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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM LAURENS COUNTY
Court of Common Pleas**

Eugene C. Griffith, Jr., Circuit Court Judge

**Case No. 2010-CP-30-1141
Appellate Case No. 2014-002295
Appellate Case No. 2017-000979**

First Citizens Bank and Trust Company, Inc. Respondent.

v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants.

Of whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Petitioners.

APPENDIX

Ella S. Barbery
James H. Cassidy
Joseph O. Smith
Roe Cassidy Coates & Price, P.A.
P.O. Box 10529
Greenville, SC 29603

Attorneys for Respondent

J. Calhoun Pruitt, Jr.
Joshua B. Raffini
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121

Attorneys for Petitioners

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Attorneys for Petitioners

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Linda G. Whiteman; Defendants,

Of whom Park at Durbin Creek, LLC and Kenneth E.
Clifton are the Appellants.

Appellate Case No. 2014-002295

Appeal From Laurens County
Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 5469
Heard November 17, 2016 – Filed February 15, 2017

AFFIRMED

James Calhoun Pruitt, Jr., of Pruitt & Pruitt, of Anderson,
for Appellants.

James H. Cassidy, Ella McKenzie Sims Barbery, and,
Joseph Owen Smith, all of Roe Cassidy Coates & Price,
P.A., of Greenville, for Respondent.

WILLIAMS, J.: The Park at Durbin Creek, LLC (PDC) and Kenneth Clifton (collectively, Appellants) appeal the circuit court's decision to set aside Clifton's

conveyance of property to PDC on the grounds that the conveyance violated the Statute of Elizabeth. On appeal, Appellants claim the circuit court erred in setting aside the transfer of Clifton's interest in the property to PDC when (1) the testimony of both owners of the property established a valid purpose for the transfer, and (2) the property was transferred by both owners in a single deed without any showing of fraudulent intent. Additionally, Appellants claim the circuit court erred in admitting certain testimony regarding a subsequent conveyance of Clifton's interest in PDC to a third party, Streamline Management, LLC (Streamline). We affirm.

FACTS

In 1995, Clifton and Linda Whiteman purchased approximately 370 acres (the Property) in Laurens County, South Carolina. They owned the Property in their individual names as tenants in common from 1995 until September 18, 2008. Testimony at trial established Clifton and Whiteman purchased the Property for retirement purposes. In addition to the Property, they purchased two other tracts of land in the early 1990s, which they also held as tenants in common in their individual names.

Clifton, a successful real estate developer, commonly purchased personal investment property in his name. If Clifton chose to develop the property, he would then transfer his interest in the property to a limited liability company (LLC), which he or employees of his company created. During Clifton's career, he organized over forty LLCs.

To generate capital to finance his developments, Clifton routinely borrowed money from third-party lenders. At issue in this case are three loans between Clifton and First Citizens Bank (Respondent), all generated to finance three separate development projects. The original principal amount of the three loans totaled \$3,873,000. Respondent submitted evidence that none of these loans were intended to be long-term loans and Respondent continued to renew these loans as Clifton made progress payments over the years.

The real estate market began to decline in 2008. In early January 2008, Clifton sought extensions on two of his loans with Respondent that were approaching their maturity dates. Prior to agreeing to a modification of the loans' terms, Respondent requested Clifton submit a personal financial statement. Clifton presented a financial statement dated January 23, 2008, in which he claimed a \$50 million net worth, with his real estate assets comprising over \$48 million of his claimed net

worth. Clifton listed the Property on his financial statement. Clifton claimed he possessed a 50% interest in the Property, it was unencumbered, and it was valued at approximately \$1,570,000. Respondent stated it relied upon Clifton's representations in his financial statement, and as a result, extended these two loans to mature in January 2009.

Clifton's third loan was set to mature on July 12, 2008, but Clifton also requested an extension on this loan. Less than a week prior to Respondent granting the modification on the third loan, Clifton and Whiteman transferred their interests¹ in the Property to PDC. Without knowledge of this transfer, Respondent then granted Clifton's extension request on September 22, 2008, resulting in all three loans maturing in January 2009. During this timeframe, Clifton and Whiteman transferred their interests in the other two tracts of land to LLCs. Clifton also transferred the bulk of his personal real estate holdings to other LLCs.² According to Respondent, it became concerned with Clifton's ability to pay the balance on the outstanding loans. Respondent requested Clifton to bring his interest payments current on the three loans and to provide additional collateral before agreeing to again extend the maturity dates on the loans. Despite Respondent's requests, Clifton failed to provide a business plan or secure additional collateral. As a result, Respondent accelerated the loans and commenced foreclosure proceedings in February 2009. Respondent obtained foreclosure judgments against Clifton, and after foreclosure and deficiency sales took place, a deficiency judgment totaling \$745,317.86, plus interest, was entered against Clifton.

In the midst of Respondent obtaining foreclosure judgments against Clifton,

¹ As discussed *infra*, Clifton testified he and Whiteman chose to transfer their interests in the Property to PDC based upon Whiteman's longstanding concerns regarding personal liability because the Property was being leased to third parties for recreational hunting.

² Specifically, Clifton and Whiteman transferred property they owned in their individual names since 1993 to Gardens at Fourteen, LLC, on July 31, 2008. On September 15, 2008, Clifton transferred personal ownership of four tracts of land that he had owned since at least 2004 to Pawley Plantation, LLC. Three days later, on September 18, 2008, Clifton and Whiteman transferred property they owned in their individual names since 1992 to Pelham at Boiling Springs, LLC. The following day, on September 19, 2008, Clifton transferred ownership of his office building, which he owned individually since 1997, to Central Office, LLC. All of these transfers occurred just prior to Respondent granting Clifton a final extension.

Clifton and his two daughters entered into an assignment agreement on August 5, 2009. In the assignment agreement, Clifton agreed to disassociate from PDC and transfer his membership interest in PDC to Streamline, whose sole members were Clifton's two daughters and his ex-wife. Streamline was nonexistent on the date of the assignment but was subsequently organized in January 2010. Whiteman testified she did not authorize or consent to Clifton's transfer or assignment of his membership interest in PDC to Streamline.

In October 2010, Respondent initiated supplemental proceedings against Clifton in an effort to collect on the deficiency judgment. However, by this time, all of the assets listed in Clifton's financial statement to Respondent were foreclosed upon, transferred to one of Clifton's business partners as payment for outstanding debt, or disposed of in some manner, so that Clifton had no remaining assets to pay his debts to Respondent. Respondent filed suit against Appellants and Whiteman on October 20, 2010, seeking relief under the Statute of Elizabeth³ and alleging causes of action for fraudulent conveyance, civil conspiracy, and partition. Each party timely answered.

The circuit court held a one-day nonjury trial and subsequently issued an order to set aside the conveyance of the Property to PDC. The circuit court concluded sufficient "badges of fraud" existed to infer Clifton possessed fraudulent intent when he transferred his interest in the Property to PDC. As a result, Clifton's conveyance of his 50% interest in the Property was null and void pursuant to the Statute of Elizabeth. To that end, Clifton's subsequent conveyance of his 50% interest in PDC—a company whose only asset was the Property—to Streamline was also improper and invalid. Specifically, the circuit court concluded the attempted transfer on August 5, 2009, was void ab initio as Streamline did not exist at that time. Even assuming Clifton could have transferred his interest at that time to a nonexistent entity, the court concluded Clifton failed to obtain Whiteman's consent to the admission of new members into PDC. As a member-managed LLC, Whiteman's lack of consent invalidated the Streamline transaction pursuant to section 33-44-404(c)(7) of the South Carolina Code (2006).⁴ Appellants timely filed a Rule 59(e), SCRCP, motion to alter or amend, which the circuit court denied. This appeal followed.

³ S.C. Code Ann. § 27-23-10 (2007).

⁴ Section 33-44-404(c)(7) states that, in a member-managed LLC, the admission of a new member requires the consent of all members.

STANDARD OF REVIEW

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." *Oskin v. Johnson*, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012). "An action to set aside a conveyance under the Statute of Elizabeth is an equitable action," and this court applies a de novo standard of review. *Id.* at 397, 735 S.E.2d at 463.

The admission and exclusion of evidence "are matters largely within the [circuit] court's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion." *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 559, 556 S.E.2d 718, 725 (Ct. App. 2001). "[T]o reverse a case based on the erroneous admission or exclusion of evidence, prejudice must be shown." *Id.* at 559, 556 S.E.2d at 726.

LAW/ANALYSIS

I. Statute of Elizabeth

Appellants contend the circuit court improperly invoked the Statute of Elizabeth to set aside the conveyance of the Property to PDC because Clifton made the conveyance pursuant to a legitimate purpose. We disagree.

The Statute of Elizabeth provides the following:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken . . . to be clearly and utterly void

S.C. Code Ann. § 27-23-10(A) (2007).

Our courts have set aside conveyances for existing creditors, such as Respondent, in two instances. *Mathis v. Burton*, 319 S.C. 261, 264, 460 S.E.2d 406, 407 (Ct. App. 1995).

First, whe[n] the challenged transfer was made for [] valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to

the grantee. Second, where the transfer was [] made [without] valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

Id. at 264–65, 460 S.E.2d at 408 (quoting *Durham v. Blackard*, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)).

In this case, the circuit court found—and both parties agree—that valuable consideration was exchanged for the transfer of Clifton's interest in the Property to PDC. Accordingly, Respondent was required to establish by clear and convincing evidence that Clifton transferred the property with the "intent to delay, hinder, or defraud [Respondent]." § 27-23-10(A).

When a party denies any fraudulent intent in transferring an asset outside the reach of a creditor—as Clifton asserts in the instant case—our courts have inferred fraudulent intent if one or more of the following "badges of fraud" exist:

[T]he insolvency or indebtedness of the transferor, [a] lack of consideration for the conveyance, [a] relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, [a] departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973). It is generally recognized that, although the identification of one badge of fraud does not create a presumption of fraud, "whe[n] there is a concurrence of several such badges of fraud[,] an inference of fraud may be warranted." *Id.* at 209–10, 199 S.E.2d at 79–80 (quoting 37 AM. JUR. 2D *Fraudulent Conveyances* § 10 (1968)). "A badge of fraud creates a rebuttable presumption of intent to defraud." *Royal Z Lanes, Inc. v. Collins Holding Corp.*, 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999).

We find the circuit court properly held Clifton transferred the Property to PDC for purposes of avoiding Respondent's claims. We further find that several "badges of

fraud," as recited by our supreme court in *Coleman*, create an inference of fraud in this case. First, Clifton was originally indebted to Respondent for close to \$4 million. At the time of the transfer, Clifton was still indebted to Respondent. Clifton was in the process of negotiating another extension when he transferred the Property to PDC, and thus, we find this element is satisfied. Second, Clifton, as the transferor, was also one of two members of PDC, the entity to which he was transferring the Property. As Clifton's personal interests and those of PDC were essentially one in the same, we find this element is satisfied. Third, although Clifton contests litigation was looming, we—like the circuit court—conclude Clifton was well aware that his failure to satisfy his obligations to Respondent or to successfully negotiate another modification would result in inevitable litigation. It is uncontested Clifton was behind on his payments and Clifton never presented any evidence that Respondent guaranteed it would grant him an additional modification, particularly given its previous extensions, beyond the loans' original maturity dates. Fourth, Clifton was not forthright with Respondent in how he handled the conveyance. While actively negotiating an extension on these loans, Clifton transferred the Property to PDC. However, Clifton failed to inform Respondent he transferred the Property to PDC or to submit an updated financial statement to reflect his decreased net worth in the wake of transferring numerous, personally held properties to a number of LLCs. We find this course of conduct to be secretive, particularly given Clifton's knowledge that Respondent relied upon his ownership of these properties—and the unencumbered Property in particular—when it initially agreed to modify the loans' maturity dates. Last, Clifton reserved a benefit in the Property and retained possession of the Property after the conveyance. Clifton and Whiteman were the original members of PDC, each having a 50% ownership interest in the Property. After Clifton's conveyance, PDC's only asset was the Property. As a result, Clifton retained his 50% ownership interest in the Property, despite its transfer to PDC. Therefore, of the nine "badges of fraud," we find six of the nine factors⁵ weigh in favor of finding Clifton intended to defraud Respondent of its rightful claim to the Property when he conveyed it to PDC.

Having found Respondent created a presumption of fraud, we next address whether Appellants successfully rebutted this presumption. Based upon our review of the

⁵ The remaining three factors—which do not apply in this case—include the following: lack of consideration for the conveyance, departure from the usual method of business, and the transfer of the debtor's entire estate. *See Coleman*, 261 S.C. at 209, 199 S.E.2d at 79.

record, we find Appellants failed to rebut this presumption. At trial, Clifton asserted he transferred the Property to PDC at the insistence of Whiteman. Clifton testified that Whiteman was "hammering" him every day to place the Property into an LLC based on her fear of the liability associated with the Property being used for recreational hunting. Rence Gilreath, Clifton's daughter, also testified they transferred the Property to PDC based on Whiteman's liability concerns as well as for legitimate business purposes. According to Whiteman, she agreed to transfer her interest in the Property to PDC due to "liability and the timing . . . because . . . [Clifton] was starting another subdivision." Whiteman denied having any knowledge of Clifton's financial uncertainties with Respondent and stated, while she agreed to transfer her interest in the Property to PDC, she never agreed to Clifton transferring his interest in the Property from PDC to Streamline.

Having heard the foregoing testimony and evidence, the circuit court concluded Clifton's testimony was not credible. The court stated Clifton and his office staff chose the timing of the transfer, and despite their joint ownership of the Property for over twenty years and Whiteman's request to transfer the Property into a LLC for years, it was not until September 2008 when Clifton was experiencing financial uncertainties with Respondent that this transfer was consummated. Further, the court acknowledged Clifton "also transferred essentially all [the] properties he owned individually into various LLCs. . . . By doing this, he essentially divested himself of any individual ownership interest in any real property which had any significant equity that could be reached by creditors." Because the Property was debt-free and had significant equity, the court concluded Clifton wanted to protect the Property from creditors, despite offering other legitimate reasons for the transfer.

We concur with the circuit court's findings that Clifton intended to unlawfully place the Property outside Respondent's reach. Because the Statute of Elizabeth prohibits a conveyance of land with the purpose to delay, hinder, or defraud a creditor, we hold the circuit court properly concluded Clifton's conveyance of his 50% interest in the Property to PDC was null and void.

II. Division of the Deed

Appellants also contend the circuit court's decision to set aside the conveyance to PDC was improper because Whiteman and Clifton transferred the Property in a single deed. According to Appellants, voiding the sale as to Clifton effectively divided the deed, which is error when Respondent failed to prove Whiteman acted with any fraudulent intent when she transferred her interest in the Property to PDC.

We disagree.

The record shows Whiteman and Clifton owned the Property as tenants in common. As tenants in common, each person owned a 50% undivided interest in the Property. *See* 6 S.C. JURIS. *Cotenancies* § 5 (1991) ("Tenants in common each own a distinct and proportionate but undivided interest or estate in the property and do not have privity of estate with each other."). As tenants in common, each cotenant may transfer his or her separate ownership interest in the property without consent or participation of the other. *See* 6 S.C. JURIS. *Cotenancies* § 37 (1991) ("In the absence of a contrary contractual provision, one cotenant may sell, lease, or mortgage his share or interest in the property to . . . third parties."). If one cotenant conveys his or her interest to a third party, the third party—as grantee—becomes a tenant in common with the remaining cotenants. *See* 6 S.C. JURIS. *Cotenancies* § 39 (1991) ("A conveyance by one cotenant to a third party . . . conveys only the interest of the cotenant, and thus his grantee becomes a tenant in common with the other cotenants."). Because "[t]he interest of a tenant in common is freely alienable . . . [it] is subject to the claims of creditors." 6 S.C. JURIS. *Cotenancies* § 6 (1991).

Accordingly, we find the conveyances of Whiteman's 50% interest and Clifton's 50% interest to PDC were each distinct transfers that Whiteman and Clifton merely chose to accomplish in a single deed. The fact they utilized one instrument to transfer their separate interests does not negate the distinct ownership interest each person possessed in the Property. As mutually exclusive conveyances, we also find that the invalidity of one does not necessarily invalidate the other. To that end, Whiteman's intent in transferring her share of the Property to PDC is irrelevant to the circuit court's finding of fraudulent intent as to Clifton. Clifton's proportional interest is subject to the claims of his creditors, and he cannot legitimize the fraudulent transfer of his interest by lumping it together with Whiteman's presumably valid transfer of her interest. Regardless of the parties' choice of instrument to convey the Property, we find the circuit court properly set aside the conveyance pursuant to the Statute of Elizabeth.

III. Admission of Evidence

Last, Appellants contend the circuit court erred in admitting evidence of a subsequent transaction involving PDC's transfer of the Property to a third party, Streamline, because that issue was neither raised in the pleadings nor tried by consent. We find this issue is unpreserved.

As an initial matter, Respondent claims Appellants failed to properly preserve this issue for our review. Respondent contends that Appellants failed to contemporaneously object when evidence concerning the Streamline transaction was first introduced at trial. Specifically, Respondent introduced "Plaintiff's Exhibit 4" to the court, which was a conveyance timeline for certain properties owned by Clifton. Included in this exhibit was an attachment containing the PDC assignment document, in which Clifton assigned his interest in PDC to Streamline. Respondent introduced this exhibit to the court without objection from Appellants. The next time the assignment of Clifton's interest in PDC was discussed occurred during Respondent's direct examination of Whiteman when Respondent questioned Whiteman regarding her knowledge of the transfer to Streamline. Appellants failed to object to this line of questioning. It was not until Renee Gilreath's testimony that Appellants objected to any evidence or testimony concerning the Streamline transaction.

Based on our review of the record, we find Appellants failed to timely object to this evidence at trial, and thus, it is not preserved for our review. *See Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 185, 708 S.E.2d 787, 794 (Ct. App. 2011) (finding appellants failed to object contemporaneously at trial and concluding the issue was not preserved for appellate review). Further, Appellants' subsequent objections did not cure their failure to contemporaneously object when the evidence was first introduced. *Pinkerton v. Jones*, 310 S.C. 295, 298, 423 S.E.2d 151, 153 (Ct. App. 1992) (finding belated objection to evidence that was introduced earlier in trial did not cure earlier failure to object on the same ground). Accordingly, we find this issue is not preserved for our review.

CONCLUSION

Based on the foregoing, the circuit court's decision is

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

The South Carolina Court of Appeals

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

v.

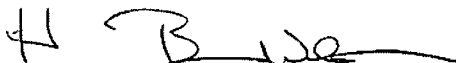
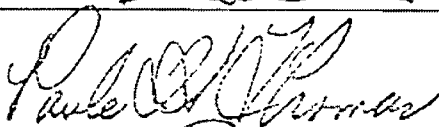
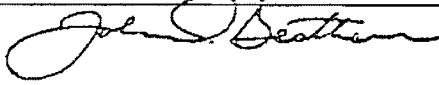
Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman; Defendants,

Of whom Park at Durbin Creek, LLC and Kenneth E.
Clifton are the Appellants.

Appellate Case No. 2014-002295

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	J.
	J.
	J.

Columbia, South Carolina

cc:

James Calhoun Pruitt, Jr., Esquire
Ella McKenzie Sims Barbery, Esquire
James H. Cassidy, Esquire
Joseph Owen Smith, Esquire
The Honorable Eugene C. Griffith, Jr.

FILED

March 16, 2017

82667

THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

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Of whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

APPELLANT'S PETITION FOR REHEARING

J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellants Park at Durbin Creek, LLC and Kenneth E. Clifton, file the following petition for rehearing regarding this Court's decision in *First Citizens Bank and Trust Company, Inc. vs. Park at Durbin Creek, LLC, et al.*, Opinion No. 5469 (S.C. Ct. App. filed February 15, 2017). Appellants contend that in affirming the decision below, the Court overlooked or misapprehended the following points:

- 1. There was insufficient evidence to infer fraudulent intent, and to the extent the evidence might permit such inference Appellants met his burden to rebut**

In order to set aside a conveyance supported by adequate consideration, the Plaintiff must prove by clear and convincing evidence the grantor's intent to defraud. *Oskin v. Johnson*, 400 S.C. 390, 398, 735 S.E.2d 459, 464 (2012) ("The Statute of Elizabeth is concerned with the intent of the grantor who conveys an interest in land," citing S.C. Code Ann. § 27-23-10(A) (2007) (additional citations omitted)). Accordingly, the key issue at trial and in this appeal is Clifton's intent in transferring the property. Our courts have identified specific badges of fraud that, if found to exist, create a rebuttable presumption of fraudulent intent.¹ In this case, to the extent any particular badge of fraud applies, Clifton presented sufficient evidence to rebut the presumption of fraud.

¹ Specific badges of fraud include (1) The insolvency or indebtedness of the transferor; (2) Lack of consideration for the conveyance; (3) Relationship between the transferor and the transferee; (4) The pendency or threat of litigation; (5) Secrecy or concealment; (6) Departure from the usual method of business; (7) The transfer of the debtor's entire estate; (8) The reservation of benefit to the transferor; and (9) The retention by the debtor of possession of the property. *In re Haddock*, 246 B.R. 810, 815 (Bankr. D.S.C. 2000) (citing *Coleman v. Daniel*, 261 S.C. 198, 199 S.E. 2d 74, 79 (1973)).

Respectfully, the Court overlooked the nature of the transaction at issue in affirming that several badges of fraud attached to the subject transfer.² In this case, Clifton decided to transfer ownership of the property at issue into a limited liability company for an equivalent ownership interest in the newly formed company. Against that backdrop, it is difficult to imagine how a property owner might avail himself of the legitimate desire to satisfy a co-owner's concerns about liability protection that did not, at least on the surface, involve badges of fraud more appropriate in other types of transactions. More specifically, an owner like Clifton would always retain possession of the property, have a relationship to the transferee, and retain a benefit in the property where he has an equivalent ownership in the company formed to hold the property. The circumstances here are notably contrast from previous fraudulent conveyance jurisprudence in this state where property owners, by virtue of their conduct, made transparent title-only transfers to close relative.³

The Court's analysis also emphasizes other potential badges of fraud where the evidence adduced at trial focused more specifically on the most relevant factor in this case: timing. It is undisputed that litigation had not commenced at the time Clifton transferred his interest in the Property. Rather, Respondent urged and this Court agreed that the threat of litigation was imminent. While failure to satisfy obligations, or in this case successfully complete loan renewals, would result in litigation, in order to impose prescient foresight on Clifton the Court would have to necessarily disregard Respondent's conduct thereafter. In this case, the transfer took place some two (2)

² The Court concluded, and Appellant agrees, that three badges of fraud do not apply: lack of consideration for the conveyance, departure from the usual method of business, and the transfer of the debtor's entire estate.

³ See e.g., *Judy v. Judy*, 742 S.E.2d 672, 403 S.C. 203 (Ct. App., 2013) (finding fraudulent conveyance where owner transferred property to his children while continuing to farm and receive farm income.).

months before Respondent informed Clifton that renewal of the loans was nearing completion.⁴ In that light, the Court would impose on Clifton knowledge that declination of his renewal requests would follow when he was assured- some two months later by Respondent's own agents- that the opposite was occurring. While litigation ultimately commenced when renewal negotiations failed, the timeline matters here not for what hindsight reflects but what foresight might have revealed. Accordingly, it was and remains inappropriate to charge Clifton with knowledge of what would happen when he was greeted by assurances from Respondent to the contrary.

As to the remaining two badges the Court found applicable, Clifton would respectfully argue that the Court's analysis lacks support in the record. Appellant admittedly remaining indebted at the time of the challenged transfer, but the actual issue as to this factor is the ability of the transferor to satisfy his obligations.⁵ Furthermore, while there was some conflict in the trial testimony regarding the timing of Clifton's payments, there was no evidence that Appellant was insolvent at the time of the transfer or immediately following. Finally here, while Respondent urged and the Court agreed that Clifton's failure to amend his financial statement shrouded the transfer in secrecy, Respondent failed to present any evidence that such information was ever requested.

To the extent record evidence establishes badges of fraud, Clifton presented sufficient evidence to rebut that presumption. In this case, all three witnesses with direct knowledge of the transfer testified that Clifton transferred the property at the insistence of

⁴ In email correspondence from November 25, 2008 John Wood of First Citizens relayed to Renee Gilreath that "I think we have everything worked out for the extension thru [sic] July, just waiting on the appraisals and the budget." Defendant's Exhibit I. (R. p. 214)

As Clifton testified, at the time of the transfer he retained access to additional sources of credit to satisfy his obligations- sources that would only disappear after Respondent elected to litigate. Tr. p. 122:22 - 123:6. (R. pp. 161-162). Tr. p. 134:9 - p. 135:16, (R. pp. 173-174).

Whiteman.⁶ Whiteman testified that she wanted the property in a limited liability company based on her fear of liability that might arise from hunting activities on the property.⁷ Furthermore, while Whiteman testified regarding longstanding concerns about liability, she also emphasized that recent events related to the subject property lead her to again pressure Clifton to place the property in a limited liability company. *Id.*⁸ Even if the trial Court found, as this Court agreed, that Clifton's testimony was not credible, there was no basis for disregarding the testimony of other witnesses whose interest were unrelated to business dealings with Respondent:

As our Supreme Court recently concluded in *Oskin v. Johnson*, a transaction that is legitimate on its face made to protect a bona fide interest in property does not become fraudulent merely because the ultimate upshot is an uncompensated creditor. 400 S.C. 390, 735 S.E. 2d 459. It is undisputed that Clifton transferred his property at the behest of a co-owner at a time when all parties believed he would continue a successful business relationship with Respondent. Respectfully, this Court overlooked the nature of the transaction at issue and what the circumstances at that time would have presented to Clifton regarding the aftermath of the transfer.

2 The Court Misapprehended Clifton's Argument Regarding a Novel Issue under South Carolina Law.

As was undisputed at trial or on appeal, there is no reported South Carolina case whereby the Court set aside half of a deed. Clifton's position has been consistent, either the transaction was fraudulent or it was not. While Clifton agrees with the Court

⁶ Tr. p. 48:21 – 51:2, (R. pp. 87-90), Tr. p. 81:6 – 82:1 (R. pp. 120-121), Tr. p. 133:4-24, (R. p. 172)

⁷ Ironically, several of the individual hunting the property were employed by Plaintiff First Citizens. Tr. p. 21:8-12, (R. p. 60). Indeed, John Wood, a Senior Vice President that had worked closely with Ken Clifton, acknowledged hunting on the property and conversations about liability from hunters on the property. *Id.* Tr. p. 28:5-8, (R. p. 67)

⁸ Tr. p. 48:21 – 51:2, (R. pp. 87-90).

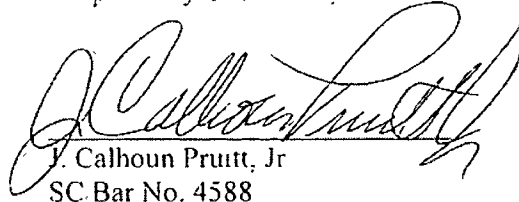
regarding the well-settled ability of a co-tenant to transfer his interest independent of a co-owner, that correct statement of law misses the issue here. The question before the Court is not whether Whiteman's admittedly valid purpose could affect Clifton's intention or whether the parties could have independently transferred their respective interests; rather, the question for the Court is whether a single deed and conveyance is susceptible to piecemeal attack. In this case, the trial Court concluded and this Court ostensibly agreed that a deed may be half-fraudulent. When these co-owners decided the transfer their property to a company created for that purpose, the entire transaction is subject to review. Stated differently, it is the transfer itself rather than the hypothetical ability to structure the transaction differently that is subject to review.

CONCLUSION

Respectfully, the Court overlooked the nature of the transaction to conclude that certain badges of fraud attached to this transfer. The Court also charged Appellant with knowledge about events he reasonably believed would unfold quite differently. Furthermore, in the absence of evidence related to fraudulent intent on the part of Whiteman, setting aside half the deed was an error of law that this Court should correct. The Court should withdraw its opinion, agree to rehear the matter, and review the transfer at issue in light of the nature of the transaction and how the parties chose to accomplish such transfer, and ultimately REVERSE the Court below.

[signature page to follow]

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Calhoun Pruitt, Jr.", written over a horizontal line.

J. Calhoun Pruitt, Jr.
SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, South Carolina 29625
(864) 224-3121
(864) 224-8711 (fax)
Attorney for Appellants

Anderson, South Carolina

February 28th, 2017.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

MAR 02 2017

Case No. 2010-CP-30-1141
Appellate Case No. 2014-002295

SC Court of Appeals

First Citizens Bank and Trust Company, Inc. Respondent,

v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants.

Of whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

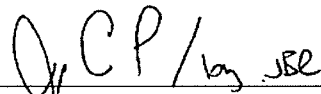
PROOF OF SERVICE

I certify that I have served the Appellant's Petition For Rehearing on the Respondent by depositing a copy of same in the United States Mail, postage prepaid, on February 28, 2017, addressed as follows.

Ella S. Barbery
James H. Cassidy
Joseph O. Smith
Roe Cassidy Coates & Price, P.A.
P.O. Box 10529
Greenville, SC 29603

PRUITT & PRUITT

February 28, 2017



J. Calloun Pruitt, Jr.
101 North Murray Avenue
Anderson, South Carolina 29625
(864) 224-3121
Attorney for Appellants, Park at Durbin
Creek, LLC and Kenneth E. Clifton

J CALHOUN PRUITT (1922-2005)
J CALHOUN PRUITT, JR
calhoun@pruittandprutt.com

JOSHUA B RAFFINI
jraffini@pruittandprutt.com

PRUITT & PRUITT
ATTORNEYS AT LAW, P. A.
101 NORTH MURRAY AVENUE
ANDERSON, SOUTH CAROLINA 29625-4301
www.pruittandprutt.com

PHONE (864) 224-3121
FAX (864) 224-8711

February 28, 2017

Clerk, South Carolina Court of Appeals
1015 Sumter St
P O Box 11629
Columbia, SC 29211

Re: First Citizens Bank and Trust Company, Inc. vs. Park at Durbin Creek, LLC,
Kenneth E. Clifton; and Linda G. Whiteman, Of whom Park at Durbin Creek,
LLC and Kenneth E. Clifton are the Appellants
Case No. 2010-CP-30-1141
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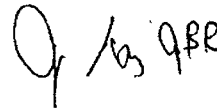
Dear Clerk:

Enclosed please find the original and six (6) copies of our Petition For Rehearing as well as
our Proof of Service.

Let me thank you in advance for your assistance in this matter.

Yours very truly,

PRUITT & PRUITT



J. Calhoun Pruitt, Jr.
Attorney for Appellant

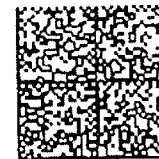
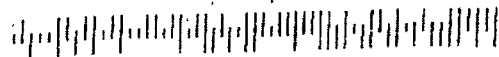
JCP,Jr/dj
Enclosures

cc: Ella S. Barbery
James H. Cassidy
Joseph O. Smith
Roe Cassidy Coates & Price, P A
P.O. Box 10529
Greenville, SC 29603
Attorneys for Respondent

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SC Court of Appeals



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PRUITT & PRUITT
ATTORNEYS AT LAW, P.A.
101 NORTH MURRAY AVENUE
ANDERSON, SOUTH CAROLINA 29625-4301

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MAR 02 2017

SC Court of Appeals

Clerk, South Carolina Court of Appeals
1015 Sumter St.
P. O. Box 11629
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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FINAL BRIEF OF APPELLANT

J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

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SC Court of Appeals

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J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRANSFER OF CLIFTON'S INTEREST IN THE PROPERTY WAS A FRAUDULENT CONVEYANCE WHERE THE TESTIMONY OF BOTH OWNERS ESTABLISHED A VALID PURPOSE FOR THE TRANSFER AND THERE WAS INSUFFICIENT EVIDENCE TO PRESUME FRAUDULENT INTENT?
2. WHETHER THE TRIAL COURT ERRED IN SETTING ASIDE THE CONVEYANCE WHERE THE PROPERTY WAS TRANSFERRED BY BOTH OWNERS IN A SINGLE DEED AND THERE WAS NO EVIDENCE OF FRAUDULENT INTENT ON THE PART OF DEFENDANT WHITEMAN?
3. WHETHER THE TRIAL COURT FAILED TO EXERCISE DISCRETION IN ADMITTING TESTIMONY REGARDING A SECOND, LATER CONVEYANCE WHERE THE ISSUE WAS NEITHER RAISED IN THE PLEADINGS NOR TRIED BY CONSENT?

STATEMENT OF THE CASE

The Plaintiff, First Citizens Bank and Trust Company, Inc. (hereinafter “First Citizens”), initiated this action by filing its Summons and Complaint on October 15, 2010 and Amended Summons and Complaint on October 20, 2010. The Amended Complaint contained three causes of action against three Defendants. (R. pp. 14-20). Named Defendants were Park at Durbin Creek, LLC (hereinafter “Durbin Creek”), Kenneth E. Clifton (hereinafter “Clifton”), and Linda G. Whiteman (hereinafter “Whiteman”). *Id.* In its first cause of action, First Citizens alleged that Clifton transferred his interest in a tract of land owned jointly with Whiteman, some 370 acres (hereinafter “the property”), to Durbin Creek in violation of the Statute of Elizabeth. Amended Complaint, p. 2, (R. p. 15). Second, First Citizens alleged that Clifton and Whiteman conspired to frustrate collection of debts owed by Clifton, specifically by virtue of the aforementioned transfer. *Id.* at 5, (R. p. 18). Finally, First Citizens sought to partition the property. *Id.* at 6, (R. p. 19). Each Defendant timely answered and denied the substantive allegations of the Amended Complaint.

Following discovery, the parties dismissed the second cause of action alleging civil conspiracy by stipulation. Stipulation of Dismissal p. 1, (R. p. 29). However, Whiteman remained a Defendant for the limited purpose of asserting her interest in the property. *Id.*, (R. p. 29).

The case proceeded to trial on the two remaining causes of action on June 26, 2014 before the Honorable Eugene C. Griffith, Jr. Tr. p. 1, (R. p. 40). The Plaintiff was represented by James H. Cassidy and Ella S. Barberry. Tr. p. 6:7-9, (R. p. 45). Defendants Clifton and Durbin Creek were represented at trial by J. Calhoun Pruitt, Jr.

Tr. p. 6:13-15, (R. p. 45). Defendant Whiteman appeared but was not represented by counsel Tr. p. 7, (R. p. 46). At the close of Plaintiff's case, the Defendants moved for a directed verdict as to the partition cause of action. Tr. p. 157:14 – p. 158:6, (R. pp. 196-197). The Defendants also moved for a directed verdict as to the fraudulent conveyance cause of action. Tr. p. 158:18 – p. 159:4, (R. pp. 197-198). The Defendants renewed their motions at the close of Defendants' case. Tr. p. 170:25 – p. 171:2, (R. pp. 209-210). Judge Griffith ruled that the partition cause of action was premature. Tr. p. 171:21 – p. 172:2, (R. pp. 210-211). The Court took the sole remaining cause of action and pending motions under advisement. Tr. p. 171:3-5, (R. p. 210). By written Order filed August 5, 2014, the Court ruled that Clifton's transfer of his interest in the property to Durbin Creek was fraudulent and set aside the conveyance. August 5, 2014 Order at 10, (R. p. 10). The Court also ruled that a second transfer, whereby Clifton transferred his interest in Durbin Creek to another LLC, was void *ab initio*. August 5, 2014 Order at 11, (R. p. 11).

By written motion filed August 13, 2014, the Defendants moved to Reconsider, Alter, or Amend Judge Griffith's Order. (R. pp. 31-32). Judge Griffith denied the motion in a written Order filed September 25, 2014. (R. pp. 12-13). Clifton and Durbin Creek timely filed their notice of appeal on October 24, 2014. (R. pp. 38-39). This appeal followed.

STATEMENT OF FACTS

Defendant Clifton had, for many years prior to this action, been engaged in various real estate development businesses. Tr. p. 106:13 – 107:3, (R. pp. 145-146). To finance his business interests, Clifton frequently borrowed money from commercial lenders, including Plaintiff First Citizens. Clifton or individuals working on his behalf often organized limited liability companies to facilitate ownership of various properties. Tr. p. 107:4-14, (R. p. 146).

Clifton previously owned an undivided one-half interest in a tract of land in Laurens County, the property, in his individual name with Whiteman. Tr. p. 133:25 – p. 134:15, (R. pp. 172-173). On September 18, 2008, Clifton and Whiteman transferred their interest in the property to a newly formed limited liability company, Durbin Creek, in exchange for an equivalent ownership percentage in the new company. Tr. p. 42:16-22, (R. p. 81); Tr. p. 51:3-7, (R. p. 90). At the time of the transfer, Clifton was indebted to Plaintiff First Citizens pursuant to three separate development loans unrelated to the property. Tr. p. 117:22 – p. 118:6, (R. pp. 156-157). At the time of the transfer, Clifton was current on his loan obligations. Tr. p. 120:20 – p. 122:8. (R. pp. 159-161).

As Clifton's loans to First Citizens became due, he requested renewals for each loan. Tr. p. 121:16-23, (R. p. 160). Clifton had previously received renewals for the same loans, and as late as November, 2008, had no reason to doubt that the loans would again be renewed. Tr. p. 120:1-5; Tr. p. 128:14 – p. 129:25, (R. p. 159; pp. 167-168); Defendants Exhibit 1, (R. p. 214). However, First Citizens ultimately declined to approve renewal, accelerated the loans, and commenced foreclosure proceedings against Clifton and the collateral associated with each of the three loans. Tr. p. 16:18-24, (R. p.

55). First Citizens also sought and obtained deficiency judgments against Clifton. Following unsuccessful attempts to enforce the deficiency judgment against Clifton, First Citizens initiated the instant action

At trial, all three witnesses with knowledge of the Durbin Creek transaction testified substantially the same: that Linda Whiteman had been the impetus for the transfer owing to her fears about liability from hunters on the property. First, Whiteman herself testified that she pressed Clifton to transfer the property into a limited liability company. Tr. p. 48:21 – 51:2, (R. pp. 87-90). Next, Renee Gilreath¹ testified regarding formation of a limited liability company for the property, at the insistence of Whiteman. Tr. p. 81:6 – 82:1, (R. pp. 120-121). Finally, Clifton testified that he agreed to transfer the property only after repeated and frequent urging from Whiteman. Tr. p. 133:4-24, (R. p. 172). Clifton also testified that the timing of the transfer was the result of unrelated business activities; specifically, Clifton instructed his staff to form Durbin Creek at the same time they were already preparing articles for other limited liability companies. Tr. p. 134:16-24, (R. p. 173).

There was no evidence that Whiteman was ever indebted to the Plaintiff. There was no evidence presented of Whiteman's intent to defraud the Plaintiff.

Finally, Clifton's testimony at trial demonstrated that foreclosures by First Citizens and the general decline of the real estate market ultimately eroded his financial standing to such an extent that he could not repay his obligations. Tr. p. 134:9 – p. 135:16, (R. pp. 173-174).

¹ The transcript incorrectly identifies Ms. Gilreath as Renee Gilree

STANDARD OF REVIEW

A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth. *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459 (2012) (citing *Windsor Props., Inc. v. Dolphin Head Constr. Co.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998)). An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies. *Id.* (citations omitted). On appeal from an equitable cause of action, “this Court has jurisdiction to find facts in accordance with its own view of ... the evidence.” *Pinckney v. Warren*, 544 S.E.2d 620, 344 S.C. 382 (S.C., 2001) (citing *Doe v. Clark*, 318 S.C. 274, 457 S.E.2d 336 (1995)).

The admission of evidence related to a second conveyance not raised in the pleadings is subject to review for an abuse of discretion. *Simmons v. Berkeley Elec. Coop. Inc.*, 404 S.C. 172, 744 S.E.2d 580 (S.C. App., 2013). (“As a general rule, the admission of evidence is a matter addressed to the sound discretion of the trial court.”) (quoting *Seabrook Island Prop. Owners’ Ass’n v. Berger*, 365 S.C. 234, 241, 616 S.E.2d 431, 435 (Ct.App 2005). “The trial judge’s decision will not be reversed on appeal unless it appears he clearly abused his discretion and the objecting party was prejudiced by the decision.” *Id.* (quoting *Seabrook*, 365 S.C. at 242).

ARGUMENT

1. THE TRIAL COURT ERRED IN FINDING TRANSFER OF THE PROPERTY WAS A FRAUDULENT CONVEYANCE WHERE THE TESTIMONY OF BOTH OWNERS ESTABLISHED A VALID PURPOSE FOR THE TRANSFER AND THERE WAS INSUFFICIENT EVIDENCE TO PRESUME THE REQUISITE FRAUDULENT INTENT.

Pursuant to the Statute of Elizabeth, “[e]very gift, grant, alienation, bargain, transfer, and conveyance of lands ... for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken ... to be clearly and utterly void.... S.C. Code Ann. § 27-23-10(A) (2007). In construing the relevant statutory language, our courts have identified two separate conditions that justify setting aside an otherwise valid conveyance. “First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration.” *Oskin v. Johnson*, 480 S.C. 390, 399-400, 735 S.E.2d 459 (2012) (citing *Future Group, II*, 324 S.C. 89, 96, 478 S.E.2d 45, 48-49 (citations omitted); *McDaniel v. Allen*, 265 S.C. 237, 242-43, 217 S.E.2d 773, 775-76 (1975) (citations omitted)).

The trial court correctly concluded that the transaction whereby Clifton and Whiteman transferred their interest in the property to Durbin Creek was supported by adequate consideration.² August 5, 2014 Order at 8, (R. p. 8). In order to set aside a conveyance supported by adequate consideration, the Plaintiff must prove by clear and convincing evidence the grantor’s intent to defraud. *Oskin v. Johnson*, 400 S.C. 390, 398, 735 S.E.2d 459, 464 (2012) (“The Statute of Elizabeth is concerned with the intent of the grantor who conveys an interest in land.” (citations omitted)). Accordingly, the key issue at trial and in this appeal is Clifton’s intent in transferring the property.

² Indeed, transferring ownership of property into a newly formed limited liability company, whose only asset is the transferred property, for an equivalent ownership percentage in the company is- by definition- supported by adequate consideration. Specifically, whatever the value of the subject property here, the value of consideration was necessarily equivalent to Clifton’s interest in the property where he received an equal percentage ownership in the company into which the property was transferred.

In this case, all three witnesses with direct knowledge of the transfer testified that Clifton transferred the property at the insistence of Whiteman. Tr. p. 48:21 – 51:2, (R. pp. 87-90), Tr. p. 81:6 – 82:1, (R. pp. 120-121); Tr. p. 133:4-24, (R. p. 172). Whiteman testified that she wanted the property in a limited liability company based on her fear of liability that might arise from hunting activities on the property.³ Tr. p. 48:21 – 51:2, (R. pp. 87-90). Furthermore, while Whiteman testified regarding longstanding concerns about liability, she also emphasized that recent events related to the subject property lead her to again pressure Clifton to place the property in a limited liability company. *Id.* Clifton testified that he would not have transferred the property to an LLC but for Whiteman's insistence. Tr. p. 154:7-11, (R. p. 193). Finally, Renee Gilreath's testimony established that the timing of the transfer was related to legitimate business purposes for the convenience of office staff in preparing multiple transactions simultaneously. Tr. p. 81:10-22, (R. p. 120).

The trial court, notwithstanding the foregoing testimony, concluded that there was sufficient evidence to infer fraudulent intent. August 5, 2014 Order at 10, (R. p. 10). The Court reasoned that several "badges of fraud" permitted an inference of fraudulent intent.⁴ Our courts have identified specific badges of fraud that, if found to exist, create

³ Ironically, several of the individual hunting the property were employed by Plaintiff First Citizens. Tr. p. 21:8-12, (R. p. 60). Indeed, John Wood, a Senior Vice President that had worked closely with Ken Clifton, acknowledged hunting on the property and conversations about liability from hunters on the property. *Id.*, Tr. p. 28:5-8, (R. p. 67).

⁴ Here it is important to note the trial court's reasoning that fraud may be inferred. Assuming, *arguendo*, there was sufficient evidence of any particular badge of fraud, our courts have reasoned that such indicators of intent create a rebuttable presumption rather than an inference. *See, e.g., Royal Z Lanes v. Collins Holding Corp.*, 524 S.E.2d 621, 337 S.C. 592 (1999) ("A badge of fraud creates a rebuttable presumption of intent to defraud.") (*citing Dinkins v. Robbins*, 200 S.C. 475, 21 S.E.2d 10 (1942); *James v. Martin*, 150 S.C. 75, 147 S.E. 752 (1929)). It is well settled that a rebuttable presumption shifts the burden of production such that the party against whom the presumption is directed must go "forward with evidence to rebut or meet the presumption." SCRE, Rule 301. Furthermore, the burden of persuasion is unaffected a rebuttable presumption. *Id.* Accordingly, if the Court found sufficient evidence of any badge of fraud, the

a rebuttable presumption of fraudulent intent.⁵ In this case, to the extent any particular badge of fraud applies, Clifton presented sufficient evidence to rebut the presumption of fraud.

The trial court reasoned that Clifton controlled the timing of the transfer at issue here. August 5, 2014 Order at 10, (R. p. 10). That conclusion, while admittedly true, does little to shed light on the purpose of the transfer. Furthermore, the only relevant badge of fraud as to timing concerns the pendency or threat of litigation. *Haddock*, 246 B.R. at 815. The transfer at issue here took place before the commencement of litigation, or even the threat of litigation. Indeed, the transfer here took place some two months prior to when the Plaintiff bank represented that an extension was nearing approval.⁶ Defendant's Exhibit 1, (R. p. 214). While the trial court noted that Clifton could have transferred his interest at an earlier time, again admittedly true, the availability of earlier opportunities to transfer the property is irrelevant where the transfer ultimately took place before Clifton had any reason to doubt his ability to satisfy ongoing obligations or suspect litigation was forthcoming.

The trial court also pointed to assumptions regarding Clifton's knowledge to find badges of fraud here. First, the court reasoned that Clifton knew he could not pay his debts to First Citizens when they became due. August 5, 2014 Order at 9, (R. p. 9).

appropriate question becomes whether the rebuttable presumption is then overcome by countervailing evidence rather than whether the court may draw an inference.

⁵ Specific badges of fraud include (1) The insolvency or indebtedness of the transferor; (2) Lack of consideration for the conveyance; (3) Relationship between the transferor and the transferee; (4) The pendency or threat of litigation; (5) Secrecy or concealment; (6) Departure from the usual method of business; (7) The transfer of the debtor's entire estate, (8) The reservation of benefit to the transferor; and (9) The retention by the debtor of possession of the property. *In re Haddock*, 246 B.R. 810, 815 (Bankr. D S C. 2000) (citing *Coleman v. Daniel*, 261 S.C. 198, 199 S.E. 2d 74, 79 (1973)).

⁶ In email correspondence from November 25, 2008, John Wood of First Citizens relayed to Renee Gilreath that "I think we have everything worked out for the extension thru [sic] July, just waiting on the appraisals and the budget "

However, as argued above, Clifton did not yet have any reasons to suspect declination of his renewal request. He also testified that at the time renewal was under active consideration, he had the ability to access additional credit to service his debt to First Citizens if necessary. Tr. p. 122:22 – 123:6, (R. pp. 161-162). The trial court also concluded that Clifton knew failure to pay would result in foreclosure. August 5, 2014 Order at 10, (R. p. 10). However, while Clifton certainly would have known that foreclosure was possible if he refused to pay his obligations, there was no evidence presented that he suspected foreclosure was likely or imminent at the time of the subject transfer. Clifton's ability to access other means to service his debt only dissipated in response to First Citizen's election to pursue foreclosure immediately after declining renewal. Tr. p. 134:9 – p. 135:16, (R. pp. 173-174). Renee Gilreath also testified that the First Citizens foreclosure actions triggered an avalanche of subsequent foreclosures by other banks. Tr. p. 78:13 – 79:3, (R. pp. 117-118).⁷

Finally here, the trial court opined that Clifton's initial intent to hold the Durbin Creek property for retirement belied his professed legitimate purposes as he knew he was placing the property beyond the reach of creditors. August 5, 2014 Order at 10, (R. p. 10). Again, that analysis yields little the point towards any particular badge of fraud. Clifton's original purpose for obtaining the property is irrelevant to his intentions for the challenged transfer. His knowledge that forming a limited liability company provided protection from creditors, particularly in light of Whiteman's concerns, serves to underscore the legitimacy of his intentions. Indeed, if this court were to adopt the

⁷ Taken as a whole, the records reflects that at the time of the challenged transfer, Clifton intended to renew his loans, believed renewal approval was forthcoming, and had access to capital to continue paying the loans. While subsequent events eliminated Clifton's access to credit, and ultimately eroded his financial standing, the relevant inquiry into his intent is properly focused on his state of mind at the time of the transfer.

position that a party's familiarity with liability protection is sufficient to presume fraud, then the formation of any entity that offers liability protection might be viewed as suspect.⁸

In the most recent South Carolina case concerning an allegedly fraudulent conveyance, our Supreme Court clarified that legitimate protection of financial interests is insufficient to create a badge of fraud. *Oskin v. Johnson*, 400 S.C. 390, 735 S.E.2d 459. In that case, Johnson owned oceanfront property jointly with his uncle. *Oskin*, 400 S.C. at 393. Oskin obtained a judgment against Johnson pursuant to a breach of contract action. *Id.* Thereafter, when the oceanfront property was threatened by foreclosure unless Johnson could refinance, the wife of the co-owner formed a limited liability company to take assignment of the existing note and mortgage. *Id.* The transaction was collateralized through the pledge of securities, allowing the limited liability company to pledge sufficient assets to secure the deal without requiring the company's owner to liquidate securities at a deflated value. *Id.* However, the nature of the transaction also allowed the newly formed limited liability company to assume priority status superior to Oskin's judgment. *Id.* In denying Oskin's claims that the transaction was a fraudulent conveyance, the Supreme Court dismissed concerns that the formation of a limited

⁸ Admittedly, the formation of an LLC here ultimately provided Clifton some protection from creditors. Here the timing is key. Clifton sought protection from potential liabilities identified by Whiteman and unrelated to his financial standing when he neither suspected nor anticipated liabilities related to his business ventures. Legitimate protection from one form of liability ought not serve as the basis for presuming fraud in avoiding other forms of liability absent clear evidence that the debtor used the stated purpose as pretext for the impermissible avoidance of creditors. See, e.g., *Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672, 676 (Ct.App. 2013) (concluding that transfers made to avoid potential liability from one creditor still subject to Statute of Elizabeth where debtor intends to "confound or hinder creditors"). The reasoning in *Judy* does not apply where, as here, transfer of ownership to a limited liability was intended to protect the owners from one form of liability, hunters, but ultimately has the unintended consequence of affecting the interests of subsequent creditors.

liability company allowed a transfer designed to protect the property from Oskin's judgment. *Oskin*, 400 S.C. at 398.

In this case, there is no basis for presuming fraud merely because a transaction legitimate on its face ultimately placed property beyond the reach of Clifton's creditors. Indeed, Clifton's claims are stronger in some respects than those in *Oskin*, as the transfer at issue in that case occurred after the debtor was subject to a judgment.

The Supreme Court has also clarified the interplay between the Statute of Elizabeth and the protection of ownership interests by innocent parties. In *McDaniel v. Allen*, Grant Allen transferred his interest in certain property he owned jointly with his wife, Ada Allen. 265 S.C. 237, 217 S.E. 773, 774 (1975). The transfer at issue in that case took place mere days before McDaniel obtained a judgment against Grant Allen. *Id.* However, that Court concluded that the transfer was supported by valuable consideration and that any intent to defraud Grant Allen's creditors was not imputable to his wife. *Allen*, 265 S.C. at 243. The Court also reasoned that Ada Allen had a legitimate purpose in securing her own interests in the property. *Allen*, 265 S.C. at 244.

Here as in *McDaniel*, inquiring into the intention behind the transfer necessarily requires evaluating the interests of a co-owner unrelated to the judgment creditor. Whitman's testimony established her desire to protect her interest in the subject property from potential liabilities. That Clifton acceded to her demands is insufficient evidence of fraudulent intent to presume the entire transfer is void under the Statute of Elizabeth. Of further significance, *McDaniel* concerned a transfer completed at a time when judgment against the debtor was imminent. 265 S.C. at 239. In this case, while Clifton as an experienced real estate developer was admittedly familiar with the nature of foreclosure

proceedings, the relevant inquiry vis-à-vis intent is whether he knew or had reason to know that litigation was imminent at the time of the transfer. He did not and thus the presumption of fraud was erroneous.

