Nikatos, to me known to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

Notary Public for South Carolina

My commission expires: 9/21/2022

JULIE CRAIG
Notary Public, South Carolina
My Commission Expires
September 21, 2022

AFFIDAVIT OF GERASIMOS NIKATOS

PERSONALLY APPEARED BEFORE ME Gerasimos Nikatos, who, duly sworn, deposes and says:

1. I am a fifty percent owner of North Towne Restaurant with Athan Fokas, who owns the other fifty percent. I am also fifty percent owner of Eat-A-Pita with Iakovos Ferderigos, who owns the other fifty percent.

2. Athan Fokas is my brother-in-law. I am married to his sister, Rania Nikatos.

3. I have no interest in Old Towne Restaurant or Zeus Restaurant.

4. North Towne Restaurant would sell food for catering events and festivals, in addition to serving customers at North Towne Restaurant's physical location.

5. North Towne Restaurant is now closed.

6. North Towne Restaurant is its own entity, separate and apart from Old Towne Restaurant.

7. North Towne Restaurant and Old Towne Restaurant were completely separate other than sharing advertising space and allowing the two restaurants to borrow inventory in emergency situations when one of the restaurants temporarily ran out of product to keep the restaurant running for the day. Specifically, North Towne Restaurant never did the following:

   a. Send North Towne Restaurant inventory to Old Towne Restaurant to be stored;

   b. Sell left over North Towne Restaurant cooked and un-cooked food/inventory to Old Towne Restaurant;

   c. Cook North Towne Restaurant orders at Old Towne Restaurant;

   d. Obtain North Towne Restaurant orders over the phone, have Old Towne Restaurant cook the food, and then sell the food cooked at Old Towne Restaurant as a North Towne Restaurant product;

   e. Have Old Towne Restaurant employees, on Old Towne Restaurant payroll, cook North Towne Restaurant orders at Old Towne Restaurant;

8. North Towne would not sell left over inventory from festivals and split the proceeds of the sales between North Towne and Old Towne.

9. Even in emergency situations, North Towne Restaurant would borrow inventory from Zeus Restaurant first since Iakovos Ferderigos had no interest in North Towne Restaurant. It was only if there was an emergency and both North Towne Restaurant and Zeus Restaurant were out of the same urgently needed inventory that Old Towne Restaurant would be contacted.

10. North Towne Restaurant did not mix, and had no need to mix, Old Towne Restaurant with North Towne Restaurant because North Towne Restaurant had its own physical building with a full kitchen, staff and inventory to handle all of North Towne Restaurant catering, festival and physical location needs. North Towne Restaurant and Old Towne Restaurant did not share their

EXHIBIT 5

assets. North Towne Restaurant had its own separate inventory for its business and Old Towne Restaurant had its own separate inventory for its business. Iakovos Ferderigos was kind enough on limited occasions to allow North Towne Restaurant to borrow necessary inventory it ran out of in emergency situations, and I was kind enough in limited situations to allow Old Towne Restaurant to borrow inventory from North Towne in emergency situations. However, North Towne Restaurant could not shop through Old Towne Restaurant's inventory like it was North Towne Restaurant's personal grocery store.

11. That sometime soon after the fire at 229 King Street, a Greek contractor named Manoli Kehagias told me and Iakovos that Athan Fokas asked him to set fire to 229 King Street.

12. Manoli told me that he could not believe that Athan Fokas would ask him to do that.

13. The second I got home that day, I told my wife, Rania Nikatos, what Manoli told me. And I have never told anyone else about this matter until after Athan Fokas' defamation lawsuit concerning this matter was filed.

FURTHER AFFIANT SAYETH NOT.

Gerasimos Nikatos

Sworn to and subscribed before me
this 2 day of Dec, 2015.

Christen Cochran
Notary Public
My Commission expires: 5/27/2025

CHRISTEN COCHRAN
NOTARY PUBLIC
MY COMMISSION EXPIRES 5/27/2025
SOUTH CAROLINA

From: Stan Barnett [mailto:stanleyb@s3blaw.com]
Sent: Friday, October 30, 2015 1:39 PM
To: Farrier, Jr., Richard A.; M. Dawes Cooke
Subject: RE: Settlement Proposal for Defamation suit: Athan Fokas v. Ferderigos

If I had some idea that I was any longer dealing with lawyers in good faith, I would be glad to sit down and discuss this case. I don't have that assurance. If we can't agree about the "factual assertions" in my letter, which are simple and without any question true, it is unlikely that we will agree to anything. I have wasted my time and my breath trying to bring these disputes to an end without both litigation and disruption of a family. Apparently, I don't have any allies on your side in that effort. I will go forward doing what is unfortunately necessary.

From: Farrier, Jr., Richard A. [mailto:Richard.Farrier@klgates.com]
Sent: Friday, October 30, 2015 1:23 PM
To: Stan Barnett <stanleyb@s3blaw.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>
Subject: RE: Settlement Proposal for Defamation suit: Athan Fokas v. Ferderigos

Stan. We won't be able to agree about the factual assertions in your letter. If there is some other person to whom you believe defamatory statements were published, I would be pleased to know the identity of that person.

EXHIBIT 16

BARNWELL WHALEY | 75 YEARS 1938-2013
PATTERSON & HELMS LLC
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

March 28, 2016
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3891

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Memorandum in Support of Motion for Summary Judgment and Exhibits being filed by Defendant, Spiros Ferderigos, in the above-referenced matter. Please file the original and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing all counsel of record of this communication with the Court and serving them with a copy of the Memorandum. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Stanley E. Barnett, Esquire (via U.S. Mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail)
J. Drayton Hastie, III, Esquire (via U.S. Mail)
Joseph R. Weston, Esquire (via U.S. Mail)

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
David S. Cox
William C. Helms, III'
* Registered patent attorney
' Retired
Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musher
John A. Jones
Lucinda D. Gardner
John W. Fletcher
Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	C/A No. 2015-CP-10-3891
Athan Fokas,)	
)	
Plaintiff,)	
)	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND HIS COMPLAINT ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS**
vs.)	
)	
Phillip Ferderigos and Spiros Ferderigos,)	
)	
Defendants.)	
)	

FILED
2016 JUN 13 P 3:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Phillip Ferderigos hereby respectfully submits his Memorandum in Opposition to Plaintiff's Motion to Amend his Complaint. Defendant opposes Plaintiff's Motion because Plaintiff's Motion is futile.

This case has been pending for about a year. During that year, discovery has been taken disproving Plaintiff's defamation claim and now Plaintiff seeks to amend his defamation claim to make it vaguer. After over 11 months of discovery, Plaintiff has not been able to provide any admissible evidence as to who, where, or when this Defendant allegedly said what to any third party. After 11 months, Plaintiff now seeks to amend his Complaint with a pleading that fails to specifically allege to whom, where and when Defendant allegedly defamed Plaintiff to any specific individual third party.[1] To date, Plaintiff has asserted that he has two witnesses: Plaintiff's mother and Plaintiff's own attorney. Both witnesses, however, as a matter of law, do not provide any admissible evidence against this Defendant for the following reasons:

[1] See McNeil v. SCDOC, 404 S.C. 186 (Ct. App. 2013) requiring Plaintiff to specifically plead who, said what, to what specific third party in order to sufficiently set forth a defamation claim.

(1) Plaintiff's mother's testimony is hearsay and speculation.

Plaintiff's mother allegedly would testify that her daughter told her that Defendants (Phillip and Spiro) told Plaintiff's father something defamatory. Initially, this alleged "evidence" is based on double hearsay (i.e., Plaintiff's mother says her daughter says Defendant's father says Defendant said something defamatory) and is not admissible. Moreover, the mother's purported hearsay testimony has been directly refuted by her own sworn testimony where she admitted that she simply made her testimony up based on an assumption. Plaintiff's mother testified under oath that she simply assumed that the alleged defamation must have come from this Defendant. Further, Rania Nikatos, Plaintiff's sister and daughter of the mother, testified via her Affidavit that this Defendant never defamed her brother and that she never told her mother that this Defendant defamed her brother to her. Accordingly, based on her own testimony, Plaintiff's mother has no admissible evidence against this Defendant as the purported "evidence" is hearsay, based upon "made up" speculation by Plaintiff's mother. The mother's hearsay speculation cannot be the basis of admissible evidence for defamation against this Defendant.[2]

(2) Plaintiff's counsel Stanley Barnett's "testimony" is privileged, inadmissible, and not evidence of publication to a third party.

Stanley Barnett, attorney for Plaintiff Athan Fokas, alleges that this Defendant "defamed" Plaintiff in a closed-door settlement conference, which Mr. Barnett requested. Mr. Barnett's testimony, however, is not admissible because he is/was the agent/counsel of Plaintiff and any alleged communications to him, as the agent of Plaintiff, at a meeting that he requested as a

[2] In addition, Plaintiff has submitted an Affidavit to the Court admitting that his mother never told him that this Defendant defamed him, but, rather, his mother refused to tell him who defamed him. Plaintiff then admitted to filing a frivolous lawsuit when he said that he thought that this Defendant must have been the one that defamed him, and he filed his defamation lawsuit based on such speculation.

settlement conference, is not admissible as a matter of law pursuant to SCRE Rule 408 and further the Boling v. Clinton Cotton Mills, 163 S.C. 13 (1931) decision.[3]

CONCLUSION

It is impossible for Defendant to defend against a defamation claim where Plaintiff refuses to set forth to whom (i.e., which alleged third party) any alleged statement was made.

This Honorable Court should deny Plaintiff's Motion to Amend his Complaint and grant Defendant's Motion for Summary Judgment. Plaintiff is unable to point to one person who has admissible evidence to establish an issue of fact that this Defendant defamed Plaintiff in any way. After over 11 months, Plaintiff has no such witness. If the only witnesses that Plaintiff points to are Plaintiff's mother or Mr. Barnett, his own attorney, then Defendant respectfully requests that this Court deny Plaintiff's motion to make his complaint vaguer 11 months after his Complaint was filed; moreover, this Defendant respectfully requests this Court to dismiss the Plaintiff's Complaint based on the failure of the Plaintiff to provide any admissible evidence to support his defamation claim.[4]

[3] It is revealing that Plaintiff seeks an amendment to allege that this Defendant made defamatory statements to Plaintiff's and his own family members, yet Plaintiff submitted an inadmissible Affidavit of his own attorney which violates the rules of evidence, in order to attempt to create an issue of fact. Plaintiff's amended pleadings do not allege any publication to Mr. Barnett; therefore, neither the original nor the proposed pleading comport with Mr. Barnett's inappropriate attempt to create any issue of fact by making himself a witness at this juncture.

[4] This Defendant further incorporates Defendant Spiro Ferderigos' Memorandum in Opposition and accompanying exhibits herein. For the sake of brevity, this Defendant submits this Memorandum without attaching said exhibits as well.

Respectfully submitted,

K & L GATES LLP

Richard A. Farrier (S.C. ID No 1962)
Email: richard.farrier@klgates.com
Jennifer H. Thiem (S.C. ID No. 73739)
Email: jennifer.thiem@klgates.com
134 Meeting Street, Suite 500
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601
ATTORNEYS FOR DEFENDANT PHILLIP FERDERIGOS

June 13, 2016
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3891
Athan Fokas,	)	
Plaintiff,	)	
v.	)	**CERTIFICATE OF SERVICE**
Philip Ferderigos and Spiro Ferderigos,	)	
Defendants.	)	

2016 JUN 13 PM 3:44
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

I, the undersigned, of the law office of K&L Gates LLP, do hereby certify that I have served counsel in this action with a copy of **Memorandum in Opposition to Plaintiff's Motion to Amend His Complaint on Behalf of Defendant Phillip Ferderigos** by mailing a copy of the same *via* first class mail to the following addresses:

Counsel Served:

Leslie S. Lenhardt, Esq.
Lenhardt Law Firm, LLC
1876 Wallenberg Boulevard
Charleston, SC 29407
Attorneys for Plaintiff

M. Dawes Cooke, Jr., Esq.
Jeremy E. Bowers, Esq.
BARNWELL WHALEY PATTERSON & HELMS LLC
PO Drawer H
Charleston, SC 29402
Attorneys for Defendant Spiros Ferderigos

Gwyn L. Martin
Legal Assistant

Charleston, South Carolina
June 13, 2016

K&L GATES

June 13, 2016

Jennifer H. Thiem
T +1 843 579 5658

jennifer.thiem@klgates.com

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: **Athan Fokas v. Philip Ferderigos and Spiros Ferderigos**
Case No. 2015-CP-10-3891

Dear Ms. Armstrong:

Enclosed herewith please find the original and one copy of Memorandum in Opposition to Plaintiff's Motion to Amend His Complaint on Behalf of Defendant Phillip Ferderigos in connection with the above-referenced matter.

Please file the original and return the filed-stamped copy to me *via* the bearer of this letter.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With kind regards, I remain.

Sincerely,

Jennifer H. Thiem

Enclosures
cc: Leslie S. Lenhardt, Esq. *(via email and US Mail, w/encls.)*
M. Dawes Cooke, Jr., Esq. *(via email and US Mail, w/encls.)*
Jeremy E. Bowers, Esq. *(via email and US Mail, w/encls.)*

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3891
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS and SPIROS FERDERIGOS, Defendants.	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT ON BEHALF OF DEFENDANT SPIROS FERDERIGOS**

FILED
2016 JUN 14 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: LESLIE LENHARDT, ATTORNEY FOR THE PLAINTIFF

Defendant, SPIROS FERDERIGOS (hereinafter referred to as "Spiros"), by and through his undersigned counsel, hereby submits this memorandum of law in opposition to Plaintiff's Motion to Amend Complaint on the grounds that Plaintiff's proposed Amended Complaint fails to sufficiently set forth a cause of action for defamation and conflicts with all the sworn testimony in this case.

PLAINTIFF'S ALLEGATIONS & PROCEDURAL HISTORY

The parties are involved in two lawsuits. The first lawsuit (Civil Action No. 2015-CP-10-3919) involves a dispute about their underlying investigation into the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street (Old Towne Restaurant) to be used for rental units. Plaintiff filed the instant action (Civil Action No. 2015-CP-10-3891) on July 14, 2015. This case involves allegations that Defendants published defamatory statements about Plaintiff, particularly with regard to setting fire to Old Towne Restaurant and filing false insurance claims. Plaintiff alleges that he and Defendants "planned to expand the suites rental business by adding three floors to the building and brought that plan to

the point of securing all necessary approvals and approval for a loan." Complaint, ¶ 5. Plaintiff further alleges that Spiros "refused to go forward with the loan," and, as a result, there were "communications between the parties in which the possibility of a lawsuit was raised." Complaint, ¶¶ 6 - 7. He then alleges that Defendants "threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims." Complaint, ¶ 8. Plaintiff alleges that the Defendants made defamatory statements that Plaintiff hired someone to set fire to the second floor of 229 King Street and that the Plaintiff filed a false workers' compensation claim. Complaint, ¶ 11(a), (b).

In the initial Complaint filed by Plaintiff, he alleges that these statements were communicated by the Defendants to their father who in turn relayed the statements to Plaintiff's mother (Defendants' aunt) for purposes "of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Complaint, ¶ 12. In the proposed Amended Complaint, Plaintiff now alleges a much vaguer publication, namely that "Defendants communicated the above statements **to members of their and Plaintiff's family** for the malicious purpose of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business."[1] Proposed Amended Complaint, ¶ 12 (emphasis added). While Plaintiff does not identify any of these family members by name, he continues to allege that he has been confronted with these statements *only* by his mother who "came to hear these falsehoods as a direct and proximate result of the publication of these falsehoods by Defendants." Proposed Amended Complaint, ¶ 14.

[1] The remaining allegations in the proposed Amended Complaint are almost identical to those set forth in the original Complaint filed by Plaintiff.

On October 1, 2015, Spiros filed an Answer and Counterclaims to Plaintiff's defamation action. In the Answer, Spiros denied making any of the statements alleged by Plaintiff in his Complaint and stated that he was "without personal knowledge to know whether the alleged statements (which were never made by Defendant) in Plaintiff's Complaint are false." Answer and Counterclaims, ¶ 9. As part of his counterclaim, Spiros incorporated his Answer and Counterclaims asserted in the second lawsuit filed against him by the Plaintiff (discussed above). Specifically, Spiros also asserted a cause of action for the initiation of frivolous proceedings based on the lack of any evidence to support the defamation claim.

SWORN TESTIMONY AND AFFIDAVITS

As stated above, in the initial Complaint, Plaintiff alleged that Defendants communicated defamatory statements about him to their father who in turn relayed the statements to Plaintiff's mother (Defendants' aunt) for purposes "of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Complaint, ¶ 12. However, shortly after the case had been filed, Plaintiff had been put on notice that his central substantive allegation was not true.

1. Dr. Fanouris Ferderigos letter

As a part of the Answer and Counterclaim, Spiros attached as an exhibit a letter from Dr. Fanouris Ferderigos to Plaintiff's counsel. Exhibit #1: Letter of Dr. Fanouris Ferderigos Dated August 21, 2015. This letter had previously been sent to Plaintiff's counsel in August. In the letter, Dr. Ferderigos, the uncle of Plaintiff and Defendants, stated Plaintiff's mother denied that Defendants' father ever discussed with her the topics of Plaintiff being involved with the fire at 229 King Street or the filing of false insurance claims. Exhibit #1: Letter of Dr. Fanouris Ferderigos Dated August 21, 2015.

2. Irene Fokas Affidavit

Despite the letter from Dr. Ferderigos, Plaintiff persisted with his allegations and action against Defendants. As a result, Spiros noticed the deposition of Plaintiff's mother, Irene Fokas. Prior to being deposed, Mrs. Fokas requested that she be allowed to provide an affidavit, and defense counsel allowed her to do so. In Mrs. Fokas' affidavit, she stated that her brother never told her "anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act."[2] Exhibit #2: Affidavit of Irene Fokas Dated October 28, 2015. Mrs. Fokas swore under oath that no one in the Ferderigos family told her that either Defendant made any defamatory comments about her son. Exhibit #2: Affidavit of Irene Fokas Dated October 28, 2015. Despite Dr. Ferderigos' letter (which disputed Plaintiff's original allegation that Mrs. Fokas heard Defendants made these statements about Plaintiff from Defendants' father) being sent to Plaintiff's counsel on August 21, 2015, Mrs. Fokas also swore that Plaintiff's counsel never contacted her to discuss the allegations in the Complaint until October 27, 2015. Exhibit #2: Affidavit of Irene Fokas Dated October 28, 2015.

3. Irene Fokas Deposition Testimony

Even with the letter of Dr. Ferderigos and the affidavit of Mrs. Fokas contradicting Plaintiff's central substantive allegation of his Complaint, Plaintiff still persisted with his allegations and noticed the deposition of Mrs. Fokas. During the deposition, Mrs. Fokas confirmed her refutation of Plaintiff's central substantive allegation. She testified that Defendants' father never spoke to her about allegations that Plaintiff set fire to 229 King Street,

[2] Mrs. Fokas had an opportunity to have her affidavit translated into Greek before its execution. Further, Mrs. Fokas consulted with both Plaintiff and Plaintiff's counsel before executing her affidavit. She actually executed the affidavit in the presence of Plaintiff and Plaintiff's counsel.

hired someone to set fire to 229 King Street, or filed false insurance claims. Exhibit #3: Deposition of Irene Fokas, p. 41, lines 8 – 18 and p. 33, lines 7 – 16. In fact, Mrs. Fokas admitted that neither Spiros nor Phillip made any defamatory statements about her son to her or to anyone that she was aware of. Exhibit #3: Deposition of Irene Fokas, p. 47, line 22 – p. 48, line 4. Instead, Mrs. Fokas testified that her daughter, Rania Nikatos, told her that Defendants would accuse Plaintiff of setting fire to 229 King Street. Exhibit #3: Deposition of Irene Fokas, p. 47, line 22 – p. 48, line 4 and p. 11, line 20 – p. 12, line 3. Mrs. Fokas confirmed on several occasions that her daughter, Rania, was the sole source of this information. However, Mrs. Fokas admitted that her daughter never told her where she heard these statements and that she never asked her daughter where she learned these things. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3. Rather, Mrs. Fokas testified that she assumed her daughter heard them from Defendants because "they do work with their cousins."[3] Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3. As a result, Mrs. Fokas not only refuted Plaintiff's central substantive allegation but also denied Defendants ever published defamatory statements about Plaintiff. Further, she denied anyone, including Rania Nikatos, ever told her that Defendants published defamatory statements about Plaintiff.

4. Rania Nikatos Affidavit

On November 20, 2015, Rania Nikatos, Plaintiff's sister, provided an affidavit wherein she denied ever hearing Defendants state that Plaintiff set fire to 229 King Street, that Plaintiff hired someone to set fire to 229 King Street, or that Plaintiff filed false insurance claims. Exhibit #4: Affidavit of Rania Nikatos Dated November 20, 2015. Mrs. Nikatos also confirmed Mrs. Fokas' testimony by stating that she never told Mrs. Fokas that she "ever heard anyone say that

[3] Interestingly, Plaintiff's mother's assumptions underlying her speculation are also erroneous as the Defendants do not work with her daughter, Rania Nikatos, or her son-in-law/daughter's husband, Gerasimos Nikatos.

Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s)." Exhibit #4: Affidavit of Rania Nikatos Dated November 20, 2015. Mrs. Nikatos also stated that she never heard anyone tell her that Phillip and/or Spiros made any of these comments about Plaintiff. Exhibit #4: Affidavit of Rania Nikatos Dated November 20, 2015.

5. Gerasimos Nikatos Affidavit

Finally, Gerasimos Nikatos, Rania's husband, provided an affidavit stating that he heard from a contractor named Manoli Kehagias that Plaintiff asked Mr. Kehagias to set fire to 229 King Street. Exhibit #5: Affidavit of Gerasimos Nikatos Dated December 2, 2015. Mr. Nikatos further stated that he immediately informed his wife, Rania, what Mr. Kehagias had told him. Exhibit #5: Affidavit of Gerasimos Nikatos Dated December 2, 2015. Mr. Nikatos' affidavit "closes the loop" on how these allegations about Plaintiff setting fire to 229 King Street originated with a contractor and got to Mrs. Fokas and ultimately Plaintiff. Nowhere in this chain of events is Spiros involved or is there any evidence that he published any statements about Plaintiff setting fire to 229 King Street.

PROPOSED AMENDED COMPLAINT

Despite all this sworn testimony, Plaintiff continues to persist with his allegations but asks this Honorable Court to allow him to amend is complaint to be vaguer **eleven (11) months** into this litigation. Specifically, Plaintiff seeks to amend his complaint to allege that "Defendants communicated the above statements to **members of their and Plaintiff's family** for the malicious purpose of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Proposed Amended Complaint, ¶

12 (emphasis added). Again, Plaintiff does *not* allege the identity of these family members but does allege that he was confronted with these allegations *only* by his mother. Plaintiff and his counsel have refused to inform Defendants or Defendants' counsel who these other family members are that heard Defendants publish these allegedly defamatory statements. Exhibit #6: E-Mails Between Richard Farrier, Jr., and Stanley E. Barnett Dated October 30, 2015. Instead, Plaintiff wants to rely on vague generalities that Defendants published these allegedly defamatory statements in an effort to continue this litigation without any factual basis which is evidenced by Plaintiff's refusal to provide the names of these individuals either to counsel or in the proposed amended complaint.

STANDARD OF REVIEW

Rule 15(a), SCRCP, sets forth the standard for granting motions to amend a pleading. Rule 15, SCRCP. The rule provides in pertinent part:

> A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. **Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.**

Rule 15(a), SCRCP (emphasis added). Although leave to amend should generally be "freely given," courts should deny proposed amendments when the amendment would be futile. See Higgins v. Med. Univ. of S.C., 326 S.C. 592, 604-05, 486 S.E.2d 269, 275 (Ct. App.1997). It is well established that a motion to amend or supplement is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. Foggie v. CSX Transp., Inc., 315 S.C. 17, 22, 431 S.E.2d 587, 590 (1993).

ARGUMENT

Because Plaintiff's proposed amended complaint fails to set forth factual allegations sufficient to allege a cause of action for defamation, this Honorable Court should find that the proposed amendment is futile and deny Plaintiff's Motion to Amend Complaint. In South Carolina, "[a] person makes a defamatory statement if the statement 'tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him.'" Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012) (citing Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 860, 860 (2002)). The tort of defamation permits "a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff." Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). A plaintiff must prove the following four elements to state a claim for defamation: "(1) a false and defamatory statement was made; (2) the ***unprivileged publication*** was made to a ***third party***; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Id. at 465, 629 S.E.2d at 664 (emphasis added).

In the present case, Plaintiff's proposed amended complaint is futile for three reasons: (1) the proposed amendment fails to sufficiently plead a cause of action for defamation because it is too vague as it fails to allege to whom the alleged defamatory statements were published; (2) the proposed amendment conflicts with all the sworn testimony in this case; and (3) to the extent Plaintiff alleges Defendants published these statements to Plaintiff's attorney (his agent), those communications occurred during settlement negotiations, were privileged, and do not constitute

publication to a third party. For these reasons, Defendants respectfully ask this Honorable Court to deny Plaintiff's Motion to Amend the Complaint.

I. Plaintiff's proposed Amended Complaint is futile because it is too vague and fails to set forth the person or persons to whom Defendants allegedly published the defamatory statements.

Because Plaintiff fails to allege ***to whom*** the alleged defamatory statements were published by Defendants, he has failed to set forth the necessary factual allegations or circumstances to support his formulaic recitation of the elements for a cause of action of defamation against Defendants, thereby rendering his proposed Amended Complaint futile. Once the Court removes all the mere legal conclusions and naked assertions of defamation, the only remaining factual allegation in the proposed Amended Complaint is that "Defendants communicated the above statements to **members of their and Plaintiff's family** for the malicious purpose of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Proposed Amended Complaint, ¶ 12 (emphasis added). This is insufficient to state a plausible claim for relief because Plaintiff does not allege with specificity to whom the alleged statements were made.

Importantly, the South Carolina Court of Appeals upheld the dismissal of a similar complaint for defamation that lacked sufficient factual allegations. In McNeil v. SCDOC, a former employee sued the South Carolina Department of Corrections for due process violations, negligence, defamation, and civil conspiracy after her termination. McNeil v. SCDOC, 404 S.C. 186, 189, 743 S.E.2d 843, 844 (Ct. App. 2013). The employee was a captain at the Kirkland Reception and Evaluation Center which maintained custody of and provided care for inmates and prisoners incarcerated by the state. Id. During the employee's shift, an inmate, who was a known suicide risk, committed suicide after being denied his request for his medication. Id.