The Statute of Elizabeth serves to protect the interests of creditors and others from fraudulent efforts to defeat enforcement of valid obligations. However, the statute by its plain letter and as interpreted by our courts does not apply to every scenario where a creditor fails to receive recompense. When, as here, the evidence suggests that the challenged transfer was made pursuant to a legitimate purpose prior to the initiation of litigation or the belief that legal action was forthcoming, there is no basis for presuming fraud and setting aside the transfer. Furthermore, to the extent First Citizens presented evidence to establish a badge of fraud in this case, Clifton and Durbin Creek provided sufficient evidence to meet and rebut any presumption. The Court below erred in inferring fraud to set aside the transfer.

2. THE TRIAL COURT ERRED IN SETTING ASIDE THE CONVEYANCE WHERE THE PROPERTY WAS TRANSFERRED BY BOTH OWNERS IN A SINGLE DEED AND THERE WAS NO EVIDENCE OF FRAUDULENT INTENT ON THE PART OF DEFENDANT WHITEMAN.

Clifton and Whiteman transferred ownership of their interest in the property to Durbin Creek in a single instrument. Amended Complaint at Exhibit "A" p. 1, (R. p. 21). Setting aside the challenged conveyance here necessarily affected Whiteman's interest. The court cannot, as a matter of law, set aside half of an instrument and thereby divide the deed. In setting aside the conveyance where there was no evidence of fraudulent intent on the part of Whiteman, the court below erred.

The Statute of Elizabeth provides, in relevant part, that “every gift, grant, alienation, bargain, transfer, and conveyance of lands ... for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken ... to be clearly and utterly void...”. S.C. Code Ann. § 27-23-10(A). However, the reach of statutory protections is limited “only as against that person or persons, his or their heirs, successors, executors, administrators and assigns.” *Id.*

First, the Court below erred in setting aside the conveyance absent evidence of fraudulent intent by Whiteman.⁹ Legitimate actions by co-owners of property to protect their own interests are beyond the remedial reach of the Statute of Elizabeth. As previously noted, the Supreme Court recently addressed the legitimate decision by an innocent co-owner to form a limited liability company and take assignment of the note and mortgage for the property at issue in that case. *Oskin*, 400 S.C. at 398. While the transaction was admittedly designed to avoid foreclosure without liquidating assets, and preserve the priority of the mortgage as superior to the interest of the judgment creditor, the Court determined that there was no fraudulent intent on the part of the grantor.¹⁰ *Oskin*, 400 S.C. At 398-399. Similarly, the Supreme Court previously refused to set aside a deed transferring the interest of the debtor to an innocent co-owner. *McDaniel*, 265 S.C. at 243-244. In that case, the court noted that the evidence presented at trial

⁹ The parties dismissed the only cause of action, alleging civil conspiracy, directed at Whiteman. Stipulation of Dismissal at 1, (R p 29). At trial, there was no evidence of fraudulent intent on the part of Whiteman.

¹⁰ In *Oskin*, the limited liability company took assignment of the note and mortgage directly from the bank. 400 S.C. at 398. Thus, the grantor in the challenged transaction was the bank. *Id.* However, the Court’s reasoning applies with equal force to the transaction at issue here. Whiteman was both a co-owner and grantor in the challenged conveyance. Absent any evidence of fraudulent intent on the part of Whiteman, the transaction here could not have been a fraudulent conveyance as both owners transferred their interest in a single instrument. Thus, in order to prevail, the Plaintiff was necessarily required to prove fraudulent intent on behalf of the both grantors.

failed to establish fraud on behalf of the wife, “and merely shows a purpose to secure her own Bona fide claim.” *McDaniel*, 265 S.C. at 244. That same reasoning applies with equal force to Whiteman here, and absent evidence of fraud on her part, the Court erred in setting aside the conveyance.¹¹

In this case, the trial Court attempted to set aside Clifton’s conveyance without reaching Whiteman’s interest. August 5, 2014 Order at 8, (R. p. 8). However, Clifton and Whiteman affected the challenged transfer in a single deed. Where the challenged transfer involves two grantors in a single deed, the entire transfer must stand or fall. In attempting to select a third option that does not exist, the court below impermissibly divided the deed.¹²

3. THE TRIAL COURT FAILED TO EXERCISE DISCRETION IN ADMITTING TESTIMONY REGARDING A SECOND, LATER CONVEYANCE WHERE THE ISSUE WAS NEITHER RAISED IN THE PLEADINGS NOR TRIED BY CONSENT.

At trial, First Citizens sought to introduce testimony regarding Clifton’s subsequent transfer of his interest in Durbin Creek to Streamline Management, LLC (hereinafter “Streamline”). Tr. p. 85:16 – 86:6, (R. pp. 124-125). Defendants Clifton and Durbin Creek timely objected to the proffered testimony on the grounds of relevance, in that Streamline was not a party to the action nor was the second transfer raised in the pleadings. Tr. p. 86:13-16, (R. p. 125). The Court allowed the testimony over

¹¹ It should be noted, however, that in *McDaniel* the Court evaluate the wife’s claims as grantee under the challenged instrument. 265 S.C. at 243. Here, Whiteman was both a grantor and obtained an interest in the grantee company. However, the required result is the same. In the absence of evidence of fraudulent intent by Whiteman, the Court erred in reaching her interest

¹² The undersigned is aware of no South Carolina cases that address division of a deed as outlined herein. However, it logically follows that a conveyance challenged as fraudulent pursuant to a single deed admits of but two possible conclusions: either the conveyance is fraudulent or it is not. Attempting to divide the deed, as the Court below did, merely highlights the failure of proof as to the intent of the grantors.

Defendant's objection.¹³ On the basis of the disputed evidence, the Court ruled that the second transfer was *void ab initio*. August 5, 2014 Order at 11.

Streamline was not a party to this action. Amended Complaint, (R. pp. 14-20). Neither Streamline nor Clifton's conveyance of his interest to Durbin Creek is referenced in the Amended Complaint (R. pp. 14-20). Furthermore, in light of Clifton and Durbin Creek's objections to testimony regarding Streamline and the second transfer, they did not consent to try the issue by consent. *See, e.g., Simmons v. Berkeley Elec. Coop. Inc.*, 404 S.C. 172, 178, 744 S.E.2d 580 (S.C. App., 2013) (*quoting* Rule 15(b), SCRCP).¹⁴

As the issue was not otherwise before the Court, the decision to admit testimony regarding Streamline is subject review for an abuse of discretion. *Simmons*, 404 S.C. at 180. In reviewing the admission of evidence, the objecting party must demonstrate prejudice. *Id.* In this case, Defendants Clifton and Durbin Creek had no notice that First Citizens sought to set aside the second conveyance. While there was some overlap in evidence and witnesses between the two conveyances, the prejudice to Clifton and Durbin Creek is apparent from the circumstances. They might have prepared their case differently, or called additional witnesses to meet the new allegations.

CONCLUSION

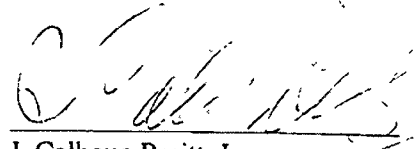
In light of the foregoing, there was insufficient evidence to presume fraudulent intent attached to Clifton and Whiteman's conveyance of the property to Durbin Creek. The insufficiency of proof here is underscored by the clear and convincing evidence

¹³ The Defendants re-crossed Ms. Gilreath regarding the second transfer, but maintained an objection to the entire line of questioning. Tr. p. 98.16-18, (R. p. 137). In arguing for a directed verdict at the close of Plaintiff's case, the Defendants again objected to the Court's consideration of a second transfer and an additional party not present in the pleadings. Tr. p. 159.17 – p. 160.2, (R. pp. 198-199).

¹⁴ Defendants Clifton and Durbin Creek also raised the issue in their Rule 59 motion. Motion to Reconsider, Alter, or Amend, (R. pp. 31-32). Judge Griffith denied the motion. September 25, 2014 Order, (R. pp. 12-13).

standard applicable to actions alleging a fraudulent conveyance. To the extent there was evidence of any particular badge of fraud, Clifton rebutted such presumption by providing sufficient evidence of the bona fides of the transfer. Furthermore, in the absence of evidence related to fraudulent intent on the part of Whiteman, setting aside the deed was an error of law. Finally, the issue of Clifton's subsequent transfer of his interest in Durbin Creek was neither raised in the pleadings nor tried by consent. The Court below erred in ruling on an issue not properly before that court. In exercising de novo review, this Court should REVERSE the decision below.

Respectfully Submitted,



J. Calhoun Pruitt, Jr.
SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, South Carolina 29625
(864) 224-3121
(864) 224-8711 (fax)
Attorney for Appellants

Anderson, South Carolina

May 7, 2015.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2010-CP-30-1141
Appellate Case No. 2014-002295

First Citizens Bank and Trust Company, Inc. Respondent,

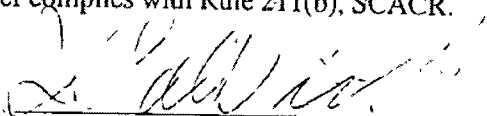
v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants,

Of Whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.


J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

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Park at Durbin Creek, LLC, Kenneth E. Clifton, and
Linda G. Whiteman.....Defendants.

Of whom Park at Durbin Creek, LLC and
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FINAL BRIEF OF THE RESPONDENT

ROE CASSIDY COATES & PRICE, P.A.

James H. Cassidy, S.C. Bar #1160
Ella S. Barbary, S.C. Bar # 70677
Joseph O. Smith, S.C. Bar # 77475
1052 North Church Street
Greenville, South Carolina 29601
(864) 349-2600
(864)-349-0303 fax
Attorneys for Respondent
First Citizens Bank and Trust Company, Inc.

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ROE CASSIDY COATES & PRICE, P.A.

James H. Cassidy, S.C. Bar #1160

Ella S. Barbery, S.C. Bar # 70677

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

Attorneys for Respondent

First Citizens Bank and Trust Company, Inc.

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I. STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly find that the evidence presented at trial established sufficient badges of fraud to infer Clifton's transfer of the Property to PDC was motivated by fraudulent intent and should be set aside under the Statute of Elizabeth?
2. Whether the trial court properly set aside Clifton's fraudulent conveyance of property owned as tenants in common with Whiteman when the challenged conveyance was accomplished in a single deed absent a showing of the non-debtor's fraudulent intent?
3. Did the trial court abuse its discretion in admitting evidence and testimony concerning Clifton's transfer of his interest in the Property to Streamline Management, LLC?

II. STATEMENT OF THE CASE

First Citizens Bank & Trust Company, Inc., (*hereinafter* “Respondent” or “First Citizens”) filed an Amended Complaint against the Defendants Park at Durbin Creek, LLC (“PDC”), Kenneth E. Clifton (“Clifton”) (*hereinafter collectively* “Appellants” or “Clifton”) and Linda G. Whiteman (“Whiteman”) on October 20, 2010 seeking relief under South Carolina’s Statute of Elizabeth, S.C. Code Ann. § 15-7-10 *et seq.* and alleging causes of action for fraudulent conveyance, civil conspiracy, and partition. Whiteman filed an Answer on December 23, 2010 setting out a general denial of the claims against her. PDC also filed an Answer on December 23, 2010 generally denying the allegations. Finally Clifton filed his Answer on January 3, 2011 denying First Citizen’s claims against him.

A non-jury trial was held before The Honorable Eugene C. Griffith, Jr. on June 26, 2014. Following trial the Court issued an August 5, 2014 Order to Set Aside [the] Conveyance (*hereinafter* the “Order”) of a 370 acre property in Laurens County Clifton owned as tenants in common with Whiteman. (R. pp. 1-11). The trial court found the evidence established sufficient “badges of fraud” to infer Clifton possessed fraudulent intent when he transferred his interest in the Property to PDC on September 18, 2008. (R. pp. 8-10). In light of that finding, the Court deemed Clifton’s conveyance of his 50% interest in the Property to PDC null and void pursuant to the Statute of Elizabeth. (R. p. 10). The Court also held that a later attempted transfer of Clifton’s 50% interest in PDC, a company whose only asset was the Property, to Streamline Management, LLC was improper and invalid. (R. pp. 10-11). Specifically, the Court held that the attempted transfer on August 5, 2009 was void *ab initio* as Streamline did not exist until months

after the purported transaction. (R. pp. 10-11). Finally, the Court held that even if Clifton could have contracted with and transferred his interest in PDC to a non-existent entity, his failure to obtain Whiteman's consent to the admission of new members into PDC as a member-managed LLC invalidated the Streamline transaction under S.C. Code Ann. § 33-44-404(7). (R. pp. 10-11). On August 6th Appellants filed a Motion to Reconsider, Alter or Amend the Court's August 5th Order. The circuit court denied that motion by Order dated August 25, 2014. This appeal followed.

III. STATEMENT OF THE FACTS

In 1995 Clifton and Whiteman purchased approximately 370 acres of real property located in Laurens County, South Carolina (the "Property") as tenants in common. (R. p. 221). Testimony at trial established that Clifton and Whiteman purchased the Property for retirement purposes. (R. p. 187 lines 6-9). Clifton and Whiteman owned the Property in their individual names as tenants in common for over twenty years until September 18, 2008 when it was conveyed to a newly formed limited liability company Park at Durbin Creek, LLC ("PDC"). (R. pp. 225-27). In addition to the Laurens Property, Clifton and Whiteman owned two other tracts of land purchased in 1992 and 1993 respectfully. (R. pp. 233, 236-38). They owned these properties as tenants in common in their individual names until July 31, 2008 and September 18, 2008 when each was transferred into an LLC. (R. pp. 234-35, 239-41).

Clifton is in the real estate business and was actively engaged in real estate development until 2009. (R. p. 121 lines 2-4; R. p. 145 lines 13-24). He typically purchased and/or transferred property he planned to develop into limited liability companies which either he or his office staff organized. (R. p. 146 lines 4-9). Over the course of his career Clifton organized in excess of forty limited liability companies. (R. p. 191 line 25 - p. 192 lines 1-2). He commonly owned personal investment property in his individual name. (R. pp. 80-81; R. p. 124 lines 2-15).

In order to finance his real estate development business Clifton routinely borrowed money from third party lenders, including First Citizens. Beginning in October 2002, Clifton entered into three loans with First Citizens in which he personally borrowed and/or guaranteed loan obligations to finance three different real estate development

projects – Edge Water Subdivision, Plantation Holdings, and Shellbrook Plantation. (R. pp. 49-52). The Edge Water loan originated in October 2002 and both Shellbrook Plantation and Plantation Holdings loans in 2006. (R. p. 49 line 25 – p. 50 line 1; R. p. 50 lines 22-25 – p. 51 lines 1-4; R. p. 58 lines 5-8). The original principle amount of the three loans totaled Three Million Eight Hundred Seventy-Three Thousand and 00/100 (\$3,873,000.00) Dollars. These development loans were never intended to be long term each having maturity dates one to two years from origination. (R. p. 51 lines 23-24). Over the years First Citizens renewed the loans, extending the maturity dates as progress payments were made. (R. p. 51 lines 23-25- p. 52 lines 1-2).

On or around January 2008, as two of Clifton's loan obligations with First Citizens neared maturity he sought modifications requesting an extension on the maturity dates. (R. p. 53 lines 1-15). Before deciding on Clifton's requested modifications First Citizens asked him to provide a personal financial statement. (R. pp. 53-54). Clifton presented a financial statement dated January 23, 2008 (*hereinafter* "Financial Statement") to the bank reflecting a personal net worth of approximately Fifty Million Dollars (\$50,000,000.00). (R. pp. 247-53). Clifton's real estate assets comprised over Forty-Eight Million Dollars (\$48,000,000.00) of his claimed net worth. (R. p. 250). One of the assets listed on the Financial Statement was Clifton's fifty percent (50%) interest in the Laurens Property. (R. p. 247). According to the Financial Statement, the Property was unencumbered and valued at One Million Five Hundred Seventy Thousand and no/100 (\$1,570,000.00) Dollars. (R. p. 247). First Citizens relied upon the Financial Statement in evaluating Clifton's financial condition to determine whether or not to modify and/or extend the loans. (R. p. 52 lines 4-25- p. 53 lines 1-23; R. p. 152 lines 18-

25 - p. 153 lines 1-18). Relying on the information set forth in the Financial Statement, First Citizens agreed to extend the maturity date on the two loans to January 2009.

Clifton's third loan was set to mature on July 12, 2008. Sometime in the spring or early summer of 2008, the real estate market declined and sales in Clifton's development projects significantly slowed and/or ceased altogether. (R. p. 74 lines 2-12). First Citizens became increasingly concerned regarding the loans and Clifton's ability to pay as he was becoming slow in making payments. (R. p. 55 lines 2-24; R. p. 74 lines 2-25 – p. 75 lines 1-13). Clifton was unable to pay the third loan when it became due on July 12, 2008, and requested another extension. First Citizens granted his request on September 22, 2008, extending the maturity date to January 2009 to coincide with the other two loans. According to the bank, Clifton's payments started to get slow around September 2008. (R. p. 52 lines 12-15).

While Clifton and First Citizens were engaged in negotiations over modifying the third loan, he and Whiteman transferred their interests in the Laurens Property to Park at Durbin Creek, LLC ("PDC") on September 18, 2008. (R. p. 221; R. pp. 225-27). Clifton and Whiteman were each 50% owners and members of PDC whose only asset was the Laurens Property. (R. p. 82 lines 16-19; R. p. 221; R. pp. 270-72). Clifton testified that he transferred his interest in the Property to PDC at the insistence of Whiteman for liability protection because it was being leased to third parties for recreational hunting. (R. p. 172 lines 4-24). Whiteman testified that she asked Clifton to put the Property in an LLC for years due to her liability concerns to no avail. (R. pp. 87-90). Clifton and/or his office prepared the organizational documents for PDC and unilaterally decided when to transfer the Property. (R. p. 82 lines 20-25 – p. 83 lines 1-4; R. p. 119 lines 1-6). On or

around the same time Clifton was in the midst of transferring personally held property out of his name as set forth below:

- a) July 31, 2008, Clifton and Whiteman transferred ownership of property they owned in their individual names since 1993 to Gardens at Fourteen, LLC.
- b) September 15, 2008, Clifton transferred ownership of four tracts of land which he owned individually since 2004 (or earlier) to Pawley Plantation, LLC.
- c) September 18, 2008, Clifton and Whiteman transferred ownership of property they owned in their individual names since 1992 (or earlier) to Pelham at Boiling Springs, LLC.
- d) September 19, 2008, Clifton transferred ownership of his office building which he owned individually since 1997 to Central Office, LLC.

(R. p. 221). Clifton did not disclose these transfers to First Citizens nor update his January 23, 2008 Financial Statement which reflected him owning these properties. (R. p. 74 lines 18-25 – p. 75 lines 1-17; R. pp. 247-53). Clifton's loan payments had slowed in September 2008 while unbeknownst to First Citizens he was undertaking a campaign of transferring property out of his name. (R. p. 52 lines 12-15). Even without knowing of Clifton's efforts to divulge himself of individually held property, under the circumstances First Citizens harbored continued concerns over his ability to pay the loans when due. (R. p. 55 lines 2-24; R. p. 73 lines 20-25 – p. 74 lines 1-12).

In October 2008 the parties began discussing another loan modification to extend the three loans' maturity dates past January 2009. (R. p. 52 lines 4-25 – p. 53 lines 1-15; R. pp. 256-67). First Citizens advised Clifton that he needed to bring his interest payments current and provide a business plan detailing how he planned to pay down the

balances. (R. pp. 52-55; R. pp. 256-67). The bank also requested he provide additional collateral to secure repayment. (R. pp. 52-55). These discussions took place over the course of approximately two months during which time Clifton consistently failed to provide the information and documents requested by the bank. (R. pp. 256-67). The information and documents requested were necessary for First Citizens to evaluate the propriety of again modifying the loans' terms by extending the maturity dates. It was not until late November 2008 that Clifton first expressed concern to the bank that he may not be able to honor his obligations. (R. pp. 262-63). Ultimately Clifton failed to bring the loans current, provide a business plan or additional collateral as requested. (R. p. 55 lines 18-24, R. p. 74 lines 18-25 – p. 75 lines 1-17; R. pp. 256-67). As a result, First Citizens elected not to modify the three loans.

First Citizens accelerated the loans and commenced foreclosure proceedings in February 2009. (R. p. 55 lines 18-24; R. p. 75 lines 1-17). Clifton retained an attorney to represent him in the foreclosure actions and filed Answers in each of the cases, thereby delaying the foreclosure process. First Citizens obtained foreclosure judgments in June 2009 and held foreclosure sales on August 3 and August 4, 2009. Deficiency sales then took place on September 3, 2009. On October 20, 2009, deficiency judgments were entered against Clifton in the total amount of \$745,317.86 plus interest.

While First Citizens was in the process of obtaining judgments against Clifton he entered into yet another transaction to further distance himself from his interest in the Laurens Property. Specifically, on August 5, 2009 Clifton and his two daughters entered into an Assignment of Interest in Park at Durbin Creek, LLC ("Assignment"), wherein Clifton agreed to disassociate from PDC and transfer his membership interest to

Streamline Management, LLC ("Streamline"). (R. pp. 228-30). The sole members of Streamline Management were his daughters Rene Gilreath and Leah Winton and ex-wife. (R. p. 124 lines 20-25- p. 125 lines 1-21). Clifton testified that he transferred his interest in PDC to Streamline to repay his daughters a rather sizeable debt owed to them that he negotiated down to approximately \$27,000. (R. pp. 178-88). Streamline did not exist at the time Clifton and his daughters executed the Assignment and was not organized until months later on January 12, 2010. (R. pp. 228-231; R. p. 128 lines 14-25- p. 130 lines 1-13). PDC is a member-managed limited liability company. (R. pp. 270-72; R. p. 83 lines 6-10). Whiteman, the other member of PDC, did not authorize or consent to Clifton's transfer or assignment of his membership interest to Streamline. (R. p. 83 lines 19-23; R. p. 87 lines 3-8).

In October 2010, Plaintiff started supplemental proceedings against Clifton in an effort to try and collect on the judgments. By this time, Clifton did not own any of the assets listed in his Financial Statement. (R. pp. 277-78). All of those properties had been foreclosed upon (or a deed in lieu of foreclosure issued), transferred by Clifton to business partners in exchange for forgiveness of debt, or otherwise disposed of by him. (R. pp. 277-78). Clifton no longer had remaining assets to pay his debt to First Citizens. As a result First Citizens instituted the underlying action to set aside the conveyance of the Laurens Property to PDC.

IV. LEGAL ARGUMENTS AND AUTHORITIES

- A. **The trial court properly found that the evidence presented at trial established sufficient badges of fraud to infer Clifton's transfer of the Property to PDC was motivated by fraudulent intent and should be set aside under the Statute of Elizabeth**

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." *Oskin v. Johnson*, 400 S.C. 390, 396, 735 S.E.2d 459 (2012). An action to set aside a conveyance under the Statute of Elizabeth is an equitable action subject to *de novo* review on appeal. *Id.*; S.C. Const. art. V § 5. Under a *de novo* standard of review the appellate court has jurisdiction to find facts in accordance with its own view of the evidence but is not required to disregard the findings of fact by the trial court or ignore that the trial judge is in a better position to assess the credibility of the witnesses. *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. *See South Carolina Cable Television Ass'n v. Southern Bell Telephone and Tele. Co.*, 308 S.C. 216, 417 S.E.2d 586 (1992). Further, a trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. *See e.g., Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154 (1996); *Wallace v. Milliken and Co.*, 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

The Statute of Elizabeth provides for the following:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken . . . to be clearly and utterly void

S.C. Code Ann. § 27-23-10(A). When interpreting this statute, the South Carolina Supreme Court has held that there are two occasions upon which a conveyance shall be set aside under the Statute of Elizabeth: (1) where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud creditors; and (2) where the transfer was made without actual intent to defraud creditors but without valuable consideration. *Oskin*, 400 S.C. at 397, 735 S.E.2d at 463.

Under the first circumstance where there is valuable consideration, the plaintiff must establish by clear and convincing evidence that the grantor transferred the property with “a conscious intent to defeat, delay, or hinder [one’s] creditors in the collection of their debts.” *Judy v. Judy*, 403 S.C. 203, 209, 742 S.E.2d 672, 675 (Ct. App. 2013) quoting *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384, 409, 1 S.E.2d 797, 808 (1939). When a debtor denies any fraudulent intent in making the challenged transfer, the Court may infer it when one or more of the following “badges of fraud” exist:

- (1) The insolvency or indebtedness of the transferor;
- (2) Lack of consideration for the conveyance;
- (3) Relationship between the transferor and the transferee;
- (4) The pendency or threat of litigation;
- (5) Secrecy or concealment;
- (6) Departure from the usual method of business;
- (7) The transfer of the debtor's entire estate;
- (8) The reservation of benefit to the transferor; and
- (9) The retention by the debtor of possession of the property.

In re Haddock, 246 B.R. 810, 815 (Bankr. D.S.C. 2000) citing *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74, 79 (1973). The debtor's intention is demonstrated by examining the circumstantial evidence surrounding the challenged transfer and considering what badges of fraud are established by it. "A badge of fraud creates a rebuttable presumption of intent to defraud." *Id.*¹

1. *The clear and convincing evidence presented to the trial court established numerous badges of fraud*

At trial Clifton denied he transferred the Property to PDC in September 2008 to defraud creditors, insisting it was done at the request and insistence of Whiteman for liability protection. (R. p. 172 lines 4-24). He claimed that convenience rather than nefarious intentions dictated the timing of the transfer to PDC. (R. p. 171 lines 14-25 - p. 173 lines 1-24). The trial court rightfully found Clifton's claims uncreditible as they were overwhelmingly contradicted by the existence of numerous badges of fraud. (R. pp. 8-10).

First, the evidence presented at trial established that when Clifton transferred the Property to PDC on September 18, 2008 he was unable to fulfill his loan obligations to First Citizens. On the stand Clifton denied experiencing financial difficulty and claimed he was current on his loan payments to the bank. (R. p. 159 lines 20-22; R. p. 161 lines 2-8). The evidence presented to and relied upon by the trial court in setting aside the conveyance handily undermines his sworn testimony.

¹ Under the second circumstance where there is lack of valuable consideration, the plaintiff does not have to establish actual intent; rather, a transfer may be set aside as fraudulent if (1) the grantor had existing debt owing to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness in full - not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt. *Future Group, II v. NationsBank*, 324 S.C. 89, 96, 478 S.E.2d 45, 48 (1996)

Around the time of the September 2008 transfer the real estate market was in the midst of a massive downhill slide into the Great Recession causing Clifton's real estate developments to come to a halt. His personal real estate holdings, which comprised the vast majority of his wealth, deteriorated with the market. (R. pp. 247-53). This had a massive negative impact on Clifton's financial condition, causing him to get behind in making loan payments to the bank. Both First Citizens officers testified that as of September 2008, Clifton had become slow in making loan payments. (R. p. 55 lines 2-24; R. p. 74 lines 2-25 – p. 75 lines 1-13). Email correspondence between First Citizens and Clifton's office also showed that he continued to be behind, requesting past due payments for October 2008 that were still outstanding in late November of that year. (R. p. 256, p. 259, pp. 261-63). In fact the scant evidence submitted by Clifton and PDC at trial included a November 24, 2008 email from First Citizens to Clifton's office listing three loan "[p]ayments past due for October." (R. p. 214).²

In addition, when one of the three loans matured in July 2008 Clifton could not repay it and was in the process of negotiating another extension when he transferred the Property to PDC. In fact, in September 2008 Clifton was actively seeking to modify all three loans requesting the bank extend their maturity dates past January 2009. Clifton knew that he did not have the ability to repay the loans under their current terms and was completely reliant upon the bank approving modification. (R. p. 170 lines 13-19). His argument for legitimacy of the PDC transfer treats modification as a foregone conclusion

² On cross examination Clifton finally admitted that he was in fact behind on his loan payments in the fall of 2008 while he negotiated another modification with the bank. (R. p. 170 lines 13-19) Following his begrudged admission, Clifton claimed that he still had the ability to repay the loans at the time of the transfer (R. pp. 173-74). As detailed in this brief, his claim of financial wherewithal to fulfill his obligations to the bank is sufficiently undermined by the overwhelming evidence to the contrary.

rather than the uncertainty it was. However, before granting yet another extension on the repayment dates First Citizens required Clifton submit certain information including a list of marketable assets that could be quickly liquidated, a budget showing sources of income and a business plan detailing how he planned to repay the bank. (R. pp. 259-65). First Citizens needed this information to evaluate the propriety of granting another modification, indicating it was anything but guaranteed. (R. p. 256, pp. 261-65).

Both at trial and on brief, Clifton treats ability to repay loan obligations as they stood in late 2008 as financial wherewithal to repay them under modified terms. In other words, Clifton claims that he was able to repay his debts to First Citizens when he transferred the Property in September 2008 because the bank was going to modify the terms. (R. pp. 168-75; App. Br. at 9-10). Clifton's misguided assumption cannot hide the fact that the evidence presented to the court showed he lacked the finances to repay his debts as they stood in September 2008. It is axiomatic that Clifton could not meet his loan obligations as they stood in September 2008 if he was reliant upon modification of the terms. The trial court correctly analyzed whether Clifton could pay the obligations as they then stood, not as he expected them to be, and found that he could not meet them.

Moreover, in the course of negotiating loan extensions Clifton was actively forming LLCs and divesting himself of all personal holdings. The evidence presented at trial showed that Clifton not only transferred the Laurens Property to PDC but was engaged in a coordinated effort of moving any personally held property out of his name. (R. pp. 277-78). *See supra* at 6-7.³ Clifton did not disclose these transfers to First Citizens or update his January 23, 2008 Financial Statement which reflected him owning

³ As noted above, Clifton was unable to repay one of the loans when it matured in July 2008. Clifton's efforts to divulge himself of all personally held property began the same month (R. pp. 221).

these properties. (R. pp. 247-53). Clifton's entire financial condition and personal net worth had dramatically changed, and rather than informing First Citizens of that fact, he sought to postpone his loan repayment dates and divulge himself of assets owned in his name. Tellingly, neither at trial nor on brief does Clifton acknowledge this devastating evidence.⁴

Clifton attempts to dismiss the timing of the transfer by claiming it was done in September 2008 merely out of convenience because he was setting up companies for other development projects at the time and it made sense to go forward with the PDC conveyance. (R. p. 171 lines 19-25 - p. 173 lines 1-24). This rings hollow given the circumstances. The evidence established Clifton and/or his staff (consisting of his two daughters Rene Gilreath and Leah Winton) prepared the PDC organizational documents and decided *when* the transfer occurred. (R. p. 82 lines 20-25 – p. 83 lines 1-4; R. p. 119 lines 1-6; R. pp. 270-72). Whiteman testified that she asked Clifton to put the Property in an LLC for liability protection for years to no avail. (R. pp. 87-90). Over his career as a real estate developer Clifton and his staff always used limited liability companies for his development projects; organizing over forty LLCs. During the twenty plus years he and Whiteman owned the Laurens Property he could have easily transferred it into an LLC long before September 2008 however it was not until Clifton found himself in dire financial straits that he chose to transfer the Property out of his name.

⁴ Additional evidence presented by the bank showed that Clifton found himself in a dire financial condition prior to the transfer in September 2008. Specifically, the bank submitted an August 1, 2008 Agreement between Clifton and Whiteman under the terms of which Whiteman allowed Clifton to pledge his interest in jointly held property as collateral for a \$125,000 loan he needed to make interest payments on loan debt with Cornerstone Bank. (R. pp. 273-76). This Agreement shows that in August 2008 Clifton was reliant upon borrowing money just to make interest payments on a debt to another bank and could not obtain credit without pledging significant collateral.

Clifton's claim that liability concerns motivated the transfer is further belied by the fact that the third parties utilizing the Property for hunting obtained liability insurance naming Clifton and Whiteman as the insured and providing \$2 million in landowner liability coverage. (R. pp. 254-55). That insurance policy provided extensive coverage for the potential liability Whiteman expressed concerns over and Clifton argues motivated his transfer of the Property.⁵

The objective evidence presented to and relied upon by the trial court established that Clifton did not have the financial wherewithal to fulfill his loan obligations to First Citizens at the time of the transfer. Clifton's paltry explanation of his intent in making the transfer and its timing cannot stand and are overcome by a mountain of evidence to the contrary. Under the circumstances, the evidence presented at trial established nearly all of the recognized badges of fraud. Therefore, the clear and convincing evidence presented to and relied upon by the trial court provided more than adequate grounds to infer fraudulent intent and set aside the challenged conveyance pursuant to the Statute of Elizabeth.

2. Appellants' argument relies upon a partial statement of relevant considerations and a myopic view of the evidence

Clifton's argument on brief relies upon the court viewing but a part of the evidence through an overly narrow analytical prism.

Clifton contends that he presented sufficient evidence to rebut the presumption of fraudulent intent created by the presence of numerous badges of fraud. (App. Br. at 9).

⁵ Additional badges of fraud that were not directly mentioned in the Order include the reservation of benefit to the transferor and retention of possession by the debtor. Whiteman and Clifton were the original members of PDC, each holding a 50% ownership interest in the company. (R. p. 82 lines 16-19; R. pp 270-72). PDC's only asset was the Laurens Property. Therefore, Clifton retained his 50% ownership interest in the Property after transferring it to PDC.

This evidence consists of three witnesses' testimony (Clifton, Whiteman, and Rene Gilreath) and single page sections of two email chains. (App. Br. at 8; R. pp. 214-15). Clifton argues the definitive and determinative evidence warranting reversal is these three witnesses' testimony, as the only ones with "direct knowledge of the transfer." (App. Br. at 8). All three testified that Clifton transferred the Property to PDC at the insistence of Whiteman and the timing was merely borne of convenience. (App. Br. at 8). These three interested parties' claims of legitimacy are substantially overcome by contrary objective evidence and Appellants' position relies upon acceptance of this biased and self-serving testimony without regard to the substantial countervailing evidence.

Appellants argue that a court may only infer fraudulent intent if the challenged transfer occurs when litigation against the debtor is pending or imminent. Specifically, Clifton contends that "[t]he relevant inquiry vis-à-vis intent is whether he knew or had reason to know that litigation was imminent at the time of the transfer." (App. Br. at 12-13); *see also* (App. Br. at 9)(The "[o]nly relevant badge of fraud as to timing concerns the pendency or threat of litigation."). The pendency or threat of litigation constitutes but one of some nine recognized badges of fraud courts consider in determining whether it can infer fraudulent intent. *See In re Haddock*, 246 B.R. at 815. Clifton attempts to drastically alter this analytical framework advocating for consideration of a singular determinative factor that, if absent, allows the challenged conveyance to stand. This argument amounts to a wholesale discount of the many other recognized and useful badges of fraud which Clifton tellingly resigns to a footnote in his brief. (App. Br. at 9 fn5).

When a debtor denies he intended to defraud a creditor the court must consider what badges of fraud, if any, are present. *In re Haddock*, 246 B.R. at 815. Clifton denied any fraudulent intent and claimed he transferred the Property for liability protection at the bequest of Whiteman. (R. p. 172 lines 4-24). Evaluating the veracity of such claims are exactly what the various recognized badges of fraud considerations are for. They provide objective guideposts for a court to make an evidence-based determination as to the debtor's true intention. This holistic evidence-based approach provides an objective check on the debtor's stated motives. Those objective checks are much more reliable and probative than the debtor's testimony as to his stated intention. Therefore, a debtor's denial of fraud can and should be overcome when rebutted by objective evidence to the contrary. In this case, Clifton's self-serving denial of untoward motives and argument to overturn the trial court are belied by the established facts and circumstances.

As detailed above, the evidence before the trial court established that when Clifton transferred the Property to PDC in September 2008 his development projects had come to a halt, he was behind on loan payments, actively negotiating modification, and in the midst of a concerted effort to divulge himself of all assets held in his name. *See supra* at 6-7, 12-16. This evidence established the presence of multiple badges of fraud necessary to support the trial court's inference of fraudulent intent.

Even if the Court were to utilize Clifton's truncated analysis where the singular determinative consideration is whether litigation is pending or imminent, his argument still fails. Clifton knew that if he failed to repay his loans litigation would ensue. At trial and on brief Clifton maintains that he had no reason "to doubt his ability to satisfy ongoing obligations or suspect litigation was forthcoming." (App. Br. at 9; R. pp. 159-

62; R. pp. 168-75). All of the more reliable objective evidence presented at trial shows otherwise.

Clifton's position that litigation was not imminent necessarily depends upon his ability to repay the loans under their terms as of September 2008. At trial Clifton claimed he could have accessed additional credit to repay First Citizens however under questioning he admitted having no written commitment from a lender. (R. p. 173 line 25 – p. 175 lines 1-4). As detailed above, all of the overwhelming evidence handily contradicts Clifton's claims of financial wherewithal.

In September 2008 Clifton had already failed to pay off a loan that matured in July and was reliant upon modification to meet his obligations to the bank. At trial Clifton admitted that he was concerned about making payments and dependent upon modification:

Q: So you knew the bank was concerned about these three loans?

A: We were concerned about the three loans. We were wanting to make sure they got extended.

(R. p. 170 lines 16-19). Under these circumstances litigation was indeed imminent because there was no guarantee First Citizens would grant him yet another modification and postpone the maturity dates past January 2009. (R. pp. 256-67). Perhaps most importantly, Clifton's campaign of transferring property out of his name into LLCs strongly indicates he foresaw litigation on the horizon and took steps to protect his assets.

In sum, Clifton attempts to challenge the lower court by presenting but a portion of the evidence brought forth at trial and ignoring the substantial and more reliable countervailing evidence establishing numerous badges of fraud. Specifically, Appellants'

seek reversal of the trial court's ruling on this issue strictly on the basis of the testimony of three interested witnesses without any regard to the record as a whole analyzed in an overly narrow framework. The trial court properly found First Citizens provided clear and convincing evidence from which to infer fraudulent intent and the paltry evidence and truncated analysis argued by Appellants fails to rebut the presumption of fraud established by it.

B. The trial court properly set aside Clifton's fraudulent conveyance of the Property owned as tenants in common without a showing of the non-debtor cotenant's fraudulent intent

Clifton and Whiteman owned the Laurens Property in their individual names as tenants in common. (R. pp. 222-24). On September 18, 2008 each conveyed their respective interest in the Property to PDC through a single deed. (R. pp. 225-27). Clifton takes issue with the trial court setting aside his conveyance arguing that "[t]he court cannot, as a matter of law, set aside half of an instrument and thereby divide the deed." (App. Br. at 13). He claims, without citation to any supporting authority, that because "the transfer involves two grantors in a single deed, the entire transfer must stand or fall." (App. Br. at 15). Appellants unsupported argument mistakenly treats the transfer as a single conveyance.

As tenants in common, Clifton and Whiteman each owned a fifty percent undivided interest in the Laurens Property separate and apart from the other. Charles D. LeGrand, *Tenancy in Common*, 6 S.C. JURIS. COTENANCIES § 5 (Dec. 2014) ("Tenants in common each own a distinct and proportionate but undivided interest or estate in the property and do not have privity of estate with each other."). Each cotenant may transfer their separate ownership interest in the property without consent or participation of the

other. *Young v. Edwards*, 33 S.C. 404, 11 S.E. 1066 (1890); *Ex parte Johnson*, 147 S.C. 259, 145 S.E. 113 (1928)(“In the absence of a contrary contractual provision, one cotenant may sell, lease, or mortgage his share or interest in the property to...third parties.”). Importantly in this case, “[t]he interest of a tenant in common is freely alienable...and is subject to the claims of creditors.” 6 S.C. JURIS. COTENANCIES § 6.

As tenants in common, Clifton and Whiteman’s conveyances were two separate and distinct transfers they chose to accomplish through a single deed. As mutually exclusive conveyances, the invalidity of one does not necessarily invalidate the other. Therefore, despite Clifton’s contention to the contrary, the trial court’s setting aside of his conveyance does not require invalidation of the entire deed.⁶

Clifton also claims the trial court erred “[i]n setting aside the conveyance where there was no evidence of fraudulent intent on the part of Whiteman.” (App. Br. at 13). As distinct conveyances, Whiteman’s intent in transferring her proportional interest in the Property is wholly irrelevant and the absence of evidence concerning it inconsequential. Clifton’s proportional interest is subject to claims of his creditors and he cannot legitimize his fraudulent transfer by lumping it together with Whiteman’s presumably valid one. First Citizens, as Clifton’s creditor, sought to invalidate his transfer, not

⁶ The trial court setting aside Clifton’s conveyance results in him being cotenants with PDC. *Garret v. Wienberg*, 43 S.C. 36, 20 S.E. 756 (1895); 6 S.C. JURIS COTENANCIES § 39(“A conveyance by one cotenant to a third party that purports to convey the entire interest conveys only the interest of the cotenant, and thus his grantee becomes a tenant in common with the other cotenants.”). South Carolina courts may compel tenants in common to make a severance and partition of their jointly held lands. S.C. Code Ann. § 15-61-10. A cotenant can mortgage their undivided interest in jointly owned property and subject their pledged interest to foreclosure. *Z V. Pate, Inv v Kollock*, 202 S.C. 522, 25 S.E.2d 728 (1943). Should a creditor seek to foreclose on that mortgage a court may order either a partition of the land and attachment of the lien to the debtor’s allotted portion or a sale of the entire property and division of the proceeds among the cotenants. *Id.* Under the current circumstances it appears that a court may order sale of entire property and division of proceeds among cotenants. Clifton’s earnings from that sale can then be collected by First Citizens as a judgment creditor.

Whiteman's. Therefore, the trial court rightfully set aside his conveyance without evidence establishing Whiteman harbored similar fraudulent intentions in making hers.

C. The trial court did not abuse its discretion in admitting evidence of a later transaction involving the attempted transfer of the Property to Streamline Management, LLC

As an initial matter, First Citizens contends this issue was not properly preserved for appellate review. During trial Appellants failed to lodge a contemporaneous objection when evidence concerning the Streamline transaction was first introduced. (*See* R. p. 65 lines 1-7 - Plaintiff Exhibit 4 containing the Assignment document admitted without objection; R. p. 85 lines 17-25- p. 87 lines 1-11 - on direct First Citizen's counsel questioned Whiteman regarding the Streamline transfer without objection). Without objecting when the challenged evidence was first introduced, Appellants waived their right to later object to admission of that evidence at trial or on appeal. The failure to make a contemporaneous objection cannot later be 'bootstrapped' by a mistrial motion or cured by an objection to the same evidence introduced later through a different source. *Pinkerton v. Jones*, 310 S.C. 295, 423 S.E.2d 151 (Ct. App. 1992)(Holding that the failure to object to the evidence on a particular ground the first time it is admitted waives the objection/ground to the same or similar evidence subsequently offered.). The same rule applies when the aggrieved party fails to object to a witness's initial testimony but subsequently objects to the same or similar testimony from the same witness, i.e., the objection is untimely and no issue is preserved for appeal. *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994); SCRPC 43(c)(1). Therefore, this issue was not properly preserved for appellate review. Should the Court determine the issue is properly before

it, the trial court did not abuse its discretion in admitting evidence regarding the Streamline transaction.

1. *Evidence of the Streamline transaction was properly admitted relevant evidence*

Admission of evidence is a matter addressed to the sound discretion of the trial judge. An appellate court may overturn the lower court's admission of evidence upon finding that the trial judge abused their discretion and admission resulted in prejudice to the objecting party. *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Assoc., Inc.*, 347 S.C. 545, 556 S.E.2d 718 (Ct. App. 2001); SCRE 103. An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *Wilson v. Rivers*, 350 S.C. 536, 567 S.E.2d 482 (Ct. App. 2002).

During trial the court admitted evidence related to the August 5, 2009 transfer of Clifton's membership interest in PDC to Streamline Management, LLC. Appellants contend the court's admission and consideration of evidence related to this later transfer was inappropriate and resulted in prejudice to them. (App. Br. at 15-16).

Clifton's argument on this issue does not appear to be one claiming irrelevance; merely noting a relevancy objection was lodged at trial. (App. Br. at 15). Rather, Appellants claim that due to the issue not being included in the pleadings or tried by consent it was not properly before the court. (App. Br. at 15-16). That argument ignores the fact that the threshold and overarching admissibility determination is an evaluation of relevancy. SCRE 401("Relevant evidence' means evidence having a tendency to make the existence of any fact that is consequential to the determination of the action more probable or less probable than it would be without the evidence."). If a court determines

evidence is relevant to the issues at hand then it may only be rightfully excluded under certain exceptions including when “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues...or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” SCRE 403; SCRE 402(“All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.”).

The trial court properly admitted evidence of the Streamline transaction as it was relevant to the issues before it and inextricably intertwined with the initial challenged conveyance to PDC. First and foremost, the validity of the later Streamline transaction depends upon the legitimacy of the initial transfer to PDC. If the initial transfer to PDC is properly set aside, the subsequent Streamline transaction necessarily suffers the same fate. Therefore, First Citizens seeking to set aside the transfer to PDC was necessarily an attack on any subsequent transfers of that Property or Clifton’s interest in it.

Furthermore, Clifton’s transfer of his interest in PDC to Streamline was yet another piece of evidence establishing the existence of numerous badges of fraud. This second transfer involved and impacted the ownership of the same Property transferred to PDC. It is evidence of Clifton attempting to further distance himself from the Laurens Property and the initial fraudulent conveyance to PDC. The Streamline transfer also provided evidence of Clifton’s dire financial condition indicating that he had been accumulating debt and had no liquid assets with which to repay it. It is also proof of him retaining ownership of the Property and enjoying the benefits of that possession by using

it to pay down debt. Thus, the court rightfully admitted evidence of this second nefarious transaction as part of a related series of actions and events impacting the same Property conveyed in the challenged transfer and evidencing Clifton's fraudulent intent.

Clifton failed to demonstrate that the Streamline transaction was irrelevant and that the court's admission of evidence concerning it prejudiced him in any way. As demonstrated above, its relevancy to the issues before the Court cannot be argued. Appellants summarily claim to have suffered prejudice because Clifton and PDC "had no notice that First Citizens sought to set aside the second conveyance." (App. Br. at 16). A statement, as detailed above and discussed below, that lacks any credence whatsoever.⁷

2. Evidence concerning an issue not raised in the pleadings was properly admitted at trial

Clifton argues that the trial court erred in admitting evidence concerning the Streamline transfer as the issue "was neither raised in the pleadings nor tried by consent." (App. Br. at 15-16; R. pp. 106-107; R. p. 198 lines 17-25 – p. 199 lines 1-19). Including an issue in the pleadings is not a prerequisite to admission of testimony or other evidence concerning it at trial. SCRCP 15(b). Under SCRCP 15(b) an issue not raised in the pleadings may be tried by the express or implicit consent of the parties:

When issues not raised by the pleadings are tried by express or implied consent of the parties, *they shall be treated in all respects as if they had been raised in the pleadings*. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but *failure so to amend does not affect the result of the trial of these issues*."

SCRCP 15(b).

⁷ Streamline is the only party that could have suffered any potential prejudice by admission of this evidence, although First Citizens maintains there was none, and Clifton and PDC do not have standing to assert any arguments on behalf of Streamline Management, LLC.

The Streamline transfer, while not mentioned in the pleadings, permeated the entire litigation and was tried by implicit consent. First Citizens discovery requests to Clifton and PDC included some fourteen requests for information and documents related to Streamline and/or the transfer to it. (See R. pp. 35-36). PDC identified Renee Gilreath, a member of Streamline, as its 30(b)(6) deposition witness. During deposition, both Ms. Gilreath and Mr. Clifton were questioned extensively about the facts and circumstances surrounding the transfer of Clifton's interest in PDC to Streamline. Therefore, despite their contention, Appellants knew and had sufficient notice that the second conveyance from Clifton into Streamline would and/or could be an issue raised at the trial of this case.

The Rule also states that:

If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.

SCRCP 15(b). At trial the court could have allowed First Citizens to amend the pleadings in order to incorporate the Streamline issue because it subserved the presentation of the merits and no showing of prejudice was made. Neither party nor the trial court looked to amend the pleadings during the proceedings. As a practical matter doing so was unnecessary and would have been a formalistic act at best. While Clifton objected to the Streamline evidence, he failed to demonstrate that its admission would prejudice his defense.

V. Conclusion

The clear and convincing evidence presented to and relied upon by the trial court established that when Clifton transferred the Property to PDC in September 2008 his development projects had come to a halt, he was behind on loan payments, actively negotiating modification, and in the midst of a concerted effort to divulge himself of all assets held in his name. The trial court properly found that this reliable and substantial evidence established the presence of multiple badges of fraud necessary to infer fraudulent intent and set aside Clifton's conveyance to PDC under the Statute of Elizabeth.

Appellants attempt to challenge the lower court by presenting but a portion of the evidence brought forth at trial and ignoring the substantial and more reliable countervailing evidence establishing numerous badges of fraud. They seek reversal of the trial court's ruling strictly on the basis of the testimony of three interested witnesses analyzed in an overly narrow framework. The trial court properly found First Citizens provided clear and convincing evidence from which to infer fraudulent intent and the paltry evidence and truncated analysis argued by Appellants fails to rebut the presumption of fraud established by it.

Also, the trial court properly set aside Clifton's fraudulent conveyance of the Property owned as tenants in common without a showing of the non-debtor co-tenant's fraudulent intent. As tenants in common, Clifton and Whiteman's conveyances were two separate and distinct transfers they chose to accomplish through a single deed making Whiteman's intent in transferring her proportional interest in the Property wholly irrelevant and the absence of evidence concerning it inconsequential. Furthermore, as

mutually exclusive conveyances, the invalidity of one does not necessarily invalidate the other. Therefore, despite Clifton's contention to the contrary, the trial court's setting aside of his conveyance does not require invalidation of the entire deed.

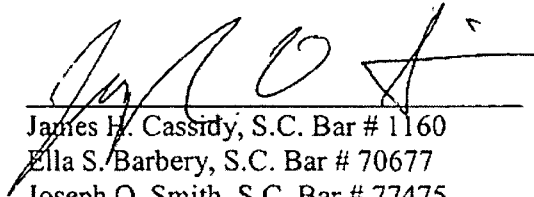
Finally, the trial court did not abuse its discretion in admitting evidence of a later transaction involving the attempted transfer of Clifton's interest in the Property to Streamline Management, LLC. As noted above, First Citizens contends Appellants failed to properly preserve this issue for appellate review by allowing admission of the disputed evidence when it was first introduced at trial without lodging a contemporaneous objection. Should the Court determine the issue is properly before it, the trial court did not abuse its discretion in admitting this evidence as it was relevant to the issues before it and inextricably intertwined with the initial challenged conveyance to PDC. This second nefarious transaction was part of a related series of actions and events impacting the same Property conveyed in the challenged transfer and further evidence of Clifton's fraudulent intent. The Streamline transfer, while not mentioned in the pleadings, permeated the entire litigation and was tried by implicit consent. Despite their contention, Appellants knew and had sufficient notice that the second conveyance involving Streamline would and/or could be an issue raised at the trial of this case. Appellants failed to demonstrate that the Streamline transaction was irrelevant and the court's admission of evidence concerning it prejudiced them in any way.

For the reasons set forth above, the Circuit Court's Order of August 5, 2014 should be affirmed.

(signature page to follow)

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.

A handwritten signature in black ink, appearing to read "J. Cassidy", is written over a horizontal line.

James H. Cassidy, S.C. Bar # 1160

Ella S. Barbary, S.C. Bar # 70677

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

Attorneys for the Respondent

First Citizens Bank and Trust Company, Inc.

May 11, 2015
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM LAURENS COUNTY

Court of Common Pleas
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2010-CP-30-1141
Appellate Case No. 2014-002295

RECEIVED

MAY 13 2015

SC Court of Appeals

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

v.

Park at Durbin Creek, LLC, Kenneth E. Clifton, and
Linda G. Whiteman.....Defendants.

Of whom Park at Durbin Creek, LLC and
Kenneth E. Clifton are the.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondent's Final Brief complies with Rule 211(b), SCACR.

Respectfully Submitted,
ROE CASSIDY COATES & PRICE, P.A.


James H. Cassidy, S.C. Bar # 1160
Ella S. Barbary, S.C. Bar # 70677

Joseph O. Smith, S.C. Bar # 77475
1052 North Church Street
Greenville, South Carolina 29601
(864) 349-2600
(864)-349-0303 fax

Attorneys for the Respondent
First Citizens Bank and Trust Company, Inc.

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Greenville, South Carolina

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PROOF OF SERVICE

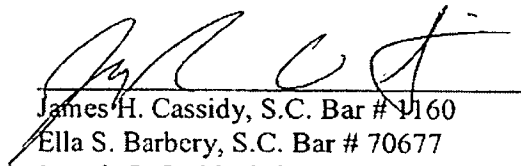
The undersigned hereby certifies that a copy of the foregoing RESPONDENT'S FINAL BRIEF was served upon all counsel of record in the above-referenced action this 12th day of May, 2015, by depositing same in the United States Mail, sufficient postage affixed thereon, and addressed as follows:

Pruitt & Pruitt
J. Calhoun Pruitt, Jr.
101 North Murray Avenue
Anderson, South Carolina 29625-4301
*Attorney for Appellants Park at Durbin Creek, LLC
And Kenneth F. Clifton*

(signature page to follow)

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

A handwritten signature in black ink, appearing to read "J. Cassidy", is written over a horizontal line.

James H. Cassidy, S.C. Bar # 4160

Ella S. Barbary, S.C. Bar # 70677

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

Attorneys for the Respondent

First Citizens Bank and Trust Company, Inc.

May ^{14th} 2015
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Case No. 2010-CP-30-1141
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v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants.

Of Whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

FINAL REPLY BRIEF

J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants,

Of Whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

FINAL REPLY BRIEF

J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

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ARGUMENT IN REPLY

This case and this appeal remain primarily concerned with the intention of the grantors in transferring property into a limited liability company, where one of the grantors would eventually become insolvent. In arguing its preferred interpretation of the facts, First Citizens takes the position that there is but one possible interpretation of Ken Clifton's (hereinafter "Clifton") intentions regarding the transfer at issue here. In a difficult case, concerning a nuanced body of law, that position- and analysis- works a disservice upon the primary issue on appeal here. Providing a myriad of references to "mountains of evidence" and conclusory statements untethered to facts or applicable law, First citizens substitutes such references for analysis. For the reasons argued in Appellant's Brief, and the additional arguments that follow, this Court should REVERSE the decision below.

I. The Challenged Transfer Occurred for a Valid Purpose with Sufficient Evidence to Rebut Any Presumption of Fraud.

First Citizens relies on mischaracterizing Clifton's financial condition, contradictory statements about the interest of witnesses, and unsupported conclusions about other evidence of fraudulent intent. First, Respondent treats its own active consideration of loan renewal as substantial evidence of financial peril. Next, First Citizens argues that Linda Whiteman (hereinafter "Whiteman") is an interested witness whose testimony should be discounted before reversing course to claim that Whiteman's participation in the challenged transfer was somehow separate and distinct from Clifton's conveyance. Finally, First Citizens proffers unsupported arguments that other possible badges of fraud attached to the challenged transfer where the evidence adduced at trial centered on the most prescient detail: timing.

A. Clifton was able to meet his obligations at the time of the transfer and First Citizens misapprehends the relevance of renewal negotiations

The question before the Court as to Clifton's intent in making the challenged transfer requires examining his financial condition, and motivation for his action, at the time of that transfer. In September of 2008, Clifton was current on his loan obligations. Tr. p. 121:16-23, (R. p. 160). Two months later, with renewal under active consideration, he discussed making a final payment before renewal could be approved. Defendant's Exhibit 1, (R. p. 214). When First Citizens ultimately declined to renew his loan, only then did Clifton discover that any hope for an alternative financing option evaporated together with Respondent's election. Tr. p. 134:9-135:16, (R. pp. 173-174); Tr. p. 78:13-79:3, (R. pp. 117-118).

In characterizing renewal negotiations, First Citizens argues that Clifton was unable to meet his obligations at the time of the transfer if he was dependent on modification. (Resp't Br. at 14). That position is flawed for three reasons. First, Clifton was in fact current at the time of the transfer, despite requesting and pursuing a modification. Second, Clifton's testimony reflects that he was pursuing modification as his primary, but not only, option at that time. Tr. p. 122:22 – 123:6; (R. pp. 122-123). Finally, the question of renewal is relevant beyond considerations of how declination ultimately affected Clifton's financial standing. Specifically, if, as Respondent seems to concede, he anticipated renewal, then his alleged motive to transfer property and avoid the attachment of judgments makes no sense.¹

¹ First Citizens argues, and Clifton admits, that at the time of the transfer renewal was not approved. However, in order to adopt First Citizens' position regarding the relevance of modification negotiations as it relates to Clifton's state of mind, one would also be required to charge Clifton with the knowledge that his loans would not be renewed. Stated differently, if Clifton believed his loans were set for renewal, as he testified he did and as emails from the bank corroborated the reasonableness of that belief, then he had no

Clifton or those working on his behalf provided accurate information to Respondent while renewal negotiations were ongoing. First Citizens takes the position that a financial statement provided some nine months prior to the transfer at issue, and eleven months before renewal of loans was under active consideration, created a duty to continuously update that statement. (Resp't Br. at 14-15). Compounding that erroneous attempt to create a non-existent duty, First Citizens suggests that borrowing money from other banks, and pledging collateral, is indisputable proof that Clifton lacked the ability to meet his obligations. (Resp't Br. at 15, FN4). Given the course of dealing between the parties, those arguments are disingenuous. First Citizens had previously asked for and received a financial statement from Clifton. Having failed to ask for similar information during the renewal negotiations at issue, Respondent casts the blame to Clifton for failing to update previous information. Similarly, First Citizen's suggestion that Clifton's pattern of borrowing money to meet ongoing obligations evidenced his poor standing is at odds with his historical business practice and dealings with Respondent².

B. The testimony adduced at trial provided a sufficient, *bona fide* purpose for the challenged transfer

Liability protection is a legitimate purpose for transferring ownership of property from individuals to a limited liability company. In this case all three witnesses familiar with the transaction testified that liability concerns originating with Whiteman were the impetus for the transfer. Tr. p. 48:21-51:2, (R. pp. 87-90); Tr. p. 81:6 – 82:1, (R. pp. 120-121); Tr. p. 133:4-24, (R. p. 172). Respondent discounts that testimony entirely by labeling their testimony as “interested”, “biased”, and “self-serving.” (Resp't Br. at 17).

reason to convey the property for the reason First Citizens suggests is the only possible motivation for his actions.

² Indeed, First Citizens was well aware of Clifton's interdependent financial obligations no later than January 2008. See Plaintiff's Ex. 5, (R. p. 247-253).

Even assuming that testimony from these witnesses might be suspect, Respondent fails to address two key points: first, there is no basis for discounting this sworn testimony in its entirety, and second, there was no evidence that Linda Whiteman was biased or otherwise suspect.³ Ken Clifton and his daughter testified about liability concerns at the property, and that testimony was supported by Plaintiff's own witness. Tr. p. 21:25-22:10, (R. pp. 60-61); Tr. p. 28:5-8, (R. p. 67). Linda confirmed that she pressed Clifton to transfer the property, which Clifton explained he likely would not have done but for Whiteman's insistence. Tr. p. 154:7-11, (R. p. 193).

Furthermore, Respondent suggestion that liability insurance covering the property eliminated concerns regarding hunting is unconvincing. (Resp't Br. at 16). First, insurance would have provided some protection from liability but would not have eliminated those risks. Second, one would only expect liability insurance to impact Whiteman's concerns if she was aware such a policy existed. Whiteman testified that she did not know anything about insurance, and Respondent has failed to provide any evidence to the contrary. Tr. p. 50:7-8, (R. p. 89); Tr. p. 56:9-13, (R. p. 95).

Under South Carolina law, our courts have established recognized badges of fraud to account for judicial inability to discover a grantor's state of mind. However, absent from Respondent's analysis here is any discussion of the interplay between evidence tending to establish the existence of badges of fraud and the testimony of grantors in the challenged transaction. As our Supreme Court recognized over forty years ago,

"Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as 'badges of fraud'. The badges tend to excite suspicions as to the Bona fides of a challenged conveyance. Unexplained, they

³ Indeed, Respondent later argues that Linda Whiteman's role in transferring the property should be treated completely separate from that of Clifton.

may warrant an inference of fraud. Whether the inference is warranted depends in large measure on *whether a satisfactory explanation is presented.*" *Coleman v. Daniel*, 199 S.E.2d 74, 261 S.C. 198 (1973). [Emphasis added]

In this case, Clifton and other witnesses provided a consistent, satisfactory explanation for the conveyance. Respondent merely reiterates that fraud should be inferred without adequately addressing the sufficiency of Clifton's explanation, or that his testimony was supported by that of other witnesses.⁴

C. Respondent Failed to Provide Evidence of Other Badges of Fraud.

Clifton and Durbin Creek admittedly place great weight on the timing of the transfer relative to the threat of litigation. That position is based on the dominant theme of the evidence adduced at trial, as well as arguments advanced below. Respondent complains that focusing on timing of the transfer and whether litigation was imminent amounts to a wholesale discount of other, possible badges of fraud. (Resp't Br. at 17). Appellants' position follows the evidence in the record and Respondent has failed to analyze the applicability of other badges of fraud.

At the time of the transfer, litigation was not imminent. Rather, the parties were actively negotiating renewal. Respondent suggests that because renewal was not approved, litigation was imminent. (Resp't Br. at 19). However, the threat of litigation assumes that renewal would ultimately be declined. As previously argued, Clifton had every reason to believe that renewal was on track well after the challenged conveyance which strongly suggests that the transfer was not pursuant to the threat of litigation. Defendant's Ex. 1, (R. p. 214).

⁴ Indeed, even John Wood corroborated Clifton's testimony. Tr. p. 21:25-22:10, (R. pp. 60-61); Tr. p. 28:5-8, (R. p. 67). Wood worked for First Citizens and was involved with the loans at issue here. Mr Wood also admitted that he and others had hunted the property, and that he was aware of concerns about liability

While complaining of lack of attention to other badges of fraud, and amid assurances that the evidence below established numerous instances of same, Respondent consigns specific mention of other badges of fraud to a single footnote. (Resp't Br. at 16, FN5). Reservation of benefit and retention of possession are both recognized badges of fraud, and neither applies to the facts of this case. First, analyzing the conveyance at issue by reference to whether Clifton retained possession or benefit ignores the nature of the conveyance. More specifically, where an individual transfers his interest in property to a limited liability company in which he holds a membership interest the grantor will always retain some benefit. Second, our courts have previously applied the retention of benefit analysis in the context of title only transfers where there was no legitimate purpose advanced. *See, e.g., Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672 (Ct.App. 2013). In that case, the grantor made several conveyances to family while retaining both possession and income derived from farming the land. That case was also analyzed under the rubric of a voluntary conveyance. The reasoning of *Judy* does not apply when, as here, the conveyance was supported by valuable consideration and the grantor's interest following the conveyance is an ownership share in the grantee limited liability company.

II. The Challenged Conveyance Requires Examining the Single Transaction That Actually Occurred Rather Than Irrelevant Availability of Other Options to the Grantors.

Clifton and Whiteman transferred the property in a single instrument. First Citizens apparently concedes that there was no evidence of fraudulent intent on the part of Whiteman. (Resp't Br. at 21). Respondent then provides citation to various authorities for the unchallenged propositions that a) tenants in common may transfer their interest

without the consent of the other, b) a cotenant cannot convey more than his own interest, c) creditors may pursue a debtor's interest in his fractional share of property owned as tenants in common. (Resp't Br. At 20-21). Those three propositions, all correct statements of the law, are not relevant to the case at bar. Rather, this case concerns the actual conveyance at issue rather than other transactions that might have been possible or what relief a creditor may eventually pursue.⁵

It is undisputed that tenants in common may transfer, mortgage, or otherwise dispose of their individual interest in property. *See, e.g., Ex parte Johnson*, 147 S.C. 259, 145 S.E. 113 (1928). In this case, Clifton could have transferred his individual interest in the property without the consent or participation of Whiteman. However, what Clifton might have done is neither relevant nor instructive in evaluating the transfer that actually occurred. Furthermore, that Clifton might have had another option for transferring his interest is irrelevant to determining whether the court below could, as it attempted to do, set aside half of a deed.

It is similarly undisputed that Clifton, as a tenant in common with Whiteman, could not transfer more than his individual interest in the property. *See, e.g., Garret v. Wienberg*, 43 S.C. 36, 20 S.E. 756 (1895). That suggestion, while a correct statement of law, is irrelevant to the issue before the Court. In this case, Clifton and Whiteman chose to transfer their individual interests for an equivalent ownership share in a limited

⁵ First Citizens complains that Appellants' position is without support or citation to supporting authority. As indicated in Appellants' Brief, the undersigned is not aware of any case that addresses the issue of dividing the deed. However, in challenging the conveyance at issue here, Respondent is necessarily attacking the deed utilized to effectuate the transfer. It stands to reason that a single transaction, and a single instrument, is not subject to piecemeal attack. While Respondent may urge the Court to treat a single deed as two separate and distinct transactions, the lack of case law addressing divisibility of a deed cuts both ways. There is no authority on point to support dividing the deed, just as there is no supporting authority for the proposition that a single deed should be treated as two separate conveyances at the insistence of a creditor subsequently attacking the validity of the transaction.

liability company formed for that purpose, whose sole asset was and is the property.

Considerations of what might have occurred if Clifton attempted to transfer more than his own interest are irrelevant.

Further, the availability of future proceedings to attempt enforcement of First Citizen's judgment against Clifton's interest in the property is irrelevant to ascertaining the validity of the underlying transaction or the propriety of the attempted remedy below. If this Court affirms the decision below, First Citizens would no doubt attempt enforcement of its judgment against Clifton's individual interest.⁶ However, the relevant inquiry here is whether the trial court impermissibly attempted to set aside half of the challenged conveyance and thereby divide the deed.

Finally, analyzing the transaction as one conveyance, utilizing a single deed, and a single transaction helps focus the relevant inquiry on the intent of the grantor. Here, the grantor was Ken Clifton AND Linda Whiteman. Plaintiff's Ex. 4(A), (R. pp. 225-227). As our Supreme Court recently explained, the Statute of Elizabeth is concerned with the intent of the grantor. *Oskin v. Johnson*, 400 S.C. 390, 735 S.E.2d 459, 464 (2012). Thus, the focus of the inquiry was on the intention of both Clifton and Whiteman. Having failed to provide any proof of fraudulent intent on the part of Whiteman, the appropriate result is a directed verdict in favor of Appellants rather than an attempt to recast a single

⁶ Indeed, if First Citizens were unable to seek enforcement of its judgment following successful prosecution of its case, then the underlying action would make little sense. The upshot of Respondent's position is that in the absence of ability to set aside half the deed, they may be left without a remedy. However, having chosen to attack a conveyance as fraudulent, First Citizens is not at liberty to argue the transaction is half fraudulent where the evidence ultimately fails to demonstrate improper intent by one of the grantors. Appellants' position at trial and on appeal has been consistent: in opting to dismiss claims against Whiteman, First Citizens lost the ability to challenge the conveyance as the single deed at issue is not subject to division.

transaction as two “mutually exclusive conveyances.”⁷ Accordingly, the Court below erred in attempting to adopt remedial measures that divided the deed in the underlying transaction

III. The Trial Court Improperly Considered the Legitimacy of a Transfer Not Raised in the Pleadings

As to the threshold issue of preservation, First Citizens misconstrues Appellant’s objection and argument on appeal. Noting that there was no objection to the first mention of Streamline, Respondent argues that subsequent objections are ineffective to preserve the issue. (Resp’t Br. at 22). However, Appellants’ objection concerned evidence related to attacking the second transfer. Tr. 67:1-68:16; p. 87:13-16, (R. pp. 106-107; p. 126). Indeed, in arguing that evidence of the subsequent transfer was not properly before the Court, the following exchange clarified the nature of the objection:

MR. PRUITT: Not the transfer of his interest to Streamline but the deed from Clifton and Whiteman to the LLC. That is all this lawsuit is about.

THE COURT: It is the timing, the timing is the attack.

MR. PRUITT: Sir?

THE COURT: The timing of the deed is the attack.

MR. PRUITT: Yes, sir.

THE COURT: Whether it happened or not is not a question, it happened.

MR. PRUITT: Yes, sir. You are absolutely right.

Tr. p. 68: 6-16, (R. p. 107).

⁷ (Resp’t Br. at 21). Assuming, *arguendo*, that the conveyance at issue was actually two conveyances- an assumption unsupported by the plain language of the deed or surrounding circumstances- those conveyances were certainly not mutually exclusive. Indeed, they not only occurred at the same time but in the same transaction. Respondent’s effort to sever the transaction only serve to highlight their attempt to argue against a hypothetical version of what might have occurred rather than confront the actual conveyance.

The preceding dialogue was in the context of the first attempt by Respondent to introduce evidence of the value of the property, indicating an intention to challenge the sufficiency of consideration for the second transfer. The exchange that followed demonstrates that there was no objection to the fact of the transfer, only to the first and subsequent attempts to attack the validity of that transfer. As Appellants objected the first time such evidence was offered, renewed their objection during subsequent attempts to introduce such testimony, and raised the issue in a post-trial motion, the issue is properly preserved for review.

Having objected to admission of evidence concerning the second transfer, Appellants have also demonstrated prejudice.⁸ While questions about Streamline were raised in discovery, and the fact of the transfer acknowledged, at the time of trial the Defendants had no notice that First Citizens sought to challenge the validity of the second conveyance. Indeed, Respondent's own argument on brief underscores that admission of the substance of the second transaction obscured the merits of the only transfer challenged in the pleadings. (Resp't Br. at 24) (Arguing that the second transfer provided "evidence of Clifton's dire financial condition" despite the passage of time and markedly different circumstances between the two transfers). While Respondent is correct that the Court could have entertained a motion to amend during trial, no such motion was made. Finally, First Citizens concludes that the issue was tried by implicit consent. That position is untenable where Appellants objected to the proffered evidence, argued the

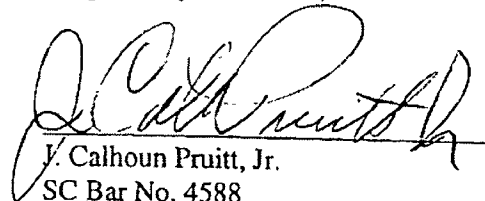
⁸ First Citizens also mischaracterizes the nature of Appellants argument here, noting that a relevance objection was made not that the evidence is irrelevant. (Resp't Br. at 23). An objection on the grounds of relevance, and the basis for that objection, obviously lodges a challenge to the relevance of the proffered testimony. Again, the context demonstrates the basis for the objection. If, as Appellants claimed at trial and argue on appeal, a challenge to the second transfer was not properly before the Court, then evidence concerning adequacy of consideration or other aspects of that transfer are irrelevant to the first transfer.

issue at the close of Plaintiff's case, and raised the matter in a post-trial motion. As the issue was not otherwise before the Court, was not tried by consent, and there was no motion to amend, the Court below erred in admitting the challenged testimony and making a ruling thereon.

CONCLUSION

Ken Clifton and other witnesses established a legitimate reason for the transaction at issue here. Accordingly, there was insufficient evidence of fraudulent intent. To the extent First Citizens presented evidence of various badges of fraud, Appellants rebutted any presumption that attached by providing sufficient evidence of a valid purpose for the transfer. As Respondent now apparently concedes, there was no evidence of fraudulent intent on the part of Whiteman. As one of the grantors in the challenged transaction, the failure of proof as to either prevents application of the Statute of Elizabeth as the Court cannot divide the deed. Finally, Appellants properly objected to irrelevant evidence concerning a second conveyance not raised in the pleadings or tried by consent. Accordingly, that issue was not properly before the trial Court. This Court, exercising de novo review, should REVERSE the decision below.

Respectfully Submitted,



J. Calhoun Pruitt, Jr.
SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2010-CP-30-1141
Appellate Case No. 2014-002295

First Citizens Bank and Trust Company, Inc. Respondent,

v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants,

Of whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

RECORD ON APPEAL

J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

James H. Cassidy, S.C. Bar No. 1160
Ella S. Barbary, S.C. Bar No. 70677
Joseph O. Smith, S.C. Bar No. 77475
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, South Carolina 29601
(864) 349-2600
Attorneys for Respondent

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

7/24 AUG - 5) A 11:24 No.: 2010-CP-30-1141

First Citizens Bank and Trust Company,
Inc.,

Plaintiff, LAURENS COUNTY
CLERK OF COURT

ORDER TO SET ASIDE
CONVEYANCES

vs.

Park at Durbin Creek, LLC; Kenneth E.
Clifton; and Linda G. Whiteman,

Defendants.

THIS MATTER was before the Court on June 26, 2014 pursuant to the Complaint of the Plaintiff, First Citizens Bank & Trust Company, Inc. ("First Citizens" or "Plaintiff"), seeking relief against the Defendants under South Carolina's Statute of Elizabeth (S.C. Code Ann. § 15-7-10). The Plaintiff was represented by James H. Cassidy and Ella S. Barbery, attorneys with the firm Roe Cassidy Coates & Price, PA. Defendants Park at Durbin Creek, LLC, and Kenneth E. Clifton were represented by attorney J. Calhoun Pruitt, Jr. Defendant Linda G. Whiteman appeared *pro se*. Non-party witnesses present and who testified at trial were John B. Wood, Jr.; John B. Schwieters; Corbin Haskell; and Renee Gilreath.

APPLICABLE LAW

The Statute of Elizabeth provides for the following:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken . . . to be clearly and utterly void

S.C. Code Ann. § 27-23-10(A). When interpreting this statute, the South Carolina Supreme Court has held that there are two occasions upon which a conveyance shall be set aside under the

Statute of Elizabeth: (1) where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud creditors; and (2) where the transfer was made without actual intent to defraud creditors but without valuable consideration. *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012).

Under the first circumstance where there is valuable consideration, the plaintiff must establish by clear and convincing evidence that the grantor transferred the property with “a conscious intent to defeat, delay, or hinder [one’s] creditors in the collection of their debts.” *Judy v. Judy*, 403 S.C. 203, 209, 742 S.E.2d 672, 675 (Ct. App. 2013)(quoting *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384, 409, 1 S.E.2d 797, 808 (1939)). However, the Court may infer fraudulent intent when the following “badges of fraud” exist:

- (1) The insolvency or indebtedness of the transferor;
- (2) Lack of consideration for the conveyance;
- (3) Relationship between the transferor and the transferee;
- (4) The pendency or threat of litigation;
- (5) Secrecy or concealment;
- (6) Departure from the usual method of business;
- (7) The transfer of the debtor’s entire estate;
- (8) The reservation of benefit to the transferor; and
- (9) The retention by the debtor of possession of the property.

In re Haddock, 246 B.R. 810, 815 (Bankr. D.S.C. 2000)(citing *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74, 79 (1973)). “A badge of fraud creates a rebuttable presumption of intent to defraud.” *Royal Z Lanes, Inc. v. Collins Holding Corp.*, 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999).

Under the second circumstance where there is lack of valuable consideration, the plaintiff does not have to establish actual intent; rather, a transfer may be set aside as fraudulent if (1) the grantor had existing debt owing to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness in full - not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt. *Future Group, II v. Nationsbank*, 324 S.C. 89, 96, 478 S.E.2d 45, 48 (1996).

In the present case, there are two transfers in question: (1) the September 18, 2008 conveyance of Defendant Clifton's interest in the Property to PDC and (2) the August 5, 2009 transfer of Defendant Clifton's interest in PDC to Streamline. Based upon the pleadings, testimony during the trial, evidentiary exhibits introduced at trial, and all matters of record, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Defendants Kenneth E. Clifton ("Clifton") and Linda G. Whiteman ("Whiteman") purchased approximately 370 acres of real property located in Laurens County, South Carolina ("Property") as tenants in common in 1995. They owned the Property in their individual names as tenants in common from 1995 until September 18, 2008.
2. The Property was purchased for retirement purposes.
3. In addition to the aforementioned Property, Clifton and Whiteman owned two additional tracts of land which they purchased in 1992 and 1993. They owned these additional properties as tenants in common in their individual names until July 31, 2008 and September 18, 2008.
4. It was not uncommon or out of the ordinary for Clifton to own personal investment property in his individual name.

5. Clifton is in the real estate business and was actively engaged in real estate development until 2009.

6. Clifton typically purchased and/or transferred property he planned to develop into limited liability companies, which either he or his office staff organized. He had organized in excess of forty (40) limited liability companies over the course of his career.

7. In order to finance his real estate development business, Clifton routinely borrowed money from third party lenders, one of which was First Citizens.

8. Beginning in October 2002, Clifton personally borrowed or guaranteed loan obligations from First Citizens and had entered into three loans with the Plaintiff to finance three different real estate development projects. The original principal amount of Clifton's three loans with the Plaintiff totaled Three Million Eight Hundred Seventy-Three and 00/100 (\$3,873,000.00) Dollars.

9. These development loans were never intended to be long term.

10. On or around January 2008, two of Clifton's loan obligations with the Plaintiff were maturing, and Clifton requested an extension in time within which to pay.

11. Clifton presented to First Citizens a personal financial statement dated January 23, 2008 (hereinafter "Financial Statement"). The Financial Statement was relied upon by the Plaintiff in evaluating Clifton's financial condition in order to determine whether or not to modify and/or extend the loans.

12. The Financial Statement showed that Defendant Clifton had a net worth of approximately Fifty Million Dollars (\$50,000,000.00).

13. One of the assets listed on the Financial Statement was Clifton's fifty percent (50%) interest in the subject Property, which was unencumbered and valued at One Million Five Hundred Seventy and no/100 (\$1,570,000.00) Dollars.

14. Relying on the information set forth in the Financial Statement, the Plaintiff agreed to extend the loan obligations with on two his loans, with a new maturity date being January 2009.

15. The third loan with Clifton was set to mature on July 12, 2008.

16. Sometime in the Spring/Summer 2008, the real estate market had declined and sales in Clifton's development projects had significantly slowed and/or ceased altogether. The Plaintiff became increasingly concerned regarding the loans with Clifton and his ability to pay, as he was becoming slow in making his loan payments.

17. Clifton was unable to pay the third loan when it became due on July 12, 2008, and another extension was requested. An extension was granted on September 22, 2008, thereby extending the maturity date to January 2009 to coincide with the other two loans.

18. While Clifton and Plaintiff were negotiating the loan modification for the third loan, Clifton and Whiteman transferred their interest in the Property to Park at Durbin Creek, LLC ("PDC") on September 18, 2008.

19. Clifton testified that he transferred his interest in the Property to PDC at the insistence of Whiteman for liability protection, as the Property was being leased to third parties for recreational hunting.

20. Clifton and/or his office prepared the organizational documents for PDC and unilaterally decided when the Property would be transferred.

21. On or around the same time, Clifton and Whiteman transferred their interest in the other two properties they owned together jointly to limited liability companies, and Clifton also transferred his interest in property he owned individually to a limited liability company, as set forth below:

- a. July 31, 2008, Clifton and Whiteman transferred ownership of property they owned in their individual names since 1993 to Gardens at Fourteen, LLC.
- b. September 15, 2008, Defendant Clifton transferred ownership of four tracts of land which he owned individually since 2004 (or earlier) to Pawley Plantation, LLC.
- c. September 18, 2008, Defendant Clifton and Whiteman transferred ownership of property they owned in their individual names since 1992 (or earlier) to Pelham at Boiling Springs, LLC.
- d. September 19, 2008, Defendant Clifton transferred ownership of his office building which he owned individually since 1997 to Central Office, LLC.

22. The Plaintiff continued to be concerned regarding Clifton's ability to pay the loans when they became due.

23. Clifton payment status on the loans had slowed in September 2008.

24. Beginning in October 2008, the Plaintiff and Clifton began discussing another loan modification to extend the due dates of the loans past January 2009. The Plaintiff advised Clifton that he needed to bring his interest payments current on the three loans and to provide a business plan as to how he planned to pay down his loan balances. The Plaintiff also requested that he provide it with additional collateral. Clifton did not provide a business plan or additional

collateral, and also failed to bring the loans current. As a result, First Citizens elected not to renew the three loans.

25. First Citizens accelerated on the loans and commenced foreclosure proceedings in February 2009.

26. Clifton retained an attorney to represent him in the foreclosure actions and filed Answers in each of the cases, thereby delaying the foreclosure process.

27. Foreclosure judgments were obtained in favor of Plaintiff in June 2009 and the foreclosures sales were held on August 3 and August 4, 2009. Deficiency sales were held on September 3, 2009. Deficiency judgments were entered against Clifton in the total amount of \$745,317.86, plus interest, on October 20, 2009.

28. On August 5, 2009, while the Plaintiff was in the process of obtaining judgments against Clifton, Clifton and his two daughters entered into an Assignment of Interest in Park at Durbin Creek, LLC ("Assignment"), wherein Clifton agreed to disassociate from PDC and transfer his membership interest in the company to Streamline Management, LLC ("Streamline").

29. Streamline was organized on January 12, 2010 and did not exist on August 5, 2009 when the Assignment was executed.

30. PDC is a member-managed limited liability company. Whiteman did not authorize or consent to Clifton's transfer or assignment of his membership interest in PDC to Streamline.

31. In October 2010, Plaintiff started supplemental proceedings against Clifton in an effort to try and collect on the judgments.

32. By this time, the assets which Clifton had listed as owning in his Financial Statement had been foreclosed upon (or a deed in lieu of foreclosure had been given), he had transferred them to business partners in exchange for forgiveness of debt, or he had otherwise disposed of the property.

33. Clifton has no remaining assets to pay the debt owing to First Citizens.

CONCLUSIONS OF LAW

After applying the applicable law to the facts of this case, and for the reasons set forth below, I hereby find Defendant Clifton's September 18, 2008 transfer of his interest in the Property into PDC was fraudulent and should be set aside under the Statute of Elizabeth, so that ownership of his fifty percent (50%) interest in the Property is restored to his individual name. I further find that the August 5, 2009 transfer from Clifton to Streamline was invalid and void *ab initio*.

A. September 18, 2008 Transfer to Park at Durbin Creek

The Court agrees with Clifton that valuable consideration was exchanged for the transfer of Clifton's interest in the Property to PDC. Therefore, the question becomes whether or not the transfer was made with fraudulent intent.

Clifton testified that he did not transfer the Property to PDC for the purpose of defrauding his creditors, but rather at the request and insistence of Whiteman. The Court does not find Clifton's testimony to be credible. It was Clifton and/or his office staff who prepared the organizational documents for PDC and decided when the transfer should occur. Whiteman testified that she had asked Clifton for years to transfer the Property, but nothing was ever done. The decision to transfer the Property into a limited liability company in September 2008 at a time when Clifton was personally experiencing financial trouble seems more than coincidental. His

explanation that it was done at this time out of convenience since he was setting up companies for other development projects is not persuasive in light of the fact that Clifton and Whiteman had owned the Property since 1995. Clifton was active in the development business for many years and testified that he and/or his staff always used limited liability companies for his development projects and had established in excess of forty companies. Accordingly, Clifton could have easily established a company and transferred the Property into an LLC sooner rather than later in September 2008.

Moreover, Clifton did not just transfer the subject Property into an LLC in September 2008, he also transferred essentially all properties he owned individually into various LLCs, including two tracts of land he owned with Whiteman, four tracts of land he owned individually, and his office building. By doing this, he essentially divested himself of any individual ownership interest in any real property which had any significant equity that could be reached by creditors.

Furthermore, all of these transfers took place at a time when the real estate market had pummeled and Clifton's real estate developments had come to a halt. Clifton became slow in making his loan payments to First Citizens as a result. Clifton had a loan that matured in July 2008, which he could not pay and was in the process of negotiating another loan extension with First Citizens. While trying to work out a deal with the bank for an extension on his loan, Clifton was busy forming LLCs and divesting himself of all his personal holdings. Clifton never disclosed to First Citizens that he was transferring property or that his Financial Statement was no longer accurate. Clifton knew that he could not pay his debts owing to First Citizens when they became due. Although Clifton was hopeful that First Citizens would agree to renew his loans as they had done previously, there was no guaranty this would happen. Email

correspondence by and between First Citizens representatives and Clifton and/or his daughters clearly establishes this fact. Clifton knew that failure to pay his loans could and/or would result in foreclosure.

Finally, the subject Property was purchased by Clifton for retirement purposes. He intended to hold on to the Property and perhaps pass it on to his daughters. The Property was not encumbered and had significant equity. Despite Clifton's contention that he transferred the Property into PDC because of other legitimate reasons, he knew that if the Property were out of his name it would be protected from creditors.

In light of the foregoing, I find that there is sufficient evidence to establish the existence of several "badges of fraud" to infer the requisite fraudulent intent on the part of Clifton, and hereby hold that the conveyance of his 50% interest in the Property to PDC is null and void pursuant to the Statute of Elizabeth.

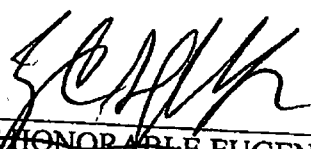
B. August 5, 2009 Transfer to Streamline

As for the second transfer of Defendant Clifton's interest in PDC to Streamline, the Court finds that the transfer is void *ab initio*. First, the Certificate of Existence on file with the South Carolina Secretary of State establishes that Streamline did not exist until January 12, 2010, after the Assignment was executed and the purported transfer took place. As a result, Clifton could not have transferred his interest in PDC to Streamline on August 5, 2009 as evidenced by the Assignment because no such entity existed. Second, applying basic contract principals, one cannot have a valid contractual agreement with a non-existent party, thereby making the Assignment invalid on its face. See *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 439 (Ct.App.2003)(A contract is an obligation which arises from actual agreement of the parties); *Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437

S.E.2d 122, 125 (Ct.App.1993)(the necessary elements of a contract are an offer, acceptance, and valuable consideration).

Finally, PDC was a member-managed company. Whiteman testified and Clifton confirmed that she was not advised of and did not consent to any purported transfer of Clifton's interest in PDC, explaining that she did not want to be in business with Clifton's daughters. In fact, Whiteman did not learn about the intended transfer of Clifton's interest to Streamline until discovery was conducted in the present action. South Carolina Code Annotated § 33-44-404(7) specifically prohibits the admission of a new member into a limited liability company without the consent of all members. Therefore, even if Clifton could have contracted with and transferred his interest in PDC to a non-existent entity, the conveyance would still be invalid. For these reasons, Clifton's transfer to Streamline is void *ab initio*. As a result, it is not necessary for the Court to analyze the transfer under the Statue of Elizabeth.

IT IS SO ORDERED.



THE HONORABLE EUGENE C. GRIFFITH, JR.
8th Judicial Circuit Court Judge

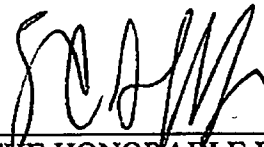
Newberry, South Carolina

July ^{30th}, 2014

ATTEST: _____
CLERK OF COURT
JUL 31 2014
NEWBERRY, SC

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IT IS SO ORDERED.

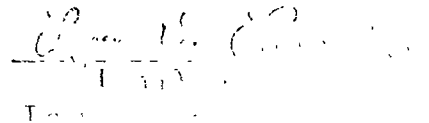


~~THE HONORABLE~~ EUGENE C. GRIFFITH, JR.
8th Judicial Circuit Court Judge

Newberry, South Carolina

September 13, 2014

A TRUE COPY OF ORIGINAL



COPY

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS

COUNTY OF LAURENS)
FILED 20 APR 30 C.A. No.: 2010-CP-30-1141

First Citizens Bank & Trust
Company, Inc.,

Plaintiff,

**AMENDED COMPLAINT
(NON-JURY TRIAL)**

vs.

Park at Durbin Creek, LLC;
Kenneth E. Clifton, and
Linda G. Whiteman,

Defendants.

The Plaintiff, First Citizens Bank & Trust Company, Inc. (hereinafter the "Plaintiff" or "Bank"), complaining of the Defendants Kenneth E. Clifton and Linda G. Whiteman, hereby alleges and says the following:

JURISDICTION AND VENUE

1. The Plaintiff is a banking corporation organized and existing under the laws of the State of South Carolina and doing business in Laurens County, South Carolina.
2. Upon information and belief, the Defendant Kenneth E. Clifton (hereinafter "Clifton") is a citizen and resident of Greenville County, South Carolina, but owns real property located in the County of Laurens, which is the subject of this lawsuit.
3. Upon information and belief, the Defendant Linda W. Whiteman (hereinafter "Whiteman") is a citizen and resident of Greenville County, South Carolina, but owns real property located in the County of Laurens, which is the subject of this lawsuit.
4. Upon information and belief, the Defendant, Park at Durbin Creek, LLC is a limited liability company duly organized and existing under the laws of the state of South

Carolina with principal officers and agent in the County of Greenville. Park at Durbin Creek, LLC owns real property located in the County of Laurens, which is the subject of this lawsuit.

5. Jurisdiction and venue are both proper in this Court pursuant to S.C. Code Ann. § 15-7-10.

FIRST CLAIM FOR RELIEF
(Fraudulent Conveyance)

6. On or about October 15, 2002, Defendant Clifton executed and delivered a promissory note to the Bank in the principal amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00) (hereinafter "Note 1"), plus interest, which was subsequently renewed by promissory notes dated December 20, 2005, December 20, 2006, and January 29, 2007.

7. On or about July 12, 2006, Shellbrook Plantation, LLC, executed and delivered a promissory note to the Bank in the principal amount of One Million Eight Hundred Seventy-Three Thousand and 00/100 Dollars (\$1,873,000.00) (hereinafter "Note 1"), plus interest, which was renewed on September 22, 2008.

8. In order to secure the payment of Note 2, including all renewals, extensions, substitutions, and/or modifications thereof, and to induce the Bank to lend the monies, Defendant Clifton executed and delivered to the Bank an original Guaranty dated July 12, 2006 and an Unlimited Guaranty Agreement dated September 22, 2008, in which he promised to pay the Bank the full amount of Note 2 in the event Shellbrook Plantation, LLC did not.

9. On or about December 15, 2007, Plantation Holdings of Greenville, LLC, executed and delivered a promissory note to the Bank in the principal amount of One

Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) (hereinafter "Note 3"), plus interest, , which was renewed on January 29, 2008.

10. In order to secure the payment of the promissory note, including all renewals, extensions, substitutions, and/or modifications thereof, and to induce the Bank to lend the monies, Defendant Clifton executed and delivered to the Bank a Guaranty Agreement dated December 15, 2006 and an Unlimited Guaranty Agreement dated January 29, 2008, in which he promised to pay the Bank the full amount of Note 3 in the event Plantation Holdings of Greenville, LLC did not.

11. On January 23, 2008, Defendant Clifton submitted a personal financial statement to the Bank, wherein he represented that he owned a fifty-percent (50%) interest in approximately 370 acres located in Laurens County, South Carolina ("Property") and that his interest was valued at One Million Five Hundred Seventy Thousand and 00/100 Dollars (\$1,570,000.00). The Property was jointly owned by Defendants Clifton and Whiteman, a description of which is set forth below:

All those certain pieces, parcels or tracts of land with improvements thereon, situate, lying and being in the County of Laurens, State of South Carolina and being shown as Tract No. 3, containing 152.86 acres, more or less, Tract No. 4, containing 202.43 acres, more or less, and Tract No. 5, containing 20.35 acres on that certain plat entitled "449.39 acres, more or less, total (John Hancock – Westvaco Tract 350) Boundary Survey for J. Larry Faulkenberry & Almond Forest Products, Inc., located 4 miles northeast of Fountain Inn – Youngs Township, Laurens County, South Carolina" dated September 9, 1993, prepared by Daniel Riddick and Associates, Inc. and recorded in the Office of the Clerk of Court for Laurens County in Plat Book A-42 at Page 7; reference to said plat being made for a more accurate and complete description of said property.

This conveyance is made subject to a timber deed from J. Larry Faulkenberry and Almond Forest Products, Inc. to Willamette Industries, Inc. recorded in Book 302 at Page 286.

LESS AND EXCEPT any properties previously conveyed.

This being the same property conveyed to Park at Durbin Creek, LLC herein by deed of Kenneth E. Clifton and Linda G. Whiteman dated September 18, 2008 and recorded in the Office of the Clerk of Court on September 22, 2008 in Book 901 at Page 247.

TMS# 184-00-00-003.

12. On September 18, 2008, Defendants Clifton and Whiteman transferred their interest in the Property to a limited liability company, Park at Durbin Creek, LLC, by Quit-Claim Deed in consideration of Ten and 00/100 Dollars (\$10.00). Defendant Clifton was listed as the registered agent of Park at Durbin Creek, LLC and thereafter, on or about August 19, 2010 the registered agent was changed to Streamline Management, LLC, and upon information and belief, both Defendants Clifton and Whiteman are members of the limited liability company. A copy of the Quit-Claim Deed is attached hereto as "Exhibit A" and incorporated herein by reference as if fully set forth in this Complaint.

13. Approximately three months later, Defendant Clifton defaulted on payments due to the Bank on Notes 1, 2, and 3. Demand was made to Defendant Clifton by letter dated January 21, 2009, but Defendant Clifton failed to cure the default. Accordingly, collection actions were commenced against Defendant Clifton in Greenville County on February 3, 2009, and judgments in the total amount of SEVEN HUNDRED FORTY-FOUR THOUSAND THREE HUNDRED SEVENTEEN and 86/100 Dollars (\$744,317.86), plus interest, attorneys' fees and costs, were obtained against Defendant Clifton and transcribed in Laurens County, copies of which are attached hereto as

"Collective Exhibit B" and incorporated herein by reference as if fully set forth in this Complaint.

14. Defendants Clifton and Whiteman transferred their interest in the Property to Park at Durbin Creek, LLC for the specific purpose and with the intent to defraud the Bank and hinder and delay the collection of the indebtedness owed to the Bank described above.

15. The Bank is informed and believes that, after the subject conveyance, Defendant Clifton failed to retain sufficient assets to pay the indebtedness he owes to the Bank in full.

16. Accordingly, the Bank is entitled to have the transfer of the Property set aside so that the Bank's lien can attach to Defendant Clifton's interest in the Property.

17. The Bank is also entitled to recover punitive damages from Defendant Clifton based on his intentional and deceptive conduct.

SECOND CLAIM FOR RELIEF
(Civil Conspiracy)

18. The allegations contained in paragraphs 1 through 16 of the Plaintiff's Complaint are incorporated herein by reference.

19. Defendants Clifton and Whiteman, by and between themselves, conspired to interfere with, delay, hinder, and/or prevent the Bank from collecting the monies it is owed from Defendant Clifton on Notes 1, 2, and 3 by transferring property out of their individual names into a limited liability company in which they both are members.

20. As a proximate result of the Defendants' conspiracy against the Plaintiff, the Bank has incurred special damages, including but not limited to, the costs and expenses

associated with the Bank having to locate Defendant Clifton's property, as well as other damages as may be proven at trial.

21. The Plaintiff is also entitled to an appropriate award of punitive damages due to the conspiracy undertaken by the Defendants.

THIRD CLAIM FOR RELIEF
(Partition)

22. The allegations contained in paragraphs 1 through 20 of the Plaintiff's Complaint are incorporated herein by reference.

23. The Property in question consists of a large tract of land that is capable of being divided equally and fairly between the Defendants to reflect their respective ownership interests in the Property.

24. The Plaintiff, therefore, requests that the Property be partitioned so that Defendant Clifton's interest can be sold in order to satisfy his obligations owing to the Bank.

WHEREFORE, the Plaintiff prays as follows:

- a. That the Property transfer be set aside;
- b. That the Property be partitioned;
- c. That the Bank be given the right to proceed against the Property to collect the full amount of its judgment against Defendant Clifton;
- d. That the Bank be awarded actual and punitive damages against Defendant Clifton for the fraudulent transfer of the Property;
- e. That the Bank be awarded actual and punitive damages against Defendants Clifton and Whiteman for their conspiracy against Plaintiff; and

f. Any other and further relief as this Court deems just and proper.

(Signature page to follow.)

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.



James H. Cassidy (SC Bar No. 1160)

jcassidy@roecassidy.com

Ella S. Barbery (SC Bar No. 70677)

ebarbery@roecassidy.com

P.O. Box 10529

Greenville, SC 29603

Telephone: (864) 349-2600

Facsimile: (864) 349-0303

Attorneys for the Plaintiff

October 18, 2010

Greenville, South Carolina

Grantee's Address: 12 Lavinia Avenue, Greenville, SC 29601

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

QUIT-CLAIM DEED
 (No title examination)

200 OCT 15 A 10:44

KNOW ALL MEN BY THESE PRESENTS, that KENNETH E. CLIFTON and LINDA G. WHITEMAN, (hereinafter referred to as the "Grantor"), in consideration of Five Dollars and 00/100, (\$5.00) the receipt of which is hereby acknowledged, does hereby forever release, remise and quit-claim unto PARK AT DURBIN CREEK, LLC, (hereinafter referred to as "Grantee"), its successors and assigns, all of the Grantor's right, title and interest, if any, in and to the following described property:

ALL THOSE certain pieces, parcels or tracts of land, with improvements thereon, situate, lying and being in the County of Laurens, State of South Carolina and being shown as Tract No. 3, containing 152.86 acres, more or less, Tract No. 4, containing 202.43 acres, more or less, and Tract No. 5, containing 20.35 acres on that certain plat entitled "449.39 acres, more or less, total (John Hancock - Westvaco Tract 350) Boundary Survey for J. Larry Faulkenberry & Almond Forest Products, Inc., located 4 miles northeast of Fountain Inn - Youngs Township, Laurens County, South Carolina" dated September 9, 1993, prepared by Daniel Riddick and Associates, Inc. and recorded in the Office of the Clerk of Court for Laurens County in Plat Book A-42 at Page 7; reference to said plat being made for a more accurate and complete description of said property.

THIS CONVEYANCE is made subject to a timber deed from J. Larry Faulkenberry and Almond Forest Products, Inc. to Willamette Industries, Inc. recorded in Book 302 at Page 286.

LESS AND EXCEPT any properties previously conveyed.

THIS BEING the same property conveyed to the Grantors herein by deed from J. Larry Faulkenberry and Almond Forest Products, Inc. recorded on June 6, 1995, in the Office of the Clerk of Court for Laurens County in Deed Book 334 at Page 307.

TMS: 184-00-00-003

2008010553

DEED
 RECORDING FEES \$10 00
 STATE TAX \$0 00
 COUNTY TAX \$0 00
 PRESENTED & RECORDED

09-22-2008 01:51 PM

LYNN W. LANCASTER

CLERK OF COURT
 LAURENS COUNTY, SC
 BY: ROBERT JOHNSON CLERK

BK: D 901

PG: 247 - 249

09/23/2008
 DATE

901
 BOOK

247
 PAGE

Lynn W. Lancaster
 AUDITOR

EXHIBIT

a

WITNESS the Grantor's hand and seal this 18th day of September, 2008.

SIGNED, sealed and delivered
in the presence of:

[Signature]
[Signature]
Kenneth E. Clifton
Linda G. Whiteman

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

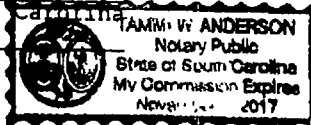
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Grantors sign, seal and, as act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 18th day of September, 2008.

Tammie Anderson

Notary Public for South Carolina
My Commission Expires:
File #9315/9006



STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being sworn, deposes and says:

Property located at 100 Allen Bridge Road, Laurens County, SC, bearing Laurens County Tax Map Number 184-00-00-003, was transferred by Kenneth E. Clifton and Linda G. Whiteman to Park at Durbin Creek, LLC, on the date hereof

The transaction was (Check One) 8 & 12

_____ an arm's length real property transaction and the sales price paid to or to be paid in money of money's worth was \$ _____ *

_____ not an arm's length real property transaction and the fair market value of the property is \$ _____ *.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann Section 12-24-10 et.seq. because the deed is a quitclaim deed (#12) and is being transferred to a corporation (#8).

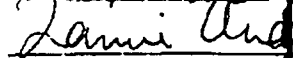
As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

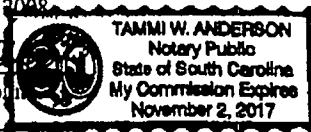

Kenneth E. Clifton, Grantor

SWORN to before me this 18th

day of September, 2008.


Notary Public for South Carolina

My Commission Expires:



*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

First Citizens Bank and Trust
Company, Inc.,

2009 OCT 15 A 10:44
Plaintiff,

vs.

Kenneth E. Clifton and Edge Water, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

2009-CP 30-01301

TRANSCRIPT OF JUDGMENT

C.A. No.: 2009-CP- 04-00425

NAME OF PARTY AGAINST WHOM JUDGMENT HAS BEEN OBTAINED:

Kenneth E. Clifton

NAME OF PARTY IN WHOSE FAVOR JUDGMENT HAS BEEN OBTAINED:

First Citizens Bank and Trust Company, Inc.

Judgment Roll No.: 2009-CP-04-00425

Amount: \$60,755.80, plus interest from August 4, 2009, and attorney fees and costs

Date: October 19, 2009

Filed of Record: October 20, 2009

(CONTINUED ON NEXT PAGE)

LAURENS COUNTY
CLERK OF COURT

2009 NOV -6 P 12: 57

LAURENS COUNTY
CLERK OF COURT

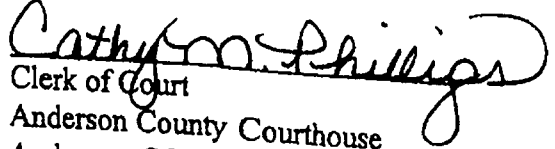
EXHIBIT

B

ATTORNEYS:

James H. Cassidy, ID No. 1160
jcassidy@roecassidy.com
Dana M. Lahey, ID No. 69469
dlahey@roecassidy.com
Roe Cassidy Coates & Price, P.A.
Attorneys for Plaintiff
Post Office Box 10529
Greenville, S.C. 29603
(864) 349-2600

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
DOCKET OF JUDGMENTS KEPT IN MY OFFICE.


Clerk of Court
Anderson County Courthouse
Anderson, SC

Date: Nov. 2, 2009

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

First Citizens Bank and Trust
Company, Inc.,

Plaintiff,

vs.

Shellbrook Plantation, LLC and Kenneth
E. Clifton,

Defendants.

LAURENS COUNTY CLERK OF COURT

IN THE COURT OF COMMON PLEAS

2009 OCT 27 P 2:35

TRANSCRIPT OF JUDGMENT

2009-CP-23-0884

2009CP3001267

NAME OF PARTY AGAINST WHOM JUDGMENT HAS BEEN OBTAINED:

Shellbrook Plantation, LLC and Kenneth E. Clifton

NAME OF PARTY IN WHOSE FAVOR JUDGMENT HAS BEEN OBTAINED:

First Citizens Bank and Trust Company, Inc.

Judgment Roll No.: 2008-CP-23-0884

Amount: \$223,390.32, plus interest from August 3, 2009, and attorney
fees and costs

Date: October 13, 2009

Filed of Record: October 20, 2009

(CONTINUED ON NEXT PAGE)

ATTORNEYS:

James H. Cassidy, ID No. 1160

jcassidy@roecassidy.com

Dana M. Lahey, ID No. 69469

dlahey@roecassidy.com

Roe Cassidy Coates & Price, P.A.

Attorneys for Plaintiff

Post Office Box 10529

Greenville, S.C. 29603

(864) 349-2600

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
DOCKET OF JUDGMENTS KEPT IN MY OFFICE.

Paul B. Wickersham
Clerk of Court
Greenville County Courthouse
Greenville, SC

Date: 10/22/9

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COUNTY OF GREENVILLE)

First Citizens Bank and Trust
Company, Inc.,

2009 OCT 27 P 2:38

Plaintiff,

LAURENS COUNTY
CLERK OF COURT

vs.

Plantation Holdings of Greenville, LLC and
Kenneth E. Clifton,

Defendants.

TRANSCRIPT OF JUDGMENT

2009CP3001268
2009-CP-23-0883

NAME OF PARTY AGAINST WHOM JUDGMENT HAS BEEN OBTAINED:

Plantation Holdings of Greenville, LLC and Kenneth E. Clifton

NAME OF PARTY IN WHOSE FAVOR JUDGMENT HAS BEEN OBTAINED:

First Citizens Bank and Trust Company, Inc.