SCDOC terminated the employee "because of alleged negligence in her duties at the time of the inmate's death and falsification of documents after his suicide." Id. The trial court dismissed the defamation claim for failure to allege sufficient facts to state a claim upon which relief could be granted. Id. On appeal, the employee argued that she pled SCDOC "made and published 'statements that insinuated she was unfit in her business and profession," but the Court of Appeals upheld the dismissal of the employee's defamation action as follows:

> McNeil ***did not allege any of SCDC's statements were unprivileged***, and she did not set forth with any specificity what the alleged false statements were. She also did not allege any of the statements were published to a third party or that SCDC made the alleged statements. ***Additionally, she did not assert to whom SCDC made the alleged statements.*** Therefore, we find McNeil's allegations do not support an action for defamation, and the trial court did not err in dismissing her cause of action.

Id. at 195, 743 S.E.2d at 848 (emphasis added). As the Court of Appeals stated, for a plaintiff to plead a cause of action for defamation, he must set forth facts sufficient to allege that the statements were unprivileged, the specificity of the alleged false statements, and ***to whom*** the alleged false statements were published. Id. Part of alleging publication is to allege that the defamatory statements were actually published to another person. See id.

In the present case, Plaintiff has not alleged any of Spiros' statements were unprivileged or set forth ***when, how, or to whom*** the statements were published. For the same reasons as set forth by the Court of Appeals in McNeil, Plaintiff's proposed Amended Complaint fails to allege facts sufficient to support a defamation claim, and, as a result, the proposed Amended Complaint is futile. In Plaintiff's original Complaint, he specifically alleged that Defendants made these alleged defamatory statements to their father who in turn passed them onto Plaintiff's mother. However, Defendants disproved this central allegation. Plaintiff's mother has refuted that substantive publication allegation in her affidavit and in her deposition. Further, the testimony

from Plaintiff's mother and his sister has unequivocally shown that neither one heard these allegedly defamatory statements from either Defendant. With the evidence contradicting Plaintiff's original allegations as set forth above and no one testifying that they heard either Defendant publish the defamatory statement, Plaintiff now seeks to amend his complaint and allege much vaguer allegations related to the publication of these allegedly defamatory statements. Now, Plaintiff seeks only to allege that the statements were published to "members of their and Plaintiff's family." In short, Plaintiff does not allege to whom the allegedly false statements were published.

While Plaintiff's original Complaint specifically alleged to whom Defendants published these allegedly defamatory statements, the proposed Amended Complaint is conspicuously vague on this issue. Rather than allege that Defendants published these statements to any particular individual, Plaintiff simply alleges in his proposed Amended Complaint "members of their and Plaintiff's family." Given the opportunity to investigate his claims for the last eleven (11) months and to perform discovery, including depositions, Plaintiff's allegations should not be getting vaguer and less specific at this stage of litigation.

In fact, during the hearing on Defendants' Motions for Summary Judgment, the Court correctly questioned Plaintiff's counsel on this very issue. As Plaintiff's counsel argued that Plaintiff needed more time for discovery regarding publication of the alleged defamatory statements, the Court stated that Plaintiff should have investigated that issue and should have known the identity of those persons to whom Defendants allegedly published the defamatory statements before filing suit.[4] When the Court asked Plaintiff's counsel for the identity of those

[4] In Plaintiff's Memorandum in Opposition to Defendants' Motions for Summary Judgment, Plaintiff admits he had no justifiable basis to allege that Defendants were the source of allegedly defamatory statements because his mother, who told him about the statements, would not tell him who told her about the statements. Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, Pages 8 – 9. As Plaintiff stated in his affidavit, the

individuals to whom Defendants allegedly published the defamatory statements, Plaintiff's counsel could only state that Plaintiff was still trying to determine such information. Rather than actually identify someone to whom Plaintiff alleges Defendants published the defamatory statements as required to sufficiently plead a cause of action for defamation, he seeks to amend his Complaint to have the vague allegation that Defendants published to family members. This is insufficient.

If Plaintiff knew or had reason to believe that either Defendant published these allegedly defamatory statements to a particular person, he would have alleged so in the proposed Amended Complaint. Instead, it is clear that Plaintiff and his counsel are without any reason to believe either Defendant published these allegedly defamatory statements to anyone. Without the identity to whom Defendants allegedly published these statements, Plaintiff has failed to sufficiently allege any publication of these statements, and, as a result, his defamation claim fails as a matter of law.[5] Plaintiff cannot rely upon a formulaic recitation of the elements for his defamation cause of action and some vague publication to an unidentifiable class of persons but instead must allege facts sufficient to demonstrate that the statements were unprivileged and when, how, and to whom the statements were published. For these reasons, Plaintiff's proposed Amended Complaint is futile and is would be subject to dismissal under the holding of McNeil.

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only basis he had to think the statements came from Defendants was that his mother would smile when he asked if she learned these statements from her brother (Defendants' father). Affidavit of Athan Folkas, ¶¶ 6 – 8.

[5] To the extent Plaintiff relies upon rumor and innuendo regarding these allegedly defamatory statements, he must provide the name of someone who will testify that Defendants published these allegedly defamatory statements to a third-party. In Williams v. Lancaster County School Dist., a father and mother filed a defamation action against the school district alleging that the principal was responsible for a rumor that father was having an affair. Williams v. Lancaster County School Dist., 369 S.C. 293, 298-99, 631 S.E.2d 286, 289-90 (2006). As the Court noted, numerous individuals had knowledge of the incident at issue between the father and a secretary at the school. Id. at 304, 631 S.E.2d at 292. The father testified that he could not say "any employee of the District had said he was having any affair" with the secretary. Id. As a result, the Court held that any number of people could be responsible for the rumor, and, as a result, the father could not establish any defamatory statement actually published by the principal. Id. Similarly, Plaintiff has put forth no evidence, and has no evidence, to support any claim that Defendants started any rumors related to Plaintiff and the fire at 229 King Street or the filing of false insurance claims.

II. Plaintiff's proposed Amended Complaint is futile because it conflicts with all the sworn testimony in this case.

As outlined above in the Sworn Testimony and Affidavits section, Plaintiff's proposed Amended Complaint conflicts with the sworn testimony in this case about the source of the allegedly defamatory statements about Plaintiff. Plaintiff seeks to amend his complaint to allege that "Defendants communicated the above statements to members of their and Plaintiff's family..." Proposed Amended Complaint, ¶ 12. However, the sworn testimony demonstrates that none of the family members have heard either Defendant publish the allegedly defamatory statements.

Mrs. Fokas, whom Plaintiff originally alleged heard Defendants' father inform her that Defendants published these allegedly defamatory statements to him, testified that she heard these allegedly defamatory statements from her daughter, Rania, and does not know who told these things to her daughter. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3. In fact, Mrs. Fokas never asked her daughter where she learned about these statements and allegations about Plaintiff's involvement in the fire at 229 King Street. Instead, Mrs. Fokas testified that she assumed her daughter heard these statements from Defendants, despite never asking her daughter. Exhibit #3: Deposition of Irene Fokas, p. 11, line 20 – p. 12, line 3. However, Mrs. Fokas' testimony clearly shows that her daughter never told her that either Defendants made any defamatory statements, and it is insufficient for Plaintiff to rely upon Mrs. Fokas' conjecture as to the ultimate source of these allegedly defamatory statements. Mrs. Fokas merely testified that her daughter made these statements to her, but Plaintiff cannot in good faith rely upon Mrs. Fokas' speculation about the source of such statements to allege that Defendants published these allegedly defamatory statements to "family members." This is especially the case in light of all the other affidavits submitted by witnesses in this case.

Indeed, Mrs. Nikatos' sworn affidavit confirms her mother's testimony that she never told her mother that either Defendant made these allegedly defamatory statements. Exhibit #4: Affidavit of Rania Nikatos Dated November 20, 2015. In fact, Ms. Nikatos swore that she never heard either Defendant make these allegedly defamatory statements. Exhibit #4: Affidavit of Rania Nikatos Dated November 20, 2015.[6]

Similarly, Mr. Nikatos' sworn affidavit demonstrates the actual source of these allegedly defamatory statements to be a contractor who claims Plaintiff asked him to set fire to 229 King Street. Exhibit #5: Affidavit of Gerasimos Nikatos Dated December 2, 2015. Mr. Nikatos then informed his wife about these allegations from the contractor, and Mrs. Nikatos then informed her mother who in turn relayed the statements to Plaintiff, her son. Nowhere in this sequence of events does either Defendant publish any defamatory statement about Plaintiff to anyone, including any family member of Plaintiff or Defendants. Recall, Plaintiff does not allege in either his original Complaint or his proposed Amended Complaint that any family member other than his mother confronted him about allegations that he was involved in the fire at 229 King Street. He alleges only that his mother confronted him about these allegations. Complaint, ¶ 14; Proposed Amended Complaint, ¶ 14. Plaintiff's mother has testified that her only source of this information is her daughter, Rania, and Rania has provided a sworn affidavit that she never heard either Defendant make these allegedly defamatory statements. As a result, the only evidence in this case shows without question that these allegedly defamatory statements originated with a contractor who claimed Plaintiff asked him to set fire to 229 King Street and were relayed to Mr. Nikatos, Mrs. Nikatos, Mrs. Fokas, and ultimately Plaintiff. Defendants had no involvement

[6] Despite having this affidavit from Ms. Nikatos since November 2015, Plaintiff has not attempted to depose or question Ms. Nikatos under oath about the content of her affidavit. Contrary to Plaintiff's prior arguments, the South Carolina Rules of Civil Procedure allow a party to notice the deposition of any person any time thirty (30) days after service of the summons and complaint without leave of court. Rule 30(a)(1), SCRCP.

whatsoever in the publication of these allegedly defamatory statements to anyone in this chain of events, and, more importantly, given the testimony in this case, Plaintiff and his counsel know that they cannot allege any such publication by Defendants. *To date, Plaintiff and Plaintiff's counsel have not alleged or provided the identity of any person who actually heard either Defendant publish any of these allegedly defamatory statements. No such person exists.*

As no one, including any family member of Plaintiff or Defendants, has testified that he or she has heard either Defendant publish any defamatory statement about Plaintiff, Plaintiff's proposed Amended Complaint is futile. The evidence ascertained in this case only demonstrates that Mr. Nikatos heard a contractor claim Plaintiff asked him to set fire to 229 King Street, that Mr. Nikatos relayed this information to his wife, that Mrs. Nikatos relayed this information to her mother, and that her mother relayed this information to Plaintiff. Plaintiff clearly alleges that his mother, Mrs. Fokas, is the one who confronted him about these allegations, and Mrs. Fokas has testified that her sole source of this information was her daughter. Mrs. Fokas' daughter provided a sworn affidavit that she never heard either Defendant publish any of these allegedly defamatory statements. As none of the family members alleged to have known about these allegedly defamatory statements heard either Defendant make these statements, this Honorable Court must deny Plaintiff's Motion to Amend Complaint to include vaguer language about to whom the statements were allegedly published.

III. To the extent Plaintiff argues that Defendants communicated these allegedly defamatory statements to his attorney (Plaintiff's agent), those communications occurred during settlement negotiations, were privileged, and do not constitute publication to a third party.

If Plaintiff alleges or argues that Defendants communicated these allegedly defamatory statements to his attorney, Stanley Barnett ("Mr. Barnett"),[7] any communications were part of privileged settlement negotiations and are inadmissible, and, as a result, they cannot serve as the basis for a defamation action. Further, those statements do not constitute publication to a third party as they were invited by Plaintiff's agent and published only to Plaintiff's agent.

A. Any and all alleged statements to Mr. Barnett were privileged settlement negotiations.

As the attorney for Plaintiff, Mr. Barnett's communications with Defendants were part of settlement negotiations in an effort to avoid "further conflict," and, as a result, any communications were privileged and cannot serve as the basis for Plaintiff's defamation claim. "The courts favor compromise; accordingly, evidence relating to settlements is generally not admissible to prove liability." Commerce Center of Greenville, Inc. v. W. Powers McElveen & Associates, Inc., 347 S.C. 545, 558, 556 S.E.2d 718, 726 (Ct. App. 2001); Rule 408, SCRE; Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). Rule 408, SCRE, provides as follows:

> **Evidence** of (1) furnishing or offering or promising to furnish, or (2) accepting or **offering or promising** to accept, a valuable **consideration** in compromising or attempting **to compromise** a claim which was disputed as to either validity or amount, **is not admissible to prove liability** for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.** This rule does not require the exclusion of any evidence otherwise discoverable

[7] It should be noted that Plaintiff's proposed Amended Complaint alleges that "Defendants communicated the above statements to members of their and Plaintiff's family..." Proposed Amended Complaint, ¶ 12. Mr. Barnett is not a member of Plaintiff's family or Defendants' family, and, as a result, any alleged publications to Mr. Barnett do not conform to Plaintiff's own proposed pleadings and cannot serve as a basis for the proposed amendment. Plaintiff likely does not allege any publication to Mr. Barnett (and instead tries to confuse the Court by arguing it elsewhere) because he knows said communications were part of settlement negotiations, are inadmissible, and do not constitute publication to a third party.

> merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

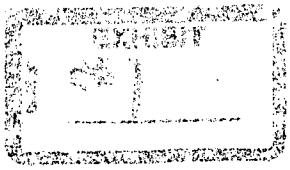
(emphasis added). "This rule contemplates that the parties need to feel free to make certain assumptions for the purpose of settlement negotiations and that those statements are assumed by the author to be true only for the purpose of compromise negotiations." Fesmire v. Digh, 385 S.C. 296, 308-09, 683 S.E.2d 803, 809 (Ct. App. 2009). "The rule codifies the longstanding principle that evidence of conduct or statements made in compromise negotiations is not admissible." Id.; see also QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (Ct. App. 2004). There has been a trend to extend the protection to all statements made in compromise negotiations. 2 McCormick on Evidence § 266 (6th ed. 2006). As any communications Defendants had with Mr. Barnett prior to the filing of the two lawsuits were part of compromise and settlement discussions, those communications are privileged, are inadmissible, and cannot be used as the basis of Plaintiff's defamation action against Defendants. As such, to the extent Plaintiff argues that Defendants published defamatory statements about Plaintiff to Mr. Barnett, those arguments are without merit.

After the dispute arose regarding the parties' underlying investigation into the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street, Plaintiff "retained Stan Barnett to communicate to the Defendants *that they were in breach of contract*," and Mr. Barnett met with the Defendants "to discuss whether there was a way for them to *negotiate* a way with the Plaintiff to move forward..." Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, Page 7-8 (emphasis added). On January 26, 2015, Mr. Barnett wrote to Defendants accusing them of being in breach of contract

and breach of their fiduciary duties and invited Defendants to participate in a meeting to "try to work out a way forward so as to accomplish the goals of the agreement which are to the mutual benefit of all four of you." Exhibit #7: Letter from Stanley Barnett Dated January 26, 2015. Mr. Barnett concluded his letter by asking Defendants to let him know a convenient time to schedule the meeting "so that any further conflict can be avoided..." Exhibit #7: Letter from Stanley Barnett Dated January 26, 2015. On February 3, 2015, Spiros replied to Mr. Barnett's letter welcoming a "conversation of resolving these issues" and agreed to meet with Mr. Barnett to resolve the issues in the threatened lawsuit because, as Spiros informed Mr. Barnett in the letter, any such lawsuit by Plaintiff would be frivolous and would further result in countersuits by Spiros against Plaintiff. Exhibit #8: E-Mail from Spiros Ferderigos Dated February 3, 2015; Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, Pages 7 – 8.

Based upon the correspondence between Mr. Barnett and Defendants, it is clear that the purpose of the meeting was to discuss a potential resolution of the issues between the parties in an effort to avoid "further conflict." In other words, Mr. Barnett and Defendants met to engage in compromise negotiations. As a result, any evidence of conduct or statements made during those compromise negotiations, namely the meeting between Mr. Barnett and Defendants, is not admissible pursuant to Rule 408, SCRE.

South Carolina courts have excluded evidence related to efforts to schedule meetings to discuss settlement negotiations, let alone the content of those settlement meetings. For example, in Commerce Center of Greenville, a contractor in a construction litigation case attempted to enter into evidence two letters from plaintiff related to settlement negotiations. Commerce Center of Greenville, 347 S.C. at 553, 556 S.E.2d at 722. The letters concluded with plaintiff's



attempts to schedule a meeting to discuss proposed repairs and to "see if a resolution can be reached...without the necessity of continued litigation." Id. at 558, 556 S.E.2d at 725. The Court of Appeals found that the letters related to actual settlement negotiations or a "settlement relationship between the parties" because "[t]hese letters reference an attempt to schedule a meeting to resolve the case" and "an attempt to curb further litigation." Id. The Court of Appeals held that the letters were properly excluded from evidence by the trial court. Id. at 559, 556 S.E.2d at 726.

Similarly, in this case, Mr. Barnett's letter to Defendants requesting a meeting to avoid further conflict (wherein Mr. Barnett threatened a breach of contract/breach of fiduciary duties lawsuit) and Defendants' responses to Mr. Barnett agreeing to meet in an effort to resolve the issues demonstrate a settlement relationship between the parties and an attempt to avoid litigation. Indeed, Mr. Barnett admits in his memorandum that Plaintiff "retained Stan Barnett to communicate to Defendants that they were in breach of contract," and Mr. Barnett met with Defendants "to discuss whether there was a way for them to ***negotiate*** a way with Plaintiff to move forward..." Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, Pages 7 – 8 (emphasis added). Mr. Barnett wrote to Defendants that he had been retained by Plaintiff regarding Defendants' alleged breach of contract and breach of fiduciary duties against Plaintiff and requested a meeting with the Defendants "so that any further conflict can be avoided." In agreeing to the meeting with Mr. Barnett, Spiros specifically mentioned discussing ways to resolve the issues between the parties and informs Mr. Barnett that he welcomed the conversation of resolving the issues because the threatened litigation by Plaintiff was frivolous. Spiros further informed Mr. Barnett that the filing of a frivolous lawsuit by Plaintiff would result in countersuits by Spiros against Plaintiff. Mr. Barnett clearly invited

Spiros to participate in settlement negotiations, and Spiros clearly met with Mr. Barnett to discuss settlement negotiations. Accordingly, any communications at such meeting constitute settlement negotiations, and Plaintiff cannot use those alleged discussions as evidence of defamation. However, as a plaintiff must allege that the alleged defamatory statements were not privileged in order to set forth a sufficient claim for defamation, Plaintiff cannot do so in this case if he intends to rely upon any alleged statements to Mr. Barnett, Plaintiff's former attorney. See Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012) (holding that a defamation cause of action requires proof that "the unprivileged publication was made to a third party"). To the extent that Plaintiff argues that its proposed amended complaint encompasses any allegedly defamatory statements made to Mr. Barnett (who again is not a "family member" of either Plaintiff or Defendants), those communications would be part of privileged settlement negotiations and are inadmissible, and, as a result, they cannot serve as the basis for a defamation action.

B. Any and all statements to Mr. Barnett were invited by him, Plaintiff's agent.

Also, any allegedly defamatory statements about Plaintiff and published to Mr. Barnett do not constitute publication as they were invited by Plaintiff's agent, Mr. Barnett. It has long been settled in South Carolina that "a person cannot invite or provoke another to make a slanderous charge against him, and then sue such person for damages on account of such charge." Boling v. Clinton Cotton Mills, 163 S.C. 13, 163 S.E. 195, 199 (1931). "There is no such publication as will support an action where the defamatory matter is invited or procured by the plaintiff *or by person acting for him in the matter*." Id. (emphasis added). "If the only publication that can be provided is one made by the defendant in answer to an application from the plaintiff, or some agent of the plaintiff, demanding explanation, such answer, if fair and

relevant will be held privileged; for the plaintiff brought it on himself." Id. Attorneys engaged in settlement negotiations within the scope of their representation of a party serve as agents for their clients. See Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005).

Here, Mr. Barnett, Plaintiff's attorney, invited Defendants to meet with him to participate in a closed door meeting to discuss Defendants' alleged breach of contract and breach of their fiduciary duties to "try to work out a way forward so as to accomplish the goals of the agreement which are to the mutual benefit of all four of you" and "so that any further conflict can be avoided..." Exhibit #7: Letter from Stanley Barnett Dated January 26, 2015. On February 3, 2015, Spiros replied to Mr. Barnett's letter welcoming a "conversation of resolving these issues" and agreed to meet with Mr. Barnett. Exhibit #8: E-Mail from Spiros Ferderigos Dated February 3, 2015; Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, Pages 7 – 8. In the e-mail response, Spiros also made it clear to Mr. Barnett that should Plaintiff file suit against him that Spiros would countersue "with numerous causes of action and well documented liability against [Plaintiff] for his behavior." Exhibit #8: E-Mail from Spiros Ferderigos Dated February 3, 2015. *Plaintiff, through his agent, cannot invite Defendants to meet and discuss how to resolve the issues between them and then allege Defendants defamed him by discussing those issues.* It would be against sound legal principle to allow Plaintiff to invite Defendants to answer certain questions from Plaintiff, or his attorney, in a settlement meeting and then allow Plaintiff to sue for defamation based upon Defendants' answer to Plaintiff's attorney. Because Plaintiff invited Defendants to settlement negotiations with Plaintiff's attorney, any statements made therein cannot be the basis of a defamation action.

C. Any and all statements to Mr. Barnett were published only to him (Plaintiff's attorney/agent, not a third party).

To the extent Plaintiff alleges that Defendants made defamatory statements about him to Mr. Barnett, his attorney, he has not alleged any publication to third-parties, and, if Plaintiff repeated what his attorney told him Defendants said, those statements constitute self-publication. "Self-publication of [an] allegedly defamatory statement may bar a plaintiff from recovery." Murray v. Holnam, Inc., 344 S.C. 129, 144-45, 542 S.E.2d 743, 751 (2001); David P. Chapus, Annotation, Publication of Allegedly Defamatory Matter by Plaintiff ("Self-Publication") As Sufficient to Support Defamation Action, 62 A.L.R.4th 616 (1988); see also 50 Am.Jur. 2d Libel and Slander § 241 (1995) (as a general rule, where a person communicates a defamatory statement only to person defamed and defamed person then repeats statement to others, publication of statement by person defamed, or "self-publication," will not support defamation action against originator of statements). "There is no publication where a Defendant communicates a statement directly to the Plaintiff, who then communicates it to a third party." Restatement of Torts 2d § 577, Comment m (1971).

If Plaintiff alleges or argues that Defendants communicated these allegedly defamatory statements to Mr. Barnett, his attorney, and then those statements were communicated from Mr. Barnett to him, there is no publication because Mr. Barnett is Plaintiff's agent, and, as a result, any such statements cannot serve as the basis for a defamation action. If Plaintiff then reiterated these allegedly defamatory statements that Mr. Barnett claimed Defendants made to others (for example, filing lawsuits against these Defendants like the case at bar), he self-published the statements to the public, and he cannot use those publications to support a defamation action against Defendants. For these reasons, any and all communications between Mr. Barnett and Defendants were part of privileged settlement negotiations, are inadmissible, and do not

constitute publication as they were invited by Mr. Barnett, Plaintiff's agent, and published only to him (not a third party).

CONCLUSION

Based upon the arguments discussed above, Spiros respectfully asks this Honorable Court to deny the Plaintiff's Motion to Amend Complaint. Plaintiff's proposed Amended Complaint is futile because it fails to set forth the individuals ***to whom*** the alleged defamatory statements were published and without such an allegation Plaintiff has failed to adequately allege any publication of any defamatory statement by Defendants. Further, Plaintiff's proposed Amended Complaint is also futile because it contradicts all the sworn testimony ascertained in this case, including the sworn testimony of Plaintiff's own mother and sister. Finally, if Plaintiff argues that Plaintiff's proposed Amended Complaint covers allegations that Defendants communicated these allegedly defamatory statements to his attorney, Stanley Barnett, during settlement negotiations in a closed door meeting, those communications were part of privileged settlement negotiations, are inadmissible, and do not constitute publication as they were invited by Plaintiff's agent and published solely to him (not a third party).

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____

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June 13, 2016
Charleston, South Carolina

15-CP-10-3891

Certificate of Service

I hereby certify that the foregoing MEMORANDUM IN OPPOSITION TO MOTION TO AMEND was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

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Columbia, SC 29201

FILED
2016 JUN 14 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This the 13th day of June 2016.

Cheryl Lessard
Legal Secretary

August 21, 2015

Stan Barnett
Smith, Bundy, Byebee & Barnett, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, SC 29464

Dear Mr. Barnett,

My name is Dr. Fanouris Ferderigos and I am the uncle of the Plaintiff and Defendants in case number 15-CP-10-3891 that you have filed in Charleston County, South Carolina. Your lawsuit alleges that my sister, Irene Fokas (which is Plaintiff Athan Fokas' mother), confronted Athan Fokas about "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds. (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds." Your lawsuit alleges that Irene Fokas confronted Athan Fokas about these allegations, and Irene Fokas informed Athan Fokas that my brother, Stavros Ferderigos (which is Defendants' father), told her about the allegations stated above and set forth in your Complaint. Your lawsuit further alleges Irene Fokas informed Athan Fokas that Stavros Ferderigos identified Defendants (Phillip and Spiros Ferderigos) as the source of those statements.

This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever.

With Kindest Regards, I am

Dr. Fanouris Ferderigos

Cc: Dawes M. Cook (288 Meeting Street, Suite 200, Charleston, SC 29401)

Richard Farrier (134 Meeting Street, Charleston, SC 29401)

EXHIBIT
#1

I, Irene Fokas, hereby solemnly swear and attest to the following:

My brother Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts.

Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false.

I have read this statement and understand its contents.

Irene Fokas

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28TH DAY OF OCTOBER, 2015.

Notary Public for Santa Caroline.
My Commission expires 3/30/21.

EXHIBIT
2

I, Irene Fokas, hereby solemnly swear and attest to the following:

My brother Stavros Ferderigos never told me anything about any statements Spiros or Phillip Ferderigos made regarding my son Athan Fokas related to the following: (1) starting a fire at 229 King Street; (2) hiring someone to start a fire at 229 King Street; (3) filing any false insurance claims; and (4) committing any other bad act. My brother certainly never told me that any of his sons told him anything about Athan Fokas, including but not limited to, Athan Fokas starting a fire or filing false insurance claims or doing any other bad acts.

Also, no one in the Ferderigos family has ever told me that Phillip or Spiros Ferderigos told anyone that my son Athan started a fire at Old Towne or hired someone to start a fire at Old Towne, filed false insurance claims, or committed any other bad act whatsoever. Stanley Barnett, Athan's attorney, never spoke to me about any such allegations until yesterday, and I told Stanley that those allegations were false.

I have read this statement and understand its contents.

Irene Fokas

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28TH DAY OF OCTOBER, 2015.

Notary Public for South Carolina.
My Commission expires 3/30/21.

00001

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS

DATE: NOVEMBER 19, 2015

TIME: 9:37 A.M.

LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

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APPEARANCES

ON BEHALF OF THE PLAINTIFF:
SMITH BUNDY BYBEE & BARNETT, PC
BY: STAN BARNETT, ESQ.
1037 Chuck Dawley Boulevard, Building F
Mount Pleasant, SC 29464

ON BEHALF OF THE DEFENDANT PHILLIP FERDERIGOS:
VERNIS & BOWLING OF BOWLING
BY: J. DRAYTON HASTIE III, ESQ.
1401 Main Street, Sutie 655
Columbia, SC 29201
K&L GATES
BY: JENNIFER H. THIEM, ESQ.

EXHIBIT 3

134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF THE DEFENDANT SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS,LLC
BY: JEREMY E. BOWERS, ESQ.
288 Meeting Street, Suite 200
Charleston, SC 29401
WESTON LAW FIRM, PA
BY: STEPHANIE PHILLIPS, ESQ.
761 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29465

ALSO
PRESENT: Athan Fokas
Phillip Ferderigos
Eleni Hatzis, Interpreter, appearing
via teleconference

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ELENI HATZIS,

The Interpreter, was first duly sworn by the court reporter to translate Greek to English and English to Greek.

IRENE FOKAS,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BARNETT:

Q. Okay. Before I ask you some questions, Miss Fokas, I want to make a couple of introductory statements that our rules require me to make.

All right. First of all, you've been sworn. I know you will tell the truth.

A. Yes.

Q. But I'm not sure that you will understand me after I have been interpreted to you. If I ask a question that you don't understand, you just tell me. My feelings will not be hurt.

THE WITNESS: Okay.

A. Okay.

Q. Please do not guess what you think I mean if I have asked a question that you just

00005

don't understand.

A. Okay.

Q. All right. And if you -- if you feel the need to take a break, just let us know. You are the boss, as well as the court reporter. The two of you are in charge here --

THE WITNESS: Okay.

Q. -- no matter what it may look like.

A. Okay.

Q. And I want to -- before I forget, which I am inclined to do sometimes, I want to thank you for being as accommodating with scheduling this as you have been. I appreciate that.

THE WITNESS: Okay.

THE INTERPRETER: That was for the reporter?

MR. BARNETT: That was for Mrs. Fokas.

Q. Okay. And with that, let's get started.

All right. Miss Fokas, you have -- do you have two brothers?

THE WITNESS: Yes.

A. Yes.

Q. Tell us their names, if you would.

A. Stavros Ferderigos. Fanouris Ferderigos.

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Q. And where do they live?

Q. This discussion you had with your son, do you remember what month this was?
A. I don't remember exactly. Could have been April or May.
Q. Okay. It was in the spring.
THE WITNESS: Uh-huh, in the spring.
A. Yes.
Q. And where did you learn that these allegations might be made?
MR. BOWERS: Object to the form.
A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.
It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

00011

Q. Did your son ask you where you learned about this?
A. Yes. My son asked me; and I told him, "You'll never find out. I want you to be very careful. Don't -- don't get involved with them because --
THE INTERPRETER: The interpreter didn't get the last word. Something about the truth.
A. Because they will find -- they will be right because they're attorneys. They can change things.
Q. What do you mean "change things"?
A. Even though you may say the truth, they may said you said -- you lied.
My -- my daughter was very afraid that they're going to destroy him; and when I heard these things, I got sick. And I told him, "No matter how right you may be, you're not going to find justice."
Q. Did your daughter tell you who she was talking about that might make these --
THE WITNESS: I never ask.
A. I never asked her, but I figured that -- I figured they might be them because she -- they have -- they do work with their cousins. She was

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hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"
Q. You referred -- you said "them." "She worked with them," I think you said.
A. Yes.
THE INTERPRETER: I'm telling her to

know. I asked what would happen if I don't sign? And they said to me, "You have to wait 3 or 4 hours to do what you're doing today." And I had no -- I didn't feel like waiting for another 3 or 4 hours.

Q. Is that the only reason that you signed the written statement?

A. No. It was to clear things up with my brother, that I don't have anything against my brother.

Q. And the -- you signed it because the statement is, in fact, true; correct?

A. Yes, it is true; and I'm telling you now my brother never -- we never talked about these things. My brother never told me anything.

When we went to Greece -- the -- the -- when we went to Greece, a week later I spoke to Stavros. He was very upset. He said, "Your son is suing, and it has to do with a building. He's been waiting for two-and-a-half years to start this building. They're not fair, and he's going to go after them." That's what my brother said.

Q. That was after the lawsuit had already been filed?

00034

A. This is before. Much before.

Q. I thought that you said that when you went back to Greece, your -- that Stavros was upset because Athan had already sued Phillip and Spiros.

A. The -- the lawsuit started after my other brother came also. This -- I went in May. That's when he told me about this, that my son is going after his son; and he was upset about that. My other son -- my other brother came in July.

Q. Okay. Going back to your written statement, did you have an opportunity to review that with your son before signing it?

A. Yes. I signed it in Greek, but my son does not understand Greek as I understand Greek.

Q. But you had an opportunity to review it with him before signing it?

A. Yes. The English one.

Q. And did you have an opportunity to review your statement with your daughter Rania before signing it?

A. Rania explained it to me. She explained to me when it was in English; but then when it was in Greek, I could read it.

Q. And you had the opportunity to have it

00035

translated to Greek; correct?

A. Yes.

Q. And you spoke with a Greek translator to

A. Okay.
Q. "Dear, Mr. Barnett. My name is Dr. Fanouris Ferderigos, and I am the uncle of the plaintiff and defendants in Case No. 15-CP-10-3891 that you have filed in Charleston County, South Carolina."
Is there anything incorrect so far?
THE INTERPRETER: Is that a question for Miss Fokas?
MR. BOWERS: Yes, please.
A. I do not understand -- I don't know any dates or numbers.
Q. Okay. Fair enough.
"Your lawsuit alleges that my sister, Irene Fokas, which is plaintiff, Athan Fokas's, mother, confronted Athan Fokas about, A), hiring someone to set a fire to the second floor of the building at 229 King Street for the purpose of

00040

collecting insurance proceeds; B), falsely claiming in an insurance claim" --
A. Is my brother saying that I said these things?
Q. Yes.
A. He's saying I said these things?
Q. That she -- he is saying that you, Irene Fokas, confronted your son Athan about these things, that the lawsuit alleges that.
A. I was -- I was saying what my daughter told me. We were afraid of what my -- what the cousins were saying.
Q. Do you know what the allegations of the defamation lawsuit are filed by Athan Fokas?
A. I believe that they're accusing him for setting a fire and for insurance.
Q. Do you know who filed that lawsuit? Who started that lawsuit?
MR. BOWERS: I'm sorry. That's a question for Ms. Fokas. Did we lose her again?
MR. BARNETT: Is her number still showing?
MR. BOWERS: It's still showing. Madam Interpreter, did you happen to hit mute, by chance?

00041

MS. PHILLIPS: The line went down.
MR. BOWERS: Yeah. Now she's gone.
(Pause in proceedings.)
THE INTERPRETER: So the last question?
MR. BOWERS: You ready to start?
THE WITNESS: Uh-huh. Yeah.
BY MR. BOWERS:
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan focus set

fire to 229 King Street?
A. No. Never. Never.
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas hired someone to set fire to 229 King Street?
A. Not with Stavros. Never.
Q. Did you ever speak with Stavros Ferderigos about allegations that Athan Fokas filed false insurance claims?
A. No.
Q. Did you tell your brother Fanouris that Stavros and you never talked about those things?
A. Yes. I talked to him.
Q. And do you -- do you know whether or not Fanouris communicated that to your son's attorney?

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A. I have no idea.
Q. Since October 28 have you talked to anyone about Dr. Fanouris's letter?
A. No. I speak to him every day, but we do not speak about this thing.
Q. Have you spoken to Dr. Fanouris about the lawsuits other than what you told Mr. Barnett?
A. Dr. Fanouris here, no. In Greece he asked me.
He asked me. He told me that Stavros was very upset, and he -- Stavros told me he thinks. I told him no. He asked me who told you? Somebody else? And I will never tell you who it is.
And I told him that someone told me that Athan should be very careful. His cousins are doing these things, and he's going to be hurt; and I did not tell him who told me.
Q. And is that person who told you Rania?
A. Yes. My son asked me who told you these things?
THE WITNESS: And I say I never say to you who told me but --
A. I told him I will never tell you who

00043

told me; but I told him to be very, very careful with them.
Q. And when did Rania tell you these things?
A. April. I don't know. We spoke for hours about these things, and she's very afraid for her brother.
Q. Where did this conversation occur?
A. We were in the car and the house many times.
THE WITNESS: Many times.

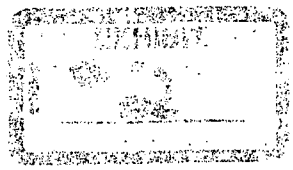
or Spiros ever said anything to Mr. Barnett?
A. No.
Q. Is everything that you know about what was told to Mr. Barnett, did that come from your son, Athan Fokas, or Mr. Barnett himself?
MR. BOWERS: And that might have been worded very poorly; and if it is, please ask me to rephrase it, Madam Interpreter.
THE INTERPRETER: Yes. Please rephrase it, yes.
Q. Everything that you know about what Stanley Barnett has been told came from either

00046

Athan Fokas or Mr. Barnett; correct?
A. Don't understand.
Q. Okay. Are you aware of any statements that Phillip or Spiros have made to Athan's lawyer?
A. I heard --
THE INTERPRETER: The interpreter wants to hear her answer again. I don't understand what she's saying.
MR. BOWERS: Okay.
A. I heard that the guys had told the attorney.
MR. BOWERS: I'm sorry. Could you get her to rephrase that answer 'cause I'm not sure that I understand.
THE INTERPRETER: I know.
I heard from where.
A. That Phillip and Spiros, they're going to accuse Athan for this and this and that.
Q. And what is "this, this, and that"?
A. Whatever my daughter told me. The things she was afraid for her brother.
Q. But you're not aware of what those things are?
A. Accusations against Athan.

00047

Q. Does she -- do you know what the specifics of the accusations are?
A. For fire, insurance, things like that.
Q. But Rania did not tell you these things.
A. Not for the attorney.
Q. Who told you these things?
A. Either the attorney or my son.
Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?
A. No. I said I was -- I was forced to say this to my son when he came here.
Q. Today?
A. Not today. When I came back -- when I



came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

00048

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

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building the additional rental units at 229 King Street?

A. Yes. What lawsuit is that?

Q. That would be a second lawsuit filed by Athan Fokas against Phillip and Spiros.

THE WITNESS: Yeah. I want -- I want to know who -- for what?

THE INTERPRETER: I didn't get that.

THE WITNESS: I want to know --

A. I want to know what type of lawsuit is it?

Q. Are you aware that the second lawsuit is your son, Athan Fokas, trying to force Phillip and Spiros to build the additional rental units at 229 King Street?

A. That's the problem, and it's been two-and-a-half years. They wanted to do it, and now

was afraid for her brother, that they want to destroy him.

Q. And at the time you heard that from your daughter, she did not say that she heard Phillip, Spiros, or Jacob say those things?

THE WITNESS: She didn't say 'cause I no ask.

A. I did not ask her.

MS. THIEM: I'm sorry. Miss Translator, can you say that again? Interpreter.

THE INTERPRETER: The only thing I got was, "I did not ask her." I'm not sure if she said something else.

A. I did not ask her, but I thought that they work together. I guess that's where she heard it.

Q. Okay. And I -- you may have clarified this already, but I wanted to confirm when you mentioned that you were being prepared by Stan Barnett for the internet, you meant deposition; correct?

A. I don't understand what you mean.

Q. You used the word "internet." When you met with Stan Barnett, you talked about the internet. You meant you were discussing the deposition?

THE INTERPRETER: She says, "I said something about the internet?"

Q. You did.

THE WITNESS: I say?

Q. You meant --

THE WITNESS: What I say for internet?

Q. That's what I wanted to clarify. So when you -- when you met with Stan Barnett, the purpose of your meeting was to prepare for this deposition; right?

A. Yes. Yes. It was to talk about how this thing was going to happen today.

Q. All right. And he explained to you what to expect?

A. Yes. That he will ask questions, and there will be other attorneys that will ask questions.

MS. THIEM: All right. That's all the questions I have.

THE WITNESS: Thank you. Thank you.

A. Thank you very much.

MR. BARNETT: And I have no questions.

THE WITNESS: Thank you, too.

MR. BARNETT: Madam Interpreter, before we let you go, the court reporter -- well, since I don't represent her, I don't mind explaining.

EXHIBIT 3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2015-CP-10-3891
ATHAN FOKAS,)	
)	
Plaintiff,)	
)	**AFFIDAVIT OF**
vs.)	**RANIA NIKATOS**
)	
)	
PHILLIP FERDERIGOS and)	
SPIROS FERDERIGOS,)	
)	
Defendant.)	

NOW COMES RANIA NIKATOS, OF FULL AGE, BEING DULY SWORN, DEPOSES AND SAYS AS FOLLOWS:

1. That Phillip and/or Spiros Ferderigos have never told me that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed false insurance claim(s).

2. That I have never heard Phillip and/or Spiros Ferderigos say that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

3. That I never told Irene Fokas that I have ever heard anyone say that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

4. That I have never heard from anyone that Phillip and/or Spiros Ferderigos said that Athan Fokas hired someone to set fire to 229 King Street, that Athan Fokas was involved with the fire at 229 King Street, and/or that Athan Fokas has filed any false insurance claim(s).

5. That I am making this statement freely, voluntarily, and under sound mind.

AND FURTHER DEPONENT SAYETH NOT.

11/20/15
Date

Rania Nikatos

EXHIBIT #4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

On this 20th day of November, 2015, before me personally appeared Rania Nikatos, to me known to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

Notary Public for South Carolina

My commission expires: 9/21/2022

JULIE CRAIG
Notary Public, South Carolina
My Commission Expires
September 21, 2022

AFFIDAVIT OF GERASIMOS NIKATOS

PERSONALLY APPEARED BEFORE ME Gerasimos Nikatos, who, duly sworn, deposes and says:

1. I am a fifty percent owner of North Towne Restaurant with Athan Fokas, who owns the other fifty percent. I am also fifty percent owner of Eat-A-Pita with Iakovos Ferderigos, who owns the other fifty percent.

2. Athan Fokas is my brother-in-law. I am married to his sister, Rania Nikatos.

3. I have no interest in Old Towne Restaurant or Zeus Restaurant.

4. North Towne Restaurant would sell food for catering events and festivals, in addition to serving customers at North Towne Restaurant's physical location.

5. North Towne Restaurant is now closed.

6. North Towne Restaurant is its own entity, separate and apart from Old Towne Restaurant.

7. North Towne Restaurant and Old Towne Restaurant were completely separate other than sharing advertising space and allowing the two restaurants to borrow inventory in emergency situations when one of the restaurants temporarily ran out of product to keep the restaurant running for the day. Specifically, North Towne Restaurant never did the following:

   a. Send North Towne Restaurant inventory to Old Towne Restaurant to be stored;

   b. Sell left over North Towne Restaurant cooked and un-cooked food/inventory to Old Towne Restaurant;

   c. Cook North Towne Restaurant orders at Old Towne Restaurant;

   d. Obtain North Towne Restaurant orders over the phone, have Old Towne Restaurant cook the food, and then sell the food cooked at Old Towne Restaurant as a North Towne Restaurant product;

   e. Have Old Towne Restaurant employees, on Old Towne Restaurant payroll, cook North Towne Restaurant orders at Old Towne Restaurant;

8. North Towne would not sell left over inventory from festivals and split the proceeds of the sales between North Towne and Old Towne.

9. Even in emergency situations, North Towne Restaurant would borrow inventory from Zeus Restaurant first since Iakovos Ferderigos had no interest in North Towne Restaurant. It was only if there was an emergency and both North Towne Restaurant and Zeus Restaurant were out of the same urgently needed inventory that Old Towne Restaurant would be contacted.

10. North Towne Restaurant did not mix, and had no need to mix, Old Towne Restaurant with North Towne Restaurant because North Towne Restaurant had its own physical building with a full kitchen, staff and inventory to handle all of North Towne Restaurant catering, festival and physical location needs. North Towne Restaurant and Old Towne Restaurant did not share their

EXHIBIT 5

assets. North Towne Restaurant had its own separate inventory for its business and Old Towne Restaurant had its own separate inventory for its business. Iakovos Ferderigos was kind enough on limited occasions to allow North Towne Restaurant to borrow necessary inventory it ran out of in emergency situations, and I was kind enough in limited situations to allow Old Towne Restaurant to borrow inventory from North Towne in emergency situations. However, North Towne Restaurant could not shop through Old Towne Restaurant's inventory like it was North Towne Restaurant's personal grocery store.

11. That sometime soon after the fire at 229 King Street, a Greek contractor named Manoli Kehagias told me and Iakovos that Athan Fokas asked him to set fire to 229 King Street.

12. Manoli told me that he could not believe that Athan Fokas would ask him to do that.

13. The second I got home that day, I told my wife, Rania Nikatos, what Manoli told me. And I have never told anyone else about this matter until after Athan Fokas' defamation lawsuit concerning this matter was filed.

FURTHER AFFIANT SAYETH NOT.

Gerasimos Nikatos

Sworn to and subscribed before me
this 21 day of Dec, 2015.

Christen Cochran
Notary Public
My Commission expires: 5/27/2025

CHRISTEN COCHRAN NOTARY PUBLIC MY COMMISSION EXPIRES 5/27/2025 SOUTH CAROLINA

From: Stan Barnett [mailto:stanleyb@s3blaw.com]
Sent: Friday, October 30, 2015 1:39 PM
To: Farrier, Jr., Richard A.; M. Dawes Cooke
Subject: RE: Settlement Proposal for Defamation suit: Athan Fokas v. Ferderigos

If I had some idea that I was any longer dealing with lawyers in good faith, I would be glad to sit down and discuss this case. I don't have that assurance. If we can't agree about the "factual assertions" in my letter, which are simple and without any question true, it is unlikely that we will agree to anything. I have wasted my time and my breath trying to bring these disputes to an end without both litigation and disruption of a family. Apparently, I don't have any allies on your side in that effort. I will go forward doing what is unfortunately necessary.

From: Farrier, Jr., Richard A. [mailto:Richard.Farrier@klgates.com]
Sent: Friday, October 30, 2015 1:23 PM
To: Stan Barnett <stanleyb@s3blaw.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>
Subject: RE: Settlement Proposal for Defamation suit: Athan Fokas v. Ferderigos

Stan. We won't be able to agree about the factual assertions in your letter. If there is some other person to whom you believe defamatory statements were published, I would be pleased to know the identity of that person.

EXHIBIT 6

SMITH, BUNDY, BYBEE & BARNETT, P.C.
ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED. ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT
BRENT MCDONALD

STAN BARNETT
stanleyb@s3blaw.com
Direct Line (843) 513-1033

VIA CERTIFIED MAIL—RETURN RECEIPT

January 26, 2015

91 7108 2133 3932 3654 0228

Spiros Ferderigos, Esq.
1971 Sandcrest Drive
Charleston, S.C. 29407

91 7108 2133 3932 3654 0215

Phillip Ferderigos, Esq.
1668 Southport Drive
Charleston, S.C. 29407

Re: Old Towne Suites

Gentlemen:

I have been retained by Athan Fokas to represent him with respect to the agreement between yourselves, your brother, Jacob, and Athan to construct a new building behind the Old Towne restaurant for the purpose of expanding the existing business of renting luxury suites. Currently there are a number of suites above the building which have been rented for four years. The rental income has been shared by the four of you pursuant to the ownership interest in the building with Athan receiving fifty percent and you and Jacob receiving the other fifty percent.

In 2013, the four of you entered into an agreement whereby a new building would be constructed with more of the luxury suites to be rented by the business on the same terms as the existing business. To date, some $86,000 has been spent toward securing city approvals, design and financing. These costs have been shared by the four of you in the same percentage as the profit from the existing suites rental business. Everything has been done to prepare for going forward with construction of the new building and suites

EXHIBIT #7

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except for closing on the loan with South Coast bank. Closing on the loan has been scheduled several times beginning in October 2014.

Each time the loan closing has been scheduled, you have refused to go forward with executing the mortgage for one or another reason. In essence, these reasons constituted conditions that were not part of the agreement between you, your brother and Athan. I believe it is clear that the agreement to construct the new building and suites is an enforceable contract for which all four of you have entered into part performance. Because the contract involves construction of a new building to expand an existing business on a specific piece of property, the elements necessary to specifically enforce the contract are present.

In addition, the refusal to carry out your obligations under the contract – to sign the mortgage so as to fund the construction – constitutes breach of the contract. Along with specific performance, the non-breaching party, Athan, would be entitled to the damages he incurs as the result of the breach. These include any increase in the construction cost incurred as the result of the delay in closing on the loan and consummating the construction contract so as to lock in the construction costs. If the delay persists, damages would also include lost profits from the inability to expand the business. As there is an existing business with a well established track record, the proof of lost profits would be readily available.

In addition to breach of contract remedies, there is a remedy, I believe, under the Uniform Partnership Act, S.C. Code 33-41-10 et seq. I believe, after consulting a colleague who specializes in this area of the law, that the four of you are in a partnership, having entered into business with one another on specific terms for a significant period of time. Section 540 and the decisions applying this part of the statute make it clear that partners owe a duty to one another as fiduciaries. I believe that refusal to execute the mortgage so as to go forward with the agreement to construct the new building and suites for the reasons you have given constitutes a breach of that fiduciary duty imposed on partners.

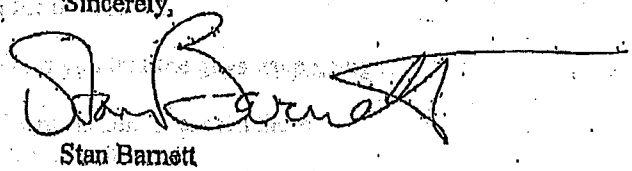
Athan has, I believe, worked to avoid any conflict and continues to want to avoid any conflict. However, he has expended $46,000 toward pursuing the agreement between the four of you. He has a reasonable expectation that the terms of the agreement will be honored by you. He has several times asked for a face to face meeting with you and Jacob for the purpose of trying to reach an agreement. Each time he has been rebuffed. Nevertheless, Athan would still like to have this meeting and try to work out a way forward so as to accomplish the goals of the agreement which are to the mutual benefit of all four of you.

What Athan seeks is the immediate agreement to execute the mortgage so that the new building and suites can be constructed and the existing business expanded. He also is seeking your agreement that you will accept responsibility for any increase in construction costs due solely to the delay in commencing the project.

Please let me know at your earliest convenience your thoughts on scheduling a meeting quickly so that any further conflict can be avoided and so that a clearly profitable business can be significantly expanded to all of your benefit.

With kindest regards, I remain

Sincerely,



Stan Barnett

Cc: Jacob Ferdenigos

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Letter re Old Towne Suites Agreement

spiros ferderigos <spirosferderigos@gmail.com> Tue, Feb 3, 2015 at 8:31 AM
To: Stan Barnett <stanleyb@s3blaw.com>
Cc: Phillip Ferderigos <pferderigos@barnwell-whaley.com>

Stan,

I am in receipt of your email and I would be willing to meet with you. I do not welcome Athan to participate in our meeting. In my opinion, it is clear from your letter that Athan has not provided you with accurate information nor all of the written correspondence which directly contradicts the assertions in your letter. I highly recommend that you confer with Athan, prior to our meeting, to receive all of that correspondence as any communications between Athan and me have been in writing.

For example, I have no idea where Athan has come up with the notion that we have had an "agreement" since 2013. It is well documented in an email from Athan dated September 9, 2014 that the estimated cost of the proposed project was not even provided to me (or my brothers) until that date (September 9, 2014). Furthermore, it is my opinion that Athan has repeatedly breached his legal duties to me in numerous ways including, but not limited to defamation, threats and repeatedly changing the material terms of how we discussed moving forward. This has resulted in severe damages to me and my family.

I invite the conversation of resolving these issues, because if Athan wants to file a frivolous lawsuit against me (as a result of his inability to provide accurate information regarding the proposed project); I will respond with my countersuits, based in legal reality, with numerous causes of action and well documented liability against Athan for his behavior. I will send you a separate email with the date and times I am available.

Spiros Ferderigos

EXHIBIT 8

BARNWELL WHALEY
PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

June 13, 2016
VIA U.S. MAIL

5033.001
The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas vs. Ferderigos
Case No.: 2015-CP-10-3891

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Memorandum in Opposition to Plaintiff's Motion to Amend Complaint filed on behalf of Defendant Spiros Ferderigos in the above-referenced matter. Please file the original Memorandum and return the filed stamped copy to me via the self-addressed prepaid envelope provided herein. By copy of this letter, I am serving counsel for the Plaintiff with a copy of the Memorandum.

If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl: Leslie S. Lenhardt, Esquire
Joseph R. Weston, Esquire
Richard A. Farrier, Jr., Esquire
J. Drayton Hastie, III, Esquire

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS, ☒ Plaintiff v. PHILLIP FERDERIGOS AND SPIROS FERDERIGOS, ☐ Defendants.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2015-CP-10-3891 MOTION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Leslie S. Lenhardt Address: 1876 Wallenberg Blvd., Charleston, SC 29407 phone: 843-371-5453 ext. 702 e-mail: Llenhardt@lenhardtlawfirm.com other:	Laura W. Robinson Address: 1401 Main Street Suite 655 Columbia, SC 20201 phone: 803-234-5416 fax: Jennifer Thiem 134 Meeting Street, Suite 200 Charleston, SC 29401 Phone:843-579-5638 e-mail: Jennifer.thiem@klgates.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: Application and Motion for Default Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type
☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Leslie S. Lenhardt — 8-25-17
Signature of Attorney for ☒ Plaintiff / ☐ Defendant — **Date submitted**

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10- 3891 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNTERCLAIMS OF PHILLIP FERDERIGOS**

FILED
2017 AUG 25 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff, Athan Fokas, by and through his undersigned counsel and pursuant to SCRCP Rule 56, will move before this Honorable Court for partial summary judgment on the counterclaim for defamation by Defendant Phillip Ferderigos set forth in his Answer and Counterclaims of Defendant Phillip Ferderigos to Plaintiff's Amended Complaint. The basis for this motion is that there are no genuine issues of material fact as to the allegations of the counterclaim, specifically that Plaintiff published to any third party the alleged defamatory statements set forth in the counterclaim.