Judgment Roll No.: 2008-CP-23-0883

Amount: \$460,171.74, plus interest from August 3, 2009, and attorney
fees and costs

Date: October 13, 2009

Filed of Record: October 20, 2009

(CONTINUED ON NEXT PAGE)

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
First Citizens Bank & Trust)
Company, Inc.,)
)
Plaintiff,)
)
vs.)
)
Park at Durbin Creek, LLC;)
Kenneth E. Clifton, and)
Linda G. Whiteman,)
)
Defendants.)
_____)

COURT OF COMMON PLEAS

C.A. No.: 2010-CP-30-1141

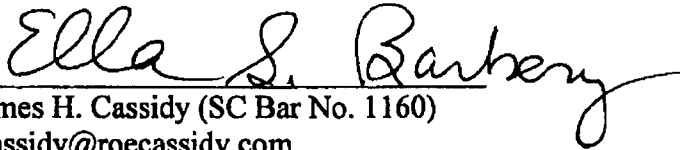
**STIPULATION OF DISMISSAL OF
CIVIL CONSPIRACY CLAIM**

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, the Plaintiff and the Defendant, by and through their undersigned counsel, hereby stipulate and agree to the dismissal with prejudice of the civil conspiracy claim asserted against Defendants Kenneth E. Clifton and Linda G. Whiteman in the above-captioned action. This agreement does not affect the first cause of action asserted in the Complaint for fraudulent conveyance, and Defendant Linda G. Whiteman shall remain a defendant as a necessary party to that cause of action for the limited purpose of being able to assert whatever interest she may have in and/or to the subject real property.

This the 21st day of April, 2014.

[Signatures to follow.]

WITH CONSENT:



James H. Cassidy (SC Bar No. 1160)

jcassidy@roecassidy.com

Ella S. Barbery (SC Bar No. 70677)

ebarbery@roecassidy.com

ROE CASSIDY COATES & PRICE, P.A.

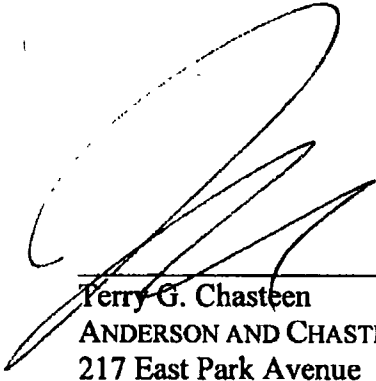
P.O. Box 10529

Greenville, SC 29603

Telephone: (864) 349-2600

Facsimile: (864) 349-0303

Attorneys for the Plaintiff



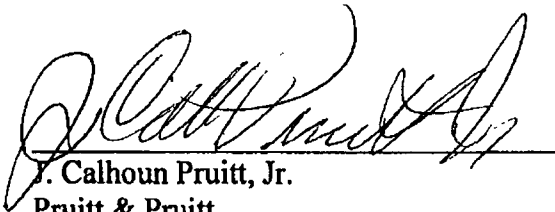
Terry G. Chasteen

ANDERSON AND CHASTEEN

217 East Park Avenue

Greenville, SC 29601

Attorney for Defendant Linda Whiteman



J. Calhoun Pruitt, Jr.

Pruitt & Pruitt

101 North Murray Avenue

Anderson, SC 29621

*Attorney for Defendants Kenneth E. Clifton and
Park at Durbin Creek, LLC*

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company,
Inc.,

Plaintiff,

-vs-

Park at Durbin Creek, LLC; Kenneth E.
Clifton; and Linda G. Whiteman,

Defendants.

**MOTION TO RECONSIDER,
ALTER OR AMEND**

2010-CP-30-1141

TO: ELLA BARBERY, ATTORNEY FOR THE PLAINTIFF:

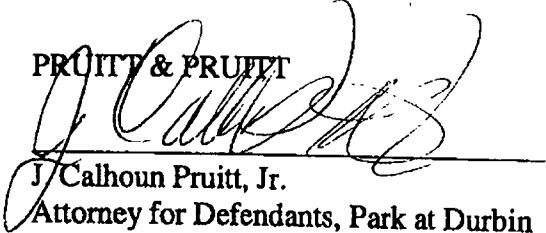
PLEASE TAKE NOTICE that the undersigned Defendants, Park at Durbin Creek, LLC and Kenneth E. Clifton will move before the Honorable Eugene C. Griffith, Jr., in his chambers at 12:00 noon on the 10th day after service hereof, or as soon thereafter as counsel can be heard, for an Order seeking to reconsider, alter or amend his Order dated July 30, 2014, and received by the Defendants on August 6, 2014, based upon the following facts:

1. There was no evidence produced to show that Linda Whiteman in any way participated in a fraudulent conveyance. The deed at issue here transferred the interest held by Ms. Whiteman and Mr. Clifton to the LLC in the same instrument. Setting aside the conveyance would necessarily require finding the entire deed invalid, and would therefore impermissibly reach Ms. Whiteman's interest where there is no evidence that Ms. Whiteman was in any way responsible. See S.C. Code 27-23-10(A) (limiting operation of the statute "only as against that person or persons, his or their heirs, successors, executors, administrators and assigns").

2. The Court improperly admitted evidence regarding transfer of Ken Clifton's interest in Park at Durbin Creek, LLC to Streamline Management, LLC. The pleadings do not

raise the issue of this second conveyance and Streamline Management, LLC, is, of course, not a party to this action. Defendants Park at Durbin Creek, LLC and Ken Clifton were, therefore, deprived of appropriate notice that the issue would be raised at trial.

PRUITT & PRUITT


J. Calhoun Pruitt, Jr.

Attorney for Defendants, Park at Durbin
Creek and Kenneth E. Clifton
101 North Murray Avenue
Anderson, SC 29625-4301
(864) 224-3121

Anderson, South Carolina

August 6, 2014

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF LAURENS)

C.A. No.: 2010-CP-30-1141

First Citizens Bank & Trust
Company, Inc.,)

Plaintiff,)

**PLAINTIFF'S RETURN TO MOTION TO
RECONSIDER, ALTER OR AMEND**

vs.)

Park at Durbin Creek, LLC;
Kenneth E. Clifton, and
Linda G. Whiteman,)

Defendants.)

Plaintiff First Citizens Bank and Trust Co., Inc. (hereinafter "First Citizens"), by and through its undersigned counsel, hereby files its return to the Defendants Kenneth E. Clifton and Park at Durbin Creek, LLC's Motion to Reconsider, Alter or Amend (hereinafter "Motion"), as follows:

INTRODUCTION

Defendants Kenneth E. Clifton and Park at Durbin Creek, LLC (collectively "Defendants") have asked the Court to reconsider its Order to Set Aside Conveyances dated July 30, 2014 (hereinafter "Order") for reason that (1) there was no evidence produced to show that Linda Whiteman in any way participated in a fraudulent conveyance and (2) the Court improperly admitted into evidence testimony regarding Kenneth E. Clifton's transfer of his interest in Park at Durbin Creek, LLC to Streamline Management, LLC. With regards to Streamline Management, LLC, the Defendants contend that since the pleadings do mention the second conveyance into Streamline Management, LLC and the company is not a party to this action, Defendants were deprived of appropriate notice that the issue would be raised at trial. For the reasons set forth

below, First Citizens hereby requests that the Defendants' Motion be denied and that the Order be upheld.

ARGUMENT

A. Setting aside the conveyance of Kenneth E. Clifton into Park at Durbin Creek, LLC does not affect the interest of Linda Whiteman.

The Defendants contend that since the property in question was initially transferred by one deed from Linda Whiteman and Kenneth E. Clifton to Park at Durbin Creek, LLC ("PDC"), in order to set aside the conveyance would require a showing of fraudulent conduct on the part of Linda Whiteman to invalidate the entire deed. The Defendants, however, are mistaken. The property in question was owned by Defendant Clifton and Linda Whiteman as tenants in common. As tenants in common, they each owned a fifty percent (50%) undivided interest in the property separate and apart from the other and could transfer or convey their interest in the property without the consent of the other. Although they decided to transfer their respective interests in the property to PDC through one deed, in essence, there were two separate and distinct transfers taking place. Accordingly, the Court could (and properly did) overturn Defendant Clifton's conveyance of his undivided interest in the property as fraudulent without having to find the entire deed (and Linda Whiteman's conveyance) invalid. Although the Defendants argue otherwise, they have not cited any statutory authority or case law in support of their position.

B. Streamline Management, LLC was not a necessary party to the litigation and Defendants had sufficient notice that the second conveyance into Streamline was at issue.

Although Streamline Management, LLC (hereinafter "Streamline"), was not a named defendant in the litigation, it was not necessary for it to be. As set forth in the Order and as proven at trial, Streamline did not even exist at the time Defendant Clifton contends he transferred his

interest in PDC. This fact is undisputed. Since there was no legal entity into which Defendant Clifton could have transferred his interest, any such purported conveyance is void *ab initio*.

Moreover, throughout the discovery of this case, it is undeniable that Defendant Clifton's transfer of his interest in PDC to Streamline was at issue. Defendants PDC and Clifton were both asked through written discovery to produce documents and information related to the following:

- a. All corporate documents of Streamline Management, LLC, including but not limited to, all organizational documents, articles of incorporation, membership agreements, and any meeting minutes.
- b. A list of all former and current members of Streamline Management, LLC.
- c. A list of all assets and liabilities, including both real and personal property, of Streamline Management, LLC.
- d. Copies of any and all documents evidencing the purchase, transfer, and/or acquisition of the subject real property by Streamline Management, LLC, including but not limited to, any purchase agreements, assignments, or any other contract or agreement.
- e. Copies of any and all documents by and between Streamline Management, LLC and Kenneth E. Clifton evidencing any loans and/or indebtedness, including but not limited to, loan agreements, promissory notes, security agreements, mortgages, etc.
- f. Copies of all bank statements and cancelled checks for Streamline Management, LLC from Kenneth E. Clifton.
- g. Copies of any and all written correspondence, including notes, memoranda, and electronic emails, by and between Defendants Kenneth E. Clifton, Linda Whiteman, and/or Streamline Management, LLC (or any of its members, officers, or directors) related in any way to Park at Durbin Creek, LLC and/or the subject real property.
- h. Copies of any and all property management contracts for Streamline Management, LLC.
- i. Copies of all federal and state tax returns for Streamline Management, LLC from the date of organization to the present.
- j. Copies of any and all documents, including notes, memoranda, correspondence, agreements, and electronic emails, by and between Clifton

and Streamline Management, LLC and/or any of its owners, members, agents, employees, or representatives, relating in any way to the transfer of Clifton's interest in Park at Durbin, Creek, LLC.

- k. Copies of any and all documents, including notes, memoranda, correspondence, agreements, and electronic emails, by and between Clifton and Streamline Management, LLC and/or any of its owners, members, agents, employees, or representatives, relating in any way to the consideration agreed upon for your interest in Park at Durbin, Creek, LLC.
- l. Any and all documents evidencing the consideration paid to Clifton for the transfer of his interest in Park at Durbin Creek, LLC, to Streamline Management, LLC, including but not limited to copies of all bank statements, cancelled checks, deposit slips, etc.
- m. Copies of any and all documents Clifton intends to introduce and/or rely upon at trial that establishes any consideration paid and/or given to him in exchange for your interest in Park at Durbin Creek, LLC.
- n. Any and all documents establishing any monies, debts, or other financial obligations due and owing from Clifton to Renee Gilreath and/or Leah Winton at or around the time you transferred your interest in Park at Durbin Creek, LLC to Streamline Management, LLC.

Defendants Clifton and PDC both answered written discovery and provided documents and information responsive to the above.

Defendant Clifton and PDC were also deposed in this case. PDC identified Renee Gilreath as its 30(b)(6) witness, who is also a member of Streamline. Both Ms. Gilreath and Defendant Clifton were questioned extensively about the facts and circumstances surrounding the transfer of Defendant Clifton's interest in PDC to Streamline. Additionally, Defendant Clifton and Ms. Gilreath both participated in and testified at trial, answering similar questions posed during their depositions regarding Streamline and the conveyance of Defendant Clifton's interest in PDC to Streamline. Therefore, despite their contention, Defendants knew and had sufficient notice that

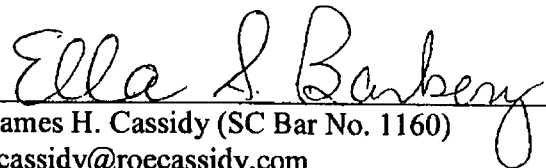
the second conveyance from Defendant Clifton into Streamline would and/or could be an issue raised at the trial of this case.

CONCLUSION

In light of the foregoing, Defendants Motion should be denied. Defendants have not cited to any legal authority which would support their argument that setting aside Defendant Clifton's conveyance into PDC would require a finding of improper conduct on the part of Linda Whiteman and, further, they cannot prove that they had inadequate notice that the second conveyance into Streamline would not be a possible issue raised at trial. First Citizens hereby submits that the Order to Set Aside Conveyances dated July 30, 2014 should stand.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.



James H. Cassidy (SC Bar No. 1160)

jcassidy@roecassidy.com

Ella S. Barbery (SC Bar No. 70677)

ebarbery@roecassidy.com

P.O. Box 10529

Greenville, SC 29603

Telephone: (864) 349-2600

Facsimile: (864) 349-0303

Attorneys for the Plaintiff

August 22, 2014

Greenville, South Carolina

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM LAURENS COUNTY
Court of Common Pleas**

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2010-CP-30-1141

First Citizens Bank & Trust Company, Inc.....Respondent,
v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman.....Defendants,

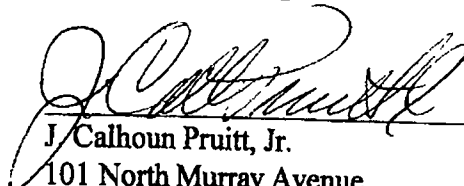
Of whom Park at Durbin Creek, LLC and Kenneth E. Clifton are.....Appellants.

NOTICE OF APPEAL

Park at Durbin Creek, LLC and Kenneth E. Clifton appeal the Order of the Honorable Eugene C. Griffith, Jr. dated July 30, 2014, and the denial of the reconsideration request by Order of Judge Griffith, dated September 23, 2014. Appellants received written notice of entry of this Order on September 26, 2014.

October 24, 2014

PRUITT & PRUITT


J. Calhoun Pruitt, Jr.
101 North Murray Avenue
Anderson, South Carolina 29625
(864) 224-3121
Attorney for Appellants, Park at Durbin
Creek, LLC and Kenneth E. Clifton

Other Counsel of Record:

Ella S. Barbery
James H. Cassidy
Roe Cassidy Coates & Price, P.A.
P.O. Box 10529
Greenville, SC 29603
Attorneys for Respondent,
First Citizens Bank & Trust Company, Inc.
(864) 349-2600

Terry G. Chasteen
Anderson and Chasteen
P.O. Box 1749
Greenville, SC 29602
Attorney for Defendant, Linda G. Whiteman
(864) 233-4566

State of South Carolina)
County of Laurens) Court of Common Pleas
) 2010-CP-30-1141

First Citizens Bank & Trust)
Company, Inc.)
 vs.) Transcript of Record
Park at Durbin Creek, LLC;)
Kenneth E. Clifton; and)
Linda G. Whiteman,)
 DEFENDANTS)

June 26, 2014
Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

James H. Cassidy, Esq.
Ella S. Barbery, Esq.
Attorneys for the Plaintiff

J. Calhoun Pruitt, Jr., Esq.
Attorney for the Defendants, Kenneth E. Clifton
and Park at Durbin Creek, LLC

Joy E. Holston
Official Court Reporter

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

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E X H I B I T S

Defendant's

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2	Email		X	23

1 THE COURT: All right. We are ready to go on the
2 record on the case captioned, First Citizens Bank and
3 Trust versus Park at Durbin Creek, LLC; Kenneth E.
4 Clifton; and Linda G. Whiteman. Caption, 2010-CP-30-1141.
5 All right, ladies and gentlemen, please identify yourself
6 and the litigants you represent.

7 MR. CASSIDY: Your Honor, if it please the Court, I
8 am Jim Cassidy with the law firm of Roe, Cassidy, Coates
9 and Price. Ella Barbery, my partner is with me today.
10 And Laura Alewine who is a paralegal in my office is here
11 today as well. And I have two representatives from First
12 Citizens, Don Wood and J.B. Schwiers.

13 MR. PRUITT: Your Honor, I am Calhoun Pruitt, Jr.
14 from Anderson and I represent Kenneth E. Clifton and Park
15 at Durbin Creek, LLC.

16 THE COURT: All right, we had a pretrial conference
17 and identified four exhibits which is basically the
18 supplemental documents which, 1 and 2, the acquisition or
19 the entry of default judgments against different
20 defendants which are litigants in this case. They have
21 been identified as Court's exhibits, case number 884 is
22 Court's exhibit 1, 883 is Court's exhibit number 2 and the
23 Anderson County judgment is Court's exhibit 3. And the
24 timeline is Court's exhibit 4. So, I want to keep the
25 record straight in that fashion. All right, Mr. Cassidy.

1 MR. CASSIDY: There is one thing I would like to
2 point out, Ms. Whiteman, she is a defendant, she should be
3 recognized as a party in the case that is present.

4 THE COURT: Ms. Whiteman. Who is your attorney, Ms.
5 Whiteman?

6 MS. WHITEMAN: It was Terry Chasteen.

7 THE COURT: And he is, Mr. Pruitt, you said you
8 received an email yesterday and he intended on not
9 attending because--

10 MR. PRUITT: I got an email from another attorney
11 yesterday that said he wasn't going to attend. Did you
12 get it too?

13 MR. CASSIDY: Your Honor, I did talk to Mr. Chasteen
14 and he indicated, and Mr. Pruitt represented and I agree,
15 we dismissed the conspiracy claim against Ms. Whiteman.
16 So, for whatever reason they didn't think they needed to
17 be here. I mean, Ms. Whiteman needed to be here.

18 THE COURT: Just so I will know, is she, this is an
19 action to set aside certain conveyances. Is she within
20 that chain of deeds or is she a owner in a resulting,
21 whatever it may be right now.

22 MR. PRUITT: She is in the conveyance chain.

23 MR. CASSIDY: And she is also a member of Park at
24 Durbin Creek which is the target property.

25 THE COURT: It is not a conspiracy so--

1 MS. BARBERY: Well, it was their choice to drop the
2 conspiracy. I think that is going to be a real bang on
3 the case as to whether any actions that Mr. Clifton may or
4 may not have done are attributable to Ms. Whiteman. I
5 guess Your Honor will have to take that up when we get to
6 it.

7 THE COURT: All right. Ms. Whiteman, you understand
8 you had a representation up to this time. Are you going
9 to participate as a party today as representing yourself?

10 MS. WHITEMAN: I was told that I was to be a witness
11 today. Since any charge against me has been dropped and
12 the only role I played was being half owner, half interest
13 in the LLC. So I said rather than have Chasteen here, if
14 I was just being a witness, that was why, that is how I
15 left it.

16 THE COURT: That is not what you are telling me. If
17 you are successful in proving your case--

18 MR. CASSIDY: We are not looking at getting to her
19 interest, Your Honor. We do not dispute that she owned an
20 undivided interest in the property.

21 THE COURT: All right. I understand. Ms. Whiteman,
22 thank you for coming. Mr. Cassidy, you may call your
23 witness.

24 MR. CASSIDY: Your Honor, we call John Wood.

25 JOHN WOOD, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Cassidy:

4 Q State your name for the record, please.

5 A My name is John Wood.

6 Q And for whom are you employed?

7 A First Citizens Bank.

8 Q And what is your title at the bank?

9 A I am Senior Vice-President in Commercial Relationship
10 Manager.

11 Q And what are your responsibilities at the bank?

12 A I am a loan officer at the bank and I manage
13 services, commercial relationships for the bank.

14 Q And how long have you been with First Citizens?

15 A Fourteen years, through the merger.

16 Q Are you familiar with Mr. Clifton?

17 A I am.

18 Q And when did you first meet Mr. Clifton?

19 A Back in the 1990's when I was with the National Bank
20 of South Carolina.

21 Q And tell me what that relationship involved to be?

22 A Our relationship, friendship goes back a long ways.
23 We finance numerous subdivisions for Mr. Clifton, as he
24 sold off lots to general builders.

25 Q So you have had occasion to either work with him at

1 NCSC or First Citizens with Mr. Clifton?

2 A I have.

3 Q And were you involved in the three loans that are the
4 judgments that have been entered in favor of First
5 Citizens?

6 A Yes sir, I was.

7 Q They were Plantation Holdings, Edgewater Subdivision
8 and Shellbrook Plantation?

9 A Yes sir, that's correct.

10 Q And you were the account officer that handled those
11 loans?

12 A I was, yes sir.

13 Q Now, just briefly, explain to the Court what each one
14 of those subdivisions were?

15 A All right. Edgewater was a 24 lot subdivision in
16 Anderson County on the bank of Lake Hartwell.

17 THE COURT: That is exhibit 3?

18 MR. CASSIDY: Yes, sir.

19 A Shellbrook Plantation, Phase I, was a 39 lot Phase on
20 a subdivision on Lee Vaughn Road in Simpsonville. And
21 Plantation was a commercial tract which was bought from
22 Pelham Road in Greenville, a potential commercial
23 development site. Most highest and best use, condo or
24 hotel.

25 Q Do you recall when you made the loan to Edgewater?

1 A Yes sir, that was around October of 2002.

2 Q And I believe that loan was for a half of a million
3 dollars?

4 A That's correct.

5 Q Now, I think you testified that it was secured by 23
6 lots, is that correct?

7 A 24 lots, yes sir.

8 Q And how many lots, in 2008 how many lots had been
9 sold out of that subdivision?

10 A One.

11 Q And how long did the bank believe, or how long was it
12 represented to the bank that that loan was going to be
13 outstanding?

14 A Based on the appraisal we had filed, we thought the
15 sellout would take somewhere between 24 and 36 months for
16 the entire subdivision. So, you know, with a loan that
17 size and the lake front lots and everything, we thought we
18 would be in and out in a year or so.

19 Q But it started in 2002 and it was still on the books
20 in 2008?

21 A That's correct.

22 Q What about Shellbrook?

23 A Shellbrook was a little bit different. Mr. Clifton
24 purchased completed lots so the infrastructure had already
25 been done on that property. It was done in December of

1 '06 for \$1,873,000.00. 22 lots were immediately sold, 10
2 of them were homeowners and residents. The other 12 were
3 spec homes that were built and it was paid down very
4 quickly to a \$688,000.00.

5 Q And then the remaining lots, what was the status of
6 the lots remaining?

7 A They were still outstanding.

8 Q And how long did the bank believe that they were
9 going to be involved in that loan?

10 A No more than two years.

11 Q And the Plantation property, was that ever sold?

12 A No.

13 Q Was it ever developed?

14 A No. The original purpose, Mr. Clifton refinanced it
15 and purchased the interest in two other partners, he had
16 Lowell Frazier and Larry McNair.

17 Q But the development never came into fruition?

18 A No, sir.

19 Q In order to get the loans approved for each
20 transaction was Mr. Clifton required to personally
21 guarantee each loan?

22 A He was.

23 Q Now, these loans were short term loans?

24 A Generally a year or two at a time, yes sir.

25 Q And the bank was renewing them as progress payments

1 were made?

2 A We were renewing them, yes, in the case of, I guess
3 Edgewater, there was very little progress.

4 Q In 2008, can you tell the Court what, if anything,
5 happened in 2008 with regard to the three loans?

6 A Well, the Shellbrook lot was coming up for maturity
7 and we were in the process of renewing it and trying to
8 line up the maturity with the other two loans so we only
9 have to touch the file one time. And that was, I guess,
10 kind of one the beginnings of the downturn and
11 responsiveness and the payment got a little bit slow.

12 Q And when did, according to your records, when did the
13 payments start to get slow?

14 A Based on the records I have it was around September
15 of '08.

16 Q What, if anything, did you do about that?

17 A Numerous phonecalls, emails, and meetings with the
18 customers.

19 Q Did you meet personally with Mr. Clifton?

20 A We did, after a couple of cancellations I met
21 primarily with his two daughters, Leah and Renee.

22 Q And what was going to be the conditions of the bank
23 or what conditions of the bank to direct Mr. Clifton to
24 provide?

25 A We were looking for some pay down or additional

1 collateral.

2 Q And you had not been getting principle payments, is
3 that correct?

4 A That's correct.

5 Q Were you requiring anything else from Mr. Clifton?

6 A We were, yes, we were asking for additional
7 collateral.

8 Q I am going to show you a copy of a personal financial
9 statement dated January 23rd, 2008 and ask you if you can
10 identify it.

11 A Yes, sir. It looks like a financial statement that
12 was presented to the bank.

13 Q That was presented to you during the time that you
14 were attempting to refinance these loans?

15 A Yes sir, I believe so.

16 MR. CASSIDY: Your Honor, we would like to mark the
17 financial statement as exhibit 5.

18 MR. PRUITT: No objection.

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

21 Q I hand you and it is dated January 28th, 2008, is
22 that correct, 23rd, excuse me.

23 A January 23rd, 2008, yes sir.

24 Q And at the time what did the personal financial
25 statement show on Mr. Clifton's personal net worth to be?

1 A \$45,640, excuse me, \$49,640,669.97 is what it looks
2 like, I am having a hard time reading it.

3 Q And does it also reflect that he owned several
4 properties that had no liens or encumbrances?

5 A It does, yes sir.

6 Q And in particular it identifies a 370 acre tract of
7 land in Laurens County in which he owned fifty percent
8 interest?

9 A That's correct.

10 MR. CASSIDY: Your Honor, for your reference it is
11 about the seventh or eighth item down on the first page of
12 the financial statement.

13 Q And it shows the market value to be \$1,570,000.00
14 dollars?

15 A That is what he stated at the time for his fifty
16 percent interest, yes sir.

17 Q And did you ask him to pledge that as additional
18 payoff for the loans?

19 A Not specifically, I don't believe so.

20 Q But he had sufficient collateral that he could pledge
21 that would satisfy the bank's request for additional
22 collateral?

23 A Yes, we were looking for just about anything.

24 Q Was he also required to present to you his tax
25 returns?

1 A Yes, sir.

2 Q And what did an analysis of the tax return show
3 according to the bank records?

4 A Well, over a four year period we saw declining
5 earnings in early, in 2006, 2007 we saw his net income
6 drop to a negative number. And when we calculated net
7 income depreciation or whatnot the cash flow available for
8 debt service was only around \$478,000.00 dollars. And he
9 had around \$38,000,000.00 dollars in direct and contention
10 debt. And buyer calculations he would need, you know, at
11 least \$2,000,000.00 dollars in cash flow to service that
12 type of debt.

13 Q And did that cause the bank concern?

14 A Great concern, yes sir.

15 Q And I believe you testified that the loans were past
16 due in September of 2008?

17 A They were, yes sir.

18 Q And as a result of your inability to get any
19 additional collateral or pay downs on principle the bank
20 elected to accelerate the loans?

21 A Later that year, yes sir.

22 Q And that resulted in the judgments which we presented
23 to the Court?

24 A That's correct.

25 MR. CASSIDY: I have no further questions, Your

1 Honor.

2 THE COURT: All right, cross, Mr. Pruitt.

3 CROSS-EXAMINATION

4 By Mr. Pruitt:

5 Q Mr. Wood, I want to show you an email that you sent
6 on November 25th of 2008 to Renee and Leah Winton who are
7 Renee Gilree and Leah Winton?

8 A They are Mr. Clifton's two daughters.

9 Q And I believe you testified earlier that you had been
10 dealing with them for a while?

11 A That's correct.

12 Q Can you identify this email here? Tell me if that is
13 one you offered in regard to the renewal of the loans and
14 in your discussions regarding the renewal of all of these
15 loans?

16 A It looks, yes sir, it looks like, let's see. Yes,
17 sir.

18 MR. PRUITT: Your Honor, we would like to have this
19 marked. I wasn't actually planning on using it so I don't
20 have but this one copy. All of it has been previously
21 provided in discovery.

22 MR. CASSIDY: No objection, Your Honor.

23 THE COURT: You need to make a copy of it so y'all
24 can have one. We can do that. Is there a copier, Ms.
25 Lancaster has one very close by. Let's keep them

1 separate, we are going to change these five, they will
2 convert to plaintiff's exhibits. And this will be
3 defendant's 1.

4 (Whereupon, Defendant's Exhibit 1 was admitted into
5 evidence.)

6 Q Mr. Wood, directing your attention to what has now
7 been marked as defendant's number 1. That indicates that
8 the loan was paid up and all though, Edgewater, Shellbrook
9 and Plantation Holdings were all current as of September
10 of 2008, is that right?

11 A It would be in November when this was dated, yes sir.

12 Q Yes, sir. And they were past due, pursuant to your
13 email, for the end of October 2008 payment?

14 A That would be correct, and five days away from the
15 November payment.

16 Q Now, that email indicates a willingness of the bank
17 to renew these loans at least through July of 2009, is
18 that true?

19 A It indicates that it is being taken into
20 consideration to defer some payments and give them some
21 more time subject to some appraisals. Yes sir, it does.

22 Q It doesn't say anything in there about pledging more
23 collateral, does it?

24 A Not in this email, no sir, it doesn't.

25 Q Now, and I believe that you testified on direct

1 examination that you never specifically requested that Mr.
2 Clifton pledged his interest in the 370 acres in Laurens
3 County, is that right?

4 A I don't recall asking for that, no sir.

5 Q Okay. Now, I believe you testified that Edgewater
6 started in 2002 and the Shellbrook in 2006. When did
7 Plantation Holdings start?

8 A 2006.

9 Q And so between 2002 for Edgewater and 2006 for
10 Plantation Mr. Clifton paid his loans as required?

11 A I believe most of the time he did, yes sir.

12 Q And according to your email it became in default with
13 the payments that were due at the end of October of 2008?

14 A That would be correct.

15 Q Now, in your experience with Mr. Clifton and I
16 believe you indicated you had many other loans other than
17 these three with him over the course of y'all's
18 relationship?

19 A That's correct.

20 Q And isn't it true that his standard mode of operation
21 in any development that he did was generally through the
22 vehicle of an LLC or limited liability company?

23 A Yes.

24 Q So, and with your experience with commercial lending
25 would you say that that is a common practice among real

1 estate developers not to hold development real estate in
2 their personal names but to have the development done
3 through LLC's?

4 A If there was a plan development, yes sir, I would
5 agree with that.

6 Q All right. And I guess that is because, you know,
7 when the project is over the LLC can wind up and the
8 developer move onto the next project or do you know why?

9 A I would agree.

10 Q But you would agree with me that that is a common
11 practice for developers?

12 A Yes, sir.

13 Q And a common practice for Mr. Clifton?

14 A For his development projects, yes sir.

15 Q Now, do you, you don't have any loans with Ms. Linda
16 Whiteman, do you?

17 A No sir, not to my knowledge.

18 Q And you don't have any past loan relationship with
19 her, do you?

20 A Not to my knowledge, no sir.

21 Q Okay. And her name was never brought up with any
22 discussions that you had with Ken Clifton or his daughter,
23 Renee or his daughter, was she?

24 A We were aware she was a shareholder on that property,
25 yes sir.

1 Q Well, you were aware that she was a shareholder in
2 the Park at Durbin Creek?

3 A No. Well, I didn't know anything about the Park at
4 Durbin Creek.

5 Q Okay. Now, I believe that you are a hunter, aren't
6 you?

7 A Yes, sir.

8 Q And I believe that during this time and several years
9 prior to this you and some of your friends used this
10 property we are talking about here, this 370 acres in
11 Laurens County for hunting?

12 A That's correct.

13 Q And I believe you and your friends or buddies put up
14 a gate down there and did some other improvements like
15 food plots and deer stands and things of that nature?

16 A Maintained roads.

17 Q Maintained roads. So you were familiar with this
18 particular property, were you not?

19 A Yes, sir.

20 Q Now, do you recall a time when Ms. Whiteman became
21 concerned about you and your friends using this property
22 down there?

23 A I don't know, I didn't realize she was concerned but
24 we provided insurance certificates and whatnot.

25 Q Well, do you remember having a discussion with her

1 through Ken about the gates being locked down there and
2 she couldn't access her property and she was in generally,
3 generally concerned about the potential liability of
4 people hunting on her property?

5 A I don't recall having conversations about that in
6 providing keys. Yes sir, I mean it is their property.

7 Q Okay. But do you recall there being some concern
8 about liability associated with people hunting?

9 A I didn't know about people hunting but I, you know, I
10 am sure she is concerned, yes.

11 Q Mr. Wood, I would like to also ask if you can
12 identify this email here that you sent to Leah Winton?

13 A Yes.

14 Q Is this email talking generally about your use of
15 this property as a hunting club and some problems that had
16 arisen, I guess, concerning that use?

17 A It is actually this piece of property and an
18 adjoining piece, yes sir.

19 Q But insofar as the property we are talking about, the
20 370 acres in Laurens County, this email concerns that
21 also?

22 A Yes sir, it does.

23 MR. PRUITT: Your Honor, we would offer this into
24 evidence as defendant's number 2.

25 MR. CASSIDY: Your Honor, I have no objection to it

1 being entered other than the fact of the relevance. It is
2 a non-jury matter but I, the fact that there was hunting
3 down there, I don't see the relevance in this case so I
4 would object to it.

5 MR. PRUITT: I will tie it up later on, Your Honor,
6 if you don't think so we can throw it out. I just can't
7 tie it up with this witness.

8 THE COURT: It will be marked as exhibit 2.

9 (Whereupon, Defendant's Exhibit 2 was admitted into
10 evidence.)

11 MR. PRUITT: That is all the questions I have of this
12 witness.

13 MR. CASSIDY: Your Honor, reserving my right about
14 relevance in the hunting, I would like to clear that up if
15 you don't mind.

16 THE COURT: Sure.

17 REDIRECT EXAMINATION

18 By Mr. Cassidy:

19 Q Mr. Wood, who leased that property for hunting
20 purposes?

21 A We actually became involved through Ron Cox, a local
22 gunsmith.

23 Q And he is a friend of Mr. Clifton's?

24 A Yes, sir.

25 Q And you have permission to be hunting on that

1 property?

2 A Yes sir, we did.

3 Q And one of the conditions is that you provide an
4 insurance certificate, isn't that true?

5 A Yes, later in the relationship it was.

6 Q I want to show you a copy of what is the notice of
7 insurance and ask you if you can identify it?

8 A Yes, sir. That is a policy that we got for the
9 property in question.

10 Q And who are the insurers?

11 A Kenneth E. Clifton, Clifton Land and Timber, Linda
12 Whiteman, in care of Clifton Land and Timber, PO Box 6143,
13 Greenville, South Carolina.

14 Q No mention of Park at Durbin Creek?

15 A No, sir.

16 Q Okay. So they were the two owners when you were
17 hunting down there?

18 A That's correct.

19 Q With the permission of Mr. Clifton?

20 A That's correct.

21 MR. CASSIDY: I would offer this, Your Honor, as
22 number 6.

23 (Whereupon, Plaintiff's Exhibit 6 was admitted into
24 evidence.)

25 Q Mr. Wood, to be fair, there were a chain of emails

1 between you and Ms. Renee and Leah, isn't that true?

2 A That's true, yes.

3 Q And I want to show you where the chain begins in
4 November 12th of 2008.

5 A Okay.

6 Q And I would ask you to take a moment and review those
7 emails to help refresh your recollection, the
8 conversations you were having at that time. Just take a
9 moment if you would.

10 A Okay.

11 Q Is that the chain of emails that you had with either
12 Mr. Clifton, Renee or Leah during the November, December
13 timeframe?

14 A It appears to be, yes sir.

15 Q And I believe we got the, these were produced by
16 Clifton Land and Timber, I believe.

17 A Okay.

18 MR. CASSIDY: Your Honor, I would like to mark this
19 chain of emails as plaintiff's exhibit number 7.

20 MR. PRUITT: I have no objection. I am curious as to
21 whether the numbering is correct, the first ones were
22 being entered as Court's exhibits?

23 THE COURT: No we converted those to plaintiff's
24 exhibits.

25

1 (Whereupon, Plaintiff's Exhibit 7 was admitted into
2 evidence.)

3 MR. PRUITT: Those are all plaintiff's exhibits now?

4 THE COURT: Yes.

5 MR. PRUITT: No problem.

6 (Whereupon, Plaintiff's Exhibits 1 through 4 were
7 admitted into evidence.)

8 Q Now, after you have had a chance to review that chain
9 of emails, there was a lot more communication other than
10 what Mr. Pruitt was drawing your attention to that wasn't
11 there?

12 A Yes, sir.

13 Q One of the conditions was that you get an appraisal
14 on the property?

15 A Yes, sir.

16 Q Isn't that true?

17 A Yes, sir.

18 Q Did you in fact get an appraisal on the property?

19 A We did.

20 Q Did it come back acceptable to the bank?

21 A Yes, sir. Well, it was lower but yes.

22 Q You got it back but the number was lower than you had
23 expected?

24 A That's correct.

25 Q And you also wanted them to give you a business

1 claim?

2 A That's correct.

3 Q Did you get it?

4 A We got a very bland response, yes.

5 Q And these emails show kind of a sense of urgency that
6 you are past due, you need to get your payments in. And
7 in fact I want to draw your attention to the response that
8 you received from, hold on one second. Look at the email
9 dated November 25th at 2:10.

10 A Got it.

11 Q It says, Hey, John. We are paying Shellbrook. Dad
12 said we can't pay the other two. Isn't that true?

13 A Yes.

14 Q So you didn't get caught up, did you?

15 A No.

16 Q No further questions.

17 RECROSS-EXAMINATION

18 By Mr. Pruitt:

19 Q Just a couple of questions on the things that were
20 brought up. Directing your attention to the insurance
21 certificate that you provided which I believe is
22 plaintiff's number 6. That insurance certificate is
23 effective March 1 of 2008 through March 1 of 2009, is that
24 right?

25 A If that is what it says, that's correct.

1 Q And it is true that you produced this insurance as a
2 result of concern about the potential liability of a
3 hunting club?

4 A Yes.

5 Q So you don't deny that there had been some
6 conversations and concerns about the potential liability
7 of a hunting club on this property?

8 A No, I don't deny that.

9 Q Now, with reference to defendant's number 7, the
10 emails that I believe that you have in your hand and with
11 reference to plaintiff's 1, 2 and 3. It appears that a
12 lis pendens was filed on all three of these properties
13 December 31st, 2008. Are you familiar with that?

14 A Generally.

15 Q Now, it is curious, of course Mr. Clifton was
16 notified on all three of these of his default after that,
17 January 21 by your demand letter to Mr. Clifton, January
18 21, 2009. Is that right?

19 A I am not totally sure, I would have to look at it but
20 that sounds right.

21 Q Okay. And actually none of these lawsuits to
22 foreclose on this property were instituted until February
23 of 2009?

24 A That sounds about right.

25 Q So, to kind of recap, the loans were current in

1 September of 2008 and you actually didn't make a demand on
2 Mr. Clifton because he wouldn't have known about the lis
3 pendens that was filed until you served him in 2009?

4 A No, that would not be correct.

5 Q Okay.

6 A We were in constant communication with them and the
7 September payment would have been current in October of
8 2008 because everything was running 30 plus days past due.
9 And the email chain basically proves that.

10 Q By the way, you talk about the appraisal that came
11 back. Did your brother do those appraisals?

12 A I don't have a brother.

13 Q Your brother-in-law?

14 A No. My brother-in-law is in the textile business, no
15 sir.

16 Q That's all I have got.

17 MR. CASSIDY: Your Honor, my intention for the next
18 witness would be my paralegal for the timeline. If you
19 would like I can just summarize and highlight the things
20 that I wanted to point out to the Court that helps frame
21 your chain of thoughts about these transactions.

22 THE COURT: Okay. We will take a short break.

23 (Whereupon, a short break was taken.)

24 MR. CASSIDY: Your Honor, I just wanted to summarize
25 a couple of things for you on these timelines. To try to

1 give you a read from where our perspective is. I am
2 looking at the, I am not quite sure which exhibit number
3 it is but it is the last three digits on the case number
4 is 883.

5 THE COURT: That would be exhibit 2.

6 MR. CASSIDY: Okay. And that is the one that
7 involves Plantation Holdings. Mr. Pruitt is correct that
8 a lis pendens was filed on January the 5th of 2009. The
9 case didn't actually get started or served on Mr. Clifton
10 until February of 2009. Then you go through the regular
11 process of the foreclosure proceeding itself and the
12 judgment was entered in October of 2009. And in that case
13 the judgment was for \$461,171.74 and interest was accruing
14 since August of 2009. I would note for the Court's
15 attention that Mr. Clifton was represented by counsel at
16 that time, Bob Wilson in Greenville represented Mr.
17 Clifton. After the judgment was entered, the normal
18 collection process pursued, an execution was filed and the
19 sheriffs returned nulla bona. And we had several
20 supplemental proceedings or attempted to have several
21 supplemental proceedings with Mr. Clifton. The last of
22 which resulted in a rule to show cause why he shouldn't be
23 held in contempt for not turning over documents.

24 MR. PRUITT: I object, that has got nothing to do
25 with this case.

1 MR. CASSIDY: Your Honor, I think it has everything
2 to do with the case because we are going to show you that
3 during this period of time he was delaying and putting the
4 bank off. And in the interim he was transferring
5 properties out of his name.

6 THE COURT: It is public record. This is in the
7 Clerk's file in Greenville County?

8 MR. CASSIDY: Yes, sir.

9 THE COURT: I trust there was a rule to show cause
10 issued and scheduled and the dates are consistent with the
11 public record in Greenville County. I mean, it is what it
12 is.

13 MR. PRUITT: I am not saying that it didn't occur, I
14 just don't think it is relevant when the deed that they
15 are trying to set aside in this case was dated September
16 of 2008 which would predate all of this and would be at a
17 time when their witness just got through testifying that
18 Mr. Clifton was current.

19 MR. CASSIDY: I don't believe that was his testimony
20 at all. But regardless, Your Honor, I think you will see
21 as the record proceeds that there were a lot of
22 shenanigans after that that brought this action about.

23 THE COURT: I thought the testimony of Mr. Wood was
24 an email, that the interest was being paid in arrears. So
25 at the end of each month he was paying that month's

1 interest. You pay a little principle, that is how I
2 always understood the mortgage. This was interest only
3 and it was always last month's interest so you couldn't
4 calculate the end of the month because you knew that the
5 principle was all the way along.

6 MR. CASSIDY: Exactly, Judge.

7 THE COURT: Okay.

8 MR. CASSIDY: You have the picture correct.

9 THE COURT: I understand, I was a finance major. I
10 have calculated interest like that before.

11 MR. CASSIDY: And I am not sure which exhibit it is
12 but the Anderson County case, the Edgewater case which
13 ends in 425.

14 THE COURT: That would be 3.

15 MR. CASSIDY: If you will look at that, again, the
16 case was commenced by serving Mr. Clifton in February of
17 2009. A judgment was entered in October of 2009. Again,
18 and that judgment was \$60,755.80 with interest accruing
19 since August 4th of 2009. And then lastly the Shellbrook
20 Plantation matter, the same thing. They all started about
21 the same time in February of 2009 and judgments entered
22 ironically in both counties about the same time on October
23 20th of 2009. In this case, the Shellbrook Plantation
24 case, which I think is your exhibit 1.

25 THE COURT: It is.

1 MR. CASSIDY: That judgment was \$223,390.32 with
2 interest accruing since August 3rd of 2009. And, again,
3 rules to show cause for supplemental proceedings were
4 issued, trying to get documents to followup. We were
5 trying to examine that January of 2008 financial statement
6 and show considerable properties that were not incumbent.
7 We had considerable difficulty in getting documentation.
8 And that is all I really wanted to point out to the Court
9 as far as the timeline is regarding the lawsuits and the
10 status of the case for that period of time.

11 THE COURT: Okay.

12 MR. CASSIDY: The next witness I would call would be
13 J.B. Schwiers.

14 J.B. SCHWIERS, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Cassidy:

18 Q State your name for the record.

19 A J.B. Schwiers.

20 Q And since I am a terrible speller and I always
21 misspell your name, spell it for the court reporter.

22 A S-C-H-W-I-E-R-S.

23 Q And where are you employed?

24 A First Citizens Bank.

25 Q And what are your duties and responsibilities?

1 A I am currently the Agriculture Business Manager for
2 South Carolina and Georgia.

3 Q In the 2006 through 8 period of time what were your
4 duties and responsibilities?

5 A In 2005 to 8 I was the Division Exec over the upstate
6 of South Carolina and Northeast Georgia. After that I was
7 Regional Exec from covering Rock Hill from down to
8 McCormick and from Horry County down to Beaufort.

9 Q And when you were in that capacity with the bank were
10 you responsible for the Clifton loan?

11 A It was in the overall portfolio that I was
12 responsible for.

13 Q But Mr. Wood was the officer that was handling it,
14 correct?

15 A Correct.

16 Q But he worked for you?

17 A Indirectly, he reported to Jimmy Gullede and Jimmy
18 Gullede worked for me, so yes, indirectly John worked for
19 me.

20 Q Did it come to your attention that this loan appeared
21 to be a problem loan?

22 A Yes.

23 Q When I say this loan, I mean all three of these?

24 A Yes.

25 Q And could you just elaborate a little bit for the

1 Court what your observations were concerning this matter?

2 A On credit this size we always have an annual credit
3 analysis done. One was done in July of 2008 and the 2007
4 tax returns pretty clearly showed what the problem was.
5 There was \$478,000.00 dollars of cash flow to service
6 interest carrier on a \$38,000.000.00 dollars worth of
7 debt. And those numbers just don't add up. So, then you
8 have the 2008 decline in property values and there was a
9 lack of activity in the developments that Mr. Clifton
10 owned. And so we had no lot selling and it became a
11 problem. And we knew that, we saw that coming and I am
12 sure Mr. Clifton did too in probably the Spring of 2008.

13 MR. PRUITT: Objection to what Mr. Clifton may have
14 thought, Your Honor, that being hearsay and speculation
15 unless he has got something to back it up.

16 THE COURT: I remember the 2008 year. Bad year for
17 real estate.

18 Q So what did the bank collector do at that point?

19 A Well, I think when the payment started running past
20 due John was trying to meet with them on numerous
21 occasions trying to find a way that we could enhance these
22 credits in order to work with Mr. Clifton and renew them.
23 Keep in mind that the Edgewater loan was made in 2002 so
24 six years later we have got one lot sale. So, that was an
25 issue and I know that we asked for numerous things. Can

1 you pay, sell some property and pay the debt down, can you
2 make some principle reduction. Because a lot of what we
3 have been talking about in here today is interest
4 payments. We asked if there was some property that he
5 could sell that was free and clear that he could pay this
6 debt down and lower our outstandings. We ask for
7 additional collateral and as you previously pointed out to
8 Mr. Wood, we had a huge financial statement that he had
9 supplied that showed that he had several properties that
10 were free and clear. We asked for additional support from
11 an investor, a guarantor, we were throwing out just find
12 us something that we can do if you really need us to
13 continue renewing these loans that are not performing.

14 Q And was that ever supplied to you?

15 A Not to my knowledge.

16 Q As a result the loans were accelerated?

17 A Correct.

18 MR. CASSIDY: Judge, subject to my objection of
19 relevance on the hunting thing, I want to put that to bed
20 if you don't mind.

21 THE COURT: Okay.

22 Q Mr. Schwiers, are you familiar with this property at
23 Durbin Creek?

24 A Very familiar with it.

25 Q Tell me how you came to know this property?

1 A Mr. Clifton and I have a mutual friend named Ron Cox
2 who runs a gunsmith shop on Woodruff Road. We were both
3 customers, we both trade there, so does Mr. Wood. Mr.
4 Clifton offered the hunting rights to this property to Ron
5 and his dad. Ron asked me to go down and look at it
6 because some of the things that Mr. Clifton wanted in
7 return for granting those hunting rights, I don't think
8 Ron could have done all of that. It was a considerable
9 amount of work that needed to be done. I went and looked
10 at it and agreed that I would hunt with Ron and his dad
11 and John and we would do the things that Mr. Clifton
12 wanted done which was clean the property up. The previous
13 hunters had left the property with the access open. They
14 took the gates with them when they left. So the residents
15 around the area had dumped considerable amount of trash,
16 tires, furniture, old appliances, shingles, all of the
17 things that you would normally pay to carry to a landfill.
18 So the first thing we did was clean it up. And the second
19 thing we did was install gates to control the access to
20 the property. The third thing and these are all things he
21 wanted done, we posted it to keep trespassers, poachers,
22 dumpers out. And he wanted food plots planted on the
23 property. I was the only person, well I knew, had the
24 equipment to do that. So for several years I was the one
25 who planted all the food plots. And then he said, Ron,

1 you and your friends can hunt the deer, don't hunt the
2 turkeys or ducks. And that is how he operated. And then
3 I think the issue with Ms. Whiteman was and I certainly
4 can understand her issue as being a fifty percent owner of
5 the property, she wanted her family to be able to utilize
6 it and there was some discussions, I think, between the
7 Cox family, Ken and Ms. Whiteman about access and keys and
8 whatnot. That is about the time we began providing the
9 insurance policy that you referenced for protection of the
10 owners in case of liability.

11 Q Did Mr. Clifton have a key to the property?

12 A To my knowledge the Cox family gave him a key.

13 Q Did you ever deny access to Ms. Whiteman?

14 A No, I never spoke with Ms. Whiteman.

15 Q And you did all of those things you listed, you put
16 new gates up and you planted food plots, you posted the
17 property for trespassing?

18 A Correct.

19 Q And you also got in touch with DNR?

20 A We had DNR out there numerous times for those
21 reasons, for people pouching and trying to slip in and
22 dump. After we put the gates up they continued to dump at
23 the gate. They would actually back up to the gate and
24 dump trash right there which, you know, we had to get the
25 Laurens County Sheriffs Office involved as well.

1 Q So you performed all the requirements that Mr.
2 Clifton--

3 A To the best of my knowledge I think we lived up to
4 the spirit to what he was looking for. And then, you
5 know, once the relationship professionally started to
6 deteriorate John and I stopped hunting there. Ron Cox and
7 his dad are still hunting there today, to my knowledge,
8 providing that same insurance policy for protection to the
9 owners.

10 Q No further questions.

11 CROSS-EXAMINATION

12 By Mr. Pruitt:

13 Q You don't disagree with the fact that during the
14 period when y'all instituted the insurance in early of
15 2008, there had been some discussions about the owners
16 being liable for some type of accident.

17 A I think it first started out, Mr. Pruitt, that Ms.
18 Whiteman wanted to have access for some family members to
19 hunt the property and then it went from there to the issue
20 if multiple people were hunting it, the chance of
21 something happening and then the liability came up which I
22 thought made good sense to provide that coverage to them.

23 Q Is it true that the conveyance of the title to an LLC
24 would also make sense from a liability standpoint?

25 A Yes, I have heard that.

1 Q I don't have any other questions.

2 THE COURT: You can step down.

3 MS. BARBERY: Your Honor, I think we will call Linda
4 Whiteman and work through the timelines.

5 THE COURT: All right, Ms. Whiteman, come on around
6 and be sworn.

7 LINDA WHITEMAN, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Ms. Barbary:

11 Q Good morning, Ms. Whiteman.

12 A Good morning.

13 Q Do you have with you that packet, exhibit 4?

14 A No.

15 Q I will find it--

16 A You can get it.

17 Q Ms. Whiteman, isn't it true that you and Mr. Clifton
18 had a relationship for many years?

19 A Forty years ago.

20 Q And during the course of that relationship the two of
21 you purchased property together, is that correct?

22 A On some occasions, yes.

23 Q Looking at that exhibit 4, the first page it
24 mentions, it has a deed from Larry Faulkenberry, Kenneth
25 E. Clifton and Linda G. Whiteman?

- 1 A Yes.
- 2 Q And that deed is dated June 6th, 1995?
- 3 A Yes.
- 4 Q And that deed is the Durbin Creek property here in
5 Laurens County, correct?
- 6 A Yes.
- 7 Q And the two of you purchased that property together
8 individually, in your individual names, correct?
- 9 A Yes.
- 10 Q You skip down to letter F, under Highway 14, has
11 August 17th, 1993, deed from Living Waters Christian
12 Church to Kenneth E. Clifton and Linda G. Whiteman?
- 13 A Correct.
- 14 Q And that property did purchase in 1993, was property
15 held by you and Mr. Clifton in your individual names,
16 correct?
- 17 A Yes.
- 18 Q Skipping down again to Boiling Springs which is
19 letter H. You see a deed from Lawrence McNair to Kenneth
20 E. Clifton and Linda G. Whiteman. That deed dated June
21 2nd, 1992?
- 22 A Yes, that is when we bought his third, property we
23 bought in 1989.
- 24 Q And you individually, is that right?
- 25 A Yes.

1 Q And then transferred your, part of your interest to
2 Mr. McNair?

3 A No. There was three of us in the beginning, McNair,
4 Clifton and me. We had third interest and then on the
5 date that you are showing, that is when we bought out his
6 one-third interest. So the actual date of purchasing, it
7 was in '89.