The counterclaim of defamation is incorporated by reference from Phillip Ferderigos' Answer, Affirmative Defenses and Counterclaims in the pending case captioned Athan Fokas v. Phillip Ferderigos, Spiros Ferderigos and Jacob Ferderigos, Case No. 2015-CP-10-3919. Defendant Phillip Ferderigos' Answer in that case is attached to this Motion as an Exhibit. In addition, this Motion is supported by the attached exhibits:

Exhibit A: Phillip Ferderigos' Answer, Affirmative Defenses and Counterclaims, Case No. 2015-CP-10-3919

Exhibit B: Supplemental Affidavit of Plaintiff, Athan Fokas

Exhibit C: Answers to Interrogatories by Phillip Ferderigos

Exhibit D: Deposition excerpt of Phillip Ferderigos

Exhibit E: Deposition excerpt of Irene Fokas

Exhibit F: Deposition excerpt of Athan Fokas

LENHARDT LAW FIRM, LLC

Leslie S. Lenhardt, Esq.
S.C. Bar No. 15858
1876 Wallenberg Blvd.
Charleston, SC 29407
(843) 371-5453
llenhardt@lenhardtlawfirm.com

August 25, 2017
Charleston, SC

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Athan Fokas,	)	
Plaintiff,	)	
v.	)	
	)	**PHILLIP FERDERIGOS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**
Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos,	)	
Defendants.	)	*Jury Trial Demanded*

FILED
2015 OCT -1 PM 4:45
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Phillip Ferderigos through his undersigned counsel, respectfully submits the following Answer, Affirmative Defenses and Counterclaims to Plaintiff Athan Fokas' Complaint. Phillip Ferderigos denies each and every allegation not specifically admitted herein. Further, Phillip Ferderigos' Answers are limited to those allegations asserted against him. Phillip Ferderigos is not required to, and does not, respond to any allegations directed toward another defendant.

(1) Paragraph 1 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos admits Paragraph 1 upon information and belief.

(2) Phillip Ferderigos admits Paragraph 2.

(3) Paragraph 3 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos admits Paragraph 3.

(4) Paragraph 4 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos admits Paragraph 4.

(5) Phillip Ferderigos admits only that Athan Fokas and Defendants are members of Old Towne Suites, LLC (hereinafter "LLC"). Phillip Ferderigos denies the remainder of Paragraph 5.

(6) Phillip Ferderigos admits Paragraph 6.

(7) Phillip Ferderigos admits Paragraph 7 only to the extent that the currently existing rental business began after the upper two stories of 229 King Street were converted to rental units from restaurant seating. Phillip Ferderigos denies the remainder of Paragraph 7.

(8) Phillip Ferderigos admits Paragraph 8 only to the extent that in 2012, the parties began to investigate the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units. Phillip Ferderigos denies the remainder of Paragraph 8 and further denies the existence of any agreement to construct said building.

(9) Phillip Ferderigos denies Paragraph 9.

(10) Phillip Ferderigos admits Paragraph 10 only to the extent that, beginning no later than mid-2012, Athan Fokas and Jacob Ferderigos coordinated with an engineer(s), architect(s), and a contractor to develop plans to submit to the City of Charleston for possible approval to determine the cost, details, scope, feasibility and whether the City of Charleston would even allow the proposed project being considered by the parties. All activities at all times were for the consideration of a possible proposed project in the future; the parties entered into no agreements whatsoever, and all parties understood that any party could decide not to participate at any time. Phillip Ferderigos denies the remainder of Paragraph 10.

(11) Phillip Ferderigos admits Paragraph 11 only to the extent that Athan Fokas secured pre-approval of a loan for himself and for Jacob Ferderigos, the terms of which were never discussed with and/or agreed upon by Phillip and Spiros Ferderigos. Phillip Ferderigos denies the remainder of Paragraph 11. Athan Fokas and Jacob Ferderigos were supposed to get a personal loan for themselves which did not involve and/or affect Phillip and Spiros Ferderigos in any way whatsoever. Athan Fokas failed to secure such a loan.

(12) Phillip Ferderigos denies Paragraph 12.

(13) Phillip Ferderigos denies Paragraph 13.

(14) Phillip Ferderigos admits Paragraph 14 only to the extent that the parties expended expense and effort toward investigating the possibility of, feasibility of, and their interest in constructing the proposed project. Phillip Ferderigos denies the remainder of Paragraph 14 and denies that there was ever an agreement to construct the building between Athan Fokas and Phillip Ferderigos at any time whatsoever.

(15) Phillip Ferderigos denies Paragraph 15 as characterized.

(16) Paragraph 16 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos denies Paragraph 16 as characterized.

(17) Phillip Ferderigos admits Paragraph 17.

(18) Phillip Ferderigos admits Paragraph 18 only to the extent that, if Athan Fokas would have signed the proposed written side/ancillary agreement prepared by Phillip and Spiros Ferderigos prior to the closing, Phillip and Spiros Ferderigos would have provided

a mortgage of their portion of 229 King Street, assuming that the additional loan closing documents were also correct in all material aspects. Phillip Ferderigos denies the remainder of Paragraph 18.

(19) Phillip Ferderigos admits Paragraph 19 only to the extent that Athan Fokas refused to sign the side/ancillary agreement. Phillip Ferderigos denies the remainder of Paragraph 19. Specifically, Phillip Ferderigos denies that there was an agreement between the parties at any time.

(20) Phillip Ferderigos denies Paragraph 20.

(21) Phillip Ferderigos denies Paragraph 21 as characterized.

(22) Phillip Ferderigos denies Paragraph 22 as characterized and further denies that there was ever any agreement whatsoever between the parties at any time.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract – Specific Performance)

(23) Responding to Paragraph 23, Phillip Ferderigos hereby incorporates by reference his responses to the allegations in the preceding paragraphs as fully as if repeated verbatim herein.

(24) Phillip Ferderigos denies Paragraph 24.

(25) Phillip Ferderigos admits Paragraph 25 only to the extent that the parties were each responsible for their respective share of costs for considering the possibility of, feasibility of, and their interest in the proposed project being considered. Phillip Ferderigos denies the remainder of Paragraph 25.

(26) Phillip Ferderigos denies Paragraph 26.

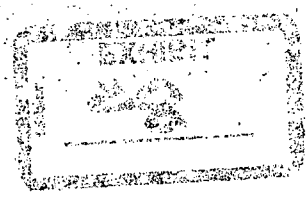
(27) Phillip Ferderigos denies Paragraph 27.

(28) Phillip Ferderigos admits Paragraph 28 only to the extent that the parties paid expenses directly toward and directly for work to investigate the possibility of, feasibility of, and their interest in the proposed project being considered. Phillip Ferderigos denies the remainder of Paragraph 28 and denies that there was ever an agreement between the parties at any time.

(29) Phillip Ferderigos denies Paragraph 29.

(30) Phillip Ferderigos denies Paragraph 30.

(31) Phillip Ferderigos denies Paragraph 31.



(32) Phillip Ferderigos denies Paragraph 32.

(33) Phillip Ferderigos denies Paragraph 33.

(34) Phillip Ferderigos denies Paragraph 34.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Breach of Contract -- Damages)

(35) Responding to Paragraph 35, Phillip Ferderigos hereby incorporates by reference his responses to the allegations in the preceding paragraphs as fully as if repeated verbatim herein.

(36) Phillip Ferderigos denies Paragraph 36.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Violation of the Duty of Care -- S.C. Code Ann. § 33-44-409)

(37) Responding to Paragraph 37, Phillip Ferderigos hereby incorporates by reference his responses to the allegations in the preceding paragraphs as fully as if repeated verbatim herein.

(38) Paragraph 38 contains legal conclusions to which no response is required. To the extent a response is required, Phillip Ferderigos craves reference to the statutes cited in Paragraph 38 and, to the extent they are applicable, denies anything inconsistent therewith.

(39) Paragraph 39 contains legal conclusions to which no response is required. To the extent a response is required, Phillip Ferderigos craves reference to the statutes cited in Paragraph 39 and, to the extent they are applicable, denies anything inconsistent therewith. Phillip Ferderigos further denies that he owed any duty of care pursuant to S.C. Code Ann. Section 33-44-409 to Athan Fokas relating to Phillip Ferderigos' real property interest in 229 King Street and/or the proposed project being considered. Phillip Ferderigos denies that the LLC statutes apply in this matter to impose any duty upon him, but, in the event the Court holds such duties do apply to him, Phillip Ferderigos denies that he breached any such duties.

(40) Phillip Ferderigos denies Paragraph 40.

(41) Phillip Ferderigos denies Paragraph 41.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

(42) Athan Fokas' claims fail to state facts sufficient to constitute a cause of action upon which relief can be granted. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint should be dismissed.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

(43) Athan Fokas' claims are barred, in whole or in part, by the doctrines of estoppel, ratification, waiver, laches, and/or unclean hands.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION
(Statute of Frauds and/or Statute of Limitations)

(44) Athan Fokas' Complaint states claims that are barred, in whole or in part, by the Statute of Frauds and/or statute of limitations.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

(45) Athan Fokas has failed to mitigate his injuries and/or damages, if any.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

(46) Phillip Ferderigos relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Answer to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence/Assumption of Risk)

(47) Any damage suffered by Athan Fokas is a direct and proximate result of his own comparative and contributory negligence and/or assumption of risk, and Athan Fokas' recovery should be barred, or alternatively, reduced proportionately to Athan Fokas' comparative negligence/assumption.

FOR AN EIGHTH DEFENSE
AND BY WAYOF AN AFFIRMATIVE DEFENSE THERETO
(Release)

(48) The Plaintiff's claims are barred by release as the Plaintiff released Defendants from any alleged agreement on multiple occasions.

FOR AN NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

(49) The Defendant would show that the claim of Athan Fokas for punitive damages cannot be had because any award of punitive damages under South Carolina law without

bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of Athan Fokas for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of Athan Fokas for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United Stated Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Athan Fokas' claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A TENTH AFFIRMATIVE DEFENSE
(No Meeting of the Minds)

(50) Athan Fokas' claims are barred as there was no "meeting of the minds" and no binding agreement between the parties as to numerous material terms of the alleged agreement. Athan Fokas admits that Phillip Perderigos did not agree to subject himself to personal liability on Fokas' personal loan involving the rental suite construction being considered at 229 King Street. A mortgage is a material term. It constitutes possible

personal liability for Phillip Ferderigos by subjecting his most important and valuable asset known at the time, 229 King Street, to possible foreclosure in the event Fokas defaulted on his personal loan. Phillip Ferderigos told Athan Fokas that he would not mortgage or guarantee "anything" for Athan Fokas or anyone else. Spiros Ferderigos further informed Athan Fokas in writing on December 19, 2012, that he would not be willing to accumulate debt for the proposed project. A mortgage is a debt. In addition, Phillip Ferderigos signing his name as an individual (direct personal liability) and/or signing his interest as a member of the LLC (personal liability if the cooperate veil is pierced) for Athan Fokas' incorrect and non-agreed upon closing documents further constitutes exposure for a personal guarantee that Phillip Ferderigos never agreed to.

Athan Fokas' incorrect and non-agreed upon closing documents required Phillip Ferderigos to sign *as an individual* (1) a mortgage for Phillip Ferderigos' interest in 229 King Street, (2) an assignment of rents, (3) a hypothecation agreement, (4) a HUD Statement, (5) an agreement to provide insurance, and (6) a UCC Financing Statement/Addendum.

Athan Fokas' incorrect and non-agreed upon closing documents also required Phillip Ferderigos to assign his interests *as a member of the LLC* for (1) the Note as the Borrower for Athan Fokas' loan, (2) an assignment of rents for a construction loan agreement, (3) a guaranty of completion and performance agreement, (4) a commercial security agreement, (5) a hazardous substances certificate and indemnity agreement, (6) an agreement to provide insurance, and (7) a UCC Financing Statement/Addendum.

There were further numerous unknown material terms at the time Athan Fokas alleges the parties entered into an agreement that would make a meeting of the minds between the parties impossible, as the parties cannot and did not agree to material terms that were still unknown at the time. As such, the parties never reached a meeting of the minds as to the essential terms of a mortgage agreement, of a side agreement, and/or any material terms.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(No Agreement to Agree)

(51) Athan Fokas' claims are barred as there was never even an "agreement to agree" between the parties. The cost of the proposed project, the scope of the proposed project, the financing details of the proposed project, the loan documentation details of the proposed project, and other material terms of the proposed project were simply unknown at the time Athan Fokas alleges an agreement was made. This is evidenced by the written documentation between the parties which have been attached as exhibits to Defendant(s) counterclaim(s).

FOR A TWELFTH AFFIRMATIVE DEFENSE
(No Consideration)

(52) Athan Fokas' claims fail for lack of consideration.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIMS

(Facts)

(53) Athan Fokas is a citizen and resident of Charleston County, South Carolina. The text messages identified as (843) 813-5612 in the attached exhibits are text messages from Athan Fokas.

(54) Phillip Ferderigos is a citizen and resident of Charleston County, South Carolina.

(55) Spiros Ferderigos is a citizen and resident of Charleston County, South Carolina.

(56) Jacob Ferderigos is a citizen and resident of Charleston County, South Carolina.

(57) The father of Jacob Ferderigos, Phillip Ferderigos, and Spiros Ferderigos (hereinafter Ferderigos Brothers) established Old Towne Restaurant in 1972. Old Towne Restaurant is located at 229 King Street. The Parcel ID number for 229 King Street is 4570801063.

(58) Athan Fokas' father joined Ferderigos Brothers' father as a partner resulting in both Ferderigos Brothers' father and Athan Fokas' father each owning a respective fifty (50) percent interest in Old Towne Restaurant. Ferderigos Brothers' father and Athan Fokas' father purchased the real property located at 229 King Street with each receiving a fifty (50) percent respective interest in the real property.

(59) Ferderigos Brothers' father transferred his respective fifty (50) percent interest in the real property located at 229 King Street in equal shares to Ferderigos Brothers. Ferderigos Brothers' father further transferred his fifty (50) percent interest in Old Towne Restaurant to Jacob Ferderigos.

(60) Upon information and belief, Athan Fokas' father transferred his respective fifty (50) percent interest in Old Towne Restaurant and 229 King Street to Athan Fokas.

(61) Accordingly, Jacob Ferderigos and Athan Fokas each own a respective fifty (50) percent interest in Old Towne Restaurant. The Ferderigos Brothers own a combined fifty (50) percent interest in 229 King Street and Athan Fokas owns the remaining fifty (50) percent interest in 229 King Street.

(62) Old Towne Restaurant leases the first floor of 229 King Street from Ferderigos Brothers and Athan Fokas.

(63) In 2009, 229 King Street was burned in a fire. During the restoration period, Ferderigos Brothers and Athan Fokas converted the top two floors (second and third floor) into short term rental units (hereinafter "original rental units").

(64) Ferderigos Brothers and Athan Fokas paid their respective fifty (50) percent of all expenses for the original rental units in cash.

(65) Ferderigos Brothers and Athan Fokas did not mortgage 229 King Street for the original rental units.

(66) Ferderigos Brothers and Athan Fokas did not personally guarantee any asset and/or interest(s) for the original rental units (including but not limited to a mortgage).

(67) Ferderigos Brothers did not encumber any of their assets for Athan Fokas and Athan Fokas did not encumber any of his assets for Ferderigos Brothers for the original rental units.

(68) Ferderigos Brothers and Athan Fokas created Old Towne Suites, LLC (hereinafter the LLC) to distribute profits for the original rental units. Ferderigos Brothers own a combined fifty (50) percent interest of the LLC and Athan Fokas owns the remaining fifty (50) percent interest in the LLC. The LLC has no assets.

(69) After the LLC was created and the original rental units constructed, but no later than 2012, Athan Fokas informed one or more of the Ferderigos Brothers that he wanted to explore potentially adding new construction over the existing building at 229 King Street for additional short terms rental units (hereinafter "proposed project").

(70) Athan Fokas approached Phillip Ferderigos and told him that the parties should mortgage 229 King Street for the proposed project. Phillip Ferderigos informed Athan Fokas that he would not mortgage his interest in 229 King Street for the proposed project. Phillip Ferderigos has not had any substantive verbal communication(s) with Athan Fokas regarding the proposed project being explored since Phillip Ferderigos had the aforementioned communication wherein Phillip Ferderigos rejected Athan Fokas' request to encumber his asset(s).

(71) Specifically, the first and last substantive conversation Phillip Ferderigos had with Athan Fokas about the proposed project was when Athan Fokas accosted Phillip Ferderigos at the Hellenic Center trying to convince Phillip Ferderigos that the parties should build a new building. Phillip Ferderigos specifically told Athan Fokas that he would not mortgage or guarantee "anything" for any proposed project and that he intended to pay cash for his portion of the proposed project. Athan Fokas proceeded to call Phillip Ferderigos a "pussy," "ignorant" and a "moron" and stated it was "ridiculous" that Phillip Ferderigos would not mortgage Old Towne for the proposed project. Phillip Ferderigos told Athan Fokas that he did not care what Athan Fokas thought and that he would not mortgage or guarantee "anything." Phillip Ferderigos explained that he was very debt averse and did not want to mortgage 229 King Street because he did not want to accumulate debt for the proposed project. Athan Fokas again said Phillip Ferderigos was being "ridiculous" and then Athan Fokas asked Phillip Ferderigos to sell him his rights to allow Athan Fokas to build the building himself. Phillip Ferderigos rejected Athan Fokas' ridiculous offer and again told Athan Fokas that he would not mortgage 229 King Street but instead would only consider doing a proposed project if he had the cash to do so. After such an unpleasant discussion with Athan Fokas, Phillip Ferderigos

has purposely avoided substantively discussing the proposed project with Athan Fokas and any substantive communications concerning the proposed project thereafter were in writing.

(72) The Ferderigos Brothers were each individually comfortable exploring the possibility of, feasibility of, and exploring their interest in the proposed project; out of a matter of convenience, the Ferderigos Brothers and Athan Fokas paid their respective share of exploration expenses for the proposed project from their respective LLC profits.

(73) Ferderigos Brothers and Athan Fokas began exploring the proposed project in 2012 and by July 2012 were already accruing expenses for the exploration of the proposed project. *See Exhibit A and B.*

a. 08/06/12: First invoice from Tucker Architectural for concept drawings.
b. 12/11/12: Email from Tucker Architectural indicating that the concept drawings for the proposed project were approximately 80 percent complete.
c. 12/20/12: Final invoice from Tucker Architectural for concept drawings.

(74) By December 11, 2012, the architect hired by the parties was approximately eighty (80) percent complete with his concept drawings regarding the proposed project. *See Exhibit B.*

(75) Initially, Athan Fokas informed the Ferderigos Brothers the total cost of the proposed project would be approximately $900,000. *See Exhibit C.*

a. 12/19/12: Email from Athan Fokas stating "the total cost for the project to build will be somewhere between $800,000 and $900,000 with spending about 25,000 per unit to furnish and make them luxury units. I hope we can keep this project somewhere around $900,000."

(76) Athan Fokas and Jacob Ferderigos began searching for a personal loan/loan commitment(s) for themselves in the event the City of Charleston would approve the construction of the proposed project being explored, assuming that the parties could reach an agreement for all material terms to build the proposed project.

(77) On December 19, 2012, Athan Fokas sent an email informing the Ferderigos Brothers that he is attempting to get an approximate $900,000 loan for the proposed project and that he believes all parties should personally guarantee and mortgage their interests in 229 King Street for the attempted loan. *See Exhibit C.*

a. 12/19/12: Email from Athan Fokas stating "I hope we can keep this project somewhere around $900,000." "Our equity in Old Towne is somewhere between 5 and 10 million dollars. Many banks these days won't touch anything in the hospitality industry so it is no guaranteed that they will lend us the money. The note on the property should be somewhere in the neighborhood of $4000.00 a

month if they let us carry the note for 30 years. If it is a 15 to 20 year note then the payments will be between $6000.00 and $8000.00 a month." "I'm only going to send information to banks that are very interested in doing the deal. I plan to give them Old Towne tax returns, Old Towne Suites income, and our personal financial statements. Phillip asked if he would be personally guaranteeing the loan. Of course every loan out there wants the people taking out the loan to personally guarantee it. The loan is less than 20 percent of our total value and we have the income from our current suites that could easily pay the note so it's a no brainer. Let me know your thoughts."

(78) Spiros Ferderigos immediately responded, in writing, to Athan Fokas that he would not personally guarantee anyone else's loan or incur additional debts to accomplish the proposed project. Spiros Ferderigos stated that, if the proposed project moved forward, it would need to be in the same manner as the original rental units without Spiros Ferderigos accumulating debt, that Spiros Ferderigos anticipated paying cash for his share of the proposed project if the parties could reach an agreement, and that the cost of construction needed to be addressed. *See Exhibit D.*

a. 12/19/12: Spiros Ferderigos email response to Athan Fokas stating "Assuming all that pans out, there will be a continuing issue on how we finance. If the bank is looking for me (and I assume this goes for Phillip as well but I will let him speak for himself) to personally guarantee a loan I am not going to do it. There is to much that can go wrong with a personal guarantee. I am confident that Phillip, Jacob and I will be able to come up with our end of the amount needed and we can move forward without accumulating debt as we did for the first round of units." "The question is how do we get there, will it be by personally guaranteeing loans that could be catastrophic to our individual families or each individual raising the necessary funds and doing it without a million dollars in debt so we can greatly limit liability. I for one already have plenty of money sitting in a bank account for my share of the additional units." (Emphasis added).

(79) Upon information and belief, Spiros Ferderigos has never spoken verbally with Athan Fokas about the proposed project being explored. All communications between Spiros Ferderigos and Athan Fokas regarding the proposed project have been in writing.

(80) Athan Fokas and Jacob Ferderigos attempted several times to receive a personal loan/loan commitment(s) for the proposed project from numerous banks to no avail. *See Exhibit C.*

a. 12/19/12: Email from Athan Fokas stating "With that said I don't even know if the bank will lend us the money. First Citizens said they are not allowed to touch the hospitality industry. BB&T is 50/50 and will let me know if they are interested in a couple of days. South Carolina Bank and Trust seems very interested according to their President but will have to see our current income to make sure the numbers work. I'm meeting with Suntrust tomorrow but I think they will be a long shot."

(81) In January 2013, Athan Fokas made initial contact with his South Coast Bank loan officer seeking a loan/loan commitment. *See Exhibit E.* South Coast Bank is the lending bank Athan Fokas refers to in his Complaint.

a. 01/11/13: Email from Jeffrey Odom (South Coast Bank loan officer) to Athan Fokas stating "It was a pleasure meeting you yesterday afternoon. I just received your fax so it looks like it went through. I have also received your emails with the attached financial information. Thank you for getting everything to us so quickly. We will get to work and will be in touch shortly."

(82) Phillip Ferderigos and Spiros Ferderigos were not involved in Athan Fokas' and Jacob Ferderigos' attempts to get a personal loan/loan commitment(s) and did not provide any financial information or make any assurances to the bank(s) for the loan Athan Fokas and Jacob Ferderigos were seeking. Furthermore, any prior loan/loan commitment(s) obtained by Athan Fokas and Jacob Ferderigos was for a personal loan between them only and to be personally guaranteed by Athan Fokas and Jacob Ferderigos only. *See Exhibit F.*

a. 06/17/14: Email correspondence between Spiros Ferderigos and Athan Ferderigos wherein Spiros Ferderigos asks Athan Fokas and Jacob Ferderigos "The loan pre-approval that you guys have for the suites...are ya'll going to have to personally guarantee the loan?" Athan Fokas responds "We are pre approved, and since we personally asked for the loan yes we are personally guaranteeing it."

(83) Unknown to Phillip and Spiros Ferderigos at the time, Athan Fokas and Jacob Ferderigos secured a personal loan commitment for themselves from South Coast Bank on February 5, 2013. The loan commitment was for a one million dollar personal loan to Athan Fokas and Jacob Ferderigos in which Athan Fokas and Jacob Ferderigos would provide a mortgage for their interest(s) in 229 King Street, their interest(s) in the LLC, and an assignment of their rents and leases, in addition to other interest(s) of Athan Fokas and Jacob Ferderigos. The loan commitment expired February 15, 2013. *See Exhibit G.*

(84) The February 5, 2013, loan commitment secured by Athan Fokas and Jacob Ferderigos for their personal loan (which was unknown to Phillip and Spiros Ferderigos at the time) was not sufficient for the proposed project being explored as the costs of the proposed project continued to increase as a result of the proposed plans being repeatedly rejected by the relevant governmental agency.

(85) Accordingly, Athan Fokas had to keep seeking approval for a new personal loan/loan commitment(s) from South Coast Bank that would be sufficient for the ever growing costs of the proposed project being explored.

(86) Athan Fokas did not inform Phillip and Spiros Ferderigos that the approximate cost for the proposed project being explored increased from approximately $900,000 to approximately $2,000,000 until September 9, 2014. *See Exhibit H.*

a. 09/09/14: Email from Athan Fokas to Ferderigos Brothers stating "It looks like our new project of six more units will cost us around two million to build."

(87) Accordingly, based upon information provided by Athan Fokas, Phillip and Spiros Ferderigos were paying expenses toward exploring the potential proposed project from as early as December 2012 through September 9, 2014, under the incorrect information provided by Athan Fokas that the approximate cost of the proposed project was $900,000, not double that amount of approximately $2,000,000.

a. 12/19/12: Email from Athan Fokas stated "the total cost for the project to build will be somewhere between $800,000 and $900,000 with spending about 25,000 per unit to furnish and make them luxury units. I hope we can keep this project somewhere around $900,000." *See Exhibit C.*
b. 09/09/14: Email from Athan Fokas to Ferderigos Brothers stating "It looks like our new project of six more units will cost us around two million to build." *See Exhibit H.*

(88) Athan Fokas did not receive approval of his $1,800,000 personal loan and did not receive the details for his personal loan for the proposed project from his banker until September 2014. *See Exhibit I.*

a. 09/19/14: Text from Athan Fokas to Ferderigos Brothers stating "Good news! We are approved for 1.8 million." Spiros Ferderigos responds "can you email us the details of the loan sometime this weekend if you have a chance?" Athan Fokas responds "The banker just called me. I won't have the details till next week." (Emphasis added).

(89) On September 24, 2014, Athan Fokas, either intentionally and/or negligently, incorrectly informed the Ferderigos Brothers that his loan terms were for a fixed 5% interest rate for 20 years, the life of the alleged loan. When Athan Fokas subsequently became aware that he was incorrect about his loan terms, Athan Fokas attempted to get his banker to change the terms to what Athan Fokas believed he had. Athan Fokas' attempts to change his loan terms were rejected by his banker. Athan Fokas response to Phillip Ferderigos when he was unable to get his banker to change his loan terms to what Athan Fokas believed he had was "Well at least I tried." *See Exhibit J.*

a. 09/24/14: Athan Fokas email to Ferderigos Brothers stating " Well I don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5% for the life of the loan which is unheard of in the current banking industry."
b. 09/25/14: Athan Fokas email to Jeffery Odom (South Coast Bank loan officer) asking his loan officer in regards to his loan terms "Can it say: 12 monthly payments of interest only followed by 239 consecutive monthly payments...so that it is truly a 20 years note. Just want to make sure that the note continues after 5 years."

c. 09/25/14: Jeffery Odom's response to Athan Fokas that "the note will be 12 months of interest only followed by 5 years of principal, interest, and escrow payments and then a balloon maturity, with monthly payments based on a 20 year schedule. That is what you wanted and that is the same thing we are doing on your North Towne deal."

d. 09/25/14: Athan Fokas forwards Jeff Odom's email to Phillip Ferderigos and in response tells Phillip Ferderigos "Well at least I tried."

(90) The City of Charleston did not approve the proposed plans for the proposed project being explored until October 2014 and Athan Fokas informed the Ferderigos Brothers on October 10, 2014, that the permit for the proposed project being explored was approved. *See Exhibit K.*

(91) From 2012 to October 2014, the estimated costs of the proposed project increased from less than a million dollars to over two million dollars.

(92) When the city approved the proposed plans for the proposed project, Athan Fokas unilaterally scheduled a closing for what was to be Athan Fokas' and Jacob Ferderigos' personal loan. Jacob, Phillip, and Spiros Ferderigos were not informed nor involved in the scheduling of the closing date and were not informed of the closing date until after it had been scheduled by Athan Fokas.

(93) Upon information and belief, a few days prior to the closing for Athan Fokas' and Jacob Ferderigos' personal loan, Athan Fokas contacted Jacob Ferderigos and informed him that Phillip and Spiros Ferderigos would need to be present at the closing to mortgage their interests in 229 King Street for the loan. Jacob Ferderigos informed Athan Fokas that Phillip and Spiros Ferderigos never agreed to personally mortgage their interests in 229 King Street and that such a mortgage was outright rejected and never considered for the proposed project. Jacob Ferderigos further informed Athan Fokas that he did not believe Phillip and Spiros Ferderigos would agree to Athan Fokas' new material demand that they mortgage their interests in 229 King Street.

(94) Jacob Ferderigos informed Phillip and Spiros Ferderigos that Athan Fokas had scheduled a closing to be held in a few days and that Athan Fokas was demanding that Phillip and Spiros Ferderigos mortgage their interests in 229 King Street for Athan Fokas' and Jacob Ferderigos' personal loan.

(95) Upon being informed of this new demand, Spiros Ferderigos communicated with all parties in writing that he never agreed to mortgage his interest in 229 King Street for Athan Fokas' and Jacob Ferderigos' personal loan, however, he would consider mortgaging his interest in 229 King Street for Athan Fokas' and Jacob Ferderigos' personal loan so long as Athan Fokas signed a side/ancillary agreement that Spiros Ferderigos believed was sufficient to protect his financial asset, assuming that all closing documents were correct.

(96) Phillip Ferderigos also informed Athan Fokas that, although he never agreed to mortgage his interest in 229 King Street, he would consider doing so if Athan Fokas, Jacob Ferderigos, and Spiros Ferderigos signed a side agreement that Phillip Ferderigos believed was sufficient to protect his financial asset, assuming that all closing documents were correct.

(97) Spiros Ferderigos further informed Athan Fokas, Jacob Ferderigos, and Phillip Ferderigos that the closing date scheduled by Athan Fokas without Spiros Ferderigos' input was not convenient for Spiros Ferderigos and that the closing would have to be scheduled for a later date.

(98) Athan Fokas scheduled a second closing date for November 21, 2014. The Ferderigos Brothers were prepared to attend the closing with Phillip and Spiros Ferderigos willing to mortgage their interests in 229 King Street so long as Athan Fokas agreed to and signed the side agreement prepared by Phillip and Spiros Ferderigos, assuming that all closing documents were correct. *See Exhibit L.*

a. 11/21/14: Text chain correspondence between Athan Fokas and Phillip/Spiros Ferderigos the date of the second scheduled closing – Phillip: "if the closing is going to happen today, I need to have it as late in the day as possible...If there any issues, let's just kick it the next week." Athan: "They scheduled if for 3:00 pm today. Will that work?" Phillip: "Should work for me, ask the lawyer to email me the HUD/settlement statement and all paperwork beforehand and I can review it and we can go through the closing more quickly..." Spiros: "From my end, we need to have the agreement signed and a copy of the closing docs to review beforehand. I want to make sure I know what I am signing. So agreement needs to be done and hud/settlement statement like Phillip said. I will block off 3 pm. Where is the closing?" "Once we get the green light on the agreement and the closing doos are revlewed/accurate (which I don't see a reason why they wouldn't be) then we can move forward this afternoon. If there are any issues with the agreement, ect then we will need to revisit everything at a later time."

(99) Athan Fokas, however, refused to agree to and never agreed to or signed the written side agreement necessary for Phillip and Spiros Ferderigos to mortgage their interests in 229 King Street. *See Exhibit M.*

a. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "I'm not interested in you trying to bully me into signing any type of side agreement that is unnecessary. My attorney, as I said earlier, strongly was against it."

b. 11/24/14: Email response from Phillip Ferderigos to Athan Fokas stating "You are asking me to mortgage my part of Old Towne and you are unwilling to sign an Agreement to say that you will make your payments timely. I believe you have mortgaged your other properties and now you want to mortgage Old Towne. I am not your piggy bank. I will not mortgage my share of Old Towne for you unless you agree to make your payments timely. Unless you change your decision, there is no point in moving forward."

c. 11/24/14: Email response from Athan Fokas to Phillip Ferderigos stating "If you want me to sign a side agreement that guarantees I will pay the note then you will sign one saying that you will come up with the money needed for construction or you shall suffer similar consequences."

d. 11/24/14: Email response from Phillip Ferderigos to Athan Fokas stating "I do not care what your bank is requiring of you to get your loan...that has nothing to do with me. I will not sign off on any mortgage of my share unless you sign an agreement that you will make your payments timely. If you are an intelligent person you will see that I can not and will not agree to mortgage my share of Old Towne if you do not agree to make your payments on time."

e. 11/24/14: Email response from Athan Fokas to Phillip Ferderigos stating "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with Ferderigos Family."

(100) Furthermore, when the Ferderigos Brothers and Athan Fokas received the proposed closing documents to review just a few hours prior to the second closing, the closing documents included requirements that were never discussed and never agreed upon by Phillip and Spiros Ferderigos. *Exhibit N (closing documents).*

(101) The closing documents were incorrect in many ways by including provisions never agreed to or even discussed by the parties. Despite Athan Fokas' Complaint admitting that Phillip and Spiros Ferderigos never agreed to personally guarantee Athan Fokas' and Jacob Ferderigos' loan, the closing documents included terms that would expose Phillip and Spiros Ferderigos to personal liability such as (1) Phillip and Spiros Ferderigos signing their interests in the LLC as the borrower of the note (Athan Fokas' closing attorney admitted in writing that this could make Phillip and Spiros Ferderigos personally liable if the corporate veil were to be pierced and Athan Fokas admitted in an email that only Athan Fokas and Jacob Ferderigos were supposed to sign their individual memberships interests for the loan), (2) Phillip and Spiros Ferderigos signing a hypothecation agreement, (3) Phillip and Spiros Ferderigos assigning their rent profits for the benefit of the lending bank, (4) Phillip and Spiros Ferderigos personally signing the HUD Statement in their individual capacities, (5) Phillip and Spiros Ferderigos mortgaging their interests in 229 King Street, (6) Phillip and Spiros Ferderigos signing an agreement to provide insurance in their individual capacities, (7) Phillip and Spiros Ferderigos signing a UCC Financing Statement/Addendum in their individual capacities, and (8) Phillip and Spiros signing their interests in the LLC for a construction loan agreement, guaranty of completion and performance agreement, commercial security agreement, hazardous substances certificate and indemnity agreement, agreement to provide insurance, and UCC Financing Statement/Addendum, amongst other provisions. *See Exhibit N and O.*

a. 11/21/14: Email of Amy Haines (closing attorney) stating "Nothing in the documents I have makes you personally liable for the debt ...assuming the llc corporate veil could not be pierced for some reason." *See Exhibit O.*

b. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "The bottom line is that the Old Towne Suites LLC on the note, that only Jacob and I are signing on as members,..." *See Exhibit O.*

(102) Accordingly, the closing was canceled as Athan Fokas refused to agree to the terms of the side agreement and the closing documents included requirements never agreed to. *See Exhibit P.*

a. 11/21/14: Email from Phillip Ferderigos stating "it is clear that the bank has not been advised how to do the particulars correctly and this can not be rushed. Closing is off for today. If the docs can be fixed and all side agreements agreed to, then we can re-visit at that time."

(103) Later in the afternoon on the same date the second closing was cancelled, Athan Fokas informed the Ferderigos Brothers *for the first time* that he will be receiving approximately 2.7 million dollars on April 1, 2014, and that he intends to pay off his mortgage obligations at that time if Phillip and Spiros Ferderigos mortgage their interests in 229 King Street for his loan. *See Exhibit Q.*

a. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "On April 1, I'm getting paid 3.5 million for a transaction I created long ago in which I have less then $800,000 invested in. I then plan to pay off my debt in full."

(104) Given this new material information, Phillip and Spiros Ferderigos communicated to Athan Fokas that they would like to consider Athan Fokas, Phillip Ferderigos, and Spiros Ferderigos paying cash for their portion of the proposed project. Athan Fokas refused to move forward unless Phillip and Spiros Ferderigos agreed to mortgage 229 King Street and sign the incorrect closing documents. *See Exhibit R.*

a. 11/21/14: Email correspondence between Athan Fokas and Phillip/Spiros Ferderigos Brothers – Phillip: "If you're coming into all the money, why don't we just move forward in April and we don't even need this loan at all." Spiros: "That's a great idea." Athan: "I'm not interested on funding anything more than my percentage as I have big plans for the rest. The bank will not just hang around for 8 months." Phillip: "Forget your bank, I have my bank...I think we should be fine, I like the idea...Athan, what do you say?" Spiros: "Sounds like a win for everyone. You would not be on any loan at all. Just paying your percentage. I think we should explore this before moving forward on a huge loan." Phillip: "I agree this is certainly something we should explore." Spiros: "Why risk that huge loan if we don't have to?" Phillip: "Spiro, you are making a lot of sense, Athan, what do you think?" Athan: "I'm at a swanky dinner now and half drunk but by then I will be n the money and not interested in an ventures but my own. I'm also working on a deal where I get 25% of $100,000,000.00 for just being an expert consultant. I hang out with the ultra wealthy now and play their games."

(105) Athan Fokas rejected moving forward without the parties incurring millions of dollars in debt despite Phillip and Spiros Ferderigos maintaining since 2012 that they were unwilling to accumulate debt for the proposed project being explored and despite Athan Fokas' new revelation confirming that accumulating debt in the form of a multi-million dollar mortgage was unnecessary since Athan Fokas will be receiving 2.7 million dollars in cash (this is nearly three times Athan Fokas' portion of costs for the proposed project).

(106) On November 24, 2014, after the parties yet again reached an impasse on negotiations for the proposed project being explored, Athan Fokas emailed the Ferderigos Brothers that the thirty (30) plus year custom of the Ferderigos and Fokas families eating at Old Towne Restaurant for free was to cease immediately. *See Exhibit S.*

a. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Oh it has been a pleasure to say the least. I'm also done with paying your half of the food you so dearly like to eat at Old Towne weekly on my dime. If you don't pay your portion to me then Jacob will have to. All management will be put on notice."

(107) This is despite the fact that it has been the custom for the Ferderigos and Fokas families to eat for free at Old Towne Restaurant since the 1970's when Athan Fokas' and the Ferderigos Brothers' parents became partners in the restaurant. Upon information and belief, Athan Fokas changed the aforementioned custom for the purpose of harassing, humiliating, and attempting to coerce and gain an upper hand in negotiations against Ferderigos Brothers.

(108) Athan Fokas then took things even a step further and texted Phillip Ferderigos that he can't wait to spread malicious rumors/defame him around the community by stating that a multimillion dollar project couldn't get done because Phillip Ferderigos couldn't eat for free at Old Towne Restaurant and that he is sure everyone will find it "hilarious." He further went on to insult Phillip Ferderigos' weight, made an inappropriate comment about Phillip Ferderigos as a father and called Phillip Ferderigos "palabo" which means "stupid" in Greek. *See Exhibit T.*

a. 12/15/14: Text message from Athan Fokas to Ferderigos Brothers referring to Phillip Ferderigos stating "I can't wait to spread the word that the suites multimillion dollar project couldn't get done cause Phillip can't eat for free. I'm sure everyone will find it hilarious. I'm probably doing you a favor. Smaller waist line. I bet your kids will be real proud of you in the future too. Your dad was right for calling you palabo [stupid] Philipa."

(109) Athan Fokas is the individual who terminated negotiations with Ferderigos Brothers and said he was no longer willing to move forward with exploring the proposed project. *See Exhibit U.*

a. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "I am interested in doing this deal now and will not do it later."

b. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family.".

(110) Athan Fokas has also repeatedly released, in writing, the Ferderigos Brothers from any alleged agreement he claims the parties reached regarding the proposed project being explored. *See Exhibit V.*

a. 10/21/14: Text from Athan Fokas to Ferderigos Brothers stating "I would rather leave it in your hands now and keep me in the loop if and when you all are ready." "It's in your court now. I could care less. My Zeus deal is bringing in plenty to keep my family happy."
b. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "Think about the big picture talk to the bank yourselves and get things done if you like."
c. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no wait in the big picture." "In the end the building is what the bank wants and none of these side agreements really matter. I suggest you forget your agreement and I will forget mine and we move forward on a very profitable venture and get it done the way the bank allows."
d. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Are ya'll contacting the bank, my attorney, and the closing attorney or are we just forgetting about it?"
e. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "If you are intelligent you will already know that the money will be there with the original suites income to pay for the loan. Cut your pompous attitude and either get it done or not."
f. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family."
g. 12/15/14: Text from Athan Fokas to Ferderigos Brothers stating "We can discuss all options when we meet and hopefully come to a mutual agreement."

(111) Athan has further repeatedly exonerated Jacob Ferderigos from any liability, alleged agreement, or any wrongdoing regarding this lawsuit by declaring that Jacob Ferderigos is the only "innocent person" in all of this and that he will keep Jacob Ferderigos out of the lawsuit. *See Exhibit W.*

a. 11/26/14: Email from Athan Fokas to Ferderigos Brothers stating "Actually this entire deal has put such a bad taste that I dislike seeing you guys in public. Except Jacob of course. He is the only innocent one in this."
b. 04/24/15: Text from Athan Fokas to Jacob Ferderigos stating "We figured out a way to keep you out the law suit."

(112) After the second closing was cancelled, Phillip Ferderigos and Spiros Ferderigos were made aware that the final costs for the proposed project were still unknown at the time of the second closing. *See Exhibit X* (the parties did not know the costs for the windows and/or sprinkler costs for windows).

a. 04/24/15: Text from Athan Fokas to Jacob Ferderigos stating "This number does not include windows over allowance. The allowance was 55k and we still need to determine if glass is fire rated or if sprinklers can cover."

(113) In addition, after the second closing was cancelled, the Ferderigos Brothers became aware for the first time that Athan Fokas entered into a written agreement with the contractor to build the proposed project being explored on October 15, 2014, without their knowledge or consent. *See Exhibit Y.*

(114) Athan Fokas entered into this agreement with the contractor (Kevin Carroll) without the prior consent or knowledge of the Ferderigos Brothers to enter into an agreement with the contractor, did not provide a copy of the agreement and/or its terms to the Ferderigos Brothers before or after signing the agreement, and signed on behalf of Jacob Ferderigos without his consent.

(115) Upon information and belief, Athan Fokas has further defamed Phillip and Spiros Ferderigos by informing a third party that the proposed project being explored was terminated because Phillip and Spiros Ferderigos were not willing to provide a mortgage for Jacob Ferderigos' portion of the proposed project and that Athan Fokas was not seeking Phillip and Spiros Ferderigos to mortgage Athan Fokas' portion of the proposed project.

(116) Upon information and belief, Athan Fokas for months continued to contact and tell the contractor (Kevin Carroll) that the proposed project was moving forward as planned despite being told by the Ferderigos Brothers that the proposed project being explored would not move forward.

(117) Although Phillip and Spiros Ferderigos have continued to ask Athan Fokas to stop harassing them with his ongoing emails, Athan Fokas has continued to send numerous emails to Phillip and/or Spiros Ferderigos in an effort to coerce them into agreeing to mortgage their interest(s) in 229 King Street and sign the incorrect closing documents, including sending emails threatening litigation in an effort to coerce Phillip and Spiros Ferderigos to give into his demands. This includes one email in which he specifically mentions that his lawsuits are not costing him anything because his attorney has taken on his case as a contingency fee. Upon information and belief, all of these emails have been sent to Phillip and Spiros Ferderigos in an effort to obtain an upper hand in negotiations and to wrongfully coerce Phillip and Spiros Ferderigos to succumb to Athan Fokas' rejected and/or non-agreed upon demands.

(118) Upon information and belief, Athan Fokas informed Jacob Ferderigos that he is going to file a lawsuit against Phillip and Spiros Ferderigos only if it does not cost him

anything, and that he is going to take Phillip and Spiros' homes from them and they will be out on the street. Upon information and belief, Athan Fokas sent such communications to be relayed to Phillip and Spiros Ferderigos in bad faith and in an effort to obtain an upper hand in negotiations and to wrongfully coerce Phillip and Spiros Ferderigos to succumb to Athan Fokas' rejected and/or non-agreed upon demands.

(119) On July 14, 2015, Athan Fokas filed a defamation lawsuit against Phillip and Spiros Ferderigos based upon information Athan Fokas alleges he received from his mother (Irene Fokas). Specifically, Athan Fokas' defamation lawsuit alleges that Phillip and Spiros Ferderigos told their father (Stavros Ferderigos), who repeated to Athan Fokas' mother (Irene Fokas), that Athan Fokas hired someone to set fire to 229 King Street and that Athan Fokas has filed a false insurance claim(s). Irene Fokas allegedly confronted Athan Fokas about these allegations.

(120) Athan Fokas knowingly and willfully filed the defamation lawsuit knowing that there was absolutely no basis for the lawsuit and knowing that his mother (Irene Fokas) never told Athan Fokas the information he alleges in the Complaint.

(121) On August 18, 2015, Athan Fokas' mother (Irene Fokas) admitted that she never discussed the topics of Athan Fokas being involved in the 229 King Street fire and/or false insurance claim(s) with Defendants' father. *See Exhibit Z.*

a. August 21, 2015 email from Fanouris Ferderigos (Irene Fokas' brother) to Stan Barnett (Athan Fokas' attorney): "This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever."

(122) Upon information and belief, Irene Fokas never told Athan Fokas that Phillip and/or Spiros Ferderigos were the source of the information alleged in Athan Fokas' defamation lawsuit against Phillip and Spiros Ferderigos.

(123) Upon information and belief, Athan Fokas has, without approval/permission of Jacob, Phillip, and/or Spiros Ferderigos, used 229 King Street for his own personal catering business and to store inventory for his own personal catering business and/or other side projects. Athan Fokas has done so for his own pecuniary gain and to the detriment of Jacob, Phillip, and/or Spiros Ferderigos, who have not received notice of these activities and/or any rent or other payments for Athan Fokas' unauthorized use of 229 King Street.

(124) That with the exception of highlighting for emphasis, the Exhibits attached to Defendants' Counterclaims have not been altered or amended and are true and accurate copies of the written documentation.

FOR A FOURTEENTH AFFIRMTAIVE DEFENSE AND BY WAY OF COUNTERCLAIM
(Violation of Duty of Care – S.C. Code Ann. § 33-44-409 and LLC Statutes)

(125) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(126) Athan Fokas violated his duty of care to Phillip Ferderigos as set forth in the LLC statutes in numerous instances. While Phillip Ferderigos denies that the LLC statutes apply in this matter to impose any duties from Phillip Ferderigos to Athan Fokas, based on Athan Fokas' representations, conduct, and/or actions concerning the LLC, Athan Fokas breached his duty of care as further described below.

(127) Among other items, Athan Fokas violated his duty of care to Phillip Ferderigos by:

a. From December 19, 2012, until a few days before Athan Fokas' unilaterally scheduled closing, Athan Fokas never disclosed that he required Phillip and Spiros Ferderigos to mortgage their interest(s) in 229 King Street, personally guarantee their interests, and/or encumber their financial interests while Jacob, Phillip and Spiros Ferderigos continued to incur expenses for the proposed project under the belief that Athan Fokas was getting a personal loan with no assurances and/or encumbrances from Phillip and Spiros Ferderigos whatsoever;

b. Athan Fokas intentionally and improperly attempting to force Jacob, Phillip, and/or Spiros Ferderigos to do things that Jacob, Phillip and/or Spiros Ferderigos never agreed to do;

c. While Jacob, Phillip, and/or Spiros Ferderigos continued to accrue significant expenses for the exploration of the proposed project under the belief from Athan Fokas that he and Jacob Ferderigos were getting their own personal loan, Athan Fokas purposefully, intentionally and/or negligently, did not

i. disclose he would be requiring Phillip and Spiros Ferderigos to mortgage their interests in 229 King Street for his benefit.

ii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interests in the LLC as borrower for Athan Fokas' loan for his benefit.

iii. disclose he would be requiring Phillip and Spiros Ferderigos to sign an assignment of rents for Athan Fokas' loan for his benefit.

iv. disclose he would be requiring Phillip and Spiros Ferderigos to sign a hypothecation agreement for Athan Fokas' loan for his benefit.

v. disclose he would be requiring Phillip and Spiros Ferderigos to sign a HUD Statement for Athan Fokas' loan for his benefit.

vi. disclose he would be requiring Phillip and Spiros Ferderigos to sign an agreement to provide insurance for Athan Fokas' loan for his benefit.

vii. disclose he would be requiring Phillip and Spiros Ferderigos to sign a UCC Financing Statement/Addendum for Athan Fokas' loan for his benefit.

viii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC on the Note and/or authorize their interest(s) in the LLC to be signed on the Note.

ix. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a construction loan agreement for Athan Fokas' loan for his benefit.

x. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a guaranty of completion and performance agreement for Athan Fokas' loan for his benefit.

xi. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a commercial security agreement for Athan Fokas' loan for his benefit.

xii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a hazardous substances certificate and indemnity agreement for Athan Fokas' loan for his benefit.

xiii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for an agreement to provide insurance for Athan Fokas' loan for his benefit.

xiv. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a UCC Financing Statement/Addendum for Athan Fokas' loan for his benefit.

d. Athan Fokas signing a loan commitment letter with his bank without the knowledge, consent, and/or approval of Phillip and Spiros Ferderigos, while now apparently claiming that the terms of that commitment letter somehow obligate Phillip and Spiros Ferderigos to provide certain financial guarantees and/or encumbrances, which Phillip and Spiros Ferderigos had previously rejected.

e. Athan Fokas failing to obtain a personal loan to fund his portion of the proposed project.

f. Athan Fokas apparently having the funds to pay for his portion of the proposed project, but choosing not to use his funds, but instead demanding Phillip and Spiros Ferderigos succumb to his demands which were outright rejected and never agreed upon.

g. Athan Fokas purposefully, intentionally, and/or negligently hiding from Jacob, Phillip, and/or Spiros Ferderigos the fact that Athan Fokas did not obtain a personal loan. Athan Fokas purposefully waited until a few days prior to Athan Fokas' unilaterally scheduled closing and after Jacob, Phillip and Spiros Ferderigos had already paid the vast majority of exploration costs before informing them that he did not have a personal loan. Athan Fokas willfully waited to disclose this material information in order to coerce Phillip and Spiros Ferderigos, who had by that time invested significant funds to explore the project, to give into his demands, which Phillip and Spiros Ferderigos had outright rejected and/or never agreed upon.

h. Athan Fokas purposefully waiting a few days before his first unilaterally scheduled closing to advise Jacob, Phillip, and Spiros Ferderigos that he needed Phillip and Spiros Ferderigos to underwrite his loan by providing him with a mortgage over their portion of 229 King Street, when Athan Fokas knew Phillip and Spiros Ferderigos had rejected such terms.

i. Athan Fokas demanding that Phillip and Spiros Ferderigos mortgage 229 King Street when Athan Fokas knew that Phillip and Spiros Ferderigos had outright rejected such material term.

j. Athan Fokas purposefully, willfully, and/or negligently unilaterally and continuously setting a closing date for his loan based on incorrect loan closing documents which would purport to require Phillip and Spiros Ferderigos to sign documents in Athan Fokas' favor, which Phillip and Spiros Ferderigos outright rejected and/or never agreed to sign.

k. Athan Fokas purposefully, willfully, and/or negligently and improperly adding new material terms in his loan documents that Phillip and Spiros Ferderigos had previously outright rejected and/or never agreed upon.

l. Athan Fokas negligently withholding and/or misrepresenting material terms of the proposed project.

m. Athan Fokas intentionally and negligently stating that Phillip and Spiros Ferderigos had made an oral agreement with him to mortgage their interests for his benefit in 229 King Street and to sign their respective interests in the LLC as a borrower for Athan Fokas' loan, when Athan Fokas knows that such statements are outright lies.

n. Athan Fokas purposefully, willfully, and/or negligently misrepresenting the requirements of his loan package and/or loan documents to Jacob, Phillip and/or Spiros Ferderigos.

o. Athan Fokas writing numerous communications to Defendants where Athan Fokas admitted to outrageous behavior, stating, he was "playing games," withholding material information, misrepresenting material information, introducing new material terms as a means to harass and annoy the Defendants, and threatening to spread malicious rumors and to defame the Defendant(s), all in an effort to improperly extort concessions out of the Ferderigos Brothers and to improperly coerce/force Phillip and Spiros Ferderigos to give Athan Fokas a mortgage over their portion of 229 King Street and to sign incorrect and improper loan closing documents.

p. Athan Fokas purposefully, intentionally, and/or negligently and falsely informing Jacob, Phillip, and/or Spiros Ferderigos that he needed a loan to fund his percentage of the project being explored. Athan Fokas purposefully, intentionally, and/or negligently hid the fact that he would be receiving 2.7 million dollars (nearly three times the amount necessary for his portion of the proposed project) within the building permit period in an effort to deceive and coerce Jacob, Phillip, and/or Spiros Ferderigos into believing it was necessary for them to mortgage their interests in 229 King Street for Athan Fokas' benefit and to deceive and to coerce them into signing incorrect closing documents for Athan Fokas' benefit. Athan Fokas hid such material information to try and force Phillip and Spiros Ferderigos into unnecessarily mortgaging their interest(s) in 229 King Street, and signing loan documents which Phillip and Spiros Ferderigos outright rejected and/or never agreed to sign.