8 Q So 1989 then. So as of 1989, again that project,
9 that property, you and Mr. Clifton, y'all owned that
10 together individually?

11 A Yes.

12 Q So, based on the history of the properties that you
13 have had with Mr. Clifton, it wasn't uncommon for you guys
14 to hold out property in your individual names?

15 A Right.

16 Q With regards to the Park at Durbin Creek property,
17 you guys owned that individually until September of 2008,
18 is that correct?

19 A That's correct.

20 Q And at that time you transferred, you transferred
21 your interest to the Park at Durbin Creek, correct?

22 A Yes.

23 Q With regards to the Highway 14 property and you guys
24 owned that from 1993 until July 31st, 2008. Is that
25 correct?

1 A Right.

2 Q And at that time you transferred?

3 A Yes.

4 Q The Pelham at Boiling Springs, again you initially
5 purchased in '89 then transferred how it was in '92 to
6 just the two of you but you owned that property from '92
7 until it was transferred to Pelham at Boiling Springs, is
8 that correct?

9 A Right.

10 Q And that transfer took place in September of 2008?

11 A Yes.

12 Q With regard to Park at Durbin Creek, Park at Durbin
13 Creek is the current owner now of the Laurens Road, that
14 370 acres property in Laurens. Is that correct?

15 A Yes. As far as my interest is, yes.

16 Q And the interest, the current ownership, well, Park
17 at Durbin Creek started out, who were the members of Park
18 at Durbin Creek?

19 A Myself and Ken.

20 Q Were you involved with the preparation of the
21 organization documents for Park at Durbin Creek?

22 A No.

23 Q Who prepared those documents?

24 A I believe it was Renee at the time, Renee Clifton.

25 Q Renee Clifton. And who was Renee Clifton?

1 A Kenneth Clifton's daughter. She is married. Her
2 name is Gilree.

3 Q And what relationship is she to--

4 A Daughter to Ken Clifton.

5 Q Now, did you have an opinion, when you were
6 transferring that property into Park at Durbin Creek. Did
7 you have an opinion as to whether you wanted that
8 property, or excuse me, that entity to be member run
9 versus manager run?

10 A I wanted it to be member run.

11 Q Why did you want that property to be member run?

12 A Because before it was done I had talked to several
13 people and they said member run gives you the right to
14 make decisions rather than having a manager who could do
15 things without your knowledge.

16 Q So you wanted to be involved in the decision making
17 with regards to that entity, is that correct?

18 A Yes.

19 Q And the same, you didn't want then Mr. Clifton to do
20 something with regards to the property or to the, with the
21 entity without your knowledge or consent. Is that
22 correct?

23 A That is correct.

24 Q If you would, please, look at a document.

25 MS. BARBERY: I would like to have this marked as

1 plaintiff's exhibit 8.

2 Q I am showing you what has been marked as plaintiff's
3 exhibit 8. And this appears to be the certificate for
4 Park at Durbin Creek, is that correct?

5 A Yes.

6 Q And if you would, and the date that this entity was
7 formed, it is August 1st of 2008, is that correct?

8 A Yes.

9 Q If you would, please, turn to the next page and what
10 appears to be the articles of organization for an LLC. Is
11 this the articles for Park at Durbin Creek?

12 A Yes.

13 Q On the second page it appears to have the signatures
14 of Kenneth Clifton as well as Linda Whiteman. Is that
15 your signature?

16 A Yes, it is.

17 Q If you look at the top page of, excuse me, the top
18 portion of that page there is a handwritten notation what
19 appears to read member run?

20 A Yes.

21 Q Do you recognize that handwriting?

22 A Yes, that is mine.

23 Q That is your handwriting. Why did you write member
24 run on this?

25 A There wasn't a spot on the form, when they sent it to

1 me for signature there wasn't a spot and I didn't learn
2 until after I was served with these papers and tried to
3 figure out and call and they said it was not a required
4 thing that you tell them. But I didn't know, I just knew
5 it wasn't on the form when I signed it. That is all I
6 knew.

7 Q And so your member run on there was your, your
8 indication that you wanted to make sure this was a member
9 managed LLC?

10 A Yes.

11 MS. BARBERY: Your Honor, if I may move to admit
12 exhibit 8 into evidence please.

13 MR. PRUITT: No objection.

14 THE COURT: No objection exhibit 8 is also in.

15 (Whereupon, Plaintiff's Exhibit 8 was admitted into
16 evidence.)

17 Q Okay, working down the timeline, under item D it has
18 a certificate of existence for Streamline Management, LLC.
19 I apologize, I am sorry. Item E, there is an amended
20 articles or organization for Park at Durbin Creek, LLC.
21 Do you see that?

22 A I do.

23 Q In looking at that document it appears to have filed
24 on August 19th of 2010, is that correct?

25 A Going by your notes, yes.

1 Q If you want to flip under tab E, you can look at that
2 document. Do you see it. I thought you had, let me help
3 you find it a little quicker. Right here. Looking at that
4 amended articles of organization, have you seen this prior
5 to August 19th of 2010?

6 A No, I had not seen it, no.

7 Q Did you discuss with Mr. Clifton the idea of changing
8 the registered agent from Kenneth Clifton to Streamline
9 Management, LLC?

10 A No.

11 Q Did you discuss the idea with Mr. Clifton, he
12 transferring his interest to Park at Durbin Creek to
13 Streamline Management, LLC?

14 A No.

15 Q When did you find out that Streamline Management, LLC
16 was now the new, the new member, I guess, at Park at
17 Durbin Creek?

18 A When I was served with papers and referred to
19 Streamline but it said, change of ownership. I am trying
20 to think what the registered agent is, what it said so I
21 started saying what does registered agent mean. I didn't
22 know then that that, the interest was transferred.

23 Q Isn't it true that you actually had to contact the
24 Secretary of State to get information about this
25 Streamline?

1 A I did that, yes, I called to find out who were
2 members and, yes.

3 Q Did you ever, prior to, did you ever give consent or
4 authorize Mr. Clifton to transfer his interest, Park at
5 Durbin Creek to Streamline Management?

6 A I wanted him to be my partner, not anybody else
7 because I knew him and I needed, bought it together and
8 planned to keep it for retirement at one time.

9 Q And that was important to you?

10 A Yes.

11 Q I do not have any other questions.

12 THE COURT: So I understand can I ask this question.
13 Park at Durbin Creek, LLC had two members originally, Mr.
14 Clifton and Ms. Whiteman?

15 MR. PRUITT: Yes, sir.

16 THE COURT: And then subject to that Mr. Clifton
17 signed his interest to Streamline?

18 MR. PRUITT: That is correct, Your Honor.

19 THE COURT: Okay. I am with you. So that fifty
20 percent of that membership got transferred to Streamline,
21 LLC. Go ahead.

22 CROSS-EXAMINATION

23 By Mr. Pruitt:

24 Q Tell me, what was the motivation for you wanting to
25 put this 370 acres in Laurens County into an LLC?

1 A Well, there were lots of motivation but they all
2 boiled down to liability. Since buying the property, some
3 of them as far back as '89, there had been changes in
4 marriages, divorces, children, grandchildren, all kinds of
5 things that changed. So it wasn't as simple as just Ken
6 Clifton and Linda Whiteman any longer, there were lots of
7 things. Something had happened to me when I got married
8 in '97 and the next thing I knew, my husband was served
9 with papers from a wife from 22 years before wanting half
10 interest in a piece of property that they owned back then.
11 And I wound up having to pay her \$20,000.00 dollars, that
12 was one big eyeopener. My husband was a Deputy Sheriff,
13 now a Department of Transportation Police Officer. We
14 lived on acreage and he would let policemen, Judges and
15 friends and neighbors come and target shoot on the
16 property. And I nearly had a nervous breakdown about it.
17 In fact I tried to get him to let me go ahead and pay him
18 for any interest he had in the house and get it back in my
19 name so I didn't have the worry of his activities. He
20 even drove an 18-wheeler and had an accident. So all of
21 that was going on. I bought a boat and paid for it myself
22 and put it in his name because I didn't want the
23 liability. So the point is, liability is, just was an
24 issue with me. Then when it started, by the way I lost
25 the boat in the divorce because it was in his name. But

1 the Laurens County thing just kept, the property just kept
2 bothering me and bothering me. I rode down there a couple
3 of times and I had seen, I don't know the time on this but
4 people were riding four wheelers, there was dumping going
5 on. Then when the bank people started hunting on it I
6 knew they had tree stands and they were letting people in
7 there and they were, they put up fences and I never saw an
8 insurance policy and I never got a key. It wasn't a huge
9 issue with family but it did cause a problem when my
10 husband said, I can't even go on property that I own and
11 hunt. But anyway, I changed my insurance from two million
12 to three million over the hunting thing. And I did that
13 before the date of, I changed mine in '07 because I was so
14 concerned, I changed from two million to three million on
15 a liability policy and was still concerned. So those are
16 the reasons, I mean there is just liability being the
17 bottom line.

18 Q Specifically, other than for many concerns with your
19 husband and people doing target practice at your place,
20 what was the main reason that you signed the deed to put
21 this property, 370 acres in Laurens County into the LLC,
22 Park at Durbin Creek, LLC.

23 A Liability and the timing was because we were, Ken was
24 starting another subdivision. At that particular time
25 that he was doing an LLC and said we might as well just do

1 this one at the same time. So as far as the actual final
2 timing of it, that was what brought that timing there.

3 Q Now, at the time that you conveyed your interest, the
4 personal interest to the LLC did you, in exchange for that
5 conveyance you got a half ownership in the LLC, is that
6 correct?

7 A That's correct.

8 Q And at that time did you have any knowledge of Ken
9 Clifton's problems with the bank?

10 A Absolutely not.

11 Q Had he discussed with you any problems that he had
12 relative to Shellbrook Plantation, Plantation Holdings in
13 Greenville or Edgewater, LLC?

14 A I had never discussed his business with him, just in
15 general terms of how is business and never knew what he
16 was developing or what he was doing. And as long as
17 everything was okay with whatever we owned together I
18 didn't have any--

19 Q Did you have any conversations with these people here
20 at the bank relative to any defaults?

21 A No. Absolutely not. I did call one of them and I
22 can't remember which one one afternoon to say, don't hunt
23 on that property but I don't know who I talked to so I
24 can't.

25 Q Well, no conversations with relatives or any

1 financial trouble that Ken may or may not have?

2 A No. And at one point we, he refinanced something
3 that he was able to do with another bank, I think it was
4 as late as 2010 or something, I can't remember the exact
5 date. But I just assumed everything is fine. Also the
6 new subdivision was getting ready to do, he had been able
7 to get a development loan with them or a land purchase, I
8 don't know what. But he was going forward with that
9 subdivision so my assumption was everything must be okay
10 even though I didn't, you know, if he is still going
11 forward with a new subdivision.

12 Q Now, you didn't owe anything to First Citizen's, did
13 you?

14 A Never have.

15 Q And you weren't in any type of financial distress at
16 this time, were you?

17 A None whatsoever.

18 Q Now, you invested another \$40,000.00 dollars or so
19 with Ken at another project?

20 A That project, that subdivision that I was referring
21 to that he was starting, the new subdivision that they
22 were, they were doing their LLC on it. I didn't have
23 anything to do directly with the ownership but I had
24 invested \$40,000.00 dollars at that same time with him.

25 Q Did he invest \$40,000.00 dollars too?

1 A Oh, he invested, I am sure, yes. I don't know, I
2 wasn't a part of the transaction. I just put up money to
3 be an investor and it was not, I didn't own a deed or a
4 loan, just a side agreement.

5 Q Now, to your knowledge the LLC known as the Park at
6 Durbin Creek has no operating agreement, does it?

7 A No, not to my knowledge.

8 Q And to your knowledge was it Renee Gilree that had
9 drew up the papers for the formation of this LLC?

10 A I believe that it was Renee but it could have been
11 Leah, I don't know, Leah being Ken's other daughter. I
12 don't know within their office who physically drew up the
13 documents.

14 Q But you signed them?

15 A Yes.

16 Q Now, and you didn't draw it up?

17 A No.

18 Q At the time that you conveyed your entity in exchange
19 for the interest of the Park at Durbin Creek, did you know
20 anything about any loans at the bank in default or behind,
21 if they were in fact behind at the time?

22 A No.

23 Q Now, this lawsuit, there is a conspiracy case against
24 you, is that right?

25 A Yes.

1 Q And so, as of right now the real estate is still
2 owned by Park at Durbin Creek, LLC?

3 A That's, as far as, yes.

4 Q Does the bank, as far as you, the plaintiff in this
5 case own any interest in that real estate?

6 A No.

7 Q Even if this Court were to set aside the deed of you
8 and Ken to the LLC would the bank even then own any
9 interest in the real estate?

10 A I am not sure I follow.

11 Q Just before you conveyed your interest to the LLC in
12 exchange for the, for lack of a better term, the stock in
13 the LLC, we will call it stock, personal property interest
14 in the LLC, we will call it stock. Before you conveyed
15 your interest in the real estate to the LLC just as
16 indicated on this timeline that Mr. Cassidy presented us,
17 who were the owners of the land?

18 A Ken Clifton and Linda Whiteman.

19 Q Individually?

20 A Yes.

21 Q And so if this Court were to set aside that deed who
22 would be the owners of the land?

23 A Ken Clifton and Linda Whiteman.

24 Q All right. And so the bank wouldn't be at harm even
25 though they might have a judgment that would attach, would

1 they?

2 A Right.

3 Q Now, when did you get married to the deputy sheriff?

4 A '97.

5 Q And that was, how long did you stay married to him?

6 A The divorce was two years ago.

7 Q Now, what was your career, were you still working?

8 A No.

9 Q What was your general career involved in?

10 A For 44 years I was in mortgage banking.

11 Q And is that kind of how you got into real estate
12 investing?

13 A That's right.

14 Q Now, in your years as a mortgage banker did you often
15 see people put property in the name of LLC's for liability
16 purposes?

17 A Well, I was generally involved with residential
18 mortgages, so I wasn't involved that much. But, yes, as
19 far as outside things, yes.

20 Q Did you think that there was anything wrong or funny
21 or fraudulent about you conveying your interest in this
22 property to the Park at Durbin Creek?

23 A Absolutely not.

24 Q Had you thought it was wrong would you have done it?

25 A I would not.

1 Q And has it been a great sacrifice to you to have been
2 involved in this lawsuit because of this action?

3 A If I had an hour I would tell you what it has done to
4 me, but yes, it has been very hard. First of all, the
5 attack on my credibility and that was the worse part of
6 the whole thing is to be sent a document that said that I
7 had conspired to defraud a bank. I have never in all my
8 44 years been accused of doing anything wrong, ever.

9 Q All right. Now, the liability insurance policy that
10 was put into evidence, I believe it is number 6, did you
11 ever know that that policy existed?

12 A I did not ever have a copy of that and did not know,
13 I didn't have a key or I didn't see that policy.

14 Q Now, I asked you, I believe you invested \$40,000.00
15 dollars in the property on Godfrey Road?

16 A Yes.

17 Q Was that in July of 2008?

18 A July, yes.

19 Q And was that with Mr. Clifton?

20 A Yes.

21 Q If you thought he was in financial trouble at that
22 time in July of 2008 would you have invested with him?

23 A Absolutely not.

24 Q Was that property on Godfrey Road put into an LLC?

25 A I believe they did. That was, I would not have been

1 a part of that LLC. But, yes, that was the reason that
2 that came up is that they were doing the LLC for that
3 property and said, let's just do the other.

4 Q That is all I have.

5 REDIRECT EXAMINATION

6 By Ms. Barbery:

7 Q Ms. Whiteman, Mr. Pruitt asked you a lot of questions
8 about your motivation as far as transferring property,
9 Park at Durbin Creek. Do you have any idea, sitting here
10 today, can you tell us what Ken Clifton's motivations are?

11 A I can't tell you what his mind was but there was
12 never an indication of anything but I had nagged him to
13 death.

14 Q But prior to transferring, you had owned that
15 property since 1995?

16 A I believe that is right.

17 Q And owned other properties with Mr. Clifton?

18 A Yes.

19 Q Individually since 1989?

20 A Yes.

21 Q And 2002, whatever the dates reflect?

22 A Yes.

23 Q So, all of a sudden now in 2008 Mr. Clifton is doing
24 another development deal and it becomes, hey, let's just
25 go ahead and do it all at the same time. Is that correct?

1 A Right.

2 Q And it was for convenience purposes I guess?

3 A You mean as far as why the timing of that, I would
4 assume you would call it the convenience of doing them all
5 together at one time.

6 Q And that was done by Ken Clifton and or, someone, is
7 that correct?

8 A Yes.

9 Q You were asked about the investment of the \$20,000.00
10 dollars into one of the Batesville Road subdivision in
11 2008. Did you also or were you also asked to pledge your
12 interest in that property as collateral?

13 A No.

14 Q You never were?

15 A No, I was not on anything to do with that
16 subdivision.

17 Q Were you ever asked to sign a mortgage so that Ken
18 Clifton could get a line of credit to assist with that
19 development?

20 A Oh, you are talking about another piece of property
21 that he refinanced a loan, on that I was talking about
22 earlier that he was able to get that loan. But there was
23 a line of credit but it was not on the subdivision
24 property, it was on another piece of property. And, yes,
25 I did not sign a note, I didn't sign as a borrower but I

1 had to pledge my part of mortgage. So, yes.

2 Q And the reason why, Mr. Clifton, he needed additional
3 collateral?

4 A Well, it was to have it available to use in
5 connection with the subdivision.

6 Q And that was in 2008?

7 A I don't know what the date on that was except that I
8 am, hold on a minute and let me look at my notes. I am
9 showing, unless I am mistaken I am showing that in
10 November of '09 he refinanced Highway 14 and the bank, I
11 had to sign the mortgage on that. That was in '09.

12 Q Okay. Let me show you what has been, what I would
13 like to have marked as plaintiff's exhibit 9. Ms.
14 Whiteman, do you recognize this?

15 A Yes.

16 (Whereupon, Plaintiff's Exhibit 9 was admitted into
17 evidence.)

18 Q Is this a document that you and Mr. Clifton entered
19 into regarding that \$40,000.00 dollar investment?

20 A Yes.

21 Q Does it also reflect that you had to, the pledging of
22 property of additional security?

23 A Tell me which number you are referring to?

24 Q Number one.

25 A Yes, that is the Highway 14 that I was talking about,

- 1 yes.
- 2 Q And it provides the Whiteman agrees to allow Clifton
- 3 to borrow \$125,000.00 dollars on Highway 14?
- 4 A Yes.
- 5 Q Right. To be used solely for interest payments on
- 6 the land purchased development--
- 7 A -- right.
- 8 Q And, again, it was, the purpose for to pledge
- 9 additional securities so you can get back--
- 10 A --credit line.
- 11 Q That credit line. And this took place, this was
- 12 signed in July of 2008?
- 13 A I am confused about, my notes that tell me that he
- 14 refinanced.
- 15 Q Looking at that agreement, it has your name and then
- 16 it has a date beside it?
- 17 A Yes, that is the date of the agreement but I am not
- 18 sure when he borrowed it. I believe he borrowed it later,
- 19 I am not sure.
- 20 Q The date of this agreement is July of 2008?
- 21 A Yes.
- 22 Q At, this time he was asking if you agree--
- 23 A --yes.
- 24 Q Pledge your interest--
- 25 A --yes.

1 Q Fifty percent interest so that he could get
2 additional collateral to obtain the line of credit?

3 A Yes. Credit line, it wasn't to be used all at once.
4 And I believe that was, I am not sure when it was actually
5 done.

6 Q Isn't it true that eventually he defaulted on
7 payments to Cornerstone Bank?

8 A I have no direct knowledge of that loan.

9 Q What happened with that property, with that Highway
10 14 property, did it eventually all come back to you?

11 A I have it, yes.

12 Q And is that part for a debt forgiveness?

13 A I paid off the loan and that is the consideration.

14 Q And that was the \$125,000.00 dollar line of credit?

15 A It was the line of credit.

16 Q But you had to pay it off, is that correct?

17 A That is what we agreed to do.

18 Q Do you have any information as to why Mr. Clifton ask
19 you to pledge your interest in that property as collateral
20 as opposed to using any other properties that he may have
21 owned?

22 A I was agreeable to it and I didn't see a problem with
23 it.

24 Q So Mr. Clifton, to your knowledge, he just didn't
25 have any other available sources?

1 A I don't know. I didn't know.

2 Q A couple of more questions and then I think I will be
3 done. Isn't it true that Mr. Clifton didn't tell you
4 about that insurance policy that was produced by the bank?

5 A I don't know. I can't remember. I think that I
6 would have known but I just didn't have a copy of it, I
7 didn't see it.

8 Q Did you ask him for a copy?

9 A I didn't know. The hunting and the liability and the
10 worrying about it. And so at some point he got it and I
11 just didn't have a copy of it and I don't remember him
12 telling me when or what or whatever. Apparently he took
13 care of it and I just didn't have a copy of it. I had
14 already changed mine from two million to three million
15 because I was so concerned.

16 Q But he didn't tell you that he had allowed other
17 folks to hunt the property?

18 A Well, I knew, obviously he had said they could. I
19 didn't know any details. They were riding out and hunting
20 without his knowing it. That was the whole point was if
21 he had a desire to let someone hunt, I just was concerned.

22 Q But y'all had not discussed prior to?

23 A We discussed that they were hunting, yes.

24 Q Prior to him allowing them to hunt on the property,
25 did he tell you that he was going to allow them?

1 A I don't know if he said, I am going to let them or
2 rather I found out later. I cannot remember.

3 Q And he and I think we covered this but just to be
4 clear. He never told you that he transferred his
5 interest--

6 MR. PRUITT: Judge, this is not in reply.

7 Q Let me rephrase the question. Did Mr. Clifton tell
8 you that he was transferring his interest in Park at
9 Durbin Creek to Streamline Management, LLC?

10 A No.

11 Q No further questions.

12 RECROSS-EXAMINATION

13 By Mr. Pruitt:

14 Q In regard to what has been marked as plaintiff's
15 number 9, dated July 9th of 2008 would you have entered
16 into this agreement with him if you had of known he was in
17 great financial distress?

18 A Absolutely not.

19 Q That is all I have.

20 THE COURT: You may step down. Let's take a break
21 for a few minutes.

22 (Whereupon, a short break was taken.)

23 THE COURT: All right, Mr. Cassidy.

24 MR. CASSIDY: We call Corbin Haskell.

25 CORBIN HASKELL, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Cassidy:

4 Q State your name for the record, please.

5 A Harrison Corbin Haskell.

6 Q And tell me what your occupation is?

7 A I am a real estate appraiser with Valbridge Property
8 Advisers, Robinson Company in Greenville.

9 Q What is your educational background?

10 A I graduated from the Citadel with a degree in
11 Business in 1978. I went in the real estate business in
12 1983. Received my MAI designation in 1991 and I am
13 currently licensed in North Carolina, South Carolina and
14 Georgia as a general real estate appraiser.

15 Q Do you have any special designations of the MAI?

16 A No, sir. The MAI would be the highest designation
17 that I have.

18 Q And then you regularly attend continuing appraisal
19 education for a lack of a better term?

20 A I am required to take education for both the
21 appraisal institute and separately for the state
22 designations also.

23 Q And you are currently accredited with all of those
24 designations?

25 A That's correct.

1 Q Requirements. What types of property do you
2 typically appraise?

3 A Our business is primarily commercial properties. We
4 do subdivision analysis, shopping centers, medical office
5 buildings, all types of commercial properties.

6 Q During the course of your employment as an appraiser
7 how many commercial appraisals would you say you have
8 performed in your career?

9 A Hundreds, the office, we do probably 4 or 500 a year
10 for the last 30 years.

11 Q Do you perform appraisals in the upstate and in
12 particular in Laurens County?

13 A Yes, sir.

14 Q Have you ever been qualified as an expert in court
15 regarding real estate appraisals?

16 A Yes, sir.

17 Q What courts have you been certified or qualified in?

18 A State, Federal and Bankruptcy.

19 MR. CASSIDY: Your Honor, I would submit Mr.
20 Haskell's qualifications as an expert to testify about the
21 appraisal of this property.

22 MR. PRUITT: I don't object to his qualifications,
23 Your Honor. I am not sure that what the value of the
24 property is is relevant so I would object on the grounds
25 of relevancy.

1 MR. CASSIDY: Your Honor, I would say this property,
2 is the subject-matter, I think the value of the property
3 is relevant.

4 MR. PRUITT: We are not arguing over the value.

5 MR. CASSIDY: Your Honor, if you will allow the
6 testimony you will see the relevance, when you see the
7 amount of the value of the property.

8 THE COURT: Go ahead.

9 Q Mr. Haskell, I want to show you a copy of an
10 appraisal and ask you if you can identify it?

11 A That is the appraisal of the property we refer to as
12 Durbin Creek.

13 MR. CASSIDY: Your Honor, we would offer the
14 appraisal in evidence as plaintiff's exhibit 10.

15 THE COURT: Subject to the objection of relevance.

16 (Whereupon, Plaintiff's Exhibit 10 was admitted into
17 evidence.)

18 MR. CASSIDY: And, Your Honor, just as a comment on
19 the relevance issue. One of the things you have to prove
20 in is the failure of consideration. And I think obviously
21 it is very relevant what the value of the property was in
22 conjunction with whatever amounts were paid for that
23 interest.

24 THE COURT: I guess what my thoughts is this, he is
25 transferred to himself. That is not in dispute.

1 MR. CASSIDY: He then transferred it to his children
2 into Streamline and distanced his interest from the
3 creditors.

4 MR. PRUITT: And, Your Honor, and Streamline is not a
5 party to this lawsuit and this lawsuit is not attacking
6 the sale of Mr. Clifton's interest in Park at Durbin Creek
7 to Streamline. Streamline is not a party to this action
8 and that transaction is not being attacked here.

9 MR. CASSIDY: Your Honor, Streamline is not a member.
10 Park at Durbin Creek is the defendant in this case. Ms.
11 Whiteman just testified that she did not authorize the
12 transfer of his interest. And when you look at code
13 section, excuse me for a second. To transfer a partner's
14 interest you have to have consent of the other member. We
15 would submit to the Court that the transfer to Streamline
16 was an ab initio act that is, could not be done, period.

17 MR. PRUITT: Your Honor, that would be a, if anybody
18 was going to attack transfer, the right to attack a
19 transfer would belong to Ms. Whiteman and would not belong
20 to the bank to assert. And she certainly has not asserted
21 in pleadings in this court that she attacks that transfer
22 nor is Streamline a named party.

23 MR. CASSIDY: She testified that it was unauthorized,
24 she didn't know about it. And code section 33-44-407(7)
25 requires that the members agree to a transfer.

1 MR. PRUITT: I don't disagree with the code section,
2 I am just saying there is nothing in the pleadings
3 attacking that transfer.

4 MR. CASSIDY: Your Honor, the whole lawsuit is the
5 attack of Mr. Clifton's transfer.

6 MR. PRUITT: -Not the transfer of his interest to
7 Streamline but the deed from Clifton and Whiteman to the
8 LLC. That is all this lawsuit is about.

9 THE COURT: It is the timing, the timing is the
10 attack.

11 MR. PRUITT: Sir?

12 THE COURT: The timing of the deed is the attack.

13 MR. PRUITT: Yes, sir.

14 THE COURT: Whether it happened or not is not a
15 question, it happened.

16 MR. PRUITT: Yes, sir. You are absolutely right.

17 THE COURT: I am with you on that. The property is
18 worth about \$2,000.00 dollars an acre, I could have told
19 you that. And that is about what it says. I don't see
20 that being a huge question of fact. I am with you on
21 that. This is all about timing. I am still with y'all, I
22 understand.

23 MR. CASSIDY: I will just cut through the chase.

24 Q Tell us what your appraisal--

25 THE COURT: For the record, I want to know this.

1 That would be my guess, just thumbing through, I opened
2 the appraisal up. There is an appraiser, apparently the
3 inspecting appraiser who I was in college with. I took
4 business classes with and is a fraternity brother of mine.
5 Is that going to create an issue for anybody that this
6 appraisal was made by Mr. Mark Rachford. Is that correct?

7 MR. CASSIDY: That's correct.

8 THE COURT: And would he not be kind of a smaller
9 dark headed fellow?

10 MR. CASSIDY: Yes, sir.

11 THE COURT: That would be my fraternity brother. I
12 understand to be the appraiser.

13 MR. CASSIDY: But he reviewed the appraisal, Judge.

14 THE COURT: He did the appraisal, he reviewed it.

15 MR. CASSIDY: But if you will allow the testimony, he
16 went out there and looked at the property and he did the
17 same things that Mr. Rachford did.

18 THE COURT: I wonder if there will be an objection to
19 that of Mr. Rachford being, having a friendship with the
20 Court.

21 MR. PRUITT: He can testify as to what he did but not
22 to what Mr. Rachford did. So we would object on the basis
23 of hearsay.

24 THE COURT: Continue on and we will see where we get.

25 Q Did you supervise the commission of that appraisal?

1 A Yes sir, I did.

2 Q And did you review all the comparables that were
3 pulled in conjunction with the appraisal?

4 A Yes, sir.

5 Q And did you, do you typically have to review an
6 appraisal within your organization that has been performed
7 by someone else?

8 A Yes, sir.

9 Q And did you personally go out to the property?

10 A Yes, sir.

11 Q So do you have an opinion on what the value of that
12 property is?

13 A Yes, sir.

14 Q And what is that opinion?

15 MR. PRUITT: I still object, Your Honor, on the basis
16 of relevance and it is not his appraisal.

17 MR. CASSIDY: He can testify to what, he said he said
18 he had all the comparables, he went to the property
19 himself. He has gone through all the same statistics that
20 Mr. Rachford went through. And he signed the appraisal.

21 THE COURT: Both of them signed the letter to the
22 bank.

23 MR. CASSIDY: Yes, sir. You hit the number on the
24 head, Judge, when you said it was worth \$2,000.00 dollars
25 an acre. It came out to \$2,200.00 dollars an acre. So I

1 accept yours.

2 THE COURT: My observation from my experience as a
3 property owner, rural property, roughly \$2,000.00 dollars
4 an acre is what it is going for right now. Prices are
5 down. It hasn't improved a lot over the last five years.
6 I have looked into it for my own benefit. I will allow
7 it, I am still, the timing seems to be the issue and
8 whether this property is worth \$800,000.00 or \$900,000.00,
9 I don't believe there are factual questions for the Court
10 to determine. So, is there any issue with Mr. Rachford
11 and I having a personal relationship years ago. I don't
12 know when the last time I have seen him, I couldn't tell
13 you, at least ten years.

14 MR. PRUITT: No sir, we have no objection to that.

15 THE COURT: We will allow it in. You can review it,
16 and they both signed the appraisal and the letter to the
17 bank.

18 Q And what is your opinion of the value?

19 A \$827,000.00.

20 Q No more questions.

21 MS. BARBERY: Your Honor, if I may, we do not have
22 any other witnesses but I just want to point out one more
23 deed to you on the timeline.

24 THE COURT: Okay.

25 MS. BARBERY: And that would be item J, for Pawley

1 Investments, LLC. There is a deed from Kenneth E. Clifton
2 from to Pawley Investments, LLC dated September 15th,
3 2008. Four tracts of land that were located in Georgetown
4 County. And if you look at that specific deed, all of
5 those tracts of land were owned by Kenneth E. Clifton
6 individually. And as you read the deed, the first tract
7 of land had been property that was purchased in 2004,
8 1999, 2003. So these are properties that he had owned for
9 several years in his individual names that were then
10 transferred to an LLC, again in September of 2008.

11 THE COURT: All right, are those all the witnesses
12 that y'all are going to call?

13 MR. CASSIDY: I have got one more document.

14 THE COURT: Okay.

15 MR. CASSIDY: Your Honor, in the course of taking
16 supplemental proceedings we provided Mr. Clifton with a
17 copy of the financial statement that is already on the
18 record. This document was produced by Mr. Clifton or his
19 daughters showing the status of all the properties that
20 were listed on the financial statements. Obviously it was
21 important to the bank to see what properties were still
22 on. The purpose of presenting this document is to show
23 that almost all of his properties were in a state of
24 foreclosure or deed in lieu of foreclosure, giving up
25 their interest to a partner during this period of time.

1 To show the fact that he was insolvent at the time, that
2 he transferred his interest in Park at Durbin Creek.

3 MR. PRUITT: Your Honor, we would object to this. I
4 am not sure who offered it, it is not part of any records
5 that is before the Court. None of these items that are
6 listed as for example, foreclosed indicate when the
7 foreclosure was done. Like I say, there is no offer me to
8 cross-examine and I don't know who filled this out and
9 don't know any times that any of these particular
10 documents, any of these particular events took place.

11 MR. CASSIDY: Judge, I am sorry that Mr. Pruitt
12 doesn't know this. But his own client gave it to us. We
13 got the email that transmitted it and was prepared, I
14 think, by Renee.

15 MR. PRUITT: Well, then I guess they better call
16 somebody to authenticate it. It is not part of his
17 deposition, if it were part of the deposition there wasn't
18 any notice that they were going to use it pursuant to the
19 rules.

20 THE COURT: Was this part of--

21 MR. CASSIDY: Supplemental proceeding in court, Your
22 Honor. And I have got the email that Ms. Renee Gilree
23 sent it to our office in response to Judge Simmons office
24 to tell us where these properties are.

25 THE COURT: Supplemental proceedings, was there not a

1 record made of it?

2 MR. PRUITT: Sir?

3 THE COURT: Was there not a record made of the
4 supplemental proceedings?

5 MR. PRUITT: I suppose there should be. If they are
6 conducted under oath then that would be the best efforts.

7 THE COURT: Did that happen?

8 MR. CASSIDY: Judge, we had probably three
9 supplemental proceedings trying to get records. Mr.
10 Clifton designated his daughter to present the records and
11 she emailed that in response to the Judge telling her that
12 she had to turn over the records. That was in 2011.

13 MR. PRUITT: Your Honor, that just goes to the point
14 of timing. This email of January 25, 2011 is two and a
15 half years after the deed in question here. And frankly
16 the, his status two and a half years later at the end of
17 the great real estate depression that we have had is not
18 particularly relevant.

19 MS. BARBERY: Your Honor, I believe the relevancy of
20 these documents goes to show the fact that at the time of
21 transferring the property it rendered him insolvent. I
22 believe that case law reflects that it is not a matter of,
23 it is, at the time when the creditors go to collect the
24 judgment is when, is when that solvency is determined. He
25 had no access at that time that we could attach to. It

1 goes to show that, in getting in the elements of
2 fraudulent conveyance that it is, this transfer renders
3 him insolvent with no assets left to pay his creditors.

4 THE COURT: If I were to make the findings of fact on
5 this the appellate court would laugh at me. I mean, I
6 agree with you there are a lot of notes on here and this
7 email says what it says. But timing wise that would be
8 impossible for me to say what happened when, foreclose,
9 foreclose, foreclose. Certainly I can take notice that
10 the property foreclosed but when and how, I don't know.
11 That would be difficult for me--

12 MR. CASSIDY: Your Honor, I don't think it is
13 intended to deal with timing. Is it to show you that he
14 was upside down standing on his head and all the property
15 that was previously presented to the bank is being viable
16 in January of 2008, was gone by 2011. Obviously he was
17 insolvent. The only property that is left in or was left
18 in Mr. Clifton's name was the property at Durbin Creek.
19 We didn't find that out until all of these supplementals
20 took place. I don't think the Court has to consider when
21 those properties were foreclosed upon. It is just to show
22 you that he was insolvent for purposes of the fraudulent
23 conveyance statute.

24 MR. PRUITT: Your Honor, it is still hearsay and the
25 record, somebody testified to it would be different. His

1 condition, we don't know when this condition was. We do
2 know that the bank was still going to renew his loan in
3 late 2008 and they were still considering it which has,
4 certainly an indication of his solvency. But this is just
5 not been properly presented as a part of their
6 case-in-chief.

7 MR. CASSIDY: Well, Judge, I will solve that problem.
8 I call Renee Gilree. If he is going to deny that she
9 prepared that I will just put her up and ask her if she
10 prepared it.

11 THE COURT: All right. You can call her.

12 RENEe GILREE, being
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Cassidy:

16 Q State your name for the record, please.

17 A Renee Gilree.

18 Q And you are related to Mr. Clifton?

19 A I am his daughter.

20 Q I want to show you a copy of a financial statement
21 that is dated January 28th of 2008 and ask if you can
22 identify it?

23 A Yes, I do identify this.

24 Q Did you prepare that?

25 A I did.

1 Q And you presented it to us to tell us what happened
2 with the property, isn't that true?

3 A Way after the fact, yes.

4 Q Yes. After Judge Simmons ruled for them to produce,
5 for you to produce records?

6 A I don't know at that time.

7 Q But you did it?

8 A Yes, I don't, I don't say that I didn't. I just said
9 I don't know the time.

10 Q And you presented it to my office to tell us what
11 happened to those properties?

12 A Yes. And I submitted a lot of documents to you guys
13 that you didn't acknowledge you had at that supplemental,
14 whatever you call it.

15 Q Thank you. No further questions.

16 CROSS-EXAMINATION

17 By Mr. Pruitt:

18 Q Now, Renee, tell me, getting back to this proposed
19 exhibit number 11, was it sent in January of 2011 like
20 this email indicates or do you know?

21 A I don't know the date.

22 Q Was it some three years after--

23 A -- well after the fact, yes.

24 Q --that they were talking about the deed to the LLC?

25 A Yes.

1 Q Now, going back to the time of the deed of the LLC,
2 were any of these properties that you marked as foreclosed
3 or sold or deeded, were any of those in default at that
4 time in September of 2008?

5 A No.

6 Q Had any mortgage foreclosures or deeds in lieu been
7 started against Ken Clifton or any of these properties in
8 September of 2008?

9 A No.

10 Q To your knowledge were any of these loans in default
11 at that time in September of 2008?

12 A Not to my knowledge.

13 Q Was the plaintiff in this action here, First
14 Citizens, were they the first ones that brought
15 foreclosure actions on property?

16 A Yes, I actually found out about the lis pendens from
17 another bank. They caused the other banks to be
18 concerned.

19 Q And what effect did the, these actions, these
20 foreclosure actions brought by First Citizens have on Ken
21 Clifton to obtain financing and refinancing and continue
22 his various real estate properties?

23 A It had a great impact because it caused concern to
24 all of the other lenders, that they were going to come
25 after other assets.

1 Q Did First Citizens start an avalanche of foreclosures
2 and defaults?

3 A Yes.

4 Q Now, we previously put into evidence as defendant's
5 number 2, an email that indicates that you and your
6 sister, Leah were in communication with Mr. Woods about
7 the three loans that they had a judgment on, is that
8 right?

9 A Yes.

10 Q And in 2008, what was the attitude of First Citizens
11 in regard to these loans?

12 A We were working together with them and they seemed to
13 be going to renew everything. We never thought any
14 different.

15 Q And when is it that you found out that they were not
16 going to renew anything?

17 A I would say December, they started working on an
18 appraisal all of a sudden. Nobody ever said an appraisal
19 was required because everybody was pretty much assuming
20 that they were going to do what they said they were going
21 to do without anything else.

22 Q In September of 2008 were you aware at that time that
23 First Citizens was going to pull the plug on these three
24 loans?

25 A No, there was no reason.

1 Q Now, in regard to your duties there, did you prepare
2 the LLC document that has been entered into evidence
3 showing, plaintiff's number 8 showing the formation of the
4 Park at Durbin Creek?

5 A I probably did. I did a lot of LLC's and that is
6 what we, our normal course of business.

7 Q Well, that was going to be my next question. Did you
8 and to your knowledge your father, always do developments
9 through the vehicle of an LLC?

10 A Always.

11 Q And for what reason did you use that particular
12 vehicle?

13 A It was compartmentalized in each deal to its own and
14 really the banks like to have that in an LLC, each deal in
15 its own LLC.

16 Q What do you mean by compartmentalize?

17 A Well, its own company.

18 Q Right. In other words, each little development would
19 stand on its own and wouldn't be liable for some other
20 development?

21 A I guess, yes.

22 Q Did you ever have a complaint from First Citizens
23 about any of these projects being denominated as an LLC?

24 A No.

25 Q Now, do you remember the general timeframe, general

1 economy starting in 2009 as far as real estate?

2 A Yes, in 2009 you could tell some things were about,
3 you know, they weren't as stable as they had been. But it
4 wasn't, anything we bought wouldn't come back. And a lot
5 of other banks were still lending.

6 Q Now, tell me if you would, did you have any
7 conversations or interactions with Linda Whiteman relative
8 to the formation of Park at Durbin Creek?

9 A We discussed the Park at Durbin Creek, yes.

10 Q What do you remember her saying her desires were at
11 that time for the property to be put in an LLC?

12 A She was concerned about the hunters, she was
13 concerned about, she just said, you know, changes in life,
14 just like she said on her testimony. She was concerned
15 about all of those things. And she wanted to have and
16 they wanted to do it and this was a timing that they
17 picked to do it because they were doing the other deal on
18 the Gardens at Godfrey Road.

19 Q And did they put that Gardens at Godfrey Road in an
20 LLC too?

21 A Yes, along with several, a couple of others that they
22 mentioned today.

23 Q And did any of those LLC's that were formed at or
24 about this same time, did any of those LLC formations,
25 were any of them motivated to hide assets?

1 A No.

2 Q Now, how long have you been in the real estate
3 business?

4 A Over ten years.

5 Q If some of these properties that you have indicated
6 were in foreclosure or otherwise distressed in 2011, had
7 they been transferred to an LLC with an existing mortgage
8 in place, would that have affected any banks rights?

9 A I don't think so, I don't know.

10 Q Would you take a look at what has been marked as, I
11 don't know whether Your Honor as admitted number 11 or
12 not?

13 THE COURT: I have not, it has been marked.

14 (Whereupon, Plaintiff's Exhibit 11 was admitted into
15 evidence.)

16 MR. PRUITT: Yes, sir.

17 Q Subject to my objection, on exhibit number 11, is the
18 debt of each of these properties listed?

19 A Yes.

20 Q So virtually none of them were free and clear at the
21 time that this financial declaration was listed in January
22 of 2008?

23 A What was the question again?

24 Q Isn't it true that most of these properties in
25 January of 2008, when this statement was performed were

1 already mortgaged?

2 A Yes.

3 Q So, the only thing we are talking about is what type
4 of, what type of equity there may or may not have been in
5 2008 and later on in 2011 after the, some of these
6 properties had been foreclosed on. Is that right?

7 A Yes.

8 Q During the time period of, during the 2008 time
9 period were all of these properties or most of these
10 properties that you acknowledged up for sale and eligible
11 for sale and were active efforts being applied to
12 liquidate some of these properties?

13 A Yes, always, we were always marketing the properties.

14 Q And in fact, if you look at some of the ones that
15 were sold it looks like you were successful in selling
16 some of them?

17 A Yes, we were.

18 Q Now, did Ken Clifton tell you anything at all that
19 would lead you to indicate that he was transferring the
20 Park at Durbin Creek property to defraud the bank in any
21 way?

22 A No.

23 Q Do you know of anything that he has done that would
24 be defrauding anybody of any property?

25 A No, I do not.

1 Q That is all I have.

2 REDIRECT EXAMINATION

3 By Ms. Barbery:

4 Q Ms. Gilree, you had testified a few minutes ago that
5 to your knowledge your father was not current, excuse me,
6 was current on his loans in 2008, is that correct?

7 A What now?

8 Q You just testified a few minutes ago that to your
9 knowledge you believe your father was current on his
10 loans?

11 A Yes, he was paying the payments.

12 Q Is there a time when he was not able, when he was not
13 current on his loans?

14 A You know, I know that they might have been late at
15 some times but I don't think, there was no default issued
16 on that, no. And we were waiting on paperwork and
17 renewals, yes. It was all related.

18 Q But isn't it correct in 2008, in the fall of 2008 he
19 was late on his payments?

20 A Yes, he was a couple of times. The emails that were
21 given to you say, yes, but not delinquent.

22 Q You also testified, you were asked questions about
23 purchasing property in an LLC and how your father, it is a
24 typical practice for development property. Is that
25 correct?

- 1 A Yes.
- 2 Q What about personal property?
- 3 A Occasionally, yes, we did personal property, any kind
4 of property. We usually did hold in an LLC.
- 5 Q But isn't it true that he held personal property in
6 his name individually, property that he was not intending
7 to develop?
- 8 A Sometimes.
- 9 Q And Park at Durbin Creek was one of those properties
10 initially, is that correct?
- 11 A He didn't own that individually.
- 12 Q That was Linda Whiteman?
- 13 A Correct.
- 14 Q It was in their individual names, correct?
- 15 A Yes.
- 16 Q At some point and time, you are currently a member at
17 Park at Durbin Creek or through a company called
18 Streamline?
- 19 A Streamline Management, yes.
- 20 Q Streamline Management, LLC is a fifty percent owner
21 of, in Clifton's interest in Park at Durbin Creek, is that
22 correct?
- 23 A Yes.
- 24 Q And it is you and your sister, correct?
- 25 A There is three.

1 Q You and your sister and who else?

2 A My mother.

3 Q Your mother. When did Ken Clifton transfer his
4 interest from Park at Durbin Creek to Streamline
5 Management?

6 A The transfer was done officially in 2010.

7 Q 2010. When you say officially, what do you mean by
8 that?

9 A We had discussed payments that he owed us as well as
10 buying his interest out. And we did an agreement, a side
11 agreement, just jot agreements down and started making
12 payments for his interest. And we provided you all that
13 information.

14 Q And when did you have these discussions, when was
15 that agreement done?

16 A I can't remember the exact date. But I knew we drew
17 it up and we signed it and that might have been a little
18 later than what we had actually agreed to. But we started
19 talking about it and making notes and then we drew up the
20 agreement and signed it. And you probably have a copy of
21 that.

22 Q I do and I will show that to you. If you would look
23 with me--

24 MR. PRUITT: Your Honor, I am going to object to this
25 line of questioning. This is their witness they called,

1 not my witness. And I didn't bring up anything related to
2 Streamline or transfer of the interest with Ken Clifton
3 with Streamline on my cross-examination. This testimony
4 is not proper.

5 MS. BARBERY: Your Honor, I think he asked and he
6 opened the door on that, he asked whether or not she was
7 aware of any fraudulent, perhaps that may have been going
8 on with the transfer of the property. And this line of
9 questioning goes to the evidence of, to establish our, to
10 show that they were both fraudulent transfer. Secondly,
11 from Ken Clifton, his interest to Streamline Management,
12 LLC which consist of his daughters and their mother.

13 MR. PRUITT: Your Honor, we also object to the
14 relevancy ground because Streamline is not part of this
15 lawsuit nor is there an attack upon any alleged transfer
16 of the LLC interest to Streamline.

17 THE COURT: Tell me why it is relevant the transfer,
18 the second transfer, the LLC interest, the Streamline
19 interest. Why is that relevant 18 months, 2 years down
20 the line.

21 MS. BARBERY: Well, again, it goes to the point of
22 what was, what was going on here. You have got this
23 property that was transferred that Ken Clifton owned
24 together in two individual names, transferred into an LLC.
25 He then, at the time we are doing supplemental

1 proceedings, transfers that interest out into a totally
2 different LLC. And this, is property which I believe we
3 will be able, which we have heard testimony, this is
4 property that he, that was free and clear, had no mortgage
5 on the property and property which he intended and wanted
6 to keep for retirement. So by transferring his interest
7 out into a property or a company which his daughters own
8 that essentially protected that property from the
9 creditors. And aside from that aspect of it, again, we
10 take the position that this was not, this was a member
11 run, Park at Durbin Creek was a member run company and to
12 which Linda Whiteman did not authorize and sent to the
13 transfer of defendant Kenneth Clifton's interest in that.
14 And, again, I think that goes to, certainly he was
15 concealing that transfer, did not give a consent of his
16 other members to that transfer. And, again, we take the
17 position that that was an unauthorized transfer just on
18 the fact that she did not consent to it.

19 THE COURT: I need to take a break. Y'all are so
20 familiar with these facts and I am not. I am trying to
21 keep up.

22 MR. CASSIDY: Judge, and by the way, I only called
23 her to authenticate the document that he said that they
24 had never seen before, it wasn't intended to call her as
25 my witness. I just, this came up in a supplemental

1 proceeding, it was given to us. He says he didn't know
2 where it came from. His own witness, and I only called
3 her to verify so you could admit it into evidence. I
4 didn't intend to call her as a fact witness about this
5 other transaction. But it was for the purpose of putting
6 that document into evidence.

7 THE COURT: We are going to take a short break.

8 (Whereupon, a short break was taken.)

9 THE COURT: All right, when we left we are talking
10 about transfer from Durbin, LLC to Streamline, that
11 interest owned by Mr. Clifton. Ask the question.

12 CONTINUE REDIRECT EXAMINATION

13 By Ms. Barbary: .

14 Q Ms. Gilree, before we left I was about to show you a
15 document, an exhibit 4. I will hand you that, please.
16 And if you would look with me, I am looking at letter C,
17 as an assignment of interest at Park at Durbin Creek.
18 Have you seen this document before?

19 A I don't see that. Yes.

20 Q Do you have the document?

21 A Yes.

22 Q Have you seen it before?

23 A Yes, I have.

24 Q And what is this document?

25 A An assignment of interest in Park at Durbin Creek,

- 1 LLC.
- 2 Q And what is the purpose of this document?
- 3 A Assigning Ken Clifton's interest to Streamline
- 4 Management.
- 5 Q And what is the date of this document?
- 6 A August 1st of 2008.
- 7 Q I am sorry. Well, are you reading the first
- 8 paragraph where it says on or about--
- 9 A Oh, yeah, yeah.
- 10 Q It is dated August 5th of 2009. Is that correct?
- 11 A Yes.
- 12 Q And is that your signature?
- 13 A It is.
- 14 Q Do you recognize the other signatures on here?
- 15 A Yes.
- 16 Q And whose signatures are on here?
- 17 A Kenneth Clifton as seller. Purchaser, Renee Gilree.
- 18 Purchaser, Leah Winton.
- 19 Q And the witnesses, who witnessed the signing of this
- 20 document?
- 21 A Kenneth Clifton and myself.
- 22 Q So no other parties witnessed the signing of this
- 23 document?
- 24 A No.
- 25 Q So this document was essentially prepared to transfer

1 Kenneth Clifton's interest of Park at Durbin Creek to
2 Streamline Management, LLC on August 5th of 2009. Is that
3 correct?

4 A Yes.

5 Q When did Streamline Management, LLC come into
6 existence?

7 A I don't know the exact date, I can't remember when we
8 form that LLC. I will be honest.

9 Q If you would look with me on that next tab over.
10 Isn't it true that Streamline Management, LLC was not in
11 existence until January 12th, 2010?

12 A Yes, that is what the articles say. The certificate
13 of existence, yes.

14 Q Now, do you recall when this document was produced to
15 us in discovery in this case?

16 A No, I don't recall.

17 Q Do you recall having verified some discovery
18 responses in December of 2012 for Park at Durbin Creek?

19 A I have been through a couple, yes. I don't know
20 which time. I mean it all runs together for me. I am
21 sorry.

22 Q If it is discovery responses, you signed it, a
23 verification for those indicating those responses were
24 true and accurate. Is that correct?

25 A I guess I did.

1 Q And one of the questions we asked or one of the
2 request for documentation was for the production of any
3 documents related to the transfer of the interest in Park
4 at Durbin Creek to Streamline Management, LLC. And the
5 response we got was referred to some bank statements which
6 reflect that transfer?

7 A Right.

8 Q At no time was it ever mentioned that there was this
9 assignment interest at Park at Durbin Creek?

10 A There may not have been. I don't know. We had, like
11 I said, we took notes, we were family members in the
12 office and I had stuff in my office. Sometimes we moved
13 around and sometimes we leave stuff out.

14 Q I would present to you as evidence by the first page
15 that this document wasn't produced to us until October 4th
16 of 2013. Is that correct?

17 A Do what now?

18 Q If you turn over to that first page of that
19 assignment.

20 A Right.

21 Q There is a couple of letters from--

22 A Oh, yeah.

23 Q Producing this document. So that document first came
24 to us in October 4th of 2013?

25 A That's right.

1 Q Okay. Now, this document you stated, it shows
2 consideration that was to be paid for Streamline,
3 consideration paid by, excuse me, by Streamline for
4 Kenneth Clifton's interest at Park at Durbin Creek,
5 correct?

6 A That's right.

7 Q Now, when asked again in discovery it never was
8 mentioned this document, it just referenced bank accounts,
9 is that correct?