q. Athan Fokas purposefully, intentionally, and/or negligently misrepresenting to Jacob, Phillip, and/or Spiros Ferderigos that he intended to pay off his portion of the loan when he received 2.7 million dollars on April 1, 2015, in order to wrongfully persuade and deceive Phillip and Spiros Ferderigos into mortgaging

their interests in 229 King Street and sign incorrect closing documents for Athan Fokas' benefit. Such representation was an intentional lie when made. Phillip and Spiros Ferderigos stated to wait a few months for when Athan Fokas had his cash and Athan Fokas, Phillip Ferderigos and Spiros Ferderigos could pay cash for the proposed project. A few days later, Athan Fokas reversed course and stated that, when he did receive his cash on April 1, 2015, he may instead decide to purchase another building downtown instead of paying off the loan. Athan Fokas intentionally gave false information to attempt to coerce Jacob, Phillip, and/or Spiros Ferderigos to provide Athan Fokas with a mortgage of 229 King Street and to sign incorrect closing documents for his benefit.

r. Athan Fokas purposefully, intentionally, and/or negligently misrepresenting to Jacob, Phillip and/or Spiros Ferderigos that he would not be willing to wait until April 1, 2015 (when he received his millions) to do the proposed project. Such representation was a lie when made. Athan Fokas misrepresented the fact that he would not wait until he received his millions on April 1, 2015, in an effort to deceive and coerce Jacob, Phillip, and/or Spiros Ferderigos into mortgaging their interests in 229 King Street for Athan Fokas' benefit and to deceive and to coerce Jacob, Phillip, and/or Spiros Ferderigos into signing the incorrect closing documents for Athan Fokas' benefit.

s. Athan Fokas refusing to wait until he received his millions of dollars on April 1, 2015, to consider moving forward with the proposed project.

t. Athan Fokas purposefully, intentionally, and/or negligently misrepresenting to Jacob, Phillip, and Spiros Ferderigos that his bank would not wait until April 1, 2015, when Athan Fokas informed Jacob, Phillip, and Spiros Ferderigos that Athan Fokas would receive his millions of dollars, while now alleging in his Complaint that his bank is still willing to offer a loan package to Athan Fokas.

u. Athan Fokas refusing to sign a side agreement protecting Phillip and Spiros Ferderigos' collateral, while at the same time demanding Phillip and Spiros Ferderigos give him a mortgage over their portion of 229 King Street.

v. Athan Fokas purposefully, willfully, and/or negligently and falsely claiming in his pleadings that he agreed to sign the side agreement when Athan Fokas rejected and never agreed to sign any such side agreement, but rather made additional demands of material terms on behalf of Phillip Ferderigos as a condition to Athan Fokas possible approval for executing the side agreement.

w. Athan Fokas knowing that his refusal to sign the side agreement resulted in the proposed project being terminated; however, Athan Fokas telling third parties that Phillip and Spiros Ferderigos terminated the proposed project for other reasons which Athan Fokas knew where false.

x. Athan Fokas harassing, threatening, mocking and attempting to coerce Jacob, Phillip, and Spiros Ferderigos by representing he was going to make twenty five million dollars ($25,000,000.00) as a consultant and by telling Jacob, Phillip, and Spiros Ferderigos "I hang out with the ultra wealthy now and play their games."

y. Athan Fokas interjecting new terms into the negotiations with ill will and actual malice by demanding that the parties change the thirty (30) plus year customary practice regarding food at Old Towne Restaurant for family members (both Ferderigos and Fokas family members) solely to be vindictive and to harass Phillip and Spiros Ferderigos, and to otherwise coerce Phillip and Spiros Ferderigos to give into Athan Fokas' demands which had been rejected.

z. On two separate occasions, Athan Fokas threatening to build the proposed project, without Phillip Ferderigos' consent and against Phillip Ferderigos' will, and purportedly with the scheme to own the new building to the exclusion of Phillip Ferderigos (which is something that Athan Fokas cannot legally do), all with the fraudulent intent of forcing Phillip Ferderigos to provide Athan Fokas a mortgage Phillip Ferderigos never agreed to, as well as signing improper and incorrect closing documents Phillip Ferderigos never agreed to sign.

aa. Athan Fokas defaming Phillip and/or Spiros Ferderigos because they would not give into Athan Fokas' demands, by telling third parties that Phillip and/or Spiros Ferderigos have no business sense and that the proposed projected fell apart because Phillip could not eat for free at Old Towne Restaurant and by calling Phillip Ferderigos stupid.

bb. Athan Fokas attempting to use the customary food practice at Old Towne Restaurant as a negotiating tactic to attempt to force Phillip and/or Spiros Ferderigos to give into Athan Fokas' demands which were rejected by Phillip and/or Spiros Ferderigos.

cc. Athan Fokas threatening to publish malicious rumors/defamatory statement(s) by telling Phillip Ferderigos that Athan Fokas can not wait to spread the word in the community that that a "multimillion dollar project" couldn't get done because Phillip Ferderigos couldn't eat for free at Old Towne Restaurant, a malicious threat of defamation that Athan Fokas knew was false and made with actual malice and ill will to attempt to improperly coerce Phillip Ferderigos into giving Athan Fokas a mortgage Phillip Ferderigos never agreed to give him, as well as coerce Phillip Ferderigos into signing improper and incorrect closing documents he never agreed to sign.

dd. Athan Fokas continuing to tell the contractor Kevin Carroll for months that the proposed project was moving forward despite Athan Fokas being repeatedly told by Jacob, Phillip and/or Spiros Ferderigos that the proposed project was not moving forward.

ee. Athan Fokas repeatedly releasing Jacob, Phillip and Spiros Ferderigos from any alleged agreement, liability and/or responsibility regarding the proposed project and then filing lawsuit(s) to attempt to coerce Jacob, Phillip, and/or Spiros Ferderigos to do the very things that were released.

ff. Athan Fokas threatening to take Phillip and Spiros Ferderigos' homes and throw their children out on the street if Phillip and Spiros Ferderigos did not give Athan Fokas a mortgage, personally guarantee, and/or encumber their interests in Athan Fokas' favor and/or give into his demands, which Phillip and Spiros Ferderigos had rejected and/or were never agreed upon.

gg. Athan Fokas unilaterally and improperly executing a written contract with contractor Kevin Carroll to build the proposed project without the knowledge, consent and/or providing details of the contract to Jacob, Phillip, and/or Spiros Ferderigos. Athan Fokas purposefully and intentionally withheld such information from Jacob, Phillip, and/or Spiros Ferderigos.

hh. Athan Fokas unilaterally and improperly executing a written contract with the contractor Kevin Carroll purportedly on behalf of the LLC, without the knowledge, consent, and/or the authorization of Jacob, Phillip, and/or Spiros Ferderigos. Athan Fokas purposefully and intentionally withheld such information from Jacob, Phillip, and/or Spiros Ferderigos.

ii. Athan Fokas signing a written contract with contractor Kevin Carroll to build the proposed project on behalf of Jacob Ferderigos, by signing a signature line that included Jacob Ferderigos' name, without the knowledge, consent and/or providing details of the contract to Jacob Ferderigos. Athan Fokas purposefully and intentionally withheld such information from Jacob, Phillip, and/or Spiros Ferderigos.

jj. Athan Fokas publishing malicious rumors/defamatory statement(s) to third parties that Phillip and Spiros Ferderigos have no business sense and that it is very sad. This is in reference to Phillip and Spiros Ferderigos not giving into Athan Fokas' wrongful and outright rejected and/or non-agreed upon demands for the proposed project being explored.

kk. Athan Fokas publishing malicious rumors/defamatory statement(s) concerning Phillip and Spiros Ferderigos by inquiring third parties about Phillip and/or Spiros Ferderigos alleged statements concerning Athan Fokas' involvement in the fire of 229 King Street.

ll. Athan Fokas publishing malicious rumors/defamatory statement(s) to third parties that the proposed project was terminated because Phillip and/or Spiros Ferderigos could not eat for free at Old Towne.

mm. Athan Fokas publishing malicious rumors/defamatory statement(s) by telling third parties that the proposed project has been terminated because Phillip and Spiros Ferderigos were not doing what they agreed to do.

nn. Athan Fokas publishing malicious rumors/defamatory statement(s) by telling third parties that Athan Fokas was not/is not seeking a mortgage from Phillip and/or Spiros Ferderigos for the proposed project.

oo. Athan Fokas telling third parties that Phillip and/or Spiros Ferderigos refused to give Jacob Ferderigos a mortgage for Jacob Ferderigos' portion of the loan and that Athan Fokas was not seeking a mortgage from Phillip and/or Spiros Ferderigos.

pp. Athan Fokas continuing to contact Jacob, Phillip, and/or Spiros Ferderigos despite threatening his lawsuits and being told by Phillip and Spiros Ferderigos to stop communicating with them. Athan Fokas continued to send obnoxious emails to Jacob, Phillip, and/or Spiros Ferderigos about how profitable the current suites project is and how profitable it would have been had the parties built the proposed project as Athan Fokas had demanded. Athan Fokas continues to harass Jacob, Phillip, and/or Spiros Ferderigos and continues to try to intimidate Jacob, Phillip, and/or Spiros Ferderigos into doing the proposed project, as well as trying to scare Jacob, Phillip, and/or Spiros Ferderigos concerning the high legal costs to defend against his frivolous lawsuits.

qq. Athan Fokas harassing, threatening, and mocking Jacob, Phillip, and/or Spiros Ferderigos by writing to them that "my attorney is working on a flat 20 percent contingency so he is not costing me anything until this case is settled," while threatening to file a multi-million dollar lawsuit against Jacob, Phillip, and/or Spiros Ferderigos. This written information was sent by Athan Fokas to Jacob, Phillip, and/or Spiros Ferderigos in an attempt to harass and to coerce them to give into Athan Fokas' rejected and non-agreed upon demands by threatening that a lawsuit will cost Jacob, Phillip, and/or Spiros Ferderigos money, but will not cost Athan Fokas anything to proceed with his frivolous lawsuit strategy.

rr. Athan Fokas conducting unauthorized business and/or storing unauthorized inventory within 229 King Street for his own pecuniary gain without the knowledge and/or consent, and to the detriment, of Jacob, Phillip and/or Spiros Ferderigos.

ss. Athan Fokas knowingly and intentionally filing a frivolous defamation lawsuit against Phillip and Spiros Ferderigos knowing that the allegations therein were false.

(128) As a direct and proximate result of Athan Fokas' actions, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)

(129) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(130) Athan Fokas made false representations to Phillip Ferderigos as set forth in Paragraph 127 and its subsections (Phillip Ferderigos' violation of duty of care claim).

(131) Athan Fokas had a pecuniary interest in making these representations/statements.

(132) Athan Fokas owed a duty of care to see that Athan Fokas communicated truthful information to Phillip Ferderigos.

(133) Athan Fokas breached that duty by failing to exercise due care.

(134) Phillip Ferderigos justifiably relied on said representations.

(135) Phillip Ferderigos suffered pecuniary loss as a proximate result of his reliance on the representations of Athan Fokas and Athan Fokas acted willfully, wantonly, carelessly, and recklessly, and as a direct and proximate result, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIM
(Fraud, Constructive Fraud)
(Concealment with Duty to Disclose)

(136) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(137) Athan Fokas further intentionally and purposely misrepresented facts set forth in Paragraph 127 and its subsections (Phillip Ferderigos' violation of duty of care claim).

(138) Athan Fokas had a duty to disclose material information to Phillip Ferderigos and Athan Fokas failed to disclose such information.

(139) Prior to and/or during the negotiations with Athan Fokas, Athan Fokas implied and/or expressly represented to Phillip Ferderigos as set forth previously.

(140) Said representations were false.

(141) Said representations were material.

(142) Athan Fokas knew said representations were false when same were made. Alternatively, Athan Fokas knew his representations to Phillip Ferderigos were false. and/or Athan Fokas' representations were made with reckless disregard as to their truth or falsity. Athan Fokas' failure to inform Phillip Ferderigos of his true intentions was intentional and/or negligent with reckless disregard to the truth upon which Phillip Ferderigos was relying.

(143) Athan Fokas intended Phillip Ferderigos to rely and act upon said representations. Phillip Ferderigos did not know said representations were false.

(144) Phillip Ferderigos had the right to rely upon, and in fact did rely upon, the truth of said representations. In the event that the element or scienter is not found, alternatively, that Phillip Ferderigos alleges and avers that Athan Fokas committed constructive fraud in that Athan Fokas breached legal, equitable, and fiduciary duty owed to Phillip Ferderigos.

(145) Athan Fokas acted willfully, wantonly, carelessly, and recklessly, and as a direct and proximate result, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as may be determined by a jury.

FOR SEVENTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIM
(Defamation – Slander - Libel)

(146) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(147) Athan Fokas threatened to publish false and defamatory statements by informing Phillip Ferderigos in writing that he cannot wait to tell everyone in the community [the false statement] that a multi-million dollar project did not move forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant and that he found it hilarious.

(148) Upon information and belief, Athan Fokas publishing false and defamatory statements that the proposed project did not move forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant.

(149) Athan Fokas published false and defamatory statements to Jacob Ferderigos in writing that Phillip and Spiros Ferderigos "have no business sense and I'm sure we will be butting heads with Greek properties in the future. Very sad!!!". *See Exhibit AA.*

(150) Upon information and belief, Athan Fokas published false and defamatory statements to other third parties that Phillip and/or Spiros Ferderigos are bad business people and/or do not have any business sense.

(151) Athan Fokas published false and defamatory statements to other third parties that Phillip and/or Spiros Ferderigos are accusing him of setting fire to 229 King Street.

(152) Athan Fokas published false and defamatory statements to other third parties that the proposed project was not moving forward because Phillip and/or Spiros Ferderigos were not doing what they agreed to do.

(153) Upon information and belief, Athan Fokas published false and defamatory statements to other third parties that he was not seeking a mortgage and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project; while at the same time, filing a lawsuit demanding that Phillip and Spiros Ferderigos mortgage and/or provide financial assurances of their interests for Athan Fokas' benefit for the proposed project.

(154) Upon information and belief, Athan Fokas verbally (slander) and in writing/conduct (libel) threatened to publish and/or has published, with premeditation, false malicious rumors and defamatory statements to third parties about Phillip Ferderigos.

(155) Athan Fokas' slander and libel is actionable per se where Athan Fokas has alleged defamatory statements charging Phillip Ferderigos with commission of a crime of moral turpitude and/or unfitness in his business or profession. Athan Fokas has also published slander and libel that is not actionable per se.

(156) Athan Fokas has made false and defamatory statements concerning Phillip Ferderigos.

(157) Athan Fokas has acted with common law malice.

(158) Athan Fokas has made such statements via an unprivileged publication to third parties.

(159) Athan Fokas is at fault in publishing the statements.

(160) Athan Fokas has harmed Phillip Ferderigos via his defamatory statements and caused harm and/or special harm to Phillip Ferderigos caused by the publication.

(161) As a direct and proximate result of Athan Fokas' defamatory statements, which were made with common law actual malice, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to general damages, special damages, actual damages, consequential damages, and punitive damages as determined by a jury.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIM
(Abuse of Process) 45

(162) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(163) Athan Fokas has employed the legal process for some purpose other than that for which it was intended by the law to effect – the improper use of a regularly issued process.

(164) Athan Fokas has commenced an action and caused process to issue without justification and is also misusing or misapplying the legal process for an end other than that which it was designed to accomplish.

(165) Athan Fokas is using the process for improper reasons with (1) an ulterior purpose; and (2) has done willful acts in the use of the process not proper in the regular conduct of the proceeding, to attempt to force Phillip Ferderigos to give Athan Fokas a mortgage and to sign incorrect loan documents by filing what Phillip Ferderigos believes to be frivolous lawsuits (where the exhibits attached to this pleading and the written documents of Athan Fokas himself prove Athan Fokas' lawsuits to be frivolous).

(166) As a direct and proximate result of Athan Fokas' actions, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR AN NINETEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIMS
(Promissory Estoppel)

(167) Phillip Ferderigos incorporates all of the above paragraphs as fully as if reinstated verbatim herein.

(168) Jacob, Phillip, and/or Spiros Ferderigos acted in reasonable reliance on Athan Fokas' representations, promises, and other acts constituting inducements to continue moving forward with exploring the proposed project with Phillip and Spiros Ferderigos not being involved in and/or granting any assurances/encumbrances of any kind whatsoever for a loan. Jacob, Phillip, and/or Spiros Ferderigos continued to expend money towards receiving governmental approval for the new building being explored in reasonable reliance of Athan Fokas' representations, promises, and other acts.

(169) As a direct and proximate result of Athan Fokas' actions and Jacob, Phillip and/or Spiros Ferderigos' reasonable reliance thereon, Jacob, Phillip and/or Spiros Ferderigos suffered damages in an amount to be determined by a jury.

FOR A TWENTIETH DEFENSE AND BY WAY OF COUNTERCLAIM
(Initiation of Frivolous Proceedings, S.C. Code Ann. § 15-36-10)

(170) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(171) The Complaint filed in this current action constitutes a frivolous pleading under the South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code Ann. § 15-36-10 (2005), in the following particulars to wit:

a. A reasonable attorney in the same circumstances would believe that the Plaintiff's claim "was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law"; and

b. A reasonable attorney presented with the same circumstances would believe that the initiation of this civil cause "was intended merely to harass or injure the other party."

c. A reasonable attorney presented with the same circumstances would believe the pleading is frivolous and was brought for a purpose other than proper adjudication of the claim.

d. The pleading makes frivolous arguments not supported by the facts.

(172) Phillip Ferderigos respectfully asks this Honorable Court to sanction the Plaintiff for this frivolous pleading pursuant to S.C. Code Ann. § 15-36-10(G) (2005), and specifically, Phillip Ferderigos prays for the following relief:

a. That the Plaintiff pay reasonable costs and attorney's fees to defend this action and for punitive damages; and

b. That the Plaintiff pay a reasonable fine to the Court.

WHEREFORE, having fully answered Plaintiffs' Complaint, Phillip Ferderigos prays that the Court:

a) Dismiss Plaintiff's Complaint with prejudice;

b) That Plaintiff take nothing by reason of his suit;

c) That Phillip Ferderigos recover costs and reasonable attorney's fees in defending this action;

d) That the Plaintiff be sanctioned for the initiation of this frivolous proceeding by being fined by this Honorable Court;

e) Enter judgment for Phillip Ferderigos on his counterclaims and award him damages for his actual, consequential, incidental, and punitive damages, and pre and post judgment interest; and

f) Award such other relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT/COUNTERCLAIMANT, PHILLIP FERDERIGOS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Plaintiff Fokas,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
Philip Ferderigos, Jacob Ferderigos, and Spiro Ferderigos,	)	
	)	
Defendants.	)	

FILED
2015 OCT -1 PM 4:45
JULIE J. ARMSTRONG
CLERK OF COURT

I hereby certify that this 1st day of October 2015, I forwarded a copy of the foregoing Answer and Counterclaims of the Defendant, Phillip Ferderigos, via U.S. Mail with sufficient postage affixed thereto, properly addressed as follows:

Counsel Served:

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
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Charleston, SC 29402

Gwyn L. Martin
Legal Assistant

Charleston, South Carolina
OCT. 1, 2015

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919

AFFIDAVIT OF ATHAN FOKAS

After being sworn, Affiant testified as follows:

1. I am Athan Fokas, a resident of Mount Pleasant, South Carolina and the Plaintiff in this case.

2. At no time, have I ever told anyone that the Defendants, Phillip and Spiros Ferderigos, had published defamatory remarks about me as they allege in their counterclaim in this case. When I learned that they had done this, I commenced a lawsuit against them for damages arising from these defamatory statements. That case is Case No. 2015-CP-10-3819.

2. Sometime in March or April of 2015, my mother told me in several different conversations that Spiros and Phillip Ferderigos were making defamatory statements accusing me of causing the fire at Old Towne Restaurant and of instances of insurance fraud. She commenced the conversation with me. I did not ask her about such statements or tell her I thought they were doing this before she engaged me in conversation. The statements concerning the allegations by Spiros and Phillip Ferderigos about me in this regard are false.

FURTHER AFFIANT SAYETH NOT.

ATHAN FOKAS

SWORN TO before me
this 23rd day of February 2017.

Notary Public for South Carolina
My Commission Expires on: 7/18/26

(132) Athan Fokas was a proximate cause of causing these representations to be made.

(133) Athan Fokas owed a duty to disclose all material information to Phillip Pendergon.

(134) Athan Fokas breached said duty by failing to disclose the same.

(135) Phillip Pendergon justifiably relied on said representations.

(136) Phillip Pendergon suffered pecuniary loss as a proximate result of the reliance on the representations of Athan Fokas and Athan Fokas acted willfully, wantonly, carelessly, and recklessly, and as a direct and proximate result, Phillip Pendergon has been damaged. Accordingly, Phillip Pendergon is entitled to actual, consequential, and punitive damages to be determined by a jury.

FOR A SIXTH AFFIRMATIVE DEFENSE
AND FOR A COUNTERCLAIM
(Fraud, Constructive Fraud)
(Concealment and Duty to Disclose)

(136) Phillip Pendergon repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(137) Athan Fokas fraudulently and purposely misrepresented facts set forth in the paragraph 129 and its subparagraphs (Phillip Pendergon's Breach of Duty Claim) above.

(138) Athan Fokas had a duty to disclose material information to Phillip Pendergon and Athan Fokas failed to disclose such information.

(139) Prior to Fokas making the representations with Athan Fokas, Athan Fokas implied and/or expressly represented to Phillip Pendergon as set forth previously.

(140) Said representations were false.

(141) Said representations were material.

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3919
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS, Defendants.	**PHILLIP FERDERIGOS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF:

NOW COMES Defendant Phillip S. Ferderigos, by and through counsel, and answers Plaintiff's First Set of Interrogatories as follows:

Defendant states that these answers are complete and responsive in accordance with his understanding of the Interrogatories, as drafted, and are based upon records or other information in his possession, or reasonably available to him at the time they were made, and that if additional or different information is subsequently discovered or brought to his attention during the pendency of this cause which renders any initial Answer incomplete, incorrect or otherwise subject to supplementation, he will do so as required by the South Carolina Rules of Civil Procedure.

Defendant further states that in preparing and making these answers, he has not accepted or acquiesced in the purported directions, conditions or definitions imposed at the time the Interrogatories were propounded by Plaintiff, except and to the extent that the same may have been consistent or in conformity with his understanding of the applicable discovery rules.

GENERAL OBJECTIONS

Defendant hereby incorporates by reference the General Objections attached hereto as Exhibit A. All of these General Objections shall be deemed continuing throughout the responses to the specific Interrogatories that follow even when not further referred to in said responses. Defendant also reserves the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein, as discovery in this case is ongoing.

ANSWERS TO INTERROGATORIES

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

Answer:

1) Phillip Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

2) Jacob Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

3) Spiros Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

4) Athan Fokas – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

5) Jeffrey Odom – Plaintiff should have contact information for Mr. Odom as Mr. Odom was Plaintiff's loan representative from Southcoast Community Bank.

6) Irene Fokas – See Irene Fokas Deposition and Affidavit(s) for written or recorded statements, in the possession of Plaintiff.

7) Spiro Fokas – No Statement taken.

8) Gerasimos Nikatos – See Affidavit of Gerasimos Nikatos for written or recorded statements, in the possession of Plaintiff.

9) Rania Nikatos – See Affidavit of Rania Nikatos for written or recorded statements, in the possession of Plaintiff.

10) Kevin Carroll – No Statement taken.

11) Justin Hansen – No Statement taken.

These individuals will testify regarding any knowledge they may have concerning the allegations in the pleadings in this case. Defendant reserves the right to call any witness named by any other party.

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

Answer: See Defendants Answers/Counterclaims and Answers to Plaintiff's Request for Production and accompanying documentation. See Defendants Response to Request No. 1 and attached Bates stamped documentation.

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

Answer: To be supplemented.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the defendant as alleged in defendant's counterclaims in this case.

Answer: Any and all damages to be determined by a jury. This includes, but is not limited to, any expenses paid toward the proposed project being considered, any potential loss of income had the proposed project being considered been built (had it not been for Plaintiff's wrongful actions), any damages that may be awarded by a jury for Plaintiff's defamatory statements, and actual and punitive damages to be determined by the jury for Plaintiff's conduct. See also Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce.

5. List the names and addresses of any expert witnesses whom the defendant proposes to use as a witness at the trial of this case.

Answer: To be supplemented in accordance with the Rules of Civil Procedure. Defendant reserves the right to call a testifying expert at trial.

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

Answer: See Answer No. 1; Answer No. 7; and Defendants Answer and Counterclaims.

7. List every person to whom the defendant claims plaintiff published defamatory statements concerning this defendant and for each describe the date, place, time and manner of such publication and the substance of such defamatory statements defendant alleges plaintiff made to each such person.

Answer: Plaintiff published libel and slander per se, which are actionable per se, and defamatory, to the following individuals:

1) Jacob Ferderigos – See Defendants Answer/Counterclaims and Answers to Plaintiff's Requests for Production.

2) Justin Hansen – Upon information and belief, Plaintiff has inquired of Mr. Hansen if Defendant has accused him of inappropriate involvement regarding a fire at 229 King Street and/or has informed Mr. Hanson that Defendant is accusing Plaintiff of inappropriate involvement regarding the fire at 229 King Street. The exact date, place and time of the statement is not known to Defendant at this time.

3) Kevin Carroll – See Defendants Answer/Counterclaims and Answer to Plaintiff's Requests for Production. In addition, upon information and belief, Plaintiff informed Mr. Carroll that the proposed project being considered was not moving forward because Defendant was not willing to give his brother a mortgage and that Plaintiff was not seeking a mortgage from Defendant. Plaintiff defamed Defendant by advising Mr. Carroll that Defendant had made promises to him and the Defendant was breaching those promises to him and, further, that the proposed project was not being built because it was the Defendants' fault. Plaintiff's statements to Mr. Carroll are defamatory per se and depicted Defendant as an unfit and stupid business person (i.e., that Defendant was unfit in his business or profession). Plaintiff also continuously informed Mr. Carroll that the proposed project was going to be built long after Plaintiff knew that the proposed project was not moving forward because of the Plaintiff's own misrepresentations, while, at the same time, Plaintiff defamed this Defendant, blaming him for the Plaintiff's own failures to obtain the necessary funds to move forward with the proposed project. Plaintiff further misrepresented the circumstances of the proposed project falling apart and purposely and intentionally attempted to cast this Defendant in a bad light and in a defamatory manner.

4) Irene Fokas – See Deposition and Affidavit(s) of Irene Fokas, in Plaintiff's possession.

In addition, upon information and belief, Plaintiff defamed this Defendant to numerous individuals, including to Defendant's brother, Jacob Ferderigos, Plaintiff's mother Irene Fokas, his father Spiro Fokas, his sister Rania Nikatos, and Old Towne's Manager Justin Hanson by telling these individuals that the proposed project fell apart because Defendant Phillip Ferderigos could not eat for free at Old Towne, because Defendant is a stupid business person/that he has no business sense, because Defendant is jealous of him, because Defendant does not want his

brothers to be successful, because Defendant wants to be wealthier than his brothers (i.e., to keep his brothers "below" him), because Defendant is a stupid and unwise business person, and his telling said witnesses that Defendant made a promise to him to mortgage 229 King Street for Plaintiff's benefit (and that Defendant broke such promise to him), all with actual malice and ill will and intent to harm Defendant in an effort to extort and force Defendant to give him a mortgage over 229 King Street (when Plaintiff knows Defendant made no such promise) and to make other concessions to Plaintiff, when Defendant never agreed to do any of those things. Plaintiff libeled this Defendant by stating Defendants (Phillip Ferderigos and Spiro Ferderigos) "have no business sense." Plaintiff further libeled this Defendant on March 21, 2016 by stating: "Now you have turned your brother Jacob into a puppet getting him to send your words on his phone. I actually now think that you didn't go along with building the new suites so that your brothers would not be able to have more income so that you can keep them below you." Defendant further incorporates his Answer and Counterclaims, Defendants Answers to Requests for Production, and the libelous emails forwarded from Plaintiff to third parties concerning this Defendant.

8. For each of the instances of alleged publication of defamatory statements described by this defendant in Answer to interrogatory number 7, describe the exact manner in which this defendant learned of such publication and include the date when defendant so learned of each alleged publication.

Answer: See Answer No. 7.

9. For each instance in which defendant alleges plaintiff made misleading or untrue statements to this defendant as alleged in this defendant's counterclaims, describe the date,

manner, extent and nature of any actions taken by this defendant in reliance on each of said alleged misrepresentations.

Answer: See Answer No. 7, Answer to No. 10, and Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

10. List all damages this defendant claims to have suffered as the proximate cause of any act of the plaintiff identified in defendant's answer and counterclaims and for each alleged damage identify the nature of the loss, the date of the loss, the value defendant claims it represents in terms of money, the action of plaintiff the defendant claims caused the loss and way in which said alleged loss resulted from the alleged action of plaintiff.

Answer: See Defendants Answers and Counterclaims and Answer No. 4. In addition, the Defendant expended personal funds as a result of the Plaintiff's misrepresentations to the detriment of Defendant. Defendant has also lost money and profit based on Plaintiff's wrongful actions. Plaintiff has intentionally caused and continues to try to cause intentional and malicious harm to Defendant's business and reputation, which directly impacts his livelihood. Plaintiff has also filed frivolous lawsuits against this Defendant and caused harm to Defendant as set forth in Defendants Answer and Counterclaims. Plaintiff is liable for actual and punitive damages to be determined by a jury.

11. With respect to the counterclaim by defendant for abuse of process, identify any demand for a collateral advantage made by plaintiff associated with any legal process defendant claims was improperly brought and list the date, the way such demand was communicated and describe the substance of said demand for collateral advantage. For each such communication, list all proof defendant claims proves the communication was made.

Answer: See Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce. In addition, Plaintiff has filed frivolous lawsuits against this Defendant in an effort to force Defendant to give him a mortgage and agree to other terms this Defendant never agreed to. The

Plaintiff boasted that his lawyer was working on a contingency and his filing a frivolous lawsuit would not cost him any money, whereas it would cost Defendant large sums of money to defend against Plaintiff's frivolous claims. Plaintiff followed through with his threat and abuse of process and the existence of these two lawsuits prove Defendant's abuse of process claim against Plaintiff. Plaintiff is demanding that this Defendant share in his risk of the project and underwrite his portion of the proposed project. This is a risk that Defendant never agreed to bear and Defendant does not agree to bear. Plaintiff has always been responsible for his portion of the proposed project and the Plaintiff cannot use this Defendant's property in order to secure a loan for his benefit. Plaintiff has defamed Defendant and filed frivolous lawsuits against Defendant to try to force Defendant to give Plaintiff a mortgage (for Plaintiff's benefit) and to try to force Defendant to agree to other terms Defendant never agreed to. Plaintiff is improperly using the legal process to try to extort concessions from this Defendant by knowingly filing frivolous lawsuits against this Defendant.

12. Identify the date and circumstances in which defendant became aware of the terms for financing the project to expand the building at 229 King Street as identified by South Coast Bank. If there were separate times and circumstances for the elements of those terms set forth below, identify when and how defendant became aware of the terms related to:

a. A requirement that defendants mortgage their interest in 229 King Street;

b. A requirement that the LLC which operates the suites rental business be obligated to pay the bank on the note;

c. A requirement for a hypothecation agreement.

Answer: Defendant objects to Plaintiff's terminology in this Interrogatory. There were no "terms for financing the project to expand the building at 229 King Street" applicable to this

Defendant. See Defendants Answer and Counterclaims. Defendant incorporates and craves reference to his texts/emails.

Defendant objects to this Interrogatory as there was never a "requirement" as this Defendant never agreed to mortgage his interest in 229 King Street for the benefit of the Plaintiff or anyone else; likewise, there was never a "requirement" as this Defendant never agreed that the LLC be obligated to pay any note, and there was never a "requirement" as this Defendant never agreed to sign a hypothecation agreement. This Defendant never agreed to provide Plaintiff with a mortgage for the proposed project, nor did he agree to the other terms as set forth in this Defendant's pleadings. Initially, this Defendant rejected getting a mortgage for the proposed project, but decided to pay for his portion of the proposed project with cash. After October 17, 2014, this Defendant attempted to negotiate terms where he would be willing to execute a mortgage, so long as Plaintiff would execute a side agreement which would protect this Defendant's collateral, but the negotiations fell apart due to Plaintiff's actions as set forth in the pleadings. Thereafter, Plaintiff made even more additional demands and new terms were sprung on Defendant on the day of the second closing as well.

Generally, there are three distinct time periods applicable to this case: (1) from the inception of the exploring of the proposed project until October 17, 2014, (2) from October 17, 2014 to November 24, 2014, and finally (3) from November 24, 2014 to the present.

(1) First time period: from the inception of the explanation of the proposed project until October 17, 2014.

During this time period, the parties explored the possibility of the proposed project. Early on, Plaintiff told Jacob Ferderigos that the parties should mortgage 229 King Street for the proposed project. Phillip Ferderigos and Spiro Ferderigos rejected such request and told Jacob

Ferderigos to tell Plaintiff they would not mortgage 229 King Street for the proposed project. From the beginning, Plaintiff knew Phillip and Spiro Ferderigos would not mortgage 229 King Street for the proposed project. Plaintiff then accosted Phillip Ferderigos at the Hellenic Center as set forth in paragraphs 70 and 71 of his Answer and Counterclaims. Again, Plaintiff knew that Phillip Ferderigos would not mortgage 229 King Street or guarantee anything for the proposed project being considered and he would self-fund his portion of the proposed project by bringing cash to the transaction if Defendant decided to move forward with the proposed project being considered.

Further, on December 19, 2012, via text, Plaintiff also texted Defendants implying that they should personally guarantee a loan for the proposed project to get a loan for the proposed project. In his written Answer, Spiro Ferderigos immediately responded he would not guarantee anyone else's loan or incur additional debt for the proposed project and, if the proposed project were to move forward, it would be in the same manner as the original units (i.e., with no mortgage or guarantee for anything). See paragraphs 77 and 78 of Defendant's Answer and Counterclaims.

Plaintiff apparently did not even contact South Coast until 1/12/13. On September 9, 2014, Plaintiff advised Defendants that the proposed project cost had drastically increased to about Two Million Dollars. Also, pursuant to Paragraph 89 of Defendant's Answer and Counterclaims, on September 24, 2014, Plaintiff represented that his South Coast loan was a fixed 5% interest 20-year loan. Plaintiff was in error, his South Coast loan was not a fixed 5% interest 20-year loan.

At all times during this time period, Plaintiff knew Phillip Ferderigos and Spiro Ferderigos would not mortgage or guarantee anything for the proposed project being considered.

However, Plaintiff deceptively allowed Defendants to expend funds to explore the possibility of the proposed project as Plaintiff hoped that he could force Defendants to ultimately give him a mortgage for the proposed project (otherwise they would have wasted all of their investment). Plaintiff's scheme was intentional and in bad faith.

(2) From October 17, 2014 to November 24, 2014.

As set forth in paragraphs 92-106, and subsections (a), (b) and (c) below, and Answer No. 14, on or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time since 2012 (when Defendants had outright rejected providing a mortgage or any other encumbrance of any kind for the proposed project) that Plaintiff demanded this Defendant (along with his brother) mortgage his interest in 229 King Street for Plaintiff's benefit. This message was relayed to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage or guarantee his interest in 229 King Street for the proposed project.

However, after some additional thought, this Defendant attempted to work with Plaintiff in response to his new demand (which had previously been rejected) in order to determine if Plaintiff would agree to very specific terms that allowed Defendant to be comfortable with mortgaging his interest in 229 King Street for the proposed project if, and only if, this Defendant had assurances, to his satisfaction, that his property would be protected from Plaintiff defaulting on his obligations. In an effort to respond to the new demands of the Plaintiff (which had previously been rejected), Phillip Ferderigos and Spiro Ferderigos decided to see if the proposed project could move forward and attempted to negotiate an ancillary agreement/side agreement which they believed would protect their interest in 229 King Street if they were to provide

Plaintiff and Jacob Ferderigos with a mortgage for the proposed project being considered. Negotiations fell apart, however, when Plaintiff placed additional demands on Phillip Ferderigos for the side agreement and when Plaintiff's bank closing documents were also incorrect in several material terms as set forth more particularly in Defendant's Answer and Counterclaims. Further, with the scheduling of the second closing, Plaintiff made additional demands on this Defendant which this Defendant never agreed to.

(3) From November 24, 2014 to the present.

After negotiations fell apart, Plaintiff proceeded in bad faith and ill will to threaten and harass Defendants as set forth with more particularity in Defendant's Answer and Counterclaims.

---

a. Initially, Plaintiff contacted Jacob Ferderigos to tell him that the parties should consider building an additional new building behind Old Towne. At some point, Plaintiff and Jacob Ferderigos apparently decided that they would need to obtain a mortgage of 229 King Street for the proposed project. Plaintiff requested that this Defendant also guarantee and/or mortgage 229 King Street for the proposed project. This Defendant told Plaintiff in no uncertain terms that he would not mortgage Old Towne, that he would not guarantee anything, and that he would pay cash to fund his share of the proposed project if the proposed project were to happen. Similarly, but separately, via written correspondence, Defendant Spiro Ferderigos advised Plaintiff of the same. From that time forward, having expressly told Plaintiff that this Defendant would not mortgage, guarantee, or encumber any of his assets for the proposed project, Plaintiff knew that, if the proposed project being considered were to go forward, he would have to be responsible for his share of the costs of the proposed project and Plaintiff knew this Defendant

would not mortgage or guarantee or in any way risk or encumber his share of the 229 King Street property for the proposed project. As such, this Defendant believed Plaintiff and Jacob Ferderigos were attempting to get a loan by mortgaging their portion of 229 King Street.

Subsequently, this Defendant started paying his share of the costs (through his ongoing profits of Old Towne Suites, LLC) for determining the possibility, feasibility and desirability of the proposed project and Plaintiff knew that this Defendant would not mortgage, guarantee, or in any way encumber his 229 King Street property for the proposed project; yet, Plaintiff apparently knew his bank would require Defendants to provide a mortgage for Plaintiff's benefit in order for Plaintiff to get a loan for the project, yet, Plaintiff did not disclose this information to any of the Defendants, and Plaintiff allowed this Defendant to spend funds during this time period. Plaintiff and Jacob Ferderigos were supposed to get a loan/mortgage for their own respective share of the proposed project over their portion of 229 King Street, and this Defendant never agreed to mortgage, guarantee, or otherwise encumber his portion of 229 King Street for the proposed project. Plaintiff knew the same, but intentionally or negligently enticed this Defendant to spend monies for the proposed project's planning, while apparently scheming to force this Defendant to give him a mortgage for his benefit.

Further, on or about September, 2014, Plaintiff advised Defendant that his bank was going to give him a 5% fixed rate 20-year mortgage for the proposed project. Plaintiff forwarded a loan document from South Coast and, after only looking at the rate and time period for this loan, Defendant determined that Plaintiff was wrong and that Plaintiff's bank did not provide him with a 5% fixed rate 20-year mortgage, but, rather, the mortgage rate was variable and would change/balloon after five years. Defendant advised Plaintiff that Plaintiff was wrong about what Plaintiff thought the terms of Plaintiff's loan were. [At this time, this Defendant still

believed that Plaintiff was obtaining a mortgage for Plaintiff's and Jacob Ferderigos' portion of 229 King Street, and Defendant did not look at the rest of the South Coast document until sometime in 2015]. On September 30, 2014, this Defendant reiterated that he was going to pay cash for his share of the project. Defendant did not become aware that Plaintiff's bank or the Plaintiff wanted this Defendant to sign a mortgage until approximately October 17, 2014 when Plaintiff advised Jacob Ferderigos, who then relayed it to this Defendant.

On or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time since 2012 (when this Defendant and Spiro Ferderigos had outright rejected providing a mortgage or any other encumbrance of any kind for the proposed project) that Plaintiff demanded this Defendant (along with his brother Spiro) mortgage his interest in 229 King Street for Plaintiff's benefit. This message was relayed to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage or guarantee his interest in 229 King Street for the proposed project.

b.) Not until on or about November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing documents were sent to Defendant to be reviewed for the first time. See also Defendants Answer and Counterclaims to Plaintiff's Request to Produce.

c.) Not until November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing attorney for Plaintiff sent an email that "[t]here will also be hypothecation agreements, I believe." See also Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

13. If this defendant claims that he informed plaintiff he would refuse to mortgage his interest in 229 King Street as part of the financing of the project to expand the building, identify the date and circumstances and means by which this was communicated to plaintiff.

Answer: See Defendants Answers/Counterclaims and Answers to Plaintiff's Request to Produce, Answer Nos. 12 and 14.

14. Does this defendant claim that he never agreed to mortgage his interest in 229 King Street as part of the financing of the project to expand the building?

Answer: Yes, see Answer Nos. 11 and 12; this Defendant never agreed to mortgage his interest in 229 King Street for the proposed project. There was never an agreement to mortgage Defendant's interest in 229 King Street as part of the financing for the proposed project being considered/explored for new construction above 229 King Street at any time, as further explained below.

In the initial stages of the parties considering/exploring new construction above 229 King Street, this Defendant told Plaintiff he would not mortgage or guarantee anything for the proposed project. See Interrogatory Answer Nos. 11 and 12 and see paragraphs 70 & 71 of this Defendant's Answer and Counterclaims. Plaintiff sent written correspondence on December 19, 2012 implying that he wanted Defendants to personally guarantee the loan. Defendant Spiro Ferderigos immediately responded the same day via written correspondence; that he outright refused to guarantee, mortgage his interest in 229 King Street, and/or accumulate any debt for the proposed project being considered. Also, this Defendant was clear with Plaintiff he would not mortgage or guarantee or encumber his interest in 229 King Street for the proposed project. (See Defendants' Answers/Counterclaims for additional details).

With this clear understanding, the parties continued to consider and explore the possibility of the proposed project from 2012 forward. It was not until a few days prior to Plaintiff unilaterally scheduling a closing for the proposed project that Plaintiff, on or about October 17, 2014, for the first time, informed Defendant (through Jacob Ferderigos) that Plaintiff demanded Defendant provide him with a mortgage in his interest in 229 King Street so Plaintiff could get Plaintiff's loan. For the first time ever, shortly thereafter, Phillip and Spiro Ferderigos, on or about October 19, 2014, informed Plaintiff that they would consider providing a mortgage of their interests in 229 King Street for the proposed project on the condition that Plaintiff would sign a side/ancillary agreement that Defendants felt was necessary to protect their financial interests. Plaintiff eventually refused to sign the side/ancillary agreement Defendant required in order to consider mortgaging his interests in 229 King Street and also placed even more demands on this Defendant, which the Defendant rejected. (See Defendants Answers/Counterclaims for additional details).

It was only after Plaintiff demanded on or about October 17, 2014 that this Defendant provide a mortgage over his portion of 229 King Street for the proposed project to move forward, did this Defendant attempt to work with Plaintiff in order to determine if Plaintiff would agree to very specific terms that allowed Defendant to be comfortable with mortgaging his interest in 229 King Street for the proposed project if, and only if, this Defendant had assurances, to his satisfaction, that his property would be protected from Plaintiff defaulting on his obligations. In an effort to respond to the new demands of the Plaintiff (which had previously been rejected), Defendant considered mortgaging his interest of 229 King Street for the proposed project if Plaintiff signed a side agreement that Defendant believed protected his interest; however, via his texts/emails referenced in the pleadings, Plaintiff refused to sign the side

agreement without preconditions and made additional demands of this Defendant, demands which this Defendant never agreed to, and the negotiations fell apart. Further, with the scheduling of the second closing, Plaintiff made additional demands on this Defendant which this Defendant never agreed to.

15. If you take the position that the LLC which operates the suites rental business being obligated to make payment on the note to South Coast Bank would have a material effect on you, explain that effect why you allege this is true.

Answer: This Interrogatory is irrelevant. Defendant never agreed to mortgage or guarantee or in any way encumber his interest in 229 King Street for the benefit of the Plaintiff or for anyone else. This Defendant was bringing cash to fund his portion of the proposed project outright and this Defendant was looking forward to enjoying the profit that would come from the investment once the proposed project was built. This Defendant never agreed to encumber his interest in the LLC or any income stream that the proposed project would bring. Per the Plaintiff's bank closing documents, the income and/or assets that would potentially be used to pay the Note would include Defendant's own profits from the rental income. Defendant never agreed to such arrangement. Defendant further never agreed to have the LLC pay a Note or to use his rental profits in such a manner. Further, based on the incorrect closing documents, which were never agreed to, having the LLC obligated to make payment on the note potentially exposes this Defendant to personal liability and further potentially interferes with this Defendant's cash flow/profit from the LLC.

Defendant also objects to this Interrogatory as it is confusing. Subject to this objection, Defendant is unable to answer this Interrogatory as the final cost of the proposed project was never established or agreed to by the parties, and, as a result, Defendant cannot state what the

income from the rental suites business would be. Defendant further objects because he never agreed that any payment was to be made by the LLC and never agreed to/was under no obligation to have a payment for a loan required by Plaintiff to be potentially paid out of Defendant's share of the rental suites business.

16. Identify the date and circumstances under which you became aware that the project to expand the building would be for an additional floor over and above what was originally investigated by you, the other defendants and plaintiff.

Answer: See Defendants Answer/Counterclaims and Defendants Answers to Requests for Production. This Defendant craves reference to the texts and emails produced in discovery. Plaintiff represented that the total cost of the project would be less than One Million Dollars and, based on that figure, this Defendant would have been responsible for one-sixth of that amount, something that this Defendant had in cash and was willing to invest at the time for the proposed project. Defendant recalls that he was notified that the costs of the proposed project had ballooned from an estimated $900,000 to well over Two Million Dollars, on or about September 9, 2014.

17. If you disagree that the rental income from the suites rental business would be sufficient to cover the payments on the loan financing the expansion of the building at 229 King Street, explain why that is true and include what you think the shortfall in funds to cover said payments would likely be.

Answer: As the final cost of the proposed project was never established, Defendant does not know at this time if income from the rental suites would have been sufficient to cover payments on any loan obtained by Plaintiff to cover his fifty percent (50%) portion of the construction

EXHIBIT D

costs. Furthermore, this Interrogatory is irrelevant to this Defendant. Defendant never agreed to have his share of profits from the rental suites to be used to pay a loan.

18. Do you agree that by the date of the first scheduled closing for the loan from South Coast Bank to finance the expansion of the building at 229 King Street all necessary design and regulatory approvals had been secured to allow the expansion to proceed? If you do not agree, explain why.

Answer: Defendant objects to the terminology of this Interrogatory; there was no expansion of the building, the proposed project was to build a new building. Further, Defendant is not aware if all necessary design and regulatory approvals had been secured to build a new building above 229 King Street by the time Plaintiff unilaterally scheduled a closing. However, Defendant knows that the final cost of the proposed project was never known. Decisions still needed to be made and the full cost of the proposed project was still unknown, including decisions/costs for windows and sprinkler systems, both material matters potentially increasing costs significantly. See also Defendant's Answer/Counterclaims and Answers to Request to Produce. Defendant craves reference to the texts/emails between the parties.

K&L Gates LLP

By: _____
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EXHIBIT A

GENERAL OBJECTIONS

1. Defendant objects to the Requests to the extent that they seek to impose any obligations beyond those provided for by the South Carolina Rules of Civil Procedure ("Rules") or any other applicable laws or rules.

2. Defendant objects to the Requests to the extent that they seek information contained in documents that were prepared for or in anticipation of litigation, constitute attorney work-product, contain or divulge attorney-client communications, contain confidential or proprietary business information, or are otherwise protected from disclosure under applicable privileges, laws or rules. Defendant does not intend to disclose information that is privileged or otherwise immune from discovery. Disclosure of any protected or privileged information in response to the Requests shall be deemed inadvertent and shall not constitute a waiver or prejudice of any privilege or any other ground for objecting to discovery with respect to any such documents, nor shall such inadvertent disclosure waive or prejudice Defendant's right to object to the use of any such information or documents during this or any subsequent proceeding.

3. Defendant objects to the Rquests to the extent that they seek information and documents that are a matter of public record, that are within the knowledge or possession of Plaintiff, or to which Plaintiff's access is equal to that of Defendant, on the grounds that providing such information and documents would impose an unreasonable burden and expense upon Defendant.

4. Defendant objects to the Requests to the extent that they seek information that is overly broad and unduly burdensome for Defendant to locate and will result in an unreasonable

expenditure of costs that exceeds the value and relevancy of finding any such information and is disproportionate to the amounts in controversy in this case.

5. Defendant objects to the Requests to the extent that they seek information prior to or beyond the scope of the subject dispute.

6. Defendant objects to the Requests to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Defendant's answers and objections to the Requests are made without waiving, or intending to waive, but on the contrary preserving, and intending to preserve: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, confidentiality, authenticity, admissibility, or any other proper grounds, as evidence for any purpose, in whole or in part, the use of the responses provided by Defendant, in any subsequent proceeding, or in any trial in this or any other action; (b) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the Requests to which Defendant has responded herein; and (c) the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein.

8. No objection or limitation, or lack thereof, made in these answers and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

9. Defendant's answers to the Requests are made to the best of his personal knowledge, information and belief. Defendant's discovery and investigation of the facts relevant to this case are ongoing.

11. All of these general objections shall be deemed continuing throughout the responses to the specific items of the Requests that follow even when not further referred to in said responses. The failure to note the application of the general objections is not a waiver of

these general objections with respect to any Request. Defendant also reserves the right to assert additional general and specific objections arising from matters discovered during this litigation.

12. Defendant reserves the right to introduce and rely upon any documents or materials listed and information provided in any other party's discovery Answers, or any materials introduced or information obtained at any deposition of any party or witness. In addition, Defendant reserves the right to introduce any documents or materials as rebuttal, if necessary.

Certificate of Service

I hereby certify that on the 1st day of June, 2016, I served the foregoing Answers to Plaintiff's First Set of Interrogatories to Defendant Phillip Ferderigos upon the parties to this action by U.S. mail, sufficient postage attached thereto, correctly addressed as follows:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd.
Building F, Suite #100
Mt. Pleasant, SC 29464

John A. Massalon
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402

M. Dawes Cooke, Esquire
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

Legal Assistant

EXHIBIT D

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF PHILLIP FERDERIGOS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3919
PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS,
Defendants.

ORIGINAL

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: PHILLIP FERDERIGOS
DATE: SEPTEMBER 21, 2016
TIME: 11:08 A.M.
LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
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A. I don't -- I don't know what you mean by "collateral demand." I -- I -- let me just say this, and maybe we can cut through. I mean, he's trying to force me to do what I didn't agree to do with the lawsuits that he's filed.

Does that make -- is that what you're getting? 'Cause I'll tell you that.

Q. That's the answer. That that's all he's asked for. I want to be clear about this. I don't want to hear about something later. That's all he's asked for.

A. As I'm sitting here today, I can't think of anything.

Q. Okay. All right. Now, let me ask you about your defamation claim, which begins on page 31 of your answer.

A. I thought that was a separate -- okay. No. Go ahead.

Q. Well, you have a counterclaim. You have a counterclaim for a defamation/slander/liable.

A. My counterclaims. Go ahead.

Q. Starts on page 31.

A. No. I understand. Go ahead.

Q. There are a number of -- some of them are somewhat related; and I'm going to ask you,

as you can imagine, similar questions about all of these.

A. Okay.

Q. 147 you say that "Athan Fokas threatened to publish false and defamatory statements by informing Phillip in writing that he cannot wait to tell everyone in the community that a million dollar project did not move forward because Phillip could not eat for free at Old Towne Restaurant."

Okay. Now, you say he threatened to you that he was going to say this; right?

A. Yeah.

Q. Of course, that's not defamation, is it?

A. Well, if he tells a third party.

Q. Did he tell a third party?

A. Well, discovery's ongoing. Let's find out.

Q. Who do you think he told?

A. Discovery's ongoing. I don't know.

Q. No, that's not -- I'm asking you --

A. Oh, sitting here today?

Q. I'm asking what you know.

A. Sitting here today? I don't know sitting here today.

Q. Okay. All right. Has anybody come back to you and said that he made such a statement? They heard he made such a statement?

A. Well, he threatened to make it.

Q. But has anybody told you that they heard that he did make the statement?

A. Well, I mean, I believe once we depose some people that, yes, such as the individual that I listed in the discovery responses are probably going to verify that. And I -- I don't know. Anyone from the contractor to the manager to several other people. We haven't deposed them yet.

Q. You say you believe that, but you're not --

A. 'Cause he threatened me, Stan.

Q. You're not telling me that --

A. Yeah. Sitting here today -- let's just do it like this. Sitting here today, I don't know.

Q. That is all we can get. So you don't -- you haven't talked to Mr. Hanson about this?

A. No.

Q. All right. Okay. You haven't talked to Kevin Carroll about this?

A. No.

Q. You haven't talked to Irene Fokas about this? Your aunt?

A. No. I mean, it's her deposition, whatever, you know. I don't talk to -- to her about stuff.

Q. Okay. All right. Okay. What harm have you suffered from this?

A. This defamation?

Q. If -- if this particular thing has been communicated, how have you been harmed?

A. My reputation is harmed.

Q. Reputation is harmed how?

A. It's not true, and it casts me in a negative light.

Q. Okay. Is everything that casts everything in a negative light defamation?

A. I don't know. You're asking me a legal question; but in this circumstance, it makes -- I believe it's defamatory, per se, if he did it.