10 A Yes, I may have only mentioned the bank accounts.

11 Q So, it wasn't until we took your deposition in
12 October of 2013 that you finally were able to come up with
13 this August 2009 document, is that correct?

14 A Well, I didn't have the document.

15 Q But it was never referenced in discovery that there
16 was additional--

17 A -- yeah, that's true.

18 Q Okay. Now, is this document what you are relying on
19 to establish that consideration was paid by Streamline to
20 Ken Clifton for his interest in Park at Durbin Creek?

21 A Say that again.

22 Q Is this document what you intend to rely upon to show
23 the valuable consideration was made by Ken Clifton or paid
24 by Streamline Management to Ken Clifton for his interest
25 at Park at Durbin Creek?

- 1 A And the money paid and the bank statements and
2 everything else.
- 3 Q As set forth in this document?
- 4 A Yes.
- 5 Q The first, if you would look with me at that back
6 page of the document, it says exhibit A, Park at Durbin
7 Creek. Number one, it says Renee Gilree and Leah Winton
8 will be credited back \$27,000.00 dollars each for back
9 salary. Is that correct?
- 10 A Yes.
- 11 Q When was that credit to take place?
- 12 A With the transfer. We were given credit for that.
- 13 Q Okay. Did you reflect that credit on your tax
14 returns?
- 15 A I don't know whether that is relevant but--
- 16 Q Did you reflect that credit on your tax return?
- 17 A I don't know, I don't know because, I don't know.
- 18 Q Do you have any documentation or have you produced or
19 provided us with any documentation which would show you
20 were in fact entitled to \$27,000.00 dollars back salary?
- 21 A I have not produced anything.
- 22 Q Number two, you show \$121,000.00 dollars to be paid
23 to Ken over two years?
- 24 A That's correct.
- 25 Q Through discovery, through supplemental discovery we

1 have been provided with some Streamline bank accounts for
2 January of 2010 through November of 2010. Is that
3 correct?

4 A Yes, whatever those dates are, I don't remember.

5 Q Through those bank accounts it show a total,
6 approximately only \$13,000.00 dollars that were paid to
7 Ken Clifton. And you produced no other documents--

8 A --that is not correct.

9 Q The bank statement showed \$13,000.00 dollars paid
10 directly to Ken Clifton.

11 A No, that is not correct. I have given y'all the bank
12 statements.

13 Q And I will--

14 A --I am just telling you, it's not correct. And
15 Calhoun has those as well if you need copies.

16 Q I have got copies.

17 MS. BARBERY: Your Honor, if I may have this
18 document, I do not have another copy of it, have this
19 document marked as exhibit number 12.

20 Q Let me show you what has been marked as plaintiff's
21 exhibit number 12. Have you seen this document before?

22 A These are interrogatory answers, yes I have. And I
23 have provided these more than once.

24 Q And what I am asking, do you see the bank statements
25 that are produced with those answers?

1 A What do you want me to look at?

2 Q The bank statements.

3 A Yes, I see those.

4 Q And those are Streamline Management, LLC bank records
5 that have been produced to us, correct?

6 A Right.

7 Q And these are the records that you are relying on to
8 show that value for consideration of that \$121,000.00
9 dollars was paid to Ken Clifton, is that correct?

10 A I have got to look through it all to see if it is all
11 here. But, yeah, this is our bank--

12 Q -- did you supply--

13 THE COURT: Don't interrupt.

14 MS. BARBERY: I am sorry.

15 THE COURT: Slow down a little bit.

16 A I have already provided it, yeah, and I am sure it is
17 here but I will have to look through it to verify it.

18 THE COURT: You need to answer her question and quit
19 saying yeah to her. Just answer her questions. Quit
20 talking about the discovery struggles y'all have had in
21 the past. I don't need to hear that. Okay. Stay away
22 from that.

23 Q My question, this is what you asked us to review. In
24 reviewing these records I show a total of \$13,000.00
25 dollars paid to Ken Clifton?

1 A Well, that is not what I have.

2 Q Well, if you don't mind. Why don't you flip through
3 the documents.

4 A I am having a hard time seeing everything here but
5 hold on. Some of them were made out to his LLC. I see
6 that. Some of them are made to him and some to his LLC.

7 Q If you would, do you have any evidence, backup
8 evidence to show or to show me, what LLC is that?

9 A Altamaha Land and Timber.

10 Q Do you have any backup documentation to show that
11 that was a check made to Altamaha Land and Timber were as
12 consideration for Ken Clifton's selling of his interest in
13 Park at Durbin Creek?

14 A That was his LLC but other than that, no.

15 Q In looking at these documents though that you have
16 produced to us, I reflect that there, there was left with
17 the Sun Trust Bank account, it shows that there was an
18 ending balance of \$49,000.00 dollars?

19 A That's correct.

20 Q Total deposits into that account however were
21 \$110,000.00 dollars?

22 A Okay.

23 Q So by my calculations, if we assume that all of these
24 checks that are written in here, including the ones to Ken
25 Clifton and the ones to Altamaha Land and Timber were in

1 fact checks for his interest in Park at Durbin Creek that
2 only \$60,000.00 dollars was paid?

3 A Okay.

4 Q Well, going back down through that number three, Leah
5 to make office payment, office payment and refinance into
6 her name within the next two years. And is this the
7 office payments on the office building at 12 Lavinia?

8 A That's correct.

9 Q Are you an owner of that office building?

10 A No.

11 Q Were you ever an owner of that office building?

12 A No.

13 Q I am going to show you--

14 MS. BARBERY: And, Your Honor, I would like to move
15 to have that exhibit 12 entered into evidence.

16 MR. PRUITT: Your Honor, subject to my objection to
17 this whole line of questioning which doesn't pertain to
18 this lawsuit. I wouldn't have any other objection.

19 THE COURT: I am going to admit it subject to your
20 objection, it goes to the weight of the timing of the lack
21 of the assets.

22 (Whereupon, Plaintiff's Exhibit 12 was admitted into
23 evidence.)

24 MS. BARBERY: Your Honor, if I may, I would like to
25 have this letter marked as plaintiff's exhibit 13.

1 (Whereupon, Plaintiff's Exhibit 13 was admitted into
2 evidence.)

3 THE COURT: How far afield are we going to go on the
4 redirect examination? You have expanded tremendously. I
5 have been giving you some latitude. But she was called to
6 identify this document.

7 MS. BARBERY: I am about to finish up if I can get
8 this.

9 Q Ms. Winton, do you recognize this document?

10 A Yes, I do. You mean Ms. Gilree.

11 Q I apologize. So you prepared this letter?

12 A I did that.

13 Q Isn't this letter kind of going through what is
14 listed on that financial statement that it is showing
15 where the property or what has happened to that property.

16 MR. PRUITT: Your Honor, that would be--

17 A I don't know.

18 MR. PRUITT: Way outside the.

19 A I would have to look at it.

20 THE COURT: Hang on, hang on.

21 MR. PRUITT: Your Honor, that would be way outside
22 the scope of reply testimony. This is, elucidating her
23 number 11 in attempting to add additional documents to
24 somehow--

25 MS. BARBERY: Well, Your Honor, if I may. What I, I

1 would like to show, this is an explanation that Ms. Gilree
 2 provided us in June of 2011 showing what has happened to
 3 this property. They again testified in consideration for
 4 the Streamline transfer that, as we brought down number 3
 5 and 4, the list, that the office particuarly was to be
 6 transferred into Leah Winton's name as part of
 7 consideration. And if I could I would like to just flip
 8 through and show there, this document, what has happened
 9 to that office building.

10 THE COURT: One more time, there is an office
 11 building unrelated to this.

12 MS. BARBERY: The office building was listed as
 13 consideration to be paid or a transfer or some type of
 14 refinance was listed as to the consideration for the
 15 purchase of Streamline's interest, excuse me,
 16 Streamline's, for the purpose of Ken Clifton's interest by
 17 Streamline and Park at Durbin Creek.

18 THE COURT: All right. Go ahead.

19 Q Ms. Gilree, if you would read number one, the 12
 20 Lavinia Avenue office building.

21 A You want me to read it.

22 Q I will read it out loud to the Court and then tell me
 23 if this is correct. There is \$146,000.00 dollars owed on
 24 the first mortgage with Arthur State Bank and
 25 approximately \$7,000.00 dollars is owed on the second

1 mortgage with the Bank of Greenville. Copies of the first
2 and second mortgages--

3 COURT REPORTER: Wait--

4 THE COURT: You are really going fast.

5 MS. BARBERY: I am sorry. I will start over, I am
6 sorry. There is a \$146,000.00 dollars owed on the First
7 Mortgage with Arthur State Bank and approximately
8 \$70,000.00 dollars is owed on the second mortgage with
9 Bank of Greenville. Copies of the first and second
10 mortgage are enclosed. Is there anywhere in that
11 description of what is going on with the office building
12 did you reference that it was to be refinanced by your
13 sister in consideration for the purchase of Ken Clifton's
14 interest in Park at Durbin Creek?

15 A There was no reference required, I don't think.

16 Q If you would then, flip over to the second to last
17 page. If you would look at number 26 and I will have you
18 look at that. And also in looking at that assignment,
19 number 4, it says Leah to take over Suburban payments for
20 Ken and refinance it into her name. Now, 26 list 2007
21 Chevrolet Suburban, value is less than amount owed.
22 Daughter, Leah, agreed to refinance it if Ken included the
23 2005 Ford King Ranch to make up for the difference in
24 value. Again, is there anything referenced in here that
25 she, that transaction was in consideration with the

1 purchase of Ken Clifton's interest in Park at Durbin
2 Creek?

3 A Maybe not but it was.

4 Q In 2010, at the time Streamline Management was
5 assigned the interest of Ken Clifton in Park at Durbin
6 Creek, at the time Streamline was assigned Durbin Creek,
7 Ken Clifton's interest in Durbin Creek, did you have an
8 appraisal or evaluation on the business?

9 A No.

10 Q What did you believe the value to be at that time?

11 A We didn't know. Everything was falling apart with
12 appraisals. You just couldn't get a good appraisal on
13 anything because there weren't a lot of comps for land.
14 There just weren't a lot of comps.

15 Q Did you provide notice to Linda of that transfer into
16 Streamline, to Linda Whiteman?

17 A No, I don't believe.

18 Q That is all I have.

19 RECROSS-EXAMINATION

20 By Mr. Pruitt:

21 Q I need to see the bank statements, I believe there is
22 only one copy.

23 A That is the one for the previous time, I gave you the
24 same ones.

25 Q All right. This is what you previously furnished

1 them shown in number 12?

2 A Yes.

3 Q Did you go through this stack of bank statements in
4 number 12 at my request and point out the amounts that you
5 had paid or presented in behalf of Ken Clifton?

6 A Yes.

7 Q All right. Would you take this copy right here and
8 go through and tell His Honor what you paid and explain
9 it.

10 A Yes.

11 Q Go ahead.

12 MR. CASSIDY: Your Honor, we don't know what she is
13 looking at.

14 MR. PRUITT: She is looking at another copy.

15 MR. CASSIDY: That is another copy of 13?

16 MR. PRUITT: You want to look at it?

17 A I just itemized the amounts is all I did, totaled it.
18 And the amounts she referred to that were left in the
19 account, totaled that.

20 Q How did you pay for this interest in Durbin Creek,
21 various methods?

22 A Cash.

23 Q How much cash did you give?

24 A It was \$65,000.00 total and then the checks added up
25 to about \$61,589.00.

- 1 Q And how, can you go through that and tell me the
- 2 checks that went to Ken or for his benefit and if they
- 3 were for his benefit tell us how they went for his
- 4 benefit.
- 5 A They went to pay his bills.
- 6 Q Go through there and tell me what checks paid for his
- 7 benefit.
- 8 A Okay. The dates too?
- 9 Q If you can.
- 10 A February 3rd, \$10,000.00.
- 11 Q Is that indicated in those statements?
- 12 A Yes, copies of the check.
- 13 Q How is that check listed?
- 14 A That was listed as to Ken Clifton personally.
- 15 Q Okay. Go ahead to the next one.
- 16 A \$64,003,52, March 17th and that was for \$64, I have
- 17 to find it on here. It is hard to see but I know it is in
- 18 here. And I don't know, I don't see that one. What is
- 19 happening is I am looking at the wrong thing.
- 20 Q Is that not a copy of number 13?
- 21 A This is some of his Altamaha Land and Timber. So I
- 22 don't have the right thing to go through each one is what
- 23 I am trying to say.
- 24 Q Tell the Court in general, if you didn't write a
- 25 check to Ken, how you would have paid him some money?

- 1 A Well, he had an LLC set up with an account where we
2 would deposit into his account. We would actually write a
3 check to deposit for him.
- 4 Q What was the name of that LLC that you funded to pay
5 him?
- 6 A Altamaha Land and Timber and it was with Ameris Bank.
7 And that is what you gave me, is the Ameris Bank where the
8 deposits went into.
- 9 Q So what is the total that you paid to Ken for his
10 interest?
- 11 A It added up to around \$120,000.00, or \$121, I am not
12 sure the exact total but it is on there.
- 13 Q And he received it by writing a check to him or by
14 giving a check to his LLC, Altamaha, whatever it is.
- 15 A Yes, Altamaha, yes.
- 16 Q Do you know that Leah refinanced on, on Lavinia
17 Street?
- 18 A Yes, she did.
- 19 Q And was that also in consideration of this transfer
20 to Streamline?
- 21 A Yes.
- 22 Q That is all the questions that I have.
- 23 THE COURT: Is that it?
- 24 MS. BARBERY: No more questions.
- 25 MR. CASSIDY: We have got one more witness, Judge.

1 But I didn't know this was going to be a marathon.

2 THE COURT: We will take a lunch break, be back at
3 2:15.

4 (Whereupon, a lunch break was taken.)

5 THE COURT: All right, call your witness.

6 MR. CASSIDY: Call Mr. Kenneth Clifton.

7 KENNETH CLIFTON, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Cassidy:

11 Q Good afternoon, Mr. Clifton.

12 A Good afternoon.

13 Q Mr. Clifton, you have been involved with the real
14 estate business for 30 years now, right?

15 A Yes, sir.

16 Q And you developed numerous developments around the
17 upstate, coast, North Carolina, South Carolina and
18 Georgia, is that true?

19 A Yes, sir.

20 Q So you are a sophisticated real estate developer, is
21 that correct?

22 A I have wore one out.

23 Q You are wore out?

24 A I am wore out.

25 Q I hear you. Just give me an estimate, over the

1 course of your experience, how many developments you say
2 you got involved with?

3 A 100, 75, 100.

4 Q And when you got involved with the property, when you
5 identified a property and you targeted to be purchased you
6 would do it in a single asset, LLC, isn't that true?

7 A Most often.

8 Q If it was something that you were going to develop
9 you put it in an LLC?

10 A Yes.

11 Q And did you typically use a lawyer to do that or did
12 you use some of your staff?

13 A Mostly the staff, at first we used attorneys and then
14 we found out we could do it on our own.

15 Q So, one of your daughters, either Renee or Leah would
16 form your LLC's, is that right?

17 A Most often.

18 Q Did you ever do it yourself?

19 A No, sir.

20 Q And you know the difference between a member managed
21 LLC and a manager managed LLC, don't you?

22 A Yes.

23 Q And the LLC that we are focused on is the Durbin
24 Creek property?

25 A Okay.

1 Q And you knew it was a member managed LLC, isn't that
2 true?

3 A I knew it was an LLC but I didn't know exactly what
4 the, I thought it was actually a manager LLC at first.
5 But I was not involved in setting it up. It was an LLC.

6 Q Well, when you say you weren't involved, you directed
7 your daughter to create an LLC, did you not?

8 A Actually she called me up and said she was going to
9 put it in an LLC after talking to Linda Whiteman after the
10 fact.

11 Q And you have seen the documents that have been
12 entered into court records that shows that Linda Whiteman
13 wanted it to be a member managed LLC?

14 A That is what she said.

15 Q Well, you saw the document, did you not?

16 A I saw you talking, yes, talking to her about it.

17 Q So you are familiar that it was a member managed LLC?

18 A That is what was said, yes.

19 Q Well, do you not believe that to be true?

20 A Sure.

21 Q Okay. And when you went to borrow monies or renew
22 loans and in particular with First Citizens they asked you
23 to present a financial statement, isn't that true?

24 A Yes.

25 Q Let me show you what has been marked as exhibit 5 and

1 entered into evidence without objection. Were these
2 properties you owned or had an interest in in January of
3 2008? Right at the top of the first page.

4 A Yes, that looks like most of my properties.

5 Q And you presented that to First Citizens when you
6 were attempting to renew the three loans that resulted in
7 judgments against you, did you not?

8 A Either I or some of my staff do.

9 Q But you obviously, let me ask you something a little
10 bit differently. You provided it to them so you had a
11 chance to review it before you gave it to them?

12 A Most often these were done one year at a time and
13 sometimes I would overlook the ones after they were done,
14 established at the first of the year. But it could have
15 been a copy of one that I had reviewed.

16 Q Okay. But is there anything on there that you think
17 is inaccurate?

18 A These are all of the properties.

19 Q But what about the values that you placed on those
20 properties?

21 A They are way upside down in the base market.

22 Q I know today, but in January of 2008 did you,
23 representing the facts that these properties had the
24 values as reflected on the financial statement?

25 A They were, there were not certified values or

1 appraised values, they were just estimated values.

2 Q And you as an experienced developer had put on these

3 properties, would you believe to be true?

4 A And our staff.

5 Q I am asking you the question. Do you believe these

6 values to be true?

7 A Close.

8 Q Close, which ones weren't close?

9 A I don't know. I have to look at these, I think all

10 of them are way off. After looking at the day to day's

11 worth. At that time, you know, we just estimated, we

12 didn't have appraisals, we just estimated.

13 Q I want to draw your attention, it appears only to be

14 about five properties owned as financial statement that

15 show that there is equity in them, is that correct?

16 A I don't know, I haven't read through it. I have

17 pretty bad eyes right now. I am having difficulty seeing

18 but I am not, if you say so then I will agree if that is

19 true.

20 Q No, sir. That is not the way it works. I want you

21 to look at that and tell me if what I said is true.

22 A Do you have the five underlined.

23 Q I do not have them underlined.

24 A I see five with zero, I guess that is what that

25 means.

1 Q Well, this is your financial statement. I don't want
2 you to guess, I want you to tell me.

3 A That is what I am looking at, I am trying to see
4 which one is done. I am having trouble seeing actually.

5 Q Look at Highway 14, six acres. Is the one, two,
6 three, four, fifth item down.

7 A Okay.

8 Q And you said it is a two acre lot, East Georgia Road.
9 You said it is worth \$95,000.00 dollars.

10 A That is not Highway 14. That is East Georgia Road.
11 Yes, I see it is East Georgia Road.

12 Q And you said it is worth \$95,000.00 dollars?

13 A Yes, I think we sold it for \$26,000.00.

14 Q How about answering my question. You said in January
15 of 2008 it was worth \$95,000.00 dollars.

16 A That is what is on this statement, yes sir.

17 Q Is that true?

18 A By this statement it is.

19 Q And then if you go down a little bit farther there
20 are three values that reflect zero in the column. One,
21 Long Beach properties?

22 A Yes, I see that.

23 Q And you said it is worth \$75,000.00 dollars?

24 A Actually that is a sewer field, I don't know where
25 that value comes, that is a mistake there. It is on

1 there.

2 Q You represented to the bank that it is worth
3 \$75,000.00?

4 A Yes, it is on this statement, yes sir.

5 Q The next one Pelham Road, 1.58 acres, is that the
6 property that you and Ms. Whiteman own?

7 A That is one, yes, that is one we owned at that time,
8 yes.

9 Q And it was worth \$350,000.00 dollars, is that right?

10 A That is what we have on this statement.

11 Q Is that what you believe the value to be?

12 A At that time that is what I put down.

13 Q And that is what you believe the value to be?

14 A Yes.

15 Q The next one is the 370 acres which is the Durbin
16 Creek property, is that correct?

17 A That's correct.

18 Q And you didn't owe any money on it and you sold it
19 worth 1.5, \$1,570,000.00 dollars?

20 A That is what we have on the statement.

21 Q Do you believe that was the value of the property?

22 A That is what we have got, yes.

23 Q You represented to the bank it was worth
24 \$1,570,000.00?

25 A I never had an appraisal done, no, I am not sure

1 about what the value was. That is what we put down.

2 Q But, Mr. Clifton, you developed a hundred and some
3 odd developments. Are you telling the Court that you have
4 no idea what the property is worth?

5 A Yes, I am because the, in January, July of '09 the
6 property right next door to it, the highest bid on 200
7 acres was \$500.00 dollars an acre. I am saying these
8 values are way skew from what their--

9 Q You stated the value of the property to the bank?

10 A I didn't never state it, that was a value that was
11 put on it at the time.

12 Q Well, you put it on there?

13 A I didn't know, the market has changed since then
14 though.

15 Q Well, did you believe that property was worth
16 \$1,570,000.00 in 2008?

17 A I was hopeful that it was.

18 Q And you presented that financial statement to the
19 bank to get them to rely on it to renew your loans, isn't
20 that true?

21 A Well, actually, I think the value of the property we
22 had loans on, that we had appraisals done on the property
23 that we purchased from the bank and the backup, we had a
24 financial statement, it is something for them to rely on
25 to say, hey, this guy has got some net worth. But mostly

1 it was based on the value of the property, the value of
2 the property we were buying. They were pieces of property
3 that I purchased, from First Citizens they required to
4 have over 70 percent of its value.

5 Q I am talking about the value you placed on this
6 financial statement. Are you telling the Court that those
7 statements, those values were overstated?

8 A No. They were estimated, these were estimated loans.

9 Q Again, you are a seasoned real estate developer. You
10 buy and sell real estate all the time. In 2008 did you
11 overstate the value of the properties that you represented
12 to the Court, represented to the bank?

13 A No.

14 Q Do you believe it to be worth that kind of money?

15 A No.

16 Q You didn't?

17 A I do, not now. Back then we just was hopeful that it
18 was worth that much.

19 Q How much did you pay for the Durbin Creek property?

20 A You know, it has been a long time but it seems like
21 we paid about a little under \$1,000.00 dollars an acre. I
22 think \$850 or \$900 dollars an acre. That is about what it
23 is worth today.

24 Q You paid \$330,000.00 dollars for that property in
25 1995?

1 A That is about \$800.00 dollars I think.

2 Q And you are telling, what you represented to the bank
3 was that it, the value increased five times?

4 A You know, I put this on the statement hopeful that
5 this was a value that was a true value or somewhere close.
6 These guys were hunting on it, they knew what the values
7 were. They were out there, they were hunting it before I
8 ever borrowed any money from them.

9 Q Well, the hunting aspect, let's put that to bed.
10 That is the red herring, isn't it?

11 A I don't know.

12 Q Did you give permission, you leased that property to
13 Mr. Cox, did you not?

14 A No, I actually, John and J.B. asked me if they could
15 hunt on it and they brought Mr. Cox in on the deal.

16 Q But nonetheless you authorized them to be on the
17 property?

18 A I did.

19 Q And you told them to be on the property they need to
20 put up gates, true?

21 A I didn't tell them to put up anything.

22 Q You said, just go use the property?

23 A No, they asked me if they could hunt on it and I
24 said, from my bank relationships I felt that it was a good
25 person in the field of developer and them being good

1 bankers I would let them hunt on it. And Abe had a guy
2 come and offer me \$10,000.00 a year to keep them out and
3 they got onto him about it and ran him off. But that was
4 a banking relationship at the time.

5 Q Are you telling me today that Mr. Cox didn't have
6 anything to do with arranging a lease of that property?

7 A Zero. I had no lease on it.

8 Q Well, let's go another way. Did they not put gates
9 on your property?

10 A Yes and locked me out and Linda out. She got mad
11 with me and that is when she started spreading about the
12 liability and them out there hunting.

13 Q You never hunted the property?

14 A Never did. They were out there, I walked through the
15 property one time or two, that is about it.

16 Q So you didn't have a key to the gate, didn't know
17 about a lease?

18 A I didn't have no lease.

19 Q And you didn't tell them to put gates up?

20 A I didn't tell them, they put them up. And they said,
21 Ken, I have got keys to the gate, do you want to pick them
22 up. They delivered some keys to the gate and they were
23 suppose to deliver some to Linda, I think. But anyway,
24 they were there by my permission.

25 Q And they planted plots for hunting?

1 A Yes, for them, not me. I didn't want to hunt their
2 plots.

3 Q And they cleaned it up where people had dumped trash
4 on it?

5 A You know, there is still trash out there, I don't
6 know what, you can't tell from one day to the next who, if
7 it was cleaned or not. I think they did one time, clean
8 it up.

9 Q But you never told Ms. Whiteman that they were
10 authorized to be on that property?

11 A I told Ms. Whiteman they were hunting out there and
12 she would throw a fit and say, get them off right now and
13 get those gates down. And that is when I started having
14 problems with her and she was harrowing me every day. As
15 a matter of fact, sent an email to John Woods telling them
16 not to be out there. And it really created an issue but I
17 told them that they could hunt out there. And I didn't
18 tell them to put the gates up.

19 Q You didn't tell them to leave either, did you?

20 A No, I didn't. But I was scared they would not honor
21 my loans.

22 Q Now, you made some reference to these three loans,
23 appraisals were done on each one of these properties and
24 they carried the value necessary to service the loan?

25 A The values of the properties that we borrowed money

1 on always appraised way higher than what we borrowed on.
2 And each time we borrowed on a particular loan and formed
3 and LLC and put it in it. And the values had to be, it
4 was my understanding, correct it with these boys by
5 Federal standards, 70 percent ratio of value to what they
6 loaned.

7 Q That was at the time the loan originated, isn't that
8 true?

9 A That is true of everything on this financial
10 statement.

11 Q Well, let's clarify that. You gave that financial
12 statement in January of 2008 and that is when you
13 represented those properties would work in 2008, true or
14 false?

15 A That is true.

16 Q So let's focus again on the Edgewater property. That
17 loan started in 2002?

18 A That is correct.

19 Q How many lots did you sell at Edgewater?

20 A We actually had about \$580,000.00 dollars worth of
21 loans on, with First Citizens on that subdivision. We
22 sold one lot for \$280,000.00 I believe it was, somewhere
23 close, almost \$300,000.00. Then we refinanced one and
24 took it out and paid First Citizens off another
25 \$200,000.00. So we paid them over half of it down. And

1 every time they asked for a reduction we would refinance
2 them or move it to another bank.

3 Q You must have missed my question. You had a half a
4 million dollar loan in October of 2002 on Edgewater, isn't
5 it true?

6 A Yes, I think that is correct.

7 Q And how many did you sell after October of 2002?

8 A Two, I think front lots.

9 Q Two?

10 A Two, yes.

11 Q And how many lots were in the subdivision?

12 A There was, lake front lots there was six and all I
13 had to sell was three lake front lots to pay it off. But
14 we sold two, anyway, had about 18 interior lots.

15 Q So you had 24 lots?

16 A That's correct.

17 Q And you sold two lots in six years?

18 A That is all we really wanted to sell because we
19 wasn't interested in selling that many at the time.

20 Q So, you weren't making a principle reduction to that
21 loan?

22 A All the lots we sold went to the principle reduction.

23 Q My question, you never made a principle reduction
24 after the sell of those two lots?

25 A Never was asked to.

1 Q Mr. Clifton, this loan was tied to the development of
2 this property. You are telling me the bank didn't want to
3 get their money back?

4 A Every time it came up for renewal they said this was
5 a good loan and they were glad to renew it.

6 Q So you weren't concerned about selling those lots?

7 A We were, wanting to sell maybe one or two more lake
8 front lots and we were going to let it sit for a while.

9 Q Did you ever sell one or two more lake front lots?

10 A Well, we did. We refinanced one to pay them down on
11 principle reduction with another bank.

12 Q So you took it out, you bought one of the lots by
13 financing with another bank?

14 A Right.

15 Q It wasn't a third party sell?

16 A No.

17 Q And isn't it fair to say the real estate was on a
18 downhill slide in 2008?

19 A I didn't see anything downhill until '09.

20 Q So it is your testimony you were current with all the
21 First Citizens loans in 2008?

22 A Every one of them.

23 Q Now, you heard the testimony Mr. Wood and Mr.
24 Schwiers, did you not?

25 A I did.

1 Q You are telling the Court that was inaccurate?

2 A It is sort of stretches the truth from the aspect
3 that when we start to renew loans they, it takes about 30
4 days to get their documentation prepared. And we start
5 getting ready for renewal and we start negotiating
6 interest rate and what the best terms we can do. And by
7 the time it gets about 14 or 15 days into it they are
8 preparing the notes. They just didn't want it to go over
9 30 days and that is what they always told us. There might
10 have been a few times when their documentation and their
11 notes were not ready but we were always prepared to pay
12 the note.

13 Q Did you pay the interest payments timely?

14 A Yes, we did. It takes up where the renewals were and
15 they were doing the documentation for renewal.

16 Q Well, help me with that. You say when the renewals
17 were coming up.

18 A Let's say the loan was coming due in September. They
19 usually took 30 days, 25 to 30 days to get their notes and
20 all ready. And we were negotiating for the best terms
21 trying to get another year, six months, trying to get the
22 interest rate lower and make it a one percent, try to get
23 some good terms. Trying to negotiate with the bankers and
24 sometimes it paid off and most of the time it did. But we
25 were always on time with our loan. They were always late

1 getting their notes and mortgage prepared.

2 Q Well, when the note came due in September were you
3 making the September payment?

4 A Absolutely. We would make, if it come due, they got
5 the notes prepared and then we made it. And that one in
6 September, we had, we had about, anyway, we were well
7 prepared. In '08 we were well, we were not financially in
8 trouble.

9 Q But your financial statement or your tax returns show
10 that you didn't have enough cash flow to service all the
11 debt you had out there, isn't that true?

12 A Well, you know, an LLC you can, the accountant, CPA
13 does different things with your tax statement. And it
14 might have shown a downturn in that year. But I mean, I
15 don't look back at that. I know some years we had zero,
16 did wonderful, had zero on the taxes and it did well. So
17 you can't look at a tax income statement and tell how good
18 a company or the LLC's are doing. You may not draw at all
19 out of the LLC's. You may leave a residual income inside,
20 not to show great income so as not to have to pay taxes on
21 them.

22 Q So you are telling me you had a bunch of money in the
23 bank?

24 A Actually we had borrowed a million and a half dollar
25 loan with Palmetto Bank in the first of '08 and we had it

1 sitting in the bank and paid payments to First Citizens
2 with and all the other banks. And we made our payments on
3 time. And then we had I think ten months to pay for the
4 Waccamaw Trace and we borrowed the money from Palmetto and
5 we had it sitting there to make our interest payments and
6 whatever.

7 Q Mr. Clifton, you saw these emails that were put into
8 evidence earlier talking about the timing of your loan
9 payments, did you not?

10 A Yes, that is when we were negotiating the mortgages
11 with First Citizens and they were slow getting their
12 payment. I know, in '08 it was Thanksgiving, I was down
13 at my place hunting and John called me and said, Ken,
14 these girls, they made two of the payments, didn't make
15 one. What is going on. I said, I called them up and
16 said, take this note to Palmetto Bank and pay it right
17 now. And, you know, that is John Woods. But we always
18 made our payments on time. And actually the girls, Renee
19 and Leah made most of my payments.

20 Q So if they wrote an email to Mr. Woods that said they
21 are going to pay the Shellbrook Plantation payment but Dad
22 said we can't pay the other two. Do you deny that took
23 place?

24 A I wouldn't deny the email took place but I was not
25 communicating with John Woods at the time on that and I

1 don't know where that Dad part come from. But it could
2 have been in there. But it was not me, I could have made
3 the payment.

4 Q You could have made the payment but you didn't make
5 it?

6 A I didn't make it because when I left town the
7 mortgage documents were not written.

8 Q And you were already past due for your October
9 payment at that point?

10 A Only because they had not had the documentation for
11 the mortgage in those.

12 Q In 2004, you know when the payments are due but you
13 are not going to make the payments unless they are going
14 to renew the loan, is that what your testimony is?

15 A They told me not to make the payment until they renew
16 the loan. They say, come in and make these payments on
17 certain times and we would go in and give them a check
18 when they, usually on most of our developments, like
19 Shellbrook, there was lots being sold. It was performing
20 really good, we sold two-thirds of those lots. And all of
21 that money is going in. And there was never a payment due
22 until they renewed the notes.

23 Q You are getting ahead of me, Mr. Clifton. Edgewater,
24 you didn't sell but two lots in that subdivision in six
25 years. You were on interest only and you weren't making

1 any principle reductions. You admit or deny that your
2 payments were slow in 2008?

3 A In that subdivision, it was such a small loan we
4 didn't want to sell but one or two lots a year or one or
5 two lots every two or three years. So when we actually
6 got down to a loan renewal on the tail end, you know, we
7 actually refinanced one of them and we refinanced one of
8 the lots about \$280,000.00 by their request and they
9 renewed it.

10 Q You went to another bank and borrowed money on the
11 same lot that hadn't sold and you used that money to pay
12 for Citizens?

13 A That is done, we have paid many loans with First
14 Citizens off with financing through other banks.

15 Q Let's focus on Edgewater. When this lawsuit started
16 you owed \$410,000.00 dollars. So you had only made
17 \$90,000.00 dollar principle reduction in six years. And
18 your testimony is you didn't want to sell the lots?

19 A No, we actually owned those \$90,000.00 dollar
20 reduction, actually the bank gave back to Clifton Land and
21 Timber, our company, over half the proceeds each time and
22 let me take them back in.

23 Q That wasn't my question. You only made a \$90,000.00
24 dollar principle reduction in a six year period of time on
25 one year notes?

- 1 A That's right.
- 2 Q And you never answered my question. Were you or were
- 3 you not slow in making your payments in September of 2008?
- 4 A No.
- 5 Q You deny that?
- 6 A I deny that.
- 7 Q So, you are saying that the testimony of Mr. Schwiers
- 8 and Mr. Woods is inaccurate?
- 9 A I am saying their notes were not ready and when they
- 10 got them ready we carried checks to them and they missed
- 11 one check and John called me at Thanksgiving, they missed
- 12 one. That was in '08.
- 13 Q You say that the Shellbrook loan was performing, is
- 14 that right?
- 15 A It was performing.
- 16 Q You hadn't sold a lot in Shellbrook in over a year,
- 17 isn't that year?
- 18 A I am not sure when the last lot was sold but they
- 19 sold 20 something up front in the very beginning.
- 20 Q And that is what Mr. Woods said?
- 21 A Sure, sure. It was doing well. And that was a good
- 22 asset for the bank and us.
- 23 Q But you didn't sell any from mid-2007 to 2008?
- 24 A I am not sure, I am not sure about that.
- 25 Q You don't know your own records?

1 A That is, we have a lot of subdivisions, I don't
2 recall that.

3 Q Okay. Fair enough. But you owned, the loan on
4 Shellbrook was \$1,873,000.00. At the time the foreclosure
5 took place you owned \$689,000.00 dollars, is that right?

6 A I think that is correct.

7 Q And you hadn't sold a lot in a year?

8 A I am not sure about that.

9 Q Okay. But you don't deny, there is testimony, that
10 is what they said?

11 A Whatever is true is true.

12 Q And then the Plantation, nothing ever came of that,
13 is that right?

14 A We bought that as a holding piece of property. We
15 actually bought some partners out and bought it to develop
16 whenever the right prospect come along. And we were
17 working with a hotel group that had put a \$50,000.00
18 dollar deposit up with us. And we had that holding at the
19 time that we didn't know that they were going to announce,
20 it was through the Hilton group, that they were going to
21 power our loan. And they backed out, we don't want to be,
22 somebody has got a bank foreclosure bouncing off the
23 walls.

24 Q So you are blaming the bank for that deal not coming
25 to fruition?

1 A Well, I am not blaming nobody. It just happens. The
2 circumstances at that time.

3 Q When you had properties available did you put a
4 pledge to the bank to keep those loans in place, did you
5 not?

6 A Well, let me say that we had a letter from John Woods
7 saying he was going to renew the loans based on what we
8 have had, the value of the properties. And as far as any,
9 pledging any properties we never mentioned any particular
10 properties or anything. And they said, we can work on a
11 payment plan, we work with a payment plan. And that was
12 in and Renee and Leah was working on that at the time,
13 they filed the notes.

14 Q You are saying that Mr. Wood wrote you a letter
15 saying that they were going to renew the loans?

16 A Yes. And in December there is an email stating that
17 they bring in the remaining something, I forgot what it
18 was, information emailing Leah and Renee saying that they
19 were going to renew the notes, bring the stuff on in. It
20 was obviously in December.

21 Q Show me the letter that Mr. Wood wrote to you and
22 said he was going to renew the loans.

23 A It is in one of the emails.

24 Q Show it to me.

25 A I will have to go back and pull it out.

1 Q I believe they were all admitted into evidence.

2 A They may have, it might of been in November but it
3 was for one of them. There is one that said he is going
4 to renew the loan.

5 Q I would like for you to identify it.

6 A Okay, okay, I will. Here is where I purchased the
7 plan, page one of two, a message.

8 Q What is the date on it?

9 A December the 5th of 2008. He said a mandatory
10 appraisal should be done today. He was still working on
11 the appraisal. And we were still in dialogue for renewal.
12 And he said, get together for portfolio review meeting on
13 Tuesday morning. One thing that is absolutely critical is
14 that you have budget and plans and reasonable and show the
15 banks upgrading. And we were working on all of that. And
16 that was December 5th. But this is a lead up to the other
17 letter. But this is right in December. And this is a
18 dialogue to us and John Woods that we were good for
19 renewal. At that time we were under renewal. We had
20 renewed it to the end of the year, that was my
21 understanding. And once we have this and the appraisal, I
22 think we should be able to respond very quickly to whether
23 or not we can extend these loans. And I hate to hit you
24 with this on Friday night. But they were still working
25 with us with the loan.

1 Q They were talking to you telling you what they needed
2 to consider renewing the loan, isn't that true?

3 A We had already been in dialogue on that for a good
4 while. And they were very optimistic with me to renew the
5 loans.

6 Q That is your opinion?

7 A That was my and their opinion.

8 Q All right. In fact the email you are referring to
9 shows that you were behind in your payments. Past due
10 payments in October and December. The December 5th email
11 says you are past due for your October payment. A little
12 inconsistent with your testimony, is it not.

13 A Well, not really. On the parts of the renewals when
14 they didn't have the notes and all prepared. And if we
15 were, any time behind it was because we were waiting on
16 the notes to be prepared and then we would respond by
17 bringing them a check.

18 Q So you admit that you were behind but you are saying
19 it is the bank's fault because they haven't decided
20 whether they were going to renew the loans?

21 A We were negotiating renewals at that time, yes.

22 Q And you weren't making any payments while you were
23 negotiating?

24 A That, we are by their request, we were operating
25 under pretense that we were getting ready to get a loan.

- 1 Q Did the bank tell you not to make a payment?
- 2 A They didn't ask before the payments at that time but
- 3 I know, Renee and my daughter made most of the payments.
- 4 And a lot of these things were presented to me about a
- 5 week or two later. And based on all the evidence that I
- 6 have seen and talking with John, John will call me, well,
- 7 it is coming due. Don't let us get 30 days late. I would
- 8 say, y'all get the paperwork and it will be in. That was
- 9 on most every occasion.
- 10 Q It is either John Wood's fault or your staff's fault
- 11 that the payments aren't getting made?
- 12 A No, it is not.
- 13 Q So you knew when the payments were due and you didn't
- 14 make them because you were renegotiating or renewing them?
- 15 A That's correct.
- 16 Q Thank you. So you knew the bank was concerned about
- 17 these three loans?
- 18 A We were concerned about the three loans. We were
- 19 wanting to make sure they got extended.
- 20 Q You were concerned about the three loans but you
- 21 never could get to the point where the loans were renewed?
- 22 A There was a trail of emails about this thick that
- 23 shows what we were doing. We were in dialogue, we weren't
- 24 running from the loans, we were renegotiating with the
- 25 bank.

1 Q And the bank was asking for millions from you and you
2 didn't show up?

3 A No, no.

4 Q That is untrue?

5 A I have never missed a meeting. Renee and Leah and
6 myself, any time they ask for a personal meeting, I have
7 asked for meetings with them myself and they moved it to
8 another date and couldn't show up. But I don't ever
9 remember missing a time with the bank, ever.

10 Q So you are saying that Mr. Woods testimony would have
11 been inaccurate?

12 A I would say I do not remember him asking me to show
13 up in a meeting and I didn't show up.

14 Q Okay. But it all came to a head in January of 2008
15 when the bank accelerated on a loan?

16 A That is correct.

17 Q Which was also in the three judgments?

18 A Yes.

19 Q You were renegotiating the renewals in September of
20 2008?

21 A All the way into December.

22 Q So, in September of 2008 you decided to create, any
23 properties that you owned in your individual name and the
24 LLC's, is that true?

25 A Not true.

1 Q Isn't that what happened?

2 A We were forming LLC's all the way through the year of
3 every year. We had over 40 LLC's.

4 Q I know you had 40 LLC's but the properties that you
5 owned in your individual name were transferred into LLC's
6 in September of 2008, isn't that true?

7 A We had properties all the year we transferred into
8 LLC's from my name to, to refinance. The ones you are
9 speaking of, I think, are the ones that we did when we
10 formed a new subdivision. And we formed that subdivision
11 and I got a bank loan, Cornerstone Bank for about
12 \$600,000.00 from, in Easley. And I got Linda to put up
13 \$40,000.00 dollars into the deal. And we established a
14 line of credit on Highway 14 and I borrowed against the
15 Pelham Road, a place on Pelham Road in case something
16 happened. So, we actually formed all of those LLC's
17 because of one another. And Parks at Durbin, Linda asked
18 me at that time, she had already been hammering me to put
19 it in an LLC because of the liability. And Renee called
20 me up one day and said, well, we are going to put the
21 Parks at Durbin in an LLC too, Linda has asked. She is
22 afraid of the liability of the hunters and people out
23 there riding four wheelers. And so those properties you
24 are speaking of was put in because of one another.

25 Q The point is, Mr. Clifton, these properties were

1 owned in your name and Ms. Whiteman's name for numerous
2 years before they were ever property put in an LLC?

3 A Well, back when we first purchased it, LLC's were not
4 real popular back then.

5 Q So when did they become popular?

6 A Well, when, we started using LLC's probably in the
7 2000's and any time we started getting involved with other
8 properties we would form LLC's on everything.

9 Q You own the property at Durbin Creek in 1995 and you
10 created the LLC in September of 2008?

11 A By the request of Linda Whiteman hammering me every
12 day, I would never probably have put it in an LLC, if it
13 hadn't been for her at that time. And Renee said, we are
14 doing these here and Linda wants this other one put in
15 too. I said, that is fine with me.

16 Q And then you own the property on Pelham Road with Ms.
17 Whiteman and you put it in an LLC in September of 2008?

18 A That's all, that is correct. All of them were put in
19 because they were tied, tied back into Gardens at
20 Batesville. And all of them, well, the line of credit on
21 14 fed the interest carrier. And so, we might as well put
22 all the other property we got in an LLC because she didn't
23 want to have liability. So all of them that we owned
24 together at that time we put in LLC's.

25 Q Isn't it true that what the house of cards did on

1 you, Mr. Clifton, that you were borrowing all this money
2 on lines of credit and you weren't able to keep up with
3 paying the payments?

4 A No, sir.

5 Q Well then how is that almost nine percent of your
6 property were in foreclosure?

7 A Because when they, once First Citizens filed
8 foreclosure, it has a domino effect on other banks. We
9 had other banks that would have taken First Citizens out
10 and they got a little, they jumped the gun way too quick
11 on us because we had a contract with this motel. We could
12 refinance these properties but they didn't give us an
13 opportunity. They got sort of in with you and you sort of
14 pulled the plug with them to foreclose on these
15 properties. You were the first in line and it had a
16 domino effect on the rest of the, on our business.

17 Q If you could refinance without all of these lines of
18 credit why don't you just pay off First Citizens?

19 A We would have if they had of asked us and said they
20 were not going to renew the loan. We had two banks that
21 would have taken these loans at that time but they, I
22 thought they were going to renew them.

23 Q You got commitment from them?

24 A Yea, verbally they, well there is a dialogue right
25 here saying they were going to renew them.

1 Q I asked you if you have a commitment from other banks
2 to take this loan out?

3 A No, we never did ask them that. I could have gotten
4 in probably a day's time.

5 Q The bank didn't ask you to take a loan out so you
6 didn't do it?

7 A No, they said they were going to renew them.

8 Q And when you got the letter from my office about
9 acceleration, you didn't call and say, oh, I will go
10 borrow the money for somebody else to pay them off?

11 A No. You were serving actually papers that is already
12 on public record. And it spooked all other banks.

13 Q Do you have any evidence of that?

14 A Yes, I do.

15 Q Where is it?

16 A I don't have it here with me right now but any other
17 banker that you deal with said you have got a foreclosure
18 in progress they won't deal with you.

19 Q This lawsuit has been pending for three years?

20 A Sure.

21 Q Where is the documentation that says banks pull the
22 plug to First Citizens accelerated?

23 A By your demand note.

24 Q Where is the documentation that the banks refused to
25 deal with you because First Citizens accelerated on this

1 loan?

2 A Well, first of all, you dealt with one of them,
3 Palmetto Bank. When this happened Palmetto called you and
4 you told them to pull the plug on our line of credit.

5 Q I am amazed that you know conversations that I have
6 with the bank.

7 A They told me.

8 Q They told you?

9 A Palmetto told me.

10 Q Who told you that?

11 A The guy--

12 THE COURT: Let's not get into all of that.

13 MR. PRUITT: Your Honor, it is his question and he
14 gets the answer that he gets.

15 MR. CASSIDY: Judge, it shows the credibility of this
16 man.

17 THE COURT: All I know, nobody likes foreclosures.
18 It is just one of those actions out there, it is not
19 liked.

20 MR. CASSIDY: It is not liked by the banks either.

21 THE COURT: Either way, if banks see it they don't
22 like it, the people that are getting foreclosed, they
23 don't like it either. It is like a divorce, it is just
24 bad news. It is never received positively. That is not a
25 good thing, a necessary thing.

1 Q Isn't it true that if you had been current on your
2 loans they never would have pulled the plug?

3 A That is not to be the criteria, was us to get our
4 documentation in so they can review the loans and they
5 pulled the plug by your demand notice.

6 Q Okay. I accept responsibility for that, my fault.
7 When Durbin Creek was created you didn't consult with Ms.
8 Whiteman about your transfer of your interest to
9 Streamline, did you?

10 A That was not even in the making.

11 Q What do you mean by that, wasn't in the making?

12 A We transferred it to Durbin Creek we had, I had no
13 idea where I may sell this property or who I may sell it
14 to.

15 Q My point was, you never talked to Ms. Whiteman about
16 it?

17 A There was nothing to discuss when it was formed, that
18 happened a year and a half later, over a year later.

19 Q Mr. Clifton, that is an easy question to answer, yes
20 or no. Did you tell Ms. Whiteman that you were
21 transferring your interest?

22 A Let me fill you on, Ms. Whiteman, I met with her for
23 lunch one day. I said, look here, I need to raise some
24 money. It was '09, a year after your foreclosure. I said
25 would you like to buy my interest in Durbin Creek. She

1 said, right now I can't do it. But I will give you a
2 note. I said a note don't work for me, I need money. I
3 tried to sell it to other people and I tried to sell it
4 to, and I had two guys almost got to the point where they
5 were going to buy it at what I bought it for, paid for.
6 And Renee and them in the office, they said, well Dad,
7 what about letting us buy you out. They were pretty flush
8 with money, they were not involved with any signatures, no
9 guarantees or any payment. So I said, okay, let's work
10 out a deal. And we sat down and scribbled out where they
11 paid me \$120,000.00 dollars plus they would, I would pay
12 them, their back payments. Renee and Leah had been
13 working on a deal that I promised a lot more than
14 \$27,000.00 dollars a piece on that didn't work out. So I
15 allowed them the \$27,000.00 dollars a piece. Leah agreed
16 to take on my Suburban payment, agreed to pay my payments
17 at my office. And they agreed to pay my bills and it
18 added up to be, almost exactly what I paid for the
19 property. So, I said that worked out for me and they got
20 a pretty good deal and I got some money to carry me
21 through. During that time I was diagnosed with a heart
22 failure type deal. And I just had to back up and not do
23 anything. So they paid me out and it helped me out until
24 I got a little bit better off. And when I did then this
25 lawsuit was filed. And but that is the whole scenario

1 behind Durbin Creek.

2 Q You are saying you had already sold your interest to
3 them when the lawsuit was filed?

4 A No. I am not sure when, it was '09. The lawsuit
5 hadn't been filed when I sold my interest to them.

6 Q You don't remember when you sold your interest?

7 A In '09, I remember it very clearly, I remember
8 sitting down with them and we were sitting there looking
9 at what was going to happen. I didn't have any incoming
10 in '09. After the First Citizens filed it tarnished the
11 whole system I was working with. Like I said, first of
12 '09 all the way through we had no revenues coming in.
13 Everybody backed off. Everybody backed off and the crash
14 was on, the banks were dumping property right and left.
15 They were taking property into foreclosure and dumping it
16 right on top of us. We couldn't see nothing because their
17 property, would sell it for twenty cent on the dollar.
18 And we were trying to get fifty cent on the dollar of
19 ours. They just killed us.

20 Q Streamline was a company that managed your rental
21 properties, wasn't it?

22 A Streamline was a company that Renee, Leah and my
23 ex-wife formed and they formed it. I sold the property
24 actually to Leah and Renee and they decided to take title.

25 Q What I asked you was, Streamline was a company that

1 was your rental agent on rental properties that you had at
2 the beach. True or false?

3 A You know, I am not sure if they did it all in ,
4 Streamline or not. I think they did under Streamline.

5 Q Well, the point is, Renee and Leah were working for
6 you, true or false?

7 A They were working for me and working for themselves
8 too. They did deals on the side and they did things on
9 their own and they worked for me and themselves.

10 Q I guess the answer to my question was yes, they work
11 for you?

12 A That's correct.

13 Q And part of the job that they did was manage your
14 rental properties?

15 A They did, they managed most of my rental properties.

16 Q And I believe you testified in your deposition that
17 you, they collected forty percent of the rents and you got
18 sixty percent?

19 A You know, it varied. Sometimes they got more and
20 sometimes less. It is like on the Captains Watch in
21 Savannah, I think they did sixty percent. The bank said
22 that is fine. The real estate agency down there charged
23 sixty so they said if that is what they charge there we
24 will let them, I believe that is correct.

25 Q It was between forty and sixty percent that they

1 collected and put in their pockets and you either got
2 sixty percent or forty percent?

3 A That's correct.

4 Q So and you testified in your deposition that they
5 were flush with cash. I mean you said that a minute ago.

6 A Well, they had more cash then I did at the time. And
7 they had an opportunity to step up to the plate and help
8 me out. And at the same time I had a piece of property
9 that I could sell them. And I sold it to them.

10 Q But they were using the monies that they were
11 collecting on your rental properties to pay you with,
12 isn't that true?

13 A I am not sure where they got all of their money from.

14 Q But you were renting properties in 2009?

15 A I am not sure, they gave me cash money. They paid
16 the money to my account. I didn't really care where they
17 got it from.

18 Q Were you also getting the, either forty or sixty
19 percent of the net rental revenue?

20 A It went into the LLC's that were gathering the money
21 for those particular rental properties like in Tybee
22 Beach, the forty percent remained in the LLC and the sixty
23 percent was transferred out to them.

24 Q But it is your LLC's so you control that account?

25 A I had it with other partners.

1 Q But you controlled the account?

2 A Well, they did. They actually controlled the
3 account, they managed the account and controlled it.

4 Q But you were collecting a lot of rent in 2008 and
5 2009, were you not?

6 A I was collecting some rent. Of course, I don't know
7 how much but it went back to mortgage payments, most of
8 it.

9 Q Well, you weren't making the mortgage payments
10 because all of your properties got a forecloser on them,
11 isn't that true?

12 A Well, not that particular day. We paid them up until
13 they were foreclosed on.

14 Q But in 2008 you had substantial rental income, true
15 or false?

16 A I guess that would probably be false. I don't know
17 exactly how much rental income I had had in 2000. You
18 said 2009.

19 Q 2008.

20 A 2008 we had more than in 2009.

21 Q In 2009 you had rental properties that says house,
22 Oak Island, commercial building and Advance Auto Parts in
23 Georgia. True or false?

24 A Yes, that is some of them, yes.

25 Q And according to your tax return you collected

1 \$169,140.00 dollars.

2 A If that is what the tax return says, it is absolutely
3 correct.

4 Q And you got either a forty or sixty percent of that
5 money, true or false?

6 A True.

7 Q And your daughters got either forty or sixty percent
8 of that money?

9 A True.

10 Q So you were actually generating money for them, why
11 weren't you paying them. If they are saying that they
12 were owed \$27,000.00 dollars how is it that they weren't
13 getting paid?

14 A On everything they were doing outside, that
15 management company was totally separate from anything
16 else. They did that on their own. They worked on their
17 own and all kinds of things. Everything they did for me
18 like managing Captains Watch when, and working with the
19 banks and all of that. That is where the \$27,000.00, if
20 you were in a organization like I was, 40 LLC's, it took
21 them almost full time to go from bank to bank and keep the
22 loans organized, keep the bankers happy. And me, I was
23 out there in the field in operations trying to see what is
24 good on the ground. And they were inside doing the
25 financials. So they work hard for that \$27,000.00

1 dollars. It was worth a whole lot more than that.

2 Q Why didn't you pay them. If you have all of these
3 lines of credit and you have the ability to pay First
4 Citizens and you have the ability to keep them current why
5 don't you pay your daughters?

6 A You are speaking about different timelines. That is
7 in '09 after everything crashed that I didn't have the
8 money to pay them.

9 Q So you owed them in '09?

10 A That's the money I paid them for '09.

11 Q Services performed in '09?

12 A That's correct.

13 Q I want to make sure I understand. You are saying at
14 the end of 2009 you owed each of your daughters \$27,000.00
15 dollars?

16 A I said over a period of time in '09 up until it
17 accumulated more than \$27,000.00 dollars. I think I owed
18 them well over \$27,000.00. I negotiated out \$27,000.00.
19 They were making well over \$100,000.00 dollars a year and
20 I hadn't paid them a whole lot at all during that year
21 because I couldn't afford to in '09 after y'all pulled the
22 plug on me.

23 Q They were independent contractors, correct?

24 A They were by the job independent contractors. And
25 they were, they did and I think in some cases we paid them

1 a salary.

2 Q This agreement was signed in August of 2009, it is
3 dated August 2008. Okay. The agreement that created the
4 assignment of interest to Park at Durbin Creek.

5 A The dates on it, I don't know. I did this deal in
6 2009. The Park at Durbin Creek was formed in 2008.

7 Q I think that is inaccurate but I want to show you the
8 agreement to help refresh your recollection. Did you not
9 sign this agreement in 2009?

10 A I signed this agreement in 2009 and this 2008 at the
11 top is not correct.

12 Q That is fair. But your testimony is by August of
13 2009 you already owed both of your daughters \$27,000.00
14 dollars?

15 A Actually I owed them more than that. On one job in
16 Savannah, Captains Watch, I promised Leah \$150,000.00
17 dollars to consummate into manage contractors and all of
18 that. And in 2009 all of that started getting stuck down
19 the tubes and she wasn't making no money. So I couldn't
20 pay her the \$150 so we sit down, what I paid them was
21 absolutely probably a penance compared to what I owed
22 them.

23 Q Well, you don't owe somebody anything until the deal
24 closes, isn't that true?

25 A That is the reason I negotiated and closed the deal.

1 Q Well, you didn't owe them any money because the deal
2 didn't close?

3 A Not in my respect. I believe in paying everybody.

4 Q You believe in paying everybody?

5 A Including the banks, yes sir.

6 Q Now, you also transferred all the properties that you
7 owned individually down at the beach into an LLC in
8 September of 2008 too, didn't you?

9 A I am not sure what date it is, whatever the date, the
10 properties there were refinanced in a package deal with a
11 bank there in Georgetown. That is when that happened,
12 they refinanced it and I think one house shortly after
13 then sold after we refinanced it.

14 Q Well, you own all of those properties, there was four
15 tracts, true or false?

16 A There was four tracts put into LLC there to
17 refinance.

18 Q And that was all done in September of 2008?

19 A That is whenever they were coming due and we put them
20 in a package and refinanced them.

21 Q So all the properties that you own individually got,
22 that you were holding for years and transferred to LLC's
23 in September of 2008?

24 A Well, yes. And we were, you know, the properties
25 that we transferred in 2008 were done for reasons,

1 particular reasons like to refinance and the others were
2 transferred in. What triggered those was the Gardens at
3 Batesville and Linda Whiteman on that line of credit. And
4 she requested they be put in LLC. I actually knew it sort
5 of after the fact.

6 Q I believe Ms. Whiteman testified that the reason why
7 you two bought that property was for purposes of
8 retirement, isn't that true, the Durbin Creek property?

9 A We did and things changed. The economy changed and
10 everything else. And I took my retirement through, I had
11 to sell it early because of the economy.

12 Q And you say that your daughters, they forgave
13 \$27,000.00 dollars, you forgave \$27,000.00 dollars which
14 you allege was income they were due?

15 A We negotiated a trade and a buyout for this property
16 based on the values that we have told you on the piece of
17 paper, it is \$27,000.00 per person plus all the other
18 dollars they paid me in cash and or check.

19 MR. CASSIDY: Judge, I am trying to be patient with
20 this witness. If he can answer the question I asked and
21 if he wants to explain something he can later. The
22 questions I am asking are pretty simple.

23 THE COURT: I think he has answered the same way
24 every time. Rephrase that question.

25 Q You forgave \$27,000.00 dollars for income to your

1 daughters as part of the consideration for the transfer at
2 Durbin Creek?

3 A That's correct.

4 THE COURT: Wait a minute, they forgave, he didn't
5 forgive, right. They were owed money?

6 A They were owed money. That is confusing me.

7 THE COURT: That is confusing me. The girls were
8 owed and gave the debt of them a salary.

9 Q What I am asking for, where is the documentation to
10 show that they were owed \$27,000.00 dollars. Where is it.

11 A It is in the rules of our office that they were paid,
12 look at their salaries in '08 and look in '09 and you can
13 figure the difference. And I don't have those numbers in
14 front of me. The CPA has those.

15 Q You were asked to produce those records and you have
16 never produced anything to substantiate that, isn't that
17 true?

18 A I don't have their tax records and I don't really
19 know what they earned exactly.

20 Q So it is not part of your personal knowledge,
21 something that the CPA would have to tell you?

22 A CPA would have to pull their tax records and see how
23 much that they were deficient. It was well over
24 \$27,000.00 dollars.

25 Q But you don't have any records to substantiate that?

- 1 A I don't have any records for 20 years substantiating
2 what I pay my employees except what we paid them.
- 3 Q So the answer to that is no, you don't have the
4 records?
- 5 A I don't have any more than what we have, no sir.
- 6 Q You haven't produced that record?
- 7 A We have produced everything you have asked for.
- 8 Q But I haven't seen anything to substantiate the
9 \$27,000.00 dollars. Show me a document.
- 10 A You have never asked for that before.
- 11 Q The other part of the consideration was that Leah was
12 going to make some payments and then she was going to
13 refinance the building, is that right?
- 14 A That was in the whole declaration of our, their
15 commitment back to me for me selling them the property.
16 And the office building, she agreed to lease it for two
17 years and make the payments.
- 18 Q And so that was income to you?
- 19 A No, straight to Arthur State Bank.
- 20 Q Which is your LLC?
- 21 A Yeah, but all the money went to Arthur State Bank.
- 22 Q That is right. So you collected rent and you paid
23 the mortgage payment with it?
- 24 A Actually they paid Arthur State Bank straight. I
25 asked them if they could make the payment straight to

- 1 them. It is in an LLC.
- 2 Q Which was a lease payment?
- 3 A It was actually a mortgage payment. They agreed to
- 4 pay my mortgage payment.
- 5 Q And then they refinanced the building?
- 6 A Leah refinanced in, she owns fifty-one percent of it,
- 7 it is a minority partner and they took that building over
- 8 so it wouldn't foreclose. I couldn't afford to pay the
- 9 payments on it or I couldn't get a loan.
- 10 Q Your daughter owns an interest in the building?
- 11 A She took mine, she took the whole building over.
- 12 Q She bought it at market value and paid off the
- 13 mortgage? You got no benefit from that, you didn't get
- 14 any cash in your pocket?
- 15 A Zero.
- 16 Q And the car. The Suburban, you owed money on the
- 17 car, correct?
- 18 A Correct.
- 19 Q And Leah wanted the car?
- 20 A She didn't really want it.
- 21 Q But she got the car and she agreed to make the
- 22 payments and keep the car?
- 23 A That was in our bargain, yes.
- 24 Q So you can gain benefit out of that?
- 25 A No, sir.

1 Q In fact you gave her another car as further
2 consideration for that. She didn't want just one car, you
3 gave her two.

4 A The Suburban, I think it was about \$35,000.00 and it
5 was worth about \$20 so she wanted, she said, can you give
6 me something to boot to make it worth my while. And so I
7 gave her a Ford truck.

8 Q So you didn't get any cash in your pocket?

9 A No, sir.

10 Q No further questions.

11 CROSS-EXAMINATION

12 By Mr. Pruitt:

13 Q Now at the time of September of 2008 when the
14 conveyance to Park at Durbin Creek, did you have a line of
15 credit at Palmetto Bank?

16 A I did.

17 Q And how much was that line of credit?

18 A Originally I had about, a little over a million
19 dollars line of credit established to make interest
20 payments on lots that we had paid up.

21 Q And could you have drawn on that line of credit to
22 make payments to Citizens Bank if you needed to?

23 A Absolutely did and we did make payments with that
24 line of credit to First Citizens Bank.

25 Q Now, approximately how many LLC's did you have in the

1 2008 timeframe?

2 A Forty plus.

3 Q Now, in 2008 there is evidence by your financial
4 statement, were you solvent at that time?

5 A Yes.

6 Q Were you able to pay your debts?

7 A Yes.

8 Q I believe even the email that was put into evidence
9 said that you were due for October 30th. So in September
10 you were current on all of your debts?

11 A That's correct.

12 Q Now, in 2008 and 2007, 2007 to 2008 what was the real
13 estate market doing at that time?

14 A It was operating under a pretty efficient mode over
15 all. The real estate market didn't start turning until
16 way, back quarter of '08 when we first noticed, a first
17 glimpse of it.

18 Q In 2007 and 2008 started turning, was the prices
19 going up or down?

20 A Well when it started turning the prices went down.

21 Q Well, prior to the turning down what did they do?

22 A Before they started turning down they were escalating
23 like crazy. We had, you didn't know what properties out
24 there were worth from day to day in '06, '07 and even in
25 the first part of '08.

1 Q Anything unusual about a property from 2002 to 2007
2 doubling or tripling in value?

3 A Not at all.

4 Q So at the time that the deed was going to Park at
5 Durbin Creek were you solvent at that time?

6 A Absolutely.

7 Q And if it hadn't been for Linda Whiteman's dealing
8 you about this, these hunters wanting to get this property
9 in an LLC, do you think you would have ever bothered in
10 doing it?

11 A Probably not.

12 Q Now, Mr. Cassidy asked you, did you have substantial
13 real income in 2008, I believe your tax returns said you
14 had \$169,000.00 dollars in real income?

15 A That's correct. If it is on the tax return it is
16 correct.

17 Q And then you said it wasn't quite as good in 2009?

18 A Yes, it started dipping a little bit in 2009, the
19 rental income.

20 Q Well, when you conveyed the property, your interest
21 in the property and Linda conveyed her interest in the
22 property to the LLC what did you receive in return?

23 A I received my fifty percent interest in the property
24 in the form of stock, the value.

25 Q Stock in the LLC?

1 A Right, stock in the LLC.

2 Q Now, Mr. Cassidy has spent a lot of time talking
3 about the 2009 sale of your interest in Durbin Creek to
4 Streamline, does that have anything to do with the
5 transaction that you and Linda did back in September of
6 2008 when y'all put that property, the 378 acres into the
7 LLC?

8 A None whatsoever.

9 Q By the time you got to 2009 and needed to sell your
10 interest in Park had the avalanche of foreclosures dipped?

11 A Absolutely. There is a property right next to this
12 property, adjacent to it that we each owned part interest
13 in with Palmetto Bank. They foreclosed on it and they had
14 an option on it and the highest bidder was \$500.00 per
15 acre.

16 Q So, there was not only a avalanche of your creditors
17 that saw what First Citizens was doing and they decided
18 that they wanted to come after you like--

19 MR. CASSIDY: Your Honor, I object to that. He is
20 saying that banks have this information. There is no
21 evidence of that.

22 MR. PRUITT: I am cross-examining, Your Honor.

23 THE COURT: All right. Foreclosure is a bad word.

24 Q Did these foreclosures that were brought by First
25 Citizens do anything good to your overall credit

1 suitability and credibility?

2 A It killed us.

3 Q When banks in general started foreclosing on all real
4 estate developers, in that time period, what did it do to
5 the prices and values of the land?

6 A Well, owning land is like having a plague. You
7 couldn't get rid of it, nobody wanted it, you couldn't
8 sell it.

9 Q Did First Citizens Bank, when y'all were discussing
10 your loan renewals that they eventually didn't give you,
11 did they discuss with you that you ought to sell some
12 property?

13 A Oh, yes. They mentioned it, that is one way that to
14 sell some property in our plan of action so they would
15 renew some loans. But that was in the plan.

16 Q To sell property so as to reduce their principle?

17 A Absolutely.

18 Q That is all I have.

19 REDIRECT EXAMINATION

20 By Mr. Cassidy:

21 Q Mr. Clifton, did you declare that \$60,000.00 dollars
22 of cash on your tax return?

23 A I had so much tax loss, it would take ten years to
24 take the losses. So, I would have to check with my CPA
25 and see what he did with that.

1 Q Did you declare?

2 A Yes, it was declared. There was a lot of things were
3 declared but I had over \$10 million dollars worth of
4 losses in one year, '09.

5 Q I just asked a simple question, did you declare it or
6 not?

7 A It was, it is in the system.

8 Q That is all.

9 THE COURT: You can step down.

10 MR. CASSIDY: Your Honor, the plaintiff rests.

11 MR. PRUITT: Your Honor, I would like to make some
12 motions.

13 THE COURT: Okay.

14 MR. PRUITT: Your Honor, the first motion that I
15 would like to make is to ask the Court to direct a verdict
16 in regard to the partition claim of action. As Your Honor
17 might review the complaint, the amended complaint has
18 three causes of action. First is fraudulent conveyance,
19 second is civil conspiracy and third is partition. Now,
20 the second cause of action, civil conspiracy has been
21 dropped so it is no longer there. At this time we are
22 asking that you direct a verdict on the partition. At the
23 present time the owner of the property is Park at Durbin
24 Creek. Even if Your Honor set aside the deed it is still,
25 wouldn't qualify for a partition because the owners, Ken

1 Clifton and Linda Whiteman neither of which have requested
2 a partition and the bank as plaintiff doesn't have
3 standing to request a partition. They might be a judgment
4 holder and they might get paid if there was a partition
5 but they certainly couldn't ask for and sue for a
6 partition.

7 MR. CASSIDY: Your Honor, I think I will handle the
8 partition part. Ms. Barbery is going to handle the next
9 part. But I will speak to the partition. If the Court
10 were to rule, I think Mr. Pruitt is right, if the Court
11 would rule that those deeds were not valid, a judgment
12 attaches to Mr. Clifton's interest. We would then have to
13 partition the Court to have the property sold. We were
14 trying to do it in one final swoop. If they want us to
15 come back a second time we can do that.

16 THE COURT: Step two, step one. Let's hear step
17 three first.

18 MR. PRUITT: Your Honor, in regard to the other cause
19 of action to set aside the deed we would indicate, Your
20 Honor, that in order for them to set aside the deed they
21 would have to show bad faith on Ms. Whiteman's part and
22 Mr. Clifton's part. They can't divide the deed. In other
23 words, there has been no evidence whatsoever that Ms.
24 Clifton, I mean Ms. Whiteman owed any money, wasn't
25 solvent, owed the bank any money, at any time fraudulent

1 beliefs which would entitle them to set aside this joint
2 deed. I don't think you can divide the deed. You can't
3 set aside Ken Clifton's part and leave her part in the
4 Park at Durbin Creek.

5 THE COURT: Let's go to the second, I think you are
6 right. That is probably their weaker argument. The
7 second deed is their better argument. Let's hear about
8 it.

9 MR. PRUITT: Sir, what is that now?

10 THE COURT: As I understand, this is what I see y'all
11 put up. The first deed was in September of '08. The
12 second deed is his daughters and was transferred via LLC
13 interest with them. That being who is sufficient
14 consideration or not, different argument. Timing on the
15 first one, consideration on the second one. Go to the
16 second one because I think that is their stronger case.

17 MR. PRUITT: Well, Your Honor, you know it is funny
18 that you should say that their stronger case is to set
19 aside the conveyance of the stock in the LLC to the
20 daughters. But, you know, that is no where mentioned in
21 the pleadings. No where. It is just not there. And
22 Streamline, the owner of that interest has transferred and
23 has testified to is not a party to this lawsuit. So there
24 is no pleading to set aside the conveyance of the limited
25 partnership interest to Streamline, Streamline is not a

1 party to this lawsuit. It is just not a party and it is
2 just not before the Court. So we think that when they
3 dropped the conspiracy they wouldn't have been able to
4 prove it anyway, but when they dropped the conspiracy they
5 left out the half of what they needed to get the Court to
6 set aside the deed because they can't prove anything
7 against Linda Whiteman. And on top of that it is clear
8 from the testimony, I think, that Mr. Clifton really
9 didn't, wasn't the moving force to put this in the LLC, it
10 was Ms. Whiteman for liability purposes because she didn't
11 like the hunters down there. And even Mr. Clifton said he
12 had sufficient assets to pay the bank at that time and
13 sufficient income to keep his businesses afloat. And by
14 their own testimony he wasn't in default or wasn't even
15 behind until at the earliest, October of 2008. So, we
16 don't think that they have proven their case in regard to
17 setting aside the deed because of the innocent purchaser
18 who would be affected, they would have to show bad faith
19 on both of them to access the Statute of Elizabeth.

20 THE COURT: All right.

21 MS. BARBERY: Your Honor, I would say as it relates
22 to, there are two separate transfers here, there is the
23 first transfer from Linda Whiteman and Kenneth Clifton to
24 the Park at Durbin Creek. And then the second transfer of
25 Mr. Clifton's interest at Park at Durbin Creek and

1 Streamline. With regards to the first transfer, what we
2 are seeking is to have, if the Court were to allow, have
3 the property retitled, moved back out of Park at Durbin
4 Creek, it would be back into the names of Linda Whiteman,
5 Ken Clifton as it initially was in 1995 when they
6 purchased that property. We don't believe that the law
7 requires us to show fraudulent intent on behalf of Linda
8 Whiteman. Essentially you just needed to show with that
9 transfer into Park at Durbin Creek that there was in fact
10 fraudulent intent on behalf of Ken Clifton. And with that
11 there are, the law provides that we can rely on certain
12 badges of fraud. And together these badges of fraud
13 created a rebuttal of presumption of the fraudulent
14 intent. With these badges of fraud, you know, it is the
15 insolvency or indebtedness of the transferor. We have
16 heard lots of testimony today regarding whether or not he
17 in fact was, you know, when he was making his loan or
18 paying his debt when they became due. We had testimony
19 from the bank folks who claim that starting in December,
20 excuse me, September 2008, he wasn't current, he stopped
21 paying his loan payments on time. And that continued, we
22 had emails going back and forth saying, hey, you need to
23 bring your payments, make your payment. So that transfer,
24 that transfer in 2008 was right there when he stopped
25 making his payment. Lack of consideration for the

1 conveyance. At this time, you know, we agree that he did
2 transfer his interest into the LLC. The relationship
3 between the transferor and the transferee, that is another
4 badge of fraud. You know, he and Linda Whiteman did have
5 a relationship, for many years they had been in business,
6 together in business, business ventures together for many
7 years. You know, this was something that they decided to
8 do. We have heard testimony regarding Ms. Whiteman, you
9 know, what she thought, the purpose and the reason why she
10 was transferring into the LLC. Ken Clifton, again,
11 because of the whole situation that was going on, it is
12 skeptical honestly. The pendency of threat of litigation,
13 that is certainly a badger problem which I just touched
14 on. In 2008 he is getting late in his payments. He is
15 sending emails. There is one email in that chain on
16 November 25th of 2008, we still have no guarantee the bank
17 will help us. We can't rob Peter to pay Paul, we are
18 doing everything we can, we have reduced prices, trying to
19 sell property. But we are still needing your help. They
20 are crying for help trying to get, they can't make, Mr.
21 Clifton cannot pay these payments when these notes are
22 maturing. The threat of litigation, the threat of
23 foreclosure is right there. Secrecy or concealment. When
24 he transferred that property into Park at Durbin Creek,
25 certainly one of the problems that we have is on his

1 financial statement. He listed that he owned a fifty
2 percent interest in that property. Once you go and
3 transfer that property out of individual names into an
4 LLC, as you are trying to, the judgments wouldn't attach
5 to that LLC at that time.

6 THE COURT: The financial statement is given in
7 January, not in August, September.

8 MS. BARBERY: I am sorry.

9 THE COURT: The financial statement--

10 MS. BARBERY: I am sorry, it shows in January, it
11 shows that he owns that property and transferred it in
12 September.

13 THE COURT: He didn't just represent it in January.

14 MS. BARBERY: Not in January, I am talking about, but
15 what I was going through was the secrecy or concealment
16 and that he transferred the property, hey what is going
17 on, we need more collateral. And he is moving property
18 around.

19 THE COURT: Uncontradicted, he really didn't want to
20 do it.

21 MS. BARBERY: That is, you know, if Your Honor were
22 to believe his testimony. The departure from the usual
23 method of business, that is another badger fraud. Well,
24 that first transfer, he had purchased this property in
25 1995 with the intent of holding onto it for retirement

1 purposes. He and Linda Whiteman owned this individually
2 from 1995 to 2008. They together owned other properties
3 individually in their individual names for many years.
4 With this personal property, this was a departure from his
5 usual method of business as dealing with Linda Whiteman.
6 Again, these are all badges of fraud, things that were
7 occurring at the time that he had given inference or
8 presumption that he in fact had to requisite fraudulent
9 intent. Now, with regards to the second transfer. Once
10 the property got into Park at Durbin Creek. He then went
11 and transferred his interest into Streamline Management.
12 At that time judgments had already been entered. You
13 know, we are going forward with collections, starting
14 supplemental proceedings. He signed this agreement in
15 August of 2009. As we presented to the Court, Streamline
16 Management didn't even exist at that time. Streamline
17 Management didn't come into existence until 2010. And,
18 again, going back to the whole fact that this was a member
19 managed LLC.

20 THE COURT: Why the question, if it wasn't formed why
21 the question about where was the rental income going, just
22 a moment ago.

23 MS. BARBERY: I think part of it goes to the whole,
24 it depends where Your Honor wants to hear. I mean, at
25 first, initially the property, the LLC had not been

1 formed. But they are alleging that there was adequate
2 consideration paid for that interest. The problems, what
3 we were saying, Streamline and Mr. Clifton had testified
4 in his deposition that Streamline had been managing
5 property, his rental properties--

6 THE COURT: But it didn't exist.

7 MS. BARBERY: For many years, exactly.

8 THE COURT: But it didn't exist.

9 MS. BARBERY: According to the Secretary of State
10 records it did not exist.

11 THE COURT: All right, keep going.

12 MS. BARBERY: But they were supposedly, according to
13 Mr. Clifton, Streamline would have been collecting rents
14 from him which then show what we were saying as far as the
15 consideration. They have produced, the Streamline bank
16 accounts is the entire, the only documents that they have
17 produced to reflect the adequate consideration of that
18 \$121,000.00 dollars was paid. And what we, the point of
19 that is that Streamline, to the extent that Streamline was
20 managing the businesses, the rental properties as Mr.
21 Clifton had testified on the stand as well as his
22 deposition, Streamline owed money to him because they were
23 collecting the rent, they owed him money. So some of that
24 money was not money paid for consideration. That was
25 money that they would have been collecting that would have

1 been owed to him.

2 THE COURT: It either existed or it didn't, it can't
3 be both ways. If it existed and owed him money I agree
4 with you. But y'all said it didn't exist and, you know,
5 the conveyance, the LLC wasn't created until after the
6 conveyance. You can't have it both ways.

7 MS. BARBERY: And that is kind of an alter ego kind
8 of argument there. That is the problem with this whole
9 situation. They have, are claiming, they are saying one
10 thing and then coming back and saying another. Argument
11 first is it didn't exist. Argument two, to the extent
12 that it did exist they cannot show that there was valuable
13 consideration. Argument three, there is the fact that
14 this was a member managed LLC. And that they could not,
15 also Park at Durbin Creek was also a member managed LLC
16 and did not have the consent of Linda Whiteman to transfer
17 the interest into Streamline.

18 THE COURT: She put it in Durbin Creek and he didn't
19 want to do it, is that kind of even Steven, is that the
20 rule?

21 MS. BARBERY: Well, I would disagree with the fact
22 that Mr. Clifton didn't want to put it into Durbin Creek.

23 THE COURT: He said he didn't.

24 MS. BARBERY: Well, again--

25 THE COURT: She is the one that wanted the hunters

1 out of there.

2 MS. BARBERY: I would disagree with the fact, I think
3 that that was something had been perhaps discussed for a
4 while but I don't believe that was something that he
5 certainly was entirely opposed to doing considering his
6 office did prepare the documents.

7 THE COURT: Okay. I understand your position.

8 MR. PRUITT: Your Honor, the only thing that I would
9 for the Court to take a look at is, just take a look at
10 the second cause of action.

11 THE COURT: I thought that was conspiracy.

12 MR. PRUITT: I mean the first cause of action. You
13 really don't have to do anything but to start reading
14 after they describe all of their judgments. There is just
15 no proof that Linda Whiteman transferred her interest to
16 the property for the specific purpose or with the intent
17 to defraud the bank.

18 THE COURT: She is not being accused.

19 MR. PRUITT: But you can't set aside half of a deed.
20 And there was a case called--

21 THE COURT: I guess the relief they are seeking is
22 that they want the share of stock he sold to his daughters
23 for a consideration. And then they can petition Durbin
24 Creek, LLC into what the value of that share, what the
25 shares are. His share at Durbin Creek, LLC and her's are

1 her's.

2 MR. PRUITT: I agree that that is what they want.

3 But where is Streamline mentioned in the complaint and

4 where is this second alleged fraudulent conveyance

5 mentioned in the complaint. No where.

6 THE COURT: Y'all have got quite the case.

7 MR. PRUITT: Well, that is why we happen to have a

8 trial.

9 THE COURT: I understand why y'all haven't mediated
10 it.

11 MR. CASSIDY: Judge, this is why we didn't want to
12 come in here today.

13 THE COURT: But you had to do it sooner or later.

14 MR. CASSIDY: I am happy to get it over with.

15 THE COURT: This is almost dividing a baby case.

16 MR. CASSIDY: Judge, I would like for you to take a
17 look at that member managed LLC provision in the code
18 because I think that is very controlling.

19 THE COURT: Okay.

20 MR. PRUITT: Your Honor, I am not trying to cut off
21 your deliberation here but my case, I guess it is my turn
22 now?

23 THE COURT: Sure.

24 MR. PRUITT: It is going to be real short because
25 they have already called my witnesses.

1 THE COURT: I noticed they did.

2 MR. PRUITT: I want to recall Linda Whiteman to the
3 stand.

4 THE COURT: All right, Ms. Whiteman, come back up. I
5 remind you you are still under oath.

6 DIRECT EXAMINATION

7 By Mr. Pruitt:

8 Q Ms. Whiteman, you have heard the testimony that Ken
9 Clifton didn't consult you in advance before he sold his
10 interest in the Park at Durbin Creek to Streamline, have
11 you heard that?

12 A Yes, sir.

13 Q And is it true that he didn't consult you?

14 A Yes, it is true.

15 Q Do you, are you upset with that now that he has done
16 it?

17 A Well, I would have preferred that he not do it or let
18 me know or consult with me. But I had reasons that I
19 didn't really want it done and that dealt with daughters
20 with husbands, with possible whatever legal problems. No,
21 I didn't want it done but there is nothing that I do now
22 to try to undo it. I mean, I would just prefer that I
23 knew.

24 Q All right. You accept the status quo and are not
25 complaining of it?

1 A Well, I am not going to do anything about it, no. It
2 is done.

3 Q That is all the questions that I have.

4 CROSS-EXAMINATION

5 By Mr. Cassidy:

6 Q What you testified to earlier was, you were in
7 partnership with Mr. Clifton and that is the way you
8 wanted it to be. You didn't want to be in partnership
9 with his daughters, isn't that true?

10 A That is the way it was, yes.

11 Q And that is the way you wanted it to be?

12 A Wanted it to be, yes.

13 Q Thank you.

14 MR. PRUITT: That is all.

15 THE COURT: And I think those answers are consistent
16 to both questions.

17 MR. PRUITT: Your Honor, I never have had a case
18 where the plaintiff called all of my witnesses. But I
19 don't have anything else, that will be the case for the
20 defendant. And I would, then we will wait to see if there
21 is anything else they are going to put up.

22 THE COURT: Are you putting anything else up?

23 MR. CASSIDY: No, sir.

24 THE COURT: All right.

25 MR. PRUITT: And, Your Honor, if they are not going

1 to put anything else up I will renew the motions that I
2 previously made.

3 THE COURT: All right. Here is what I think we ought
4 to do. I am going to take this matter under advisement.
5 Your motions as well as the case. All right. How do
6 y'all feel like proposed orders on that last cause of
7 action. Partition to me is some step in the future
8 depending on how the Court rules. So just the last cause
9 of action of the two conveyances. How does that strike
10 y'all.

11 MR. CASSIDY: The two conveyances, Your Honor, or
12 just the deed.

13 THE COURT: The deed, I am calling that transaction.
14 The Durbin Creek transaction from Ms. Whiteman and Mr.
15 Clifton, Durbin Creek onto Streamline. Basically you are
16 going to prepare an order for a directed verdict that they
17 haven't proven the case and never mentioned Streamline and
18 therefore rule in your favor.

19 MR. PRUITT: That would be my order right there.

20 THE COURT: Your order will be briefer than their's,
21 no questions. So I am directing y'all to prepare orders
22 on the third cause of action only. The second one is
23 gone, the first one I think should be, it is not mute, it
24 is not right. We can say that. And I can rule that
25 today. The first cause of action, the partition, is not

1 right by the Court's determination until the third cause
2 of action is determined. The second is gone by agreement.
3 Y'all dismissed it, right.

4 MR. CASSIDY: Your Honor, we have dismissed Ms.
5 Whiteman. Just by way of background we didn't know what
6 the situation was. We went through supplemental
7 proceedings, we knew that Ms. Whiteman and Mr. Clifton had
8 a relationship sometime in the past. We assume and
9 correctly that perhaps they had shared information about
10 their financial condition because he was borrowing money
11 from her. That is why the allegation of Ms. Whiteman is
12 in there. But as to conspiracy we did say, when they
13 transferred it into Streamline, it created a problem. No
14 question, we don't have any complaint against Ms.
15 Whiteman. But I think there is still an element of
16 conspiracy.

17 THE COURT: I will allow you to look at that issue
18 and present me language on that part of the order. Okay.
19 All right.

20 MR. CASSIDY: You did good, Judge, thank you. You
21 didn't even yell at me one time.

22 THE COURT: Well, that is not much benefit to that.
23 This foreclosure stuff, the real estate market going down,
24 it wasn't fun for anybody.

25 MS. BARBERY: When would you like the proposed

1 orders.

2 THE COURT: How much time do y'all want.

3 MR. CASSIDY: Two weeks?

4 THE COURT: Sure, how about by the 10th of July.

5 MR. CASSIDY: The 15th since it is the 4th of July?

6 THE COURT: That is fine.

7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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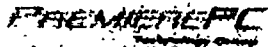
1
2
3
4 CERTIFICATE OF REPORTER5 State of South Carolina)
6)
7 County of Newberry)
89 I, Joy E. Holston, Official Court Reporter for the
10 Eighth Judicial Circuit of the State of South Carolina, do
11 hereby certify that the foregoing is a true, accurate and
12 complete transcript of record of the proceedings had and
13 evidence introduced in the trial of the captioned case,
14 relative to appeal, in the County of Laurens, South
15 Carolina on the 26th day of June, 2014.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 December 29, 2014

20
21 

22 Joy E. Holston, Court Reporter

23 My Commission expires: March 13, 2016
24
25



Renee Gilreath <renee@clandt.us>

FW:

3 messages

Wood, John B <john.wood@firstcitizenonline.com>

To: Leah Winton <leah@clandt.us>

Cc: Renee Gilreath <renee@clandt.us>

Tue, Nov 25, 2008 at 8:56 AM

Renee,

Leah said she was going to talk with you this morning about cutting a check for these October payments today before y'all left town. I've got to get them processed today - to get them posted prior to month end, since the 30th is Sunday.

I think we have everything worked out for the extension thru July, just waiting on the appraisals and the budget.

John

>
> From: Wood, John B
> Sent: Monday, November 24, 2008 4:21 PM
> To: 'Leah Winton'; Renee Gilreath
> Cc: Derrick, Ronald; Rhome, Deborah D
> Subject:
>
> Ladies,
>
> Per our conversation with Ron Derrick on the 11/14/08, we need to get
> the October payment, to move forward with the renewal and payment
> deferral. Stone & Associates was the low bidder on the three appraisal
> and Melissa should be contacting you for the details. I referred her
> to your excellent website for maps, locations, plats, surveys, price
> lists, etc.
>
> Payments past due for October:
>
> Plantation Holdings of Greenville, LLC due for 10/29/08 I/a/o
> \$8,788.22
> Ken Clifton/Lake Hartwell due for 10/29/08 I/a/o
> \$1,791.85
> Shellbrook Plantation, LLC due for 10/31/08 I/a/o
> \$5,818.60
>
> TOTAL = \$14,398.67
>
> It is essential that we get these payments processed this week before
> the Thanksgiving break. With month end following a busy holiday we
> really need to get everything posted by Wednesday. Thanks for your
> help on this. The bank will be open all day on Wednesday and Friday,
>
> Also, Ron asked me to follow up with you on item # 8 (8) A budget that
> shows all scheduled payments, sources of income or access to lines of

[Fwd: Allen Bridge Road]

4 messages

Leah Winton <leah@clandt.us>

Tue, May 27, 2008 at 3:17 PM

To: Renee C Gilreath <renee@clandt.us>

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

Subject: Allen Bridge Road

Date: Tue, 27 May 2008 15:22:01 -0400

From: Wood, John B <john.wood@firstcitizenonline.com>

To: Leah Winton <leah@clandt.us>

Leah,

The key should be the same. I checked with Ron and JB both to confirm. Neither JB nor I have our keys here today, mine's in my hunting bag at the house, his too.

JB was down there last week checking stands, food plots, salt licks, etc. He is also in the process of trying to get the guy next to the Cell Tower on the new side prosecuted for trespassing. He's riding a 4-wheeler in an out all the time. DNR has confronted him and he acknowledged that he had been in and out and even gave DNR another guy's name who's been in and out of there too. Jamie Landrum with DNR is handling the investigation and has confronted both culprits. So they know we're watching them.

Please let us know what Ken's thoughts are on the property. We'd loved to hang on to it and had already purchased seed for Fall food plots. Obviously, we'll hold off planting until Ken makes a decision. We have worked hard to be good stewards of the land, control access, manage/build the deer herd, control poaching, illegal dumping, gotten liability coverage, regular Laurens County Sheriff and S.C. DNR patrols, etc. As I told your Dad last year, it's a little disconcerting that Chris has done the "end-run" on us again, but business is business. I wouldn't do that someone that I considered a "friend", but I guess Chris is looking at it differently. Ron did hear that Chris was trying to put together a "club" where all of the members, paid in "X" number of dollars for the privilege of hunting. I'd advise you not to allow that from a liability standpoint. With us y'all know exactly who's hunting there and we're all responsible, legal and insured. Ron, JB and I would really love to hang on to it.

Don't forget to try and get us a lunch date where you, Renee', Ken, JB and I can get together soon to do an annual review/update and just catch up.

It goes without saying that we value our friendship and business relationship with you guys and want to do our best to maintain it and make sure y'all feel the same way.

**First Citizens Bank and Trust Company, Inc. v. Plantation Holdings of
Greenville, LLC and Kenneth E. Clifton
Greenville County
C.A. No.: 2009-CP-23-883
RCCP File No.: 0433.0210**

Timeline		
Foreclosure		
A	1/5/2009	Lis Pendens filed
B	1/21/2009	Demand Letter sent to Kenneth E. Clifton
C	2/3/2009	Amended & Refiled Lis Pendens, Summons, and Complaint filed
D	2/14/2009	Kenneth E. Clifton served
E	2/17/2009	Plantation Holdings of Greenville, LLC served
F	5/4/2009	Order of Reference filed
G	5/12/2009	Late Answer of Shellbrook Plantation, LLC and Kenneth E. Clifton filed (Bob Wilson)
H	5/20/2009	Affidavit Regarding HMP filed
I	5/28/2009	Notice of Hearing filed
	6/17/2009	Foreclosure Hearing held
J	6/22/2009	Foreclosure Judgment entered
	8/3/2009	Foreclosure Sale held. The Deficiency Sale is set for 9/3/2009
K	8/27/2009	Defendant Kenneth E. Clifton's Petition for Order of Appraisal filed (Bob Wilson)
	9/3/2009	Deficiency Sale held. The bank was the successful bidder at the sale for \$1,100,000.00
L	9/14/2009	Acknowledgment of Withdrawal of Petition signed by Bob Wilson
M	10/20/2009	Deficiency Judgment entered in the amount of \$461,171.74
N	10/23/2009	Master's Deed recorded
O	11/5/2009	Consent Order Withdrawing Appraisement filed
Rule To Show Cause Proceeding		
P	10/6/2010	Clerk of Court issued/signed Execution for the Delivery of Real and Personal Property
Q	10/13/2010	Sheriff stamped the Execution for the Delivery of Real and Personal Property Nulla Bona
R	11/18/2010	Petition for Supplemental Proceedings and Rule to Show Cause Order filed. The Rule to Show Cause Hearing is scheduled for 12/9/2010
S	12/7/2010	Plantation Holdings of Greenville, LLC and Kenneth E. Clifton served
	12/9/2010	Rule to Show Cause Hearing canceled. The hearing is re-scheduled for 1/18/2011.
T	1/3/2011	Plantation Holdings of Greenville, LLC and Kenneth E. Clifton served
	1/18/2011	Rule to Show Cause Hearing held.

U	1/21/2011	Supplemental Proceedings Order Appointing Investigative Receiver filed.
Rule To Show Cause for Contempt		
V	3/30/2011	Motion for Contempt, Attorney Affidavit, and Rule to Show Cause for Contempt filed. The Rule to Show Cause hearing is scheduled for 4/27/2011
W	4/22/2011	Received Affidavit of Non-Service on Plantation Holdings of Greenville, LLC and Kenneth E. Clifton. The Rule to Show Cause Hearing is re-scheduled for 5/27/2011
X	5/12/2011	Plantation Holdings of Greenville, LLC and Kenneth E. Clifton served
	5/27/2011	Rule to Show Cause for Contempt Hearing held
Y	6/2/2011	Letter to Kenneth E. Clifton, per Judge Simmons' Order, requesting documents
Z	6/6/2011	Order Regarding Rule to Show Cause Hearing Outcome filed
	6/13/2011	6/2/2011 Letter to Kenneth E. Clifton, per Judge Simmons' Order, requesting documents is filed. *see Public Index records for C.A. No. 09-CP-23-884

**First Citizens Bank and Trust Company, Inc. v. Kenneth E. Clifton and Edge
Water, LLC
Anderson County
C.A. No.: 2009-CP-04-0425
RCCP File No.: 0433.0211**

Timeline		
A	12/31/2008	Lis Pendens filed
B	1/21/2009	Demand Letter sent to Kenneth E. Clifton
C	2/5/2009	Amended & Refiled Lis Pendens, Summons, and Complaint filed
D	2/14/2009	Kenneth E. Clifton and Edge Water, LLC served
E	4/6/2009	Second Amended & Refiled Lis Pendens filed Received confirmation on 3/25/2009 from the bank that Lot 13 had been release from the subject mortgage. The Lis Pendens was amended to correct the legal description.
F	5/4/2009	Order of Reference filed
G	5/12/2009	Late Answer of Kenneth E. Clifton and Edge Water, LLC filed (Bob Wilson)
H	5/15/2009	Affidavit Regarding HMP filed
I	6/9/2009	Notice of Hearing filed
J	7/6/2009	Foreclosure hearing held and Judgment entered
	8/4/2009	Foreclosure Sale held. The Deficiency sale is set for 9/3/2009
K	8/26/2009	Defendant Kenneth E. Clifton's Petition for Order of Appraisal filed (Bob Wilson)
	9/3/2009	Deficiency Sale held. The bank was the successful bidder at the sale for \$356,000.00
L	9/18/2009	Acknowledgment of Withdrawal of Petition signed by Bob Wilson is filed
M	10/20/2009	Deficiency Judgment filed The judgment amount is \$60,755.80
N	10/20/2009	Consent Order Withdrawing Appraisement filed
O	11/4/2009	Master's Deed recorded

**First Citizens Bank and Trust Company, Inc. v. Shellbrook Plantation, LLC
and Kenneth E. Clifton
Greenville County
C.A. No.: 2009-CP-23-884
RCCP File No.: 0433.0212**

Timeline		
Foreclosure		
A	12/31/2008	Lis Pendens filed
B	1/21/2009	Demand Letter sent to Kenneth E. Clifton
C	2/3/2009	Amended & Refiled Lis Pendens, Summons, and Complaint filed
D	2/14/2009	Shellbrook Plantation, LLC and Kenneth E. Clifton served
E	5/4/2009	Order of Reference filed
F	5/12/2009	Late Answer of Shellbrook Plantation, LLC and Kenneth E. Clifton filed (Bob Wilson)
G	5/20/2009	Affidavit Regarding HMP filed
H	5/28/2009	Notice of Hearing filed
	6/17/2009	Foreclosure Hearing held
I	6/22/2009	Foreclosure Judgment entered
	7/24/2009	Mailed Amended Foreclosure Decree to Judge Simmons for execution
	8/3/2009	Foreclosure Sale held. The Deficiency Sale is set for 9/3/2009
J	8/11/2009	Amended Foreclosure Decree filed
K	8/27/2009	Defendant Kenneth E. Clifton's Petition for Order of Appraisal filed (Bob Wilson)
	9/3/2009	Deficiency Sale held. The bank was the successful bidder at the sale for \$493,000.00
L	9/14/2009	Acknowledgment of Withdrawal of Petition signed by Bob Wilson
M	10/20/2009	Deficiency Judgment entered in the amount of \$223,390.32
N	10/23/2009	Master's Deed recorded
O	11/5/2009	Consent Order Withdrawing Appraisement filed
Rule to Show Cause		
P	10/6/2010	Clerk of Court issued/signed Execution for the Delivery of Real and Personal Property
Q	10/13/2010	Sheriff stamped the Execution for the Delivery of Real and Personal Property Nulla Bona
R	11/18/2010	Petition for Supplemental Proceedings and Rule to Show Cause Order filed. The Rule to Show Cause Hearing is scheduled for 12/9/2010
S	12/7/2010	Shellbrook Plantation, LLC and Kenneth E. Clifton served
	12/9/2010	Rule to Show Cause Hearing canceled. The hearing is re-scheduled for 1/18/2011.
T	1/5/2011	Shellbrook Plantation, LLC and Kenneth E. Clifton served

	1/18/2011	Rule to Show Cause Hearing held.
U	1/21/2011	Supplemental Proceedings Order Appointing Investigative Receiver filed.
Rule to Show Cause for Contempt		
V	3/30/2011	Motion for Contempt, Attorney Affidavit, and Rule to Show Cause for Contempt filed. The Rule to Show Cause hearing is scheduled for 4/27/2011
W	4/22/2011	Received Affidavit of Non-Service on Shellbrook Plantation, LLC and Kenneth E. Clifton. The Rule to Show Cause Hearing is re-scheduled for 5/27/2011
X	5/12/2011	Shellbrook Plantation, LLC and Kenneth E. Clifton served
	5/27/2011	Rule to Show Cause for Contempt Hearing held
Y	6/2/2011	Letter to Kenneth E. Clifton, per Judge Simmons' Order, requesting documents
Z	6/6/2011	Order Regarding Rule to Show Cause Hearing Outcome filed
	6/13/2011	6/2/2011 Letter to Kenneth E. Clifton, per Judge Simmons' Order, requesting documents is filed. *see Public Index records for C.A. No. 09-CP-23-884

**First Citizens Bank and Trust Company, Inc. v. Park at Durbin Creek, LLC;
et al.**

**Laurens County
C.A. No.: 2010-CP-30-1141
RCCP File No.: 0433.0211A**

Deed Timeline		
Park at Durbin Creek, LLC		
A	6/6/1995	Deed from J. Larry Faulkenberry to Kenneth E. Clifton and Linda G. Whiteman \$330,000.00
B	9/18/2008	Quit Claim Deed from Kenneth E. Clifton and Linda G. Whiteman to Park at Durbin Creek, LLC \$5.00 and Quit Claim
C	8/5/2009	Assignment of Interest in Park at Durbin Creek
D	1/12/2010	Certificate of Existence for Streamline Management, LLC
E	8/19/2010	Amended Articles of Organization for Park at Durbin Creek, LLC
Highway 14		
F	8/17/1993	Deed from Living Waters Christian Church, Inc. to Kenneth E. Clifton and Linda G. Whiteman \$25,080.00 and Assumption of Mortgage in the amount of \$79,920.00
G	7/31/2008	Deed from Kenneth E. Clifton and Linda G. Whiteman to Gardens at Fourteen, LLC \$5.00 and Quit Claim
Pelham at Boiling Springs, LLC		
H	6/2/1992	Deed from Lawrence E. McNair, Jr. to Kenneth E. Clifton and Linda G. Whiteman \$25,000.00
I	9/18/2008	Deed from Kenneth E. Clifton and Linda G. Whiteman to Pelham at Boiling Springs, LLC \$5.00 and Quit Claim
Pawley Investments, LLC		
J	9/15/2008	Deed from Kenneth E. Clifton to Pawley Investments, LLC \$5.00 and Quit Claim *Deed describes 4 tracts of land located in Georgetown County

TITLE TO REAL ESTATE -- FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

State of South Carolina,
COUNTY OF LAURENS

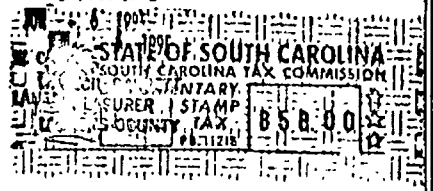
Jun 6 2 21 PM '95
LAURENS COUNTY
CLERK OF COURT

Know All Men By These Presents. That WE, J. Larry Faulkenberry and Almond Forest Products, Inc., by its duly authorized officer

DATE 6-6-95
BOOK 5
PAGE 364
AUDITOR *Lilly B. Furman*

RECORDING FEE
& COST PAID

LAURENS COUNTY S.C.
RECORDATORY TAX \$ 363.00



in the State aforesaid for and in consideration of the sum of THREE HUNDRED THIRTY THOUSAND AND 00/100 (\$330,000.00) DOLLARS --- to them paid by Kenneth E. Clifton & Linda G. Whiteman P. O. Box 6143, Greenville, SC 29606 in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said Kenneth E. Clifton & Linda G. Whiteman

All those certain pieces, parcels, or tracts of land, with improvements thereon, situate, lying and being in the County of Laurens, State of South Carolina and being shown as Tract No. 3, containing 152.86 acres ±, Tract No. 4, containing 202.43 acres ±, and Tract No. 5, containing 20.53 acres on that certain plat entitled "448.39 acres ± Total (John Hancock - Westvaco Tract 350) Boundary Survey for J. LARRY FAULKENBERRY & ALMOND FOREST PRODUCTS, INC., Located 4 miles northeast of Fountain Inn - Youngs Township, Laurens County, South Carolina" dated September 9, 1993, prepared by Daniel Riddick & Associates, Inc. and recorded in the office of the Clerk of Court for Laurens County in Plat Book A42 at page 7.

For a more particular description as to courses and distances, metes and bounds, reference is directed to the aforementioned plat.

The above described property is a portion of that property conveyed to J. Larry Faulkenberry and Almond Forest Products, Inc. by deed of John Hancock Mutual Life Insurance Company dated August 25, 1993 and recorded in the office of the Clerk of Court for Laurens County in Book 295 at page 271 on September 3, 1993.

THIS CONVEYANCE is made subject to a timber deed from J. Larry Faulkenberry and Almond Forest Products, Inc. to Willamette Industries, Inc. recorded in Book 302 at page 286.

Portion of:
TAX MAP No. 184-00-00-003

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

To Have and to Hold all and singular the premises before mentioned unto the said
Kenneth E. Clifton & Linda G. Whiteman, Their Heirs & Assigns

~~XXXXXX~~ forever

And WE do hereby bind ourselves, our successors, Heirs, Executors
and Administrators, to warrant and forever defend all and singular the said premises unto the said
Kenneth E. Clifton & Linda G. Whiteman, Their Heirs & Assigns

~~XXXXXX~~ against US and OUR SUCCESSORS, Heirs and against every
person whomsoever lawfully claiming, or to claim, the same or any part thereof.
WITNESS OUR Hand and Seal this 6th day of June
in the year of our Lord one thousand nine hundred and ninety-five
and in the two hundred and nineteenth year of the Sovereignty
and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of

Veronica S. Wooten

J. Lapy Faulkenberry (SEAL)
J. Lapy Faulkenberry
ALMOND FOREST PRODUCTS, INC. (SEAL)
BY: *Frankie R. Wooten*

STATE OF SOUTH CAROLINA, }
Kershaw County }

Personally appeared before me the undersigned
and made oath that he saw the within named J. Larry Faulkenberry and Almond Forest
Products, Inc., by its duly authorized officer
sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein
mentioned, and that he, with the other witness witnessed the
execution thereof.

SWORN to before me this 6th
day of June 19 95
[Signature] (L.S.)
Notary Public of S.C.

Veronica L. Wooten

My Commission expires: 9/09/02

Grantee's Address: 12 Lavinia Avenue, Greenville, SC 29601

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

QUIT-CLAIM DEED
(No title examination)

KNOW ALL MEN BY THESE PRESENTS, that KENNETH E. CLIFTON and LINDA G. WHITEMAN, (hereinafter referred to as the "Grantor"), in consideration of Five Dollars and 00/100, (\$5.00) the receipt of which is hereby acknowledged, does hereby forever release, remise and quit-claim unto PARK AT DURBIN CREEK, LLC, (hereinafter referred to as "Grantee"), its successors and assigns, all of the Grantor's right, title and interest, if any, in and to the following described property:

ALL THOSE certain pieces, parcels or tracts of land, with improvements thereon, situate, lying and being in the County of Laurens, State of South Carolina and being shown as Tract No. 3, containing 152.86 acres, more or less, Tract No. 4, containing 202.43 acres, more or less, and Tract No. 5, containing 20.35 acres on that certain plat entitled "449.39 acres, more or less, total (John Hancock - Westvaco Tract 350) Boundary Survey for J. Larry Faulkenberry & Almond Forest Products, Inc., located 4 miles northeast of Fountain Inn - Youngs Township, Laurens County, South Carolina" dated September 9, 1993, prepared by Daniel Riddick and Associates, Inc. and recorded in the Office of the Clerk of Court for Laurens County in Plat Book A-42 at Page 7; reference to said plat being made for a more accurate and complete description of said property.

THIS CONVEYANCE is made subject to a timber deed from J. Larry Faulkenberry and Almond Forest Products, Inc. to Willamette Industries, Inc. recorded in Book 302 at Page 286.

LESS AND EXCEPT any properties previously conveyed.

THIS BEING the same property conveyed to the Grantors herein by deed from J. Larry Faulkenberry and Almond Forest Products, Inc. recorded on June 6, 1995, in the Office of the Clerk of Court for Laurens County in Deed Book 334 at Page 307.

TMS: 184-00-00-003

2008010553

DEED
RECORDING FEES \$10 00
STATE TAX \$0 00
COUNTY TAX \$0 00
PRESENTED & RECORDED

09-22-2008 01:51 PM

LYNN W. LANCASTER
CLERK OF COURT
LAURENS COUNTY, SC
BY: ROSLYN JOHNSON CLERK

BK: D 901

PG: 247 - 249

WITNESS the Grantor's hand and seal this 18th day of September, 2008.