Q. How is it defamatory, per se? Is it damaging you in your profession?

A. Defamation could -- if he's -- if he's spreading rumors that aren't true about me, yeah, I'd say he could. Like when he says -- we're

going to go on to it about being a businessman and not having any sense. I believe it's the fifth prong of the defamation --

Q. We're not there yet.

A. Let me finish. Let me finish. I'm answering.

I believe it's the fifth prong of defamation, per se, that he violated with all these emails that I'm referencing to.

Q. How have you been -- how has your reputation as a lawyer, we'll put it that way, been damaged if somebody has said that you pulled out of this multi-million dollar project because you couldn't eat for free at Old Towne?

A. It damages me as a lawyer, and it damages me as a businessperson.

Q. How does it damage you as a lawyer?

A. What are you -- are you kidding me?

Q. No. I'm asking a serious question.

A. If -- if Athan goes around saying this to everybody like he threatened, then people are going to think I'm an idiot. That's not why the project fell apart, Stan. We already covered why the project -- why the proposed project fell apart.

Q. Okay.

A. And this -- I'll stop.

Q. Your testimony is that this damages you as a lawyer because people would think you were an idiot if you -- if that were true.

A. Yeah. And it's not -- it's not true. It's defamatory as a lawyer and as a businessperson is my testimony.

Q. Well, of course, the not being true part is just part of the inquiry about defamation. It's also got to damage you in some way that the law recognizes.

A. Oh, I think the law recognizes that damage, Stan.

Q. That --

A. Harm to my reputation. I think that's what defamation is.

Q. You think this is harm to your reputation as a lawyer? That's what I'm getting at.

A. As a lawyer and as a businessperson.

Q. Now, your business activities, other than being a lawyer, are that you own some rental properties; right?

A. Yes.

Q. How does it damage you as somebody who owns rental property?

A. Same reason. Somebody's going to hear that false statement and think like, "Well, oh, Phillip's stupid. He's not a good businessman."

Q. Has anybody told you or have you heard by rank hearsay that somebody has said, "I think Phillip Ferderigos is stupid because he got out of a deal because he couldn't eat for free at the restaurant"? Has anybody told you that?

A. Well, you combined two things. I think I have emails from Athan that say I'm a stupid businessperson.

Q. But that's not defamation, is it?

A. Well, it copied Jacob and Spiros.

Q. Okay. Because it was communicated to your brothers?

A. Yeah.

Q. Okay. How have you been damaged by that?

A. It's not true.

Q. Have they denied you business? Have they caused you to lose business in some way?

A. I think you and I have a different understanding of what "defamation" means as far

as damages.

Q. We might. But I'm asking you questions about the facts.

A. Yeah. No. My -- my brothers Spiros and Jacob don't think any less of me because of his threats.

Q. Okay.

A. And his defamation.

Q. And you don't know of any business you've lost either as a lawyer or as a -- an owner of rental property because of this; is that correct?

A. Well, I mean, I don't know; but, as I said, sitting here today, discovery is ongoing. If -- if, you know, if we discover that he did tell third parties, I mean, we'll see when we get there.

Q. Okay. Okay. Number 48 seems to repeat. It says that you believe that he did carry out these threats. So we won't beat that horse anymore.

Number 149 says that because he wrote you and Spiros have no business sense, and I'm sure we will be butting heads with Greek properties in the future. Very sad.

How, first of all, is that defamation to you; and then how have you been damaged by that?

A. If somebody does not have business sense, it means they're not a good businessperson; and, again, I don't know if he's told any third party that. We will find out.

Q. Okay. So you -- and, again, you don't know that you've lost any business or lost anything as a result of this?

A. Sitting here today, I don't know how much harm his defamation has caused me. I agree.

Q. Okay. Well, sitting here today, you don't know if there's been defamation. You don't know if he told anybody other than you.

A. I disagree. He sent texts to my brothers about it. That in and of itself, plus I don't know about third parties; but we'll find out.

Q. And no business sense, isn't that an opinion?

A. Whoa, Stanley. I don't know if it's an opinion or a fact. That's a jury issue.

Q. Okay. All right. Let's see. Publish -- publish statements are bad business people and/or do not have any business sense.

That seems to be repetitive so we'll move on to 151.

Did he -- he -- he defamed you to third parties by saying that you and Spiros are accusing him of setting fire to 229 King Street. Okay. How -- who is it that you claim he communicated this to?

A. Same answer. Discovery is ongoing, and he clearly put it in his pleadings as well. That's what he alleged.

Q. Okay. Well, never mind what's in his pleadings but what -- in other words, communicating to third parties outside of the pleadings of the lawsuit, do you have any knowledge that he did that?

A. Discovery's ongoing. Not sitting here today.

Q. So you don't know today. All right.

You say it's defamation that he said to third parties the project wasn't going forward because you and Spiros were not doing what you agreed to do.

Okay. Who do you believe he communicated that to?

A. We'll find out, but I suspect -- and let

me incorporate my interrogatory responses, but that's what I suspect we will determine via deposition testimony. I believe he told several individuals that: Kevin Carroll, potentially the manager. I don't know. We're going to find out when we depose these folks.

Q. But you don't have any evidence that he told them that sitting here today.

A. Well, I have -- sitting here today, I don't have any direct evidence, no.

Q. Do you have any indirect evidence?

A. No.

Q. All right. So no one has told you that these statements were made to any particular person.

A. Well, actually that's -- it's attorney-client privileged and work product privileged after anticipation of litigation. So I'm not going to open the door and testify about it. That's why I answered no.

Q. I'm going to -- I'm not sure I'm -- if either you know -- either you have some information that somebody has -- that Mr. Fokas here has communicated this thing to a third party or you don't.

A. Right.

Q. I'm asking you what that is and who that person was?

A. I believe that I have a good faith basis that that sort of information was communicated to Kevin Carroll.

Q. To Kevin Carroll.

A. But I'm not going to tell you who because it's attorney-client/work product privilege, and it was after the anticipation of the lawsuit.

Q. Because your lawyer told you this? Is that what you're telling me?

MR. FARRIER: You know, Stanley, this is sort of new territory to me. I'd like to consult with him on this so I can understand whether or not to instruct him not to answer.

MR. BARNETT: Okay. All right. Why don't we -- why don't we keep going. We'll set that aside. Let me make a big note 'cause I'll forget. Attorney-client privilege.

Q. But it's Mr. Carroll is the guy. That's the person that you were speculating this was communicated to?

A. You use the word "speculating." I

believe it's -- I believe -- I believe things were said to him.

Q. I beg your pardon?

A. You're the one that used the word "speculating." I believe that things were said to him, and I'm looking forward to taking his deposition to find out.

Q. Okay. You believe it. All right. Okay. So he's the guy. All right. But you've not spoken --

A. He's one of them, yes.

Q. All right. And you haven't spoken to Justin Hanson about this.

A. No.

Q. And you said you don't speak to your aunt. So it's not her.

A. Right.

Q. Okay. I really don't understand paragraph 153. You're going to have to explain that to me, if you can.

"Athan Fokas published false defamatory statements to third parties that he was not seeking a mortgage and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project."

What do you mean by that?

A. Well, you got to read the second part of that sentence.

Q. Well, no. It's a standalone -- it's a standalone statement. You're saying he published to third parties that he -- by Athan, that's him; right? Athan Fokas is the "he," was not seeking a mortgage and/or other financial assurances from Phillip and/ or Spiros Ferderigos for the proposed project.

A. "While at the same time filing a lawsuit demanding that we mortgage and plus or provide financial assurances of their interests for Athan Fokas' benefit for the proposed project."

So, in other words, he's making me look like I'm a stupid businessperson and a stupid lawyer by saying that the project isn't happening because of something I failed to do. I think it's pretty clear.

Q. Well, that's not quite what it says; but he's filed -- he's filed a lawsuit. That's a standalone statement. So who did he communicate to? What -- who are these third parties --

A. Well, the --

Q. -- that he was not seeking a mortgage

and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project? Who did he communicate that to do you say?

A. Well, discovery will hopefully reveal that.

Q. Same answer. You don't know right now.

A. Sitting here today, no, no evidence.

Q. All right. Direct or indirect; right?

A. Sitting here today, no evidence.

Q. And what harm have you suffered if this has been communicated to third parties --

A. That same --

Q. -- that you are aware of?

A. The same answer as far as reputation. Damage to reputation.

Q. It would damage your reputation?

A. As a lawyer and as a businessman, yes.

Q. Okay. So every time somebody says to you if you're out there in the rental business. All right. Every time somebody says to you, "You didn't -- you're not complying with our agreement for our short-term rental. That agreement says that you were supposed to provide fresh towels every day, and you didn't do it. You're not --

EXHIBIT E

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs.
CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS
DATE: NOVEMBER 19, 2015
TIME: 9:37 A.M.
LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA
REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
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A. The other day --

THE WITNESS: The other day I had to come here to the office, to Phillip and Spiros.

THE INTERPRETER: The interpreter did not hear what you said or understand.

A. I came late, around 12; and the next day I received a paper saying that I had to go to the office where Spiros -- Spiros is. I asked them to cancel it or to reschedule because I came from a very long trip, but they did not do it.

Q. And the day of the week that you returned, was it a Friday?

A. I don't remember exactly.

Q. Okay. Okay. All right. Mrs. Fokas, did you -- before you went to Greece, did you discuss with your son Athan --

A. Yes.

Q. -- some allegations that you heard had been made about him?

A. Yes.

Q. And what were those allegations?

A. He was playing Tavli with his father. I told my -- my son to be very careful. I heard that they're going to come after you, and they're going to -- they're going to say things against

you.

They're going to say things about you about the insurance. They're going to say that you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.

Q. You said a fire. Was there a specific place that he was accused of starting a fire?

MS. THIEM: Objection.

A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.

Q. And who was -- who were the people that you thought might accuse your son of these things?

MR. BOWERS: Object to the form.

A. His cousin. They were accusing him. They were going to destroy him.

Q. What are their names?

A. Spiros and Phillip Ferderigos.

MR. BARNETT: Do you want to chat with me?

MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

technicalities.

A. Okay.

Q. You didn't seem bothered by it.

Okay. All right. Let's go forward.

A. Okay.

Q. This discussion you had with your son, do you remember what month this was?

A. I don't remember exactly. Could have been April or May.

Q. Okay. It was in the spring.

THE WITNESS: Uh-huh, in the spring.

A. Yes.

Q. And where did you learn that these allegations might be made?

MR. BOWERS: Object to the form.

A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.

It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

EXHIBIT F

hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. You referred -- you said "them." "She worked with them," I think you said.

A. Yes.

THE INTERPRETER: I'm telling her to please state in sentences so that I can translate.

A. Yes. She has -- she does work with her cousins. They have a store together or stores. They have businesses together.

Q. And, again, the cousin's names are?

A. Spiros Ferderigos, Phillip Ferderigos, and Iakovos Ferderigos.

Q. When your daughter said that these things might be -- these allegations might be made against your son and that it would destroy him --

A. She was very afraid, and I was very afraid.

Q. Yes. Did your daughter say that it was one person or multiple people that would do these things?

MS. PHILLIPS: Objection.

A. She said her cousins will do it. Her cousins.

Q. Okay. Thank you. And those are the same people you just named; right?

MR. BARNETT: Ma'am, are you there? Madam interpreter?

(Pause in proceedings.)

MR. BARNETT: You there?

THE INTERPRETER: Yes. I could hear everything you said. You could not hear me.

MR. BARNETT: Yes. There was a little blip there.

THE INTERPRETER: I don't know what happened, but I never left. What was the last question?

MR. BARNETT: You know, Madam Court Reporter, do you mind reading it?

(The pending question was read back by the reporter.)

MR. BARNETT: And I think we had an answer.

THE REPORTER: That was the answer we couldn't hear.

A. Yes. It was -- it was her cousin.

Q. Okay. All right.

Q. Does she -- do you know what the specifics of the accusations are?

A. For fire, insurance, things like that.

Q. But Rania did not tell you these things.

A. Not for the attorney.

Q. Who told you these things?

A. Either the attorney or my son.

Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?

A. No. I said I was -- I was forced to say this to my son when he came here.

Q. Today?

A. Not today. When I came back -- when I came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

false insurance claims?

A. Yes. He told me that these -- the -- the accusations against Athan.

Q. And had your son Athan previously told you that Phillip and Spiros were accusing him of setting the fire at 229 King Street and filing false insurance claims?

A. I said that because my daughter told me. Are we going to repeat the same thing?

Q. No. But I want to know did your son Athan ever tell you that Phillip and Spiros were accusing him of those things?

A. Athan said that they are looking for things to accuse me.

Q. And --

A. And I -- and I -- and I heard them -- I heard the things from my daughter; and I told him, "They're accusing you of insurance."

Q. So no one other than Rania told you that Phillip and Spiros were accusing Athan of these things?

A. Nobody else.

Q. And then you heard those same things, though, from Mr. Barnett; correct?

A. I heard those things, as I said before,

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ATHAN FOKAS
VOLUME II

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: ATHAN FOKAS

DATE: FEBRUARY 10, 2017

TIME: 2:10 P.M.

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
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PHILLIP FERDERIGOS
JACOB FERDERIGOS
SPIROS FERDERIGOS

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ATHAN FOKAS,
being previously duly sworn, testified as follows:

MR. COOKE: We're back on the record. Just to make sure we're clear on what we're doing here, we had had scheduled for this afternoon a deposition of Justin Hansen. By agreement we're going to postpone that, and we'll work with you on a time. And we had also intended to depose Kevin Carroll at some point. Is it all right if we just agree that we'll work with you on a time?

MR. BARNETT: Definitely, yes, right.

EXAMINATION

BY MR. COOKE:

Q. Okay. I'm going to backtrack only as little as I can possibly do and cover things that were already covered before, but here is an accounting that you have previously provided.

(Exhibit No. 36 marked for identification.)

Q. Who prepared this accounting?

A. I think Joe Tucker.

Q. So this is an accounting of just the account of the architectural fees that were paid?

A. And some engineering.

Q. Do these dates on the right, is that the

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for the notes in the first page.
Q. Yes or no?
A. I'm not sure. I'm not sure how that works. But the LLC was the reason they had the stream of money that would pay for the note in the first place.
Q. If you don't know, you don't know.
A. Okay.
Q. Did you tell your sister Rania that Phillip and Spiros promised to give you a mortgage and that they broke that promise?
A. I don't know.
Q. I'm going to ask you that same question as to several people. Did you ever tell that to Maki Nikatos?
A. I don't know.
Q. Did you ever tell that to Irene Fokas?
A. I don't think so.
Q. Did you ever tell Justin, the manager?
A. Can you repeat that question?
Q. Yes, that Phillip and Spiros promised to give you a mortgage and they broke the promise.
A. That was the original agreement that we had with Southcoast. We all agreed to sign on the mortgage.

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Q. Did you ever tell Justin, the manager at Old Towne, that Phillip and Spiros made an original promise to give you a mortgage and that they broke that promise?
A. I don't think so.
Q. Okay. Same question as to Kevin High.
A. I don't think so.
Q. I'm going to ask you that as to Spiro Fokas.
A. My father?
Q. Yes.
A. I don't think so.
Q. All right. Now, I'm going to ask you a question that is like that pertaining to those same individuals. Did you ever tell your sister Rania that Phillip and Spiros are stupid?
A. I don't think so.
Q. Did you ever tell that to Maki Nikatos?
A. I don't think so.
Q. Did you ever tell that to Irene Fokas?
A. Ditto.
Q. You did not tell that to Irene Fokas?
A. I don't think so.
Q. How about Kevin High?
A. I don't think so.
Q. How about Spiros Fokas?

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A. I don't think so.
Q. How about Justin, the manager?
A. I don't think so.
Q. All right. Next question, same program, did you ever tell your sister Rania that Phillip and Spiros are liars?
A. I don't think so.
Q. Same question is to say Maki Nikatos.
A. I don't think so.
Q. I'm going to read these names, and at the end you can just say, I don't think I told any of those people that, okay? It's quicker.
A. That would be quicker.
Q. Yes. I don't know if I said Maki Nikatos.
A. You did.
Q. Irene Fokas?
A. You did.
Q. Justin, the manager?
A. You did.
Q. Kevin High?
A. Yes.
Q. Spiros Fokas?
A. All those, I don't think I said any of those things about Phillip.
Q. Okay. Or how about Spiros?

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A. Or Spiros.
Q. All right. Did you and Kevin High ever talk or communicate about preferred advertising on your website?
A. No.
Q. I remember Dawes identifying this, and so I apologize if I'm asking a question related to Kevin High and his buying the property.
A. Your apology is accepted.
Q. I was apologizing to these guys, not to you.
A. Okay.
Q. What happened with Kevin High and his buying the property?
A. His buying what property?
Q. 493 King.
A. He did not buy 493 King.
Q. I know. But originally he was on the contract for sale, and then in a modification he was taken out as a purchaser.
A. Yes, we talked about originally he showed me the property and he would like to be a partner in the property.
Q. Okay.
A. But that didn't happen.
Q. Okay. Going to show you a paragraph out of

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our answer and counterclaim in this suit.
A. Okay.
Q. It is paragraph 71 out of our answer and counterclaim. Have you got a copy?
MR. BARNETT: I do, yes.
THE WITNESS: Could I ask you a question? How long do you think you will be deposing me because my wife wants to know.
Q. I think this is my last question, but it depends on your answer.
A. Okay. Tell me what answer you would like to hear.
Q. Look at paragraph 71 and read it to yourself, please.
A. I see it. I read it.
Q. Have you read both pages?
A. Yes.
Q. Do you agree in full or disagree in full with the allegations of that paragraph?
A. I disagree in full with the allegations of this paragraph.
Q. Is there anything in this paragraph which you would agree with?
A. We were sitting -- our kids were at dance practice one time at the church hall, and Phillip I

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think came and sat at the table where I was sitting; and I think we were drinking tea that day; so we had tea, and I don't remember anybody saying pussy or ignorant or moron. This may be how -- this may be what Phillip said happened, but this is not what happened. He said I accosted him, and I remember just sitting down at the table, drinking tea. And there were a lot of people at the table as well. It wasn't just the two of us.
Q. Do you agree that this is the only -- I'm sorry. You've already testified that there were many, many conversations about the Old Towne Suites project and about the mortgage. You've already testified about that, right?
Is that a yes?
A. That we've already testified about the --
Q. You already testified that there were --
A. Many conversations.
Q. -- many conversations concerning the mortgage.
A. Right.
Q. In this conversation what is being alleged is that Phillip and you had a conversation in which he said, I am not going to mortgage the property.
A. I don't remember that conversation.

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Q. You don't recall that conversation occurring at church at some point?
A. No.
Q. Okay. You don't recall a conversation that occurred at church during which Phillip said he was not going to guarantee the property?
A. No.
Q. Did you have a conversation with Phillip, I mean a verbal conversation with Phillip, not writings because we've got these writings here; but did you ever have a verbal conversation with Phillip during which he said, I am not going to mortgage the property and I am not going to guarantee anything related to this project?
A. No.
Q. Do you recall anyone else that was at the table that day?
A. I think it was -- it might have been Tony Forsberg, he was -- his kids were at dance as well. It might have been -- what is his name? There were a few people there, like Stephanie Moskos might have been at the table. She usually sat there. And there's a guy named Thanasi Tsimidilis, his wife is usually at that table as well.
Q. All right.

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A. And I think Tula Zecopoulos was there as well.
Q. Okay. Why don't you go ahead and spell those last two names now.
A. Zecopoulos is Z-E-C-O-P-O-U-L-O-S.
Q. Okay.
A. Tsimidilis -- I have to write it down.
THE REPORTER: Write it on here for me, that would be perfect (indicating).
THE WITNESS: I think that's how you spell his last name. I don't know his wife's name, but that's -- his name is Thanasi Tsimidilis. Thanasi is T-H-A-N-A-S-I.
Q. I just want to make sure I understand your testimony. There's a difference between a recollection and an educated guess or probability.
A. Right.
Q. Are you saying you actually remember these people being there or that these are the typical people that were there for this event.
A. Well, usually they have the -- the families whose kids do dance, we all sit at one table, and it's typical the people that always sit there. And Stephanie Moskos is always there. Tula is usually there. I think she was sitting to my -- no, I

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Q. So do you have an email like this where you sent that commitment letter to Phillip and Spiros?
A. I haven't seen it. I don't know. Maybe I gave that to them in person, I copied it and gave that to them in person, but I don't remember.
Q. Or might you not have given it to them at all?
A. No, they would definitely have known that we received the million dollars or we would have not gone forward.
Q. I thought you said yesterday that you may have relied on Jacob to inform his side of the family.
A. To give it to them. If I did, I made a copy of it, gave it to Jacob, Jacob might have given it to his brothers; but we all knew about it because we were excited that we got the new loan, and we talked about it at our church gatherings as well.
Q. I noticed that you, in this email where you are introducing the letter, you do refer to the term of it, that is, you say that you talked the banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan. Is there any other email or other communication where you called Spiros's attention

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to the collateral required in this commitment?
A. I'm sure we talked about it, but I don't know if there are other emails out there. I would have shown all the emails.
Q. And how soon after this email did Ms. Haines issue the closing papers?
A. I'm not sure.
Q. Okay. You were shown Exhibit 52 which is an email from Pete Paulatos to Spiros, correct; and this was evidently sent to him around November 19, 2014.
A. Correct.
Q. Now, when did you first see this email?
A. I guess maybe last -- I don't know, couple days ago.
Q. So you've never seen that before?
A. No.
Q. Okay. Do you remember this morning seeing Exhibit 3 to the deposition of Mr. Odom?
A. Okay.
Q. Look at the page that's numbered 3 at the bottom.
A. Okay.
Q. There's an email from you to Jeff Odom dated November 20, 2014. Do you see that?

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A. Yes.
Q. It says, hey, Jeff, check out the email below. It seems that we only need $1,750,000 now. Look at the math below and let me know if it makes sense. Did you send that email?
A. Yes.
Q. And the forwarded message was a message from Spiros to you and Jacob and -- well, to you and Jacob with a copy to, evidently, himself and to Phillip; do you see that?
A. Yes.
Q. And it's regarding payments on loan, and you see it begins on the next page, Phillip is working on the agreement and anticipates, and so forth?
A. Yes.
Q. And then do you see about a third of the way down he says, here is the email from my accountant.
A. Correct.
Q. Do you see that?
A. Yes.
Q. All right. Now, compare the email that he quotes with the email that you're now saying you saw for the first time this week.
A. The email that I saw for the first time this week was the email from Pete Paulatos to Spiros.

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Q. Right.
A. The content was the accountant that we had no clue who the accountant was until Pete showed us the email.
Q. Yes. So do you agree that what Spiros forwarded to you in this email back on November 20, 2014, is essentially the same email that Pete Paulatos sent him on November 19?
A. Well, it's not the same email because he had other words up here, ha, yes, typo, 1.75 million, you are awesome, glad to know I was close, we are just going to do 7 point -- might have been 1.75 million.
I don't know how many other emails there are about Pete Paulatos talking about the project with Spiros or how many times they talked about the project with Spiros, but this is the first time that I knew that Pete Paulatos was involved in this case.
Q. But maybe I misunderstood the thrust of your being shown this exhibit. I thought that maybe it was to try to show somehow that Spiros had hidden this information from you, but I just want to make sure that we agree that he forwarded the substance of Mr. Paulatos's email to you on November 19,

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Q. Do you know whether your cousin Spiros is a close friend with Mr. Paulatos?
A. They're childhood friends and we go to church together and we often see each other.
Q. All right. Now, John Massalon asked you some questions about your complaint and your allegations against Jacob. I'm not going to re-ask you those. Before this lawsuit was filed, when Phillip and Spiros were telling you they did not want to go forward with the deal, did you discuss with Jacob the possibility that you might file the lawsuit?
A. Yes.
Q. Did you tell Jacob that you did not want to join him in the lawsuit?
A. Yes.
Q. Did you ask Jacob to enter into some sort of an agreement that if his cousins agreed or were required to go forward with the project that he would go forward with the project?
MR. MASSALON: I object. That's settlement discussions.
THE WITNESS: I think so. I think I did.
Q. What did he say?

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MR. MASSALON: Same objection.
THE WITNESS: He agreed to go forward with the project.
Q. Did he refuse to enter into an agreement?
MR. MASSALON: Same objection.
THE WITNESS: He would have to have the agreement from his brothers to have an agreement.
Q. Okay. So he wouldn't enter into an agreement unless his brothers said it was okay.
A. Yes.
Q. All right. Have you ever told anyone, I won't borrow Richard's list of people, but anyone other than your cousins -- I'm not asking you what you told your cousins.
A. Okay.
Q. Did you ever tell anyone else other than your cousins that Phillip was a bad businessman, and by that I mean a bad businessman or a really, really bad business -- any language at all disparaging his skill as a businessman?
A. No.
Q. Did you ever say that kind of thing in any words about your cousin Spiros?
A. No.
Q. Did you ever say that thing by whatever

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words about your cousin Jacob?
A. No.
Q. Have you ever accused your cousins -- well, take them one at a time. Have you ever said to any person other than your cousins that Phillip is dishonest in any way?
A. No.
Q. By whatever words.
A. No.
Q. Spiros, did you ever tell anybody that you thought Spiros was dishonest?
A. No.
Q. Did you ever tell anybody that you thought Jacob was dishonest?
A. No.
Q. Did you ever tell anybody that this project to expand the suites at 229 King Street was not going forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant?
A. No.
MR. BARNETT: That's all I have.
MR. COOKE: I've got a few follow-up.
BY MR. COOKE:
Q. This is Exhibit 51. Take a look at that. This is dated September 24, 2014. Says, well, I

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don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5 percent for the life of the loan, which is unheard in the current banking industry.
Do you now agree that you did not, in fact, talk your banker into getting rid of the five year balloons?
A. Yes. I misunderstood. So I always knew it was a 20-year loan for five year balloons, but then when I went back and reread something, maybe the commitment letter, maybe I -- for a second I interpreted it that way, I shot him out an email -- I don't know if this was around the time when I was at Zero George with all those guys and we were drinking, but definitely it was the original loan that I thought it was, which was a 20-year with five balloon payments.
Q. Okay. And then you did attach a copy of the amended or the new, I guess, commitment letter.
A. Okay.
Q. So my question is, as we've discussed many times, there was another commitment letter that was issued on or about February 5, 2013, for a $1 million loan, correct?
A. Correct, yes.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3891 **CERTIFICATE OF SERVICE**

I, Leslie S. Lenhardt, hereby certify that true and correct copies of Plaintiff's Motion for Partial Summary Judgment as to Counterclaims of Phillip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 25th day of August, 2017, addressed as follows:

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