SIGNED, sealed and delivered
in the presence of:

[Signature]
[Signature]

[Signature]
Kenneth E. Clifton
[Signature]
Linda G. Whiteman

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

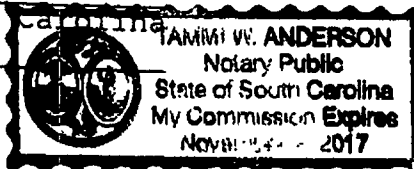
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Grantors sign, seal and, as act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 18th day of September, 2008.

[Signature]

Notary Public for South Carolina
Commission Expires:
File #9315/9006



STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being sworn, deposes and says:

Property located at 100 Allen Bridge Road, Laurens County, SC, bearing Laurens County Tax Map Number 184-00-00-003, was transferred by Kenneth E. Clifton and Linda G. Whiteman to Park at Durbin Creek, LLC, on the date hereof.

The transaction was (Check One): 8 & 12

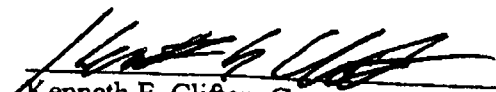
_____ an arm's length real property transaction and the sales price paid to or to be paid in money of money's worth was \$ _____*.

_____ not an arm's length real property transaction and the fair market value of the property is \$ _____*.

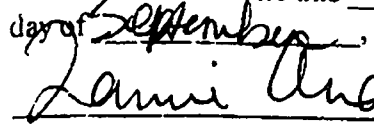
The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et.seq. because the deed is a quitclaim deed (#12) and is being transferred to a corporation (#8).

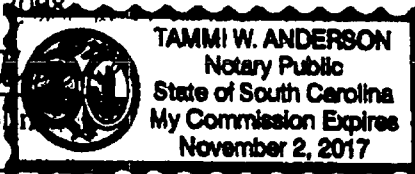
As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Kenneth E. Clifton, Grantor

SWORN to before me this 18th
day of September, 2008.


Notary Public for South Carolina
My Commission Expires: _____



*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

J CALHOUN PRUITT (1922-2005)
J. CALHOUN PRUITT, JR

PRUITT & PRUITT
ATTORNEYS AT LAW, P. A.
101 NORTH MURRAY AVENUE
ANDERSON, SOUTH CAROLINA 29625-4301

PHONE (864) 224-3121
FAX (864) 224-8711
e-mail: calhoun@pruittandpruitt.com
web page: www.pruittandpruitt.com

October 4, 2013

Ella S. Barbery
Roe Cassidy Coates & Price
P. O. Box 10529
Greenville, SC 29603

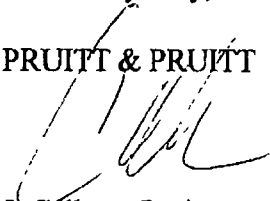
Re: First Citizens Bank & Trust Company, Inc. vs. Park at Durbin Creek, LLC, et al
#2010-CP-30-1141

Dear Ella:

In regard to the documents which were the subject of much debate at the deposition, enclosed please find a copy of the documents provided to me. Please allow this letter to serve as a supplementation of our previous discovery.

Yours very truly,

PRUITT & PRUITT


J. Calhoun Pruitt, Jr.

JCP,Jr/tg
Enclosure

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

ASSIGNMENT OF INTEREST IN
PARK AT DURBIN CREEK, LLC

WHEREAS, on or about August 1st, 2008, Kenneth E. Clifton and Linda Whiteman as initial members entered into an operating agreement for Park at Durbin Creek, LLC, a South Carolina Limited Liability Company that was organized and filed with the Secretary of State.

WHEREAS, Kenneth E. Clifton owns 50% of the interest in Park at Durbin Creek, LLC and Linda Whiteman owns a 50% interest in the LLC.

WHEREAS, Kenneth E. Clifton desires to transfer his 50% interest in the LLC to Streamline Management, LLC in lieu of payments owed. (SEE ATTACHED PAYMENT AGREEMENT).

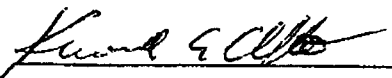
Seller hereby warrants to Buyer that his interest in the LLC is unencumbered, has not been pledged, hypothecated or assigned and that there are no other owners of any portion of the 50% LLC interest. Seller agrees to warrant and forever defend the title of said LLC interest to the Buyer against any person who may claim any portion thereof. The warranties in this paragraph shall survive closing.

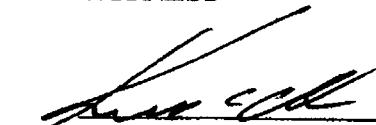
By affixing his signature hereto Kenneth E. Clifton has agreed to Dissolution from the Limited Liability Company and acknowledges consent to the purchase by Streamline Management, LLC.

IN WITNESS WHEREOF, THIS 5th DAY OF AUGUST, 2009:

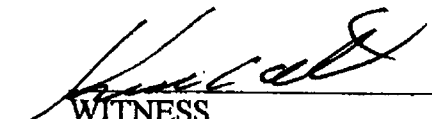
SELLER: KENNETH E. CLIFTON


WITNESS


PURCHASER: RENEE GILREATH


WITNESS


PURCHASER: LEAH WINTON


WITNESS

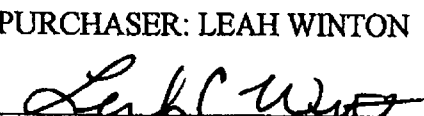

PURCHASER: LEAH WINTON

EXHIBIT A
PARK AT DURBIN CREEK, LLC
ASSIGNMENT OF INTEREST
PAYMENT AGREEMENT

Payment of Funds to be allocated and distributed in the following manner.

- 1.) Renee Gilreath & Leah Winton will be credited back \$27,000 each for back salary
- 2.) \$121,000 to be paid to Ken over 2 years
- 3.) Leah to make office payments and refinance into her name within the next 2 years.
- 4.) Leah to take over Suburban payments for Ken and refinance into her name.





The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

STREAMLINE MANAGEMENT LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on January 12th, 2010, with a duration that is at will, has as of this date filed all reports due this office, including its most recent annual report as required by section 33-44-211, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed a certificate of cancellation as of the date hereof.

Given under my Hand and the Great Seal of the
State of South Carolina this 12th day of January,
2010

A handwritten signature of Mark Hammond in black ink, written over a horizontal line.

Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

AMENDED ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

AUG 19 2010

TYPE OR PRINT CLEARLY IN BLACK INK

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Pursuant to S.C. Code of Laws §33-44-204(a), the undersigned limited liability company adopts the following Amended Articles of Organization:

1. The name of the limited liability company is PARK AT DURBIN CREEK, LLC
2. The date the articles of organization were filed is August 1, 2008
3. The articles of organization are amended in the following respects, of which all amended provisions may lawfully be included in the articles of organization. If the space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph on this form.

Change member Kenneth E. Clifton, to Streamline Management, LLC.

Change Registered Agent to Streamline Management, LLC

Streamline Management, LLC By: Leah C. Winton, Manager LCW

[Signature]
Signature (Please see the Filing Checklist below)

Kenneth E. Clifton, Member

Print or Type Name

Capacity/Position of Person Signing (You must check one box.)

- ☐ Manager ☒ Member ☐ Organizer
☐ Fiduciary ☐ Attorney-in-Fact

Date 8/18/10

Filing Checklist

- Amended Articles of Organization (filed in duplicate)
- \$110.00 made payable to the Secretary of State's Office
- Self-Addressed, Stamped Return Envelope
- Make sure the proper individual has signed the form (Please see S.C. Code of Laws §33-44-205(a))
 - Limited Liability Company forms filed with the Secretary of State must be signed in the name of the company by a:
 - (1) manager of a manager-managed company
 - (2) member of a member-managed company
 - (3) person organizing the company, if the company has not been formed or
 - (4) fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary

- Return all documents to:

South Carolina Secretary of State's Office
Attn: Corporate Filings
P.O. Box 11350
Columbia, SC 29211

LLC - Domestic - Amended Articles of Organization

Form Revised by South Carolina
Secretary of State April 2008

100824-0016

FILED: 08/19/2010
PARK AT DURBIN CREEK, LLC

Filing Fee: \$110.00 ORIG

Mark Hammond

South Carolina Secretary of State

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

1527: S9

KNOW ALL MEN BY THESE PRESENTS, that Living Waters Christian Church, Inc.
A Corporation chartered under the laws of the State of SC and having a principal place of business at
Greenville, State of SC, in consideration of
\$25,080.00 and assumption of mortgage set out below Dollars,
the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain,
sell and release unto Kenneth E. Clifton & Linda G. Whiteman, Their Heirs & Assigns

ALL that piece, parcel or tract of land with all buildings and improvements
thereon or hereinafter constructed thereon in Greenville County, South Carolina,
being shown and designated as 5.48 acres, more or less, on plat entitled
"Survey for Living Water Christian Church" prepared by Richard D. Wooten, Jr.,
RLS, dated June 20, 1991 and recorded July 30, 1991 in Plat Book 20J, page 91.

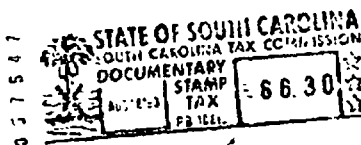
This being same property conveyed to Grantors by Nora Fowler Hughes
recorded July 30, 1991 in Book 1443, page 598.

This conveyance is made subject to any and all existing and recorded
easements, rights of way and restrictions affecting said property.

As a part of the consideration herein, Grantees agree to assume and pay the
balance due on that certain mortgage in favor of Nora Fowler Hughes in the
original sum of \$74,000.00 recorded in Book 2168, page 223, having a present
balance due thereon of \$79,920.00.

Grantees' address - 3691 S Hwy 14, Greenville, SC 29615

16-195-533.2-1-1



together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise
incident or appertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s), and the
grantee(s)' heirs or successors and assigns, forever. And, the grantor does hereby bind itself and its successors to warrant and
forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every
person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS whereof the grantor has caused its corporate seal to be affixed hereto and these presents to be subscribed by its
duly authorized officers, this 17 day of Aug 19 93

SIGNED, sealed and delivered in the presence of:

Living Waters Christian Church, Inc. (SEAL)

A Corporation

By:

President

Secretary

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within
named Corporation, by its duly authorized officers, sign, seal and as the grantor's act and deed deliver the within written deed
and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 17 day of Aug 19 93

Notary Public for South Carolina. (SEAL)

My commission expires 11/28/2000

FILED FOR RECORD IN GREENVILLE
COUNTY SC REC OFFICE AT 10:27 AM 10, at M, No. 55134
09/18/93 RECORDED IN DEED
BOOK 1527 PAGE 0059
DOC # 93055133

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

QUIT-CLAIM DEED
(no title certificate)

ALL THAT PIECE, parcel or tract of land with all buildings and improvements thereon or hereinafter constructed thereon in Greenville County, SC, being shown and designated as 5.48 acres, more or less, on plat entitled "Survey for Living Water Christian Church" prepared by Richard D. Wooten, Jr., RLS, dated June 20, 1991, and recorded July 30, 1991, in Plat Book 20-J at Page 91; reference to said plat being made for a more accurate and complete description of said property.

TMS# 0533-02-01-001-00

SIGNED, sealed and delivered
in the presence of: _____

Terry Hunt
Kangaroo


Kenneth E. Clifton


Linda G. Whiteman

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) **PROBATE**

SWORN to before me this 31st
day of July, 2008.

Notary Public for South Carolina
My Commission Expires: 11/30/2008
File #9315/9011

FILED IN GREENVILLE COUNTY SC

2008071597 ocd
2 POS
Book: DE 2334 Page: 169A-169B
August 01, 2008 03-06:31 PM State Tax:\$8.00
County Tax:\$0.00 Svc:\$10.00

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF GREENVILLE)

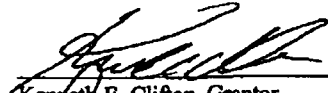
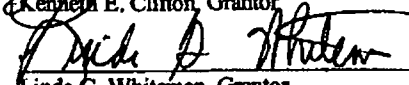
PERSONALLY appeared before me the undersigned, who being sworn, deposes and says:

Property known as 5.36 acres on Highway 14, Greenville, SC, bearing Greenville County Tax Map Number 0533-02-01-001-00, was transferred by Kenneth E. Clifton and Linda G. Whiteman to Gardens at Fourteen, LLC, on the date hereof.

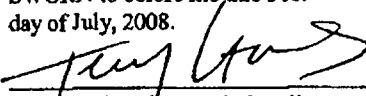
The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is: being transferred to a corporation (#8) and is a quitclaim deed (#12).

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantors.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

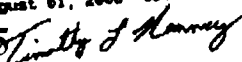

Kenneth E. Clifton, Grantor

Linda G. Whiteman, Grantor

SWORN to before me this 31st
day of July, 2008.


Notary Public for South Carolina
My Commission Expires: 11/30/08

*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2008071597 Book: DE 2334 Page: 1694-1695
August 01, 2008 03:00:31 PM

235 

1477-955

Prepared by BOZEMAN, GRAYSON, SMITH & PRICE, Attorneys
Grantee's Mailing Address: 33 Villa Road, Suite 100 B-125
Greenville, SC 29615

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

DEED

KNOW ALL MEN BY THESE PRESENTS that LAWRENCE E. McNAIR, JR. in consideration of TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) Dollars, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents grants, bargains, sells, and releases unto Kenneth E. Clifton (1/2) and Linda G. Whiteman (1/6), their heirs and assigns, forever:

All of his right, title and interest the same being an undivided two-thirds (2/3) interest in and to the following property:

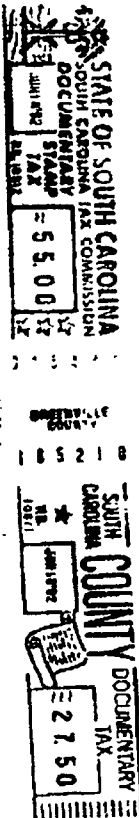
PARCEL 1

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, as is more fully shown on a survey for Larry McNair, Jr., prepared by Webb Surveying and Mapping Group dated March, 1989, containing 0.91 acres and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the northern side of Pelham Road at the corner of property of Horseshoe Development and running thence with the northern side of Pelham Road N 80-33 E 162.89 feet to a point at the corner of property of Sherry T. Burnett; running thence with the line of said property N 24-14 W 120.10 feet to a point; running thence still with the line of said property of Sherry T. Burnett N 9-03 E 162.07 feet to an old iron pin on the bank of a branch; running thence along the branch as a line, the traverse lines of which are N 77-08 W 143.94 feet to an iron pin in the line of property of Horseshoe Development; running thence with the line of said property S 0-36 E 328.38 feet to the POINT OF BEGINNING.

ALSO PARCEL 2

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, as is more fully shown on a survey for Larry McNair, Jr., prepared by Webb Surveying and Mapping Group dated March, 1989, containing 0.67 acres and having according to said plat, the following metes and bounds, to-wit:



6-18 9550

3

1000

BEGINNING at an old iron pin located 1030 feet, more or less, from the intersection of Boiling Springs Road and Pelham Road and located on the northern side of Pelham Road at the corner of property of McJunkin; running thence along the line of McJunkin N 0-32 W 223.73 feet to an iron pin on the bank of a branch; running thence along the branch as a line, the traverse lines of which are N 73-34 W 111.84 feet to an old iron pin on the bank of said branch; running thence S 9-03 W 162.07 feet to a point; running thence S 24-14 E 120.10 feet to a point on the northern side of Pelham Road; running thence with the northern side of Pelham Road N 80-33 E 86.69 feet to the POINT OF BEGINNING.

This being the same property conveyed to the grantor herein by deed of Linda G. Whiteman dated November 10, 1989 and recorded November 7, 1990 in the RMC Office for Greenville County in Deed Book 1417 at Page 262.

This conveyance is made subject to any restrictions, reservations, zoning ordinances, or easements that may appear of record, on the recorded plat(s) or on the premises.

This conveyance is made together with all and singular, the rights, members, hereditaments, and appurtenances to said premises belonging or in any way incident or appertaining thereto; to have and to hold all and singular the premises abovementioned unto the grantees, and the grantees' heirs or successors and assigns forever. The grantor does hereby bind the grantor and grantor's heirs or successors, executors, and administrators to warrant and forever defend all and singular said premises unto the grantee and grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's hand and seal this 2nd day of June, 1992.

SIGNED, SEALED AND DELIVERED
In the Presence of:

Patrick H. Gray - J
Susan J. Walker

Lawrence E. McHair, Jr.

1477 957

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE

PERSONALLY APPEARED before me Susan D. Walker and made
oath that (s)he saw the above named grantor sign, seal and deliver
the within deed; and that (s)he, with the other witness named
above, witnessed the execution thereof.

SWORN TO before me

this 2nd day of

June, 1992.

Susan D. Walker

Patricia H. Gray
Notary Public for South Carolina
My Commission Expires: 10-19-99

FILED FOR RECORD IN GREENVILLE
COUNTY SC RMC OFFICE AT 11:34 AM
06/18/92 RECORDED IN DEED
BOOK 1477 PAGE 0955
DOC # 92038270

38270



2008085324

GCD
3 PGS

September 18, 2008

03:29:28 PM

Book: DE 2340

Page: 1541-1543

Rec: \$10.00

Cnty Tax: EXEMPT

State Tax: EXEMPT

FILED IN GREENVILLE COUNTY, SC

Grantee's Address: 12 Lavinia Avenue, Greenville, SC 29601

STATE OF SOUTH CAROLINA)

)

COUNTY OF GREENVILLE)

)

QUIT-CLAIM DEED

(no title certificate)

KNOW ALL MEN BY THESE PRESENTS, that **KENNETH E. CLIFTON and LINDA G. WHITEMAN** (hereinafter referred to as the "Grantor"), in consideration of Five Dollars and no other consideration (\$5.00) the receipt of which is hereby acknowledged, does hereby forever release, remise and quit-claim unto **PELHAM AT BOILING SPRINGS, LLC** (hereinafter referred to as "Grantee") their heirs and assigns forever:

PARCEL 1: ALL THAT certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, as is more fully shown on a survey for Larry McNair, Jr., prepared by Webb Surveying and Mapping Group dated March, 1989, containing 0.91 acres and having according to said plat, the following metes and bounds, to wit: BEGINNING at an iron pin on the northern side of Pelham Road at the corner of property of Horseshoe Development and running thence with the northern side of Pelham Road North 80-33 East 162.89 feet to a point at the corner of property of Sherry T. Burnett; running thence with the line of said property North 24-14 West 120.10 feet to a point; running thence still with the line of said property of Sherry T. Burnett North 9-03 East 162.07 feet to an old iron pin on the bank of a branch; running thence along the branch as a line, the traverse lines of which are North 77-08 West 143.94 feet to an iron pin in the line of property of Horseshoe Development; running thence with the line of said property South 0-36 East 328.38 feet to the point of BEGINNING.

PARCEL 2: ALL THAT certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, as is more fully shown on a survey for Larry McNair, Jr., prepared by Webb Surveying and Mapping Group dated March, 1989, containing 0.67 acres and having according to said plat, the following metes and bounds, to wit: BEGINNING at an old iron pin located 1030 feet, more or less, from the intersection of Boiling Springs Road and Pelham Road and located on the northern side of Pelham Road at the corner of property of McJunkin; running thence along the line of McJunkin North 0-32 West 223.73 feet to an iron pin on the bank of the branch; running thence along the branch as a line, the traverse lines of which are North 73-34 West 111.84 feet to an old iron pin on the bank of said branch; running thence South 9-03 West 162.07 feet to a point; running thence South 24-14 East 120.10 feet to a point on the northern side of Pelham Road; running thence with the northern side of Pelham Road North 80-33 East 86.69 feet to the point of BEGINNING.

THIS CONVEYANCE is made subject to any restrictions, reservations, zoning ordinances, or easements that may appear of record, on the recorded plat(s) or on the premises.

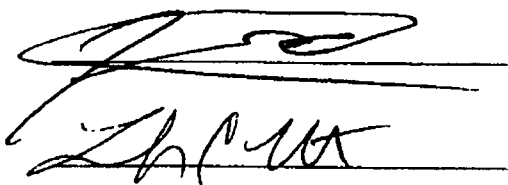
LESS AND EXCEPT any properties previously conveyed.

THIS BEING the same property conveyed to the Grantors herein by deed from Lawrence C. McNair, Jr. recorded on June 18, 1992, in the Office of the Register of Deeds for Greenville County in Deed Book 1477 at Page 955.

TMS# 0533-04-01-015-01

WITNESS the Grantor's hand and seal this 18th day of September, 2008.

SIGNED, sealed and delivered
in the presence of:



Kenneth E. Clifton

Linda G. Whiteman

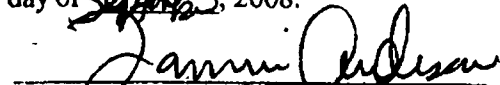
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

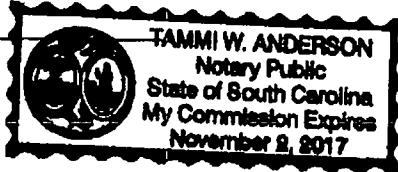
PROBATE

PERSONALLY appeared before me the undersigned witness, who being first duly sworn, acknowledged his/her signature on the within written instrument and the due execution thereof

SWORN to before me this 18th
day of September, 2008.


Notary Public for South Carolina

My Commission Expires:
File #9315/9011



STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF GREENVILLE)

PERSONALLY appeared before me the undersigned, who being sworn, deposes and says:

Property located at 2319 Pelham Road, Greenville, SC, bearing Greenville County Tax Map Number 0533-04-01-015-01, was transferred by Kenneth E. Clifton and Linda G. Whiteman to Pelham at Boling Springs, LLC, on the date hereof.

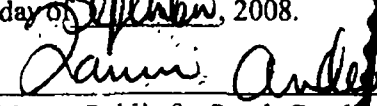
The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is: quitclaim, exemption # 12 and exemption #8.

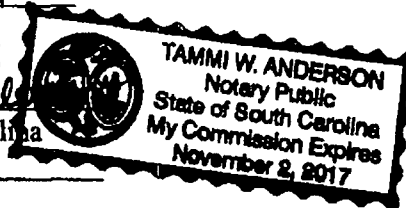
As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Kenneth E. Clifton, Grantor

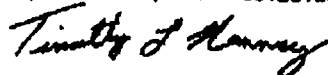
SWORN to before me this 18th
day of September, 2008.


Notary Public for South Carolina
My Commission Expires: _____



*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

FILED FOR RECORD IN GREENVILLE COUNTY, SC R0D
2008085324 Book: DE 2340 Page: 1541-1543
September 19, 2008 03:28:28 PM



Grantee's Address: 12 Lavinia Avenue, Greenville, SC 29601

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

QUIT-CLAIM DEED
(No Title Examination)

KNOW ALL MEN BY THESE PRESENTS, that Kenneth E. Clifton, (hereinafter referred to as the "Grantor"), in consideration of Five Dollars and 00/100, (\$5.00) the receipt of which is hereby acknowledged, does hereby forever release, remise and quit-claim unto Pawley Investments, LLC, (hereinafter referred to as "Grantee"), its successors and assigns, all of the Grantor's right, title and interest, if any, in and to the following described property:

TRACT ONE: ALL THAT certain piece, parcel or tract of land with improvements thereon, situate in the Town of Pawleys Island, County of Georgetown, State of South Carolina, designated as Lot 118 and Parcel A, and a Portion of Lot 119, as shown on a plat prepared by Waccamaw Trace, LLC and C. Edward Floyd, M.D. by Survey Technology, Inc., dated July 30, 2001, recorded on Slide 407 at Page 5, in the Georgetown County RMC; reference to said plat being given for a more complete metes and bounds description thereof.

Subject to easements shown of record on the Plat and in the Office of The Clerk of Court for Georgetown County including utility easement to Georgetown County Water & Sewer District, the right-of-way of Springs Avenue, and other easements, restrictions and other matters of record.

OCEANFRONT PROPERTY DISCLOSURE STATEMENT

Pursuant to the S.C. Code Ann. Section 48-39-330 (1998 Suppl.), the Grantor discloses to the Grantee that the property or a portion thereof is or may be subject to statutory regulation imposed by The South Carolina Coastal Zone Act of 1977, S.C. Ann., Section 49-39-10 et. seq. (1988 Suppl.) As amended by The South Carolina Beach Management Act, S.C. Code Ann. Section 48-39-270 et. seq. (1988 Suppl.), hereinafter collectively called "the Acts". The acts involve and may subject the property to, the creation and existence of interim and final baselines, setback lines the velocity zone and an erosion rate, all as is more fully defined in the Acts. Part or all of the property is or may be located seaward of the setback line, the minimum setback line or interim baseline, and has an erosion rate, all as determined by the South Carolina Coastal Council on July 1, 1998. All or part of the property is or may be within the velocity zone as determined by the Federal Emergency Management Agency. The Acts may also restrict the Buyer's right to build, repair or rebuild structures on the property. No structure may be constructed seaward of the setback line without a permit issue by the South Carolina Coastal Council. Pursuant to the Acts, the locations of the baselines and interim and final setback lines are subject to change. The methodology utilized in determining the exact location of the setback lines and baselines on the property and the currently applicable erosion rate may be obtained from the South Carolina Coastal Council. The methodology described above must be utilized in a case-by-case, property-by-property manner in order for an exact, surveyed determination to be made of the location of the baselines and setback lines. The Grantor makes no representation to the Grantee concerning the location of such baselines, setback lines or the velocity zone, the effect of such regulation on the property or the accuracy of the foregoing disclosure.

LESS AND EXCEPT any properties previously conveyed.

THIS BEING the same property conveyed to Kenneth E. Clifton by deed from Waccamaw Trace, LLC recorded on February 9, 2004, in the Office of the Clerk of Deeds for Georgetown County in Deed Book 1477 at Page 163

TMS: 42-175-33 and a portion of 42-175-34

242

200800014871
PT 118 & Parcel A
GEORGETOWN SC
WANDA PREVATTE
09-22-2008 At 01:06 pm.
DEED 10.00
STATE TAX .00
COUNTY TAX .00
Book 1057 Page 35 - 39
EXEMPT

42-175-33, 4-140-119
4-138-58.2, 4-132-71.42
SPE
GEORGETOWN COUNTY PARCEL

TRACT TWO: ALL that certain condominium apartment known as Unit Number 1-F in Sandpiper Run Horizontal Property Regime, a horizontal property regime established by Litchfield-By-The-Sea, a joint venture, pursuant to Title 27, Chapter 31, Code of Laws of South Carolina, as amended, by a Master Deed dated September 7, 1984, recorded in the Office of the Clerk of Court for Georgetown County in Deed Book 220 at Page 1350 on September 20, 1984, and specifically incorporated by reference herein which Unit is shown on the survey and architectural plans set forth as Exhibits A and B of the Master Deed together with the undivided interest in the common elements declared by the said Master Deed to be an appurtenance to said Unit conveyed hereby and the right of ingress to and egress from said Unit.

LESS AND EXCEPT any properties previously conveyed.

THIS BEING the same property conveyed to Kenneth E. Clifton by deed from J. Rion McKissick recorded on September 17, 2004, in the Office of the Register of Deeds for Georgetown County in Deed Book 1560 at Page 295.

* TMS: 4-140-112 (deed into Clifton - 2nd acquisition online).

TRACT THREE: ALL AND SINGULAR that certain Unit No. 215 of Bridgewater Horizontal Property Regime, a condominium established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated April 3, 1995 and recorded April 4, 1995, in the Office of the Clerk of Court for Georgetown County, South Carolina in Deed Book 622 at Page 89, reference to which is craved hereto as forming a part hereof.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all of the provisions of the said Master Deed, the provisions of the South Carolina Horizontal Property Act, the provisions of the By-Laws of the Bridgewater Council of Co-Owners, Inc. and all other covenants, conditions, reservations, restrictions and easements and rights of way of record.

THIS PROPERTY is further subject to any interests created by or limitations on use imposed by the Federal Coastal Zone Management Act and S.C. Coastal Zone Management Act, Section 48-30-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the S.C. Beach Management Act, S.C. Code Sections 48-39-270, et. seq., all as more fully described in the aforesaid Master Deed recorded April 4, 1995, in Deed Book 622 at Page 89, office of the Clerk of Court for Georgetown County, South Carolina.

LESS AND EXCEPT any properties previously conveyed.

THIS BEING the same property conveyed to Kenneth E. Clifton by deed from Pamela W. Loesch and John T. Loesch, Jr. recorded on April 23, 1999, in the Office of the Register of Deeds for Georgetown County in Deed Book 968 at Page 269.

TMS: 04-0138-058.02.14

TRACT FOUR: ALL THAT certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Georgetown, known and designated as Lot No. 42, Waccamaw Trace, as shown on a plat thereof entitled "Survey of Division 1, Waccamaw Trace, Waccamaw Trace, Inc.", prepared by Survey Technology, Inc., dated November 26, 1998, revised June 23, 1999, and July 8, 1999, and recorded on April 11, 2000 in the RMC Office for Georgetown County, in Plat Slide 349 at Page 9. Reference to said plat being given for a more complete metes and bounds description thereof.

ALSO a non-exclusive perpetual easement of ingress and egress over and across the roadways as they now exist or may hereafter exist leading from the above-described premises to Boyle Road, and as shown on a survey as described herein; said easement being appurtenant to and running with the above-described real property.

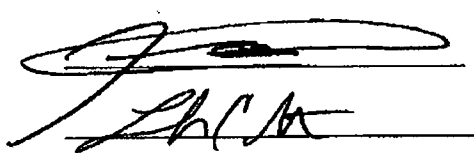
LESS AND EXCEPT any properties previously conveyed

THIS BEING the same property conveyed to Kenneth E. Clifton by deed from Waccamaw Trace, LLC recorded on December 29, 2003, in the Office of the Register of Deeds for Georgetown County in Deed Book 1460 at Page 165.

TMS: 04-0132-007.01.42

WITNESS the Grantor's hand and seal this 15th day of September, 2008.

SIGNED, sealed and delivered in the presence of:

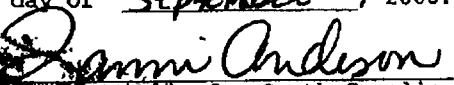

Kenneth E. Clifton

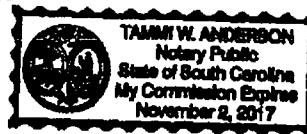
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor sign, seal and, as act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 15th day of September, 2008.


Notary Public for South Carolina
My Commission Expires: 11/02/2017



STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF GEORGETOWN)

PERSONALLY appeared before me the undersigned, who being sworn, deposes and says:

Property located at 680 Springs Avenue, Pawley's Island (TMS: 42-175-33 and a portion of 42-175-34), 141 Cayman Loop Road, Pawley's Island (TMS: 04-0132-007-01-42), 601 Retreat Beach Loop, Pawley's Island (TMS: 04-0138-058.02.14) and 741 Retreat Beach Loop, Pawley's Island (TMS 4-140-119) were transferred by Kenneth E. Clifton to Pawley Investments, LLC, on the date hereof.

The transaction was (Check One): 8 & 12

_____ an arm's length real property transaction and the sales price paid to or to be paid in money of money's worth was \$_____.

_____ not an arm's length real property transaction and the fair market value of the property is \$_____.

☒ The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is a quitclaim deed (12) and is being transferred to a corporation (8).

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Kenneth E. Clifton, Grantor

 I, Tamm W. Anderson, Notary Public for South Carolina, do hereby certify that the foregoing is a true and correct copy of the original as shown to me this 15th day of September, 2008. My Commission Expires: November 1, 2011

 TAMM W. ANDERSON
Notary Public
State of South Carolina
My Commission Expires
November 1, 2011

*The fee is based on the real property's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

76919 J. Jerry Lewis

200800016871
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
09-22-2008 At 01:06 PM.
DEED 10.00
STATE TAX .00
COUNTY TAX .00
Book 1057 Page 55 - 59
Wanda J. Prevatte

RECORDED THIS DATE
Linda S. Ince
REGISTER GEORGETOWN CO.
LINDA S. INCE

KENNETH E. CLIFTON FINANCIAL STATEMENT

Personal Residence and 2 lots Deerland Plantation			
12 Lavinia Avenue - office building	\$1,280,000.00	1,000,000.00	1,000,000.00
Lake Keowee lot (50%)	\$250,000.00	150,000.00	150,000.00
2 acre lot on E. Georgia Rd	\$250,000.00	70,000.00	70,000.00
Highway 14 - 6 acres (50% interest)	\$95,000.00	paid	0
512 acres, Enoree, SC (35% interest) Federal Land Bank (2 1/2 shares of 8)	\$300,000.00	43,500.00	43,500.00
One-A Long Beach Properties	\$700,000.00	15,000.00	15,000.00
Pelham Road - 1.58 acres (50% interest)	\$75,000.00	paid	0
370 acres - Laurens County (50% interest)	\$350,000.00	paid	0
240 acres-Laurens County	\$1,570,000.00	paid	0
90 acres - Ashmore Bridge Road	\$2,040,000.00	699,600.00	750,000
95 acres - Woodruff, SC with 2 rental on site	\$5,000,000.00	1,134,000.00	1,134,000.00
Carrington Subdivision (2 rental houses)	\$500,000.00	226,000.00	226,000.00
Pelham Pointe, LLC (Villa & Pelham - 2 acre commercial corner) (75%)	\$260,000.00	210,000.00	210,000.00
Plantation Holdings, LLC (Villa & Pelham-Commercial Lots)	\$1,350,000.00	750,000.00	750,000.00
Five Forks Plantation Subdivision (50 lots) Phase I/ PHASE II (70 lots)	\$2,800,000.00	1,500,000.00	1500,000.00
Five Forks Plantation Subdivision Phase III	\$11,590,000.00	3,910,000.00	4400,000.00
Porta Rossa new S2 lot subdivision	\$800,800.00	560,600.00	560,600.00
Shellbrook Plantation Phase I (17 lots)	\$1,280,000.00	548,000.00	580,000.00
Asheton Lakes Phase III Land	\$1,122,000.00	690,000.00	890,000.00
Asheton Lakes Subdivision (14 lots)	\$1,500,000.00	390,000.00	400,000.00
Savannah Subdivision (1 Lot)	\$1,400,000.00	250,000.00	250,000.00
Edgewater lot 13	\$85,000.00	paid	0
Edgewater Subdivision (Hartwell Lake-24 lots)	\$315,000.00	240,000.00	240,000.00
Waverly Hall Subdivision (1 Lots)	\$1,948,000.00	400,000.00	400,000.00
Captain's Watch, Tybee Island (75% Ownership)	\$65,000.00	paid	0
Waccamaw Landings - Commercial Development (8 lots)	\$10,500,000.00	6,375,000.00	7800,000.00
Waccamaw Trace - Litchfield Beach (15 Lots)	\$5,000,000.00	2,550,000.00	2550,000.00
Waccamaw Trace Beach House	\$6,090,000.00	769,767.63	\$2,000,000.00
680 Springs Ave. oceanfront & Creek front (5 Bdrm, 5Bath - Rental)	\$1,200,000.00	367,000.00	367,000.00
746 Springs Ave. Oceanfront & Creekfront (4 Bdrm, 2 Bath - Rental)	\$4,500,000.00	2,017,000.00	2000,000.00
Litchfield Beach - Condo unit BW 215	\$2,000,000.00	1,550,000.00	1550,000.00
Litchfield Beach- Condo unit Sandpiper Run B1F	\$700,000.00	340,000.00	340,000.00
Litchfield Beach- Condo unit BW 423 (50%)	\$775,000.00	434,000.00	500,000.00
Oak Island, NC Beach House (50% interest)	\$187,500.00	155,000.00	155,000.00
Litchfield Beach - Condo unit BW 126	\$400,000.00	120,000.00	120,000.00
Tybee Island Oceanfront House (75%)	\$350,000.00	220,000.00	220,000.00
Down by the River- Mountain House (50% interest)	\$1,725,000.00	975,000.00	75,000.00
Bank Building in Buford, Georgia (50%)	\$325,000.00	170,000.00	170,000.00
Toto Creek Building (50%)	\$475,000.00	245,000.00	15,000.00
Banks County land (33.3%)	\$115,000.00	65,000.00	65,000.00
	\$283,333.00	146,666.00	146,666.00

Amount	Description	Bank
7,000.00		Capital Bank
1,100.00		Arthur State Bank
\$538.00	Doug Adams 50%	Palmetto Bank
\$550.00	Linda Whiteman 50%	Regions Bank
	under contract payments made from earnest \$	Ag South
	Linda Whiteman 50%	
	Linda Whiteman 50%	
4,300.00		Palmetto Bank
8,000.00		1st South
1,300		Woodruff Federal
	rental houses	Palmetto Bank
3,600.00	Don Arsenault 12.5 %, Renee Gilreath 12.5%	1st South
	Paid from interest reserve	First Citizens
	Paid from interest reserve	Capital Bank
	to be paid in full within one year	Owners financed
	Paid from interest reserve	Bank Greenville
5,000.00		First Citizens
		Pinacle Bank
2,000.00		First Citizens
1,500.00		Bank Greenville
3,000.00		First Citizens
	paid from interest/ Don Arsenault 25%	Darby Bank
	Paid from interest reserve	Palmetto Bank
		Palmetto Bank
	rental house	Washington Mutual
	rental house	Washington Mutual
	rental house	Capital Bank
	rental house	Washington Mutual
	rental house	1st Savers
	rental house Renee Gilreath 50%	First Savers
	rental house Renee Gilreath 50%	American Home Mortgage
	rental house	NBSC
	new rental house paid from interest reserve	Darby Bank
	rental house Renee Gilreath 50%	American Home Mortgage
	rental/ office space lease option to buy	Bank of Hiwassee
	paid from partnership funds from sales	Bank of Hiwassee
	paid from partnership funds from sales	GA Trust Bank

Section One
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Clifton Land & Timber LLC
Kenneth E. Clifton and Linda Whiteman
Greenville Land & Timber LLC
One A Long Beach LLC
Kenneth E. Clifton and Linda Whiteman
Kenneth E. Clifton and Linda Whiteman
Waccamaw Trace LLC
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Pelham Pointe LLC
Plantation Holdings of Greenville LLC
Plantation Point of Greenville LLC
Plantation Point of Greenville LLC
Porta Rossa LLC
Shellbrook Plantation LLC
Asheton Lakes LP
Asheton Lakes LLC
Savannah LLC
Kenneth E. Clifton
Edgewater at Six and Twenty LLC
Waverly Hall LLC
Captain's Watch LLC
Waccamaw Landings LLC
Waccamaw Trace LLC
Kenneth E. Clifton
Kenneth E. Clifton
Plantation Point of Greenville LLC
Kenneth E. Clifton
Kenneth E. Clifton
Bridgewater 423 LLC
Po Boy of Oak Island LLC
K & R Grading LLC
Captain's Watch LLC
Down by the River LLC
Kenneth E. Clifton & Donald Arsenault
Kenneth E. Clifton & Donald Arsenault
Kenneth E. Clifton, Donald Arsenault, Paul Asenmaucker

Lake Lanier 10 lots (25%)	\$300,000.00	paid	
Bonner-Allen LLC	\$2,111,111.00	950,000.00	950,000.00
Lake Lanier 20 lots (50%)	\$800,000.00	paid	
Advance Auto Parts, Vidalia, GA	\$800,000.00	184,000.00	184,000.00
228 acres and rental house in Lyons, GA	\$400,000.00	15,000.00	15,000.00
*196 acres and Sports Bar w/9ac.'s (Rental income) Lyons, GA	\$410,000.00	154,000.00	154,000.00
*119 acres and General Store on U.S. Hwy #1, Lyons, GA	\$230,000.00	paid	0
200 acres and renovated historical house	\$400,000.00	150,000.00	150,000.00
5 acres and farm house on Hwy 147 Georgia Farm	\$400,000.00	150,000.00	150,000.00
487 acres, Lyons GA, Phillips tract	\$1,200,000.00	400,000.00	400,000.00
1007 acre tract on Hwy 147 Georgia Farm Hunt Club	\$2,720,000.00	\$ 1,200,000.00	1,200,000.00
TOTAL REAL ESTATE	\$81,122,744.00	\$2,486,188.63	34,985,766.00

TOTAL REAL ESTATE ASSETS	\$48,626,610.87

AUTOMOBILES/BOATS/AIRCRAFT		estimated
2007 Chev. Suburban	60,000.00	53,000.00
1969 Baron 55	\$210,000.00	
1980 Cessna 172	\$80,000.00	
2006 Chrysler 300 Limo	\$68,000.00	
2001 Suburban	\$30,000.00	
2005 Ford Truck King Ranch	\$35,000.00	
OFFICE EQUIPMENT		
*Computer System	\$10,000.00	
*Software	\$750.00	
*Computer accessories	\$300.00	

CASH ON HAND	\$550,000.00
Stocks	\$300,000.00
INSURANCE - \$4,000,000.00 (Cash Value)	\$100,000.00

TOTAL OTHER ASSETS	\$1,014,050.00

TOTAL ASSETS	\$82,136,794.00

NET WORTH	\$82,136,794.00

*** Mr. Clifton owns 9 1/2 shares of the total 36 in BONNER-ALLEN, LLC - a historical mall located in Gainesville, Georgia on approximately 20 acres with existing buildings. This is valued at \$8,000,000.00 with an outstanding debt of \$3,800,000.00. There is currently a fifteen (15) year lease on the property. The monthly rental income is \$25,000.00.

Date

Kenneth E. Clifton

10-Jan-08

	Paid from rentals/ cash flow office space	Cadence Bank
	rental	Peoples Bank
100		Peoples Bank
1000	farm	Peoples Bank
	farm	
1000	farm	Peoples Bank
1000		Peoples Bank
3000	farm	Peoples Bank
	2007 first year income producing membership \$ daily hunting	Mount Vernon Bank
41,989.00		

Stratford on Lanier LLC
Bonner Allen LLC
Stratford on Lanier LLC
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton
Kenneth E. Clifton



**NOTICE OF INSURANCE - PROTECTION FOR FOREST LANDOWNERS AFFILIATED ENTITIES,
LANDOWNERS AND HUNT CLUBS**

Policy Holder- First Named Insured: Durban Creek Hunt Club

Policy: FL200822053

INSURED COPY

**Named Insured: Kenneth E. Clifton/Clifton Land & Timber & Linda Whiteman
c/o Clifton Land & Timber P.O. Box 6143
Greenville, SC 29606**

Period: 03/01/2008 to 03/01/2009 (Both days at 12:01 A.M. Local Standard Time)

Location of Insured Premises: Per schedule on file

LIMITS OF LIABILITY

Landowner and Hunting Club Liability	\$ 1,000,000 Each Occurrences \$ 2,000,000 General Aggregate
Medical Payments	\$1,000 Each Person Limit / \$10,000 Each Occurrence Limit
Coverage for Damage to Property of Others Rented, Leased or Loaned to the Insured Club or Insured Landowner	\$25,000 Each Occurrence
Club Member's Emergency Transportation Coverage	\$500 Each Occurrence Limit

Coverage Applies to: CGL LIMITED COVERAGE

FORMS AND ENDORSEMENTS See Policy FL200822053. Copy Available upon request.

Countersigned: March 11, 2008
(Date)

By

Authorized Representative

Underwritten by: Certain Underwriters, Lloyds London

**THIS CERTIFICATE TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART
DECLARATIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ATTACHED TO THE
INSURANCE POLICY REFERENCED ABOVE COMPLETE THE ABOVE NUMBERED CERTIFICATE.**

**Forest Landowners Endorsed Property & Casualty Insurance Program
P.O. Box 410679 / Kansas City, Missouri 64141 / 1-800-658-7047 / FAX 913-652-7599
ADMINISTERED BY LOCKTON RISK SERVICES**

LLOYD'S NOTICE OF INSURANCE

This Notice of Insurance (hereinafter referred to as "certificate") is effected with certain Underwriters at Lloyd's, London.

Limited Authorization. This Certificate is issued in accordance with the limited authorization granted to the Authorized Representative (hereinafter referred to as "Correspondent") by certain Underwriters at Lloyd's, London whose syndicate numbers and the proportions underwritten by them can be ascertained from the office of the said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters hereby bind themselves severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Insured is requested to read this Certificate, and if it is not correct, return it immediately to the Correspondent for appropriate alteration.

Inquiries. All inquiries regarding this Certificate should be addressed to the following Correspondent:

Lockton Risk Services 1-800-658-7047

P.O. Box 410679 / Kansas City, Missouri 64141

Signature Required. This Certificate shall not be valid unless signed by the Correspondent on the attached Notice of Insurance Page

Correspondent Not Insurer. The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those Underwriters at Lloyd's, London whose syndicate numbers can be ascertained as hereinbefore set forth. As used in this Notice of Insurance Certificate "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.

Name of Insurer and Percentage Participation on this Risk and Authority Reference Number:

Certain Underwriters, Lloyds, London			
<u>Syndicate</u>	<u>Number</u>	<u>Liability signing</u>	<u>Authority Reference Number</u>
ROC	1200	40%	1084505AR000
LIB	4472	25%	1147700105EC
GSC	958	12.5%	ZYXAXTBNA114
KILN	510	10.00%	FAQA05FMYT
SAM	727	12.50%	9M680C1806MP

ANTI STACKING OF LIMITS EXCLUSION

With respect to any premises or property located on any premises which is owned or occupied in whole or in part by the named insured club and which is specifically scheduled under another policy issued by this Insurance Company

This insurance does not apply to "bodily injury," "property damage," "personal injury," or "advertising injury" arising out of:

- (i). The ownership, maintenance or use of such premises
- (ii). Operations on those premises or elsewhere which are necessary or incidental to the ownership, maintenance or use of those premises; or
- (iii). Goods or products manufactured at or distributed from those premises.



Renee Gilreath <renee@clandt.us>

Today2 messages

Wood, John B <john.wood@firstcitizensonline.com>

Fri, Nov 14, 2008 at 4:33 PM

To: Leah Winton <leah@clandt.us>, Renee Gilreath <renee@clandt.us>

Ladies,

Thanks for taking time to meet with Ron and me today on your overall situation. I think it was a very productive meeting and although we only touched on a few of your projects, I felt like it was a very good update. I truly hope that things get better for you, very soon. The appraisals have been ordered, and you should be contacted early next week, for information on the various projects/sites. I doubt we'll be able to get everything buttoned up by month end, so I think it will require one more payment on all three loans, but then a moratorium until mid-2009. This is all pending internal credit approval here and receipt and review of the new appraisals, but I'm optimistic we'll be able to get this done subject to the property values.

Thanks again and have a great weekend,

John

Mr. John B. Wood, Jr.
Senior Vice President
First Citizens
P.O. Box 3028 (29602-9773)
325 West McBee Avenue (29601)
Greenville, South Carolina
Direct Dial: 864-240-5877
Fax Number: 864-255-3730

*Please note: email address of sender has changed
to "firstcitizensonline.com"

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=====

11/14/08, 16:33:23

Leah Winton <leah@clandt.us>
To: Renee C Gilreath <renee@clandt.us>

Mon, Nov 17, 2008 at 8:48 AM

he said subject to the property values. Its not a done deal.
[Quoted text hidden]



Leah C. Winton
leah@clandt.us
www.clandt.us

Office	864.241.8132
Mobile:	864.933.3075
Fax:	864.241.8134



Renee Gilreath <renee@clandt.us>

Appraisals

1 message

Wood, John B <john.wood@firstcitizensonline.com>
To: Leah Winton <leah@clandt.us>, Renee Gilreath <renee@clandt.us>

Wed, Nov 19, 2008 at 4:12 PM

Stone & Associates were the low bidders on the appraisals. Please expect a call from Melissa there with questions. I referred her to your excellent website for plats, surveys, price lists, etc.

Thanks,

John

Mr. John B. Wood, Jr.
Senior Vice President
First Citizens
P.O. Box 3028 (29602-9773)
325 West McBee Avenue (29601)
Greenville, South Carolina
Direct Dial: 864-240-5877
Fax Number: 864-255-3730

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=====

11/19/08, 16:12:42.

PREMIEREPC
Technology Services

Renee Gilreath <renee@clandt.us>

(no subject)

Wood, John B <john.wood@firstcitizensonline.com>

Mon, Nov 24, 2008 at 4:20 PM

To: Leah Winton <leah@clandt.us>, Renee Gilreath <renee@clandt.us>

Cc: "Derrick, Ronald" <ronald.derrick@firstcitizensonline.com>, "Rhome, Deborah D" <deborah.rhome@firstcitizensonline.com>

Ladies,

Per our conversation with Ron Derrick on the 11/14/08, we need to get the October payment, to move forward with the renewal and payment deferral. Stone & Associates was the low bidder on the three appraisal and Melissa should be contacting you for the details. I referred her to your excellent website for maps, locations, plats, surveys, price lists, etc.

Payments past due for October :

Plantation Holdings of Greenville, LLC due for 10/29/08 i/a/o \$6,788.22	
Ken Clifton/Lake Hartwell	due for 10/29/08 i/a/o
\$1,791.85	
Shellbrook Plantation, LLC	due for 10/31/08 i/a/o
\$5,818.60	

TOTAL = \$14,398.67

It is essential that we get these payments processed this week before the Thanksgiving break. With month end following a busy holiday we really need to get everything posted by Wednesday. Thanks for your help on this. The bank will be open all day on Wednesday and Friday.

Also, Ron asked me to follow up with you on item # B (B) A budget that shows all scheduled payments, sources of income or access to lines of credit to make these payments, cover basic overhead, etc)

Thanks again and Happy Thanksgiving,

John

Mr. John B. Wood, Jr.
Senior Vice President
First Citizens
P.O. Box 3028 (29602-9773)
325 West McBee Avenue (29601)
Greenville, South Carolina
Direct Dial: 864-240-5877
Fax Number: 864-255-3730

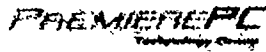
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=====

11/24/08, 16:20:57



Renee Gilreath <renee@clandt.us>

FW:

3 messages

Wood, John B <john.wood@firstcitizensonline.com>

Tue, Nov 25, 2008 at 8:56 AM

To: Leah Winton <leah@clandt.us>

Cc: Renee Gilreath <renee@clandt.us>

Renee,

Leah said she was going to talk with you this morning about cutting a check for these October payments today before y'all left town. I've got to get them processed today - to get them posted prior to month end, since the 30th is Sunday.

I think we have everything worked out for the extension thru July, just waiting on the appraisals and the budget.

John

>
 > From: Wood, John B
 > Sent: Monday, November 24, 2008 4:21 PM
 > To: 'Leah Winton'; Renee Gilreath
 > Cc: Derrick, Ronald; Rhome, Deborah D
 > Subject:
 >
 > Ladies,
 >
 > Per our conversation with Ron Derrick on the 11/14/08, we need to get
 > the October payment, to move forward with the renewal and payment
 > deferral. Stone & Associates was the low bidder on the three appraisal
 > and Melissa should be contacting you for the details. I referred her
 > to your excellent website for maps, locations, plats, surveys, price
 > lists, etc.
 >
 > Payments past due for October :
 >
 > Plantation Holdings of Greenville, LLC due for 10/29/08 i/a/o
 > \$6,788.22
 > Ken Clifton/Lake Hartwell due for 10/29/08 i/a/o
 > \$1,791.85
 > Shellbrook Plantation, LLC due for 10/31/08 i/a/o
 > \$5,818.60
 >
 > TOTAL = \$14,398.67
 >
 > It is essential that we get these payments processed this week before
 > the Thanksgiving break. With month end following a busy holiday we
 > really need to get everything posted by Wednesday. Thanks for your
 > help on this. The bank will be open all day on Wednesday and Friday.
 >
 > Also, Ron asked me to follow up with you on item #8 (8) A budget that
 > shows all scheduled payments, sources of income or access to lines of

> credit to make these payments, cover basic overhead, etc)
 >
 > Thanks again and Happy Thanksgiving.
 >
 > John
 >
 > Mr. John B. Wood, Jr.
 > Senior Vice President
 > First Citizens
 > P.O. Box 3028 (29602-8773)
 > 325 West McBee Avenue (29601)
 > Greenville, South Carolina
 > Direct Dial: 864-240-5877
 > Fax Number: 864-255-3730
 >
 >

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=====

11/25/08, 08:56:56

Leah Winton <leah@clandt.us>
 To: "Wood, John B" <john.wood@firstcitizenonline.com>
 Cc: Renee Gilreath <renee@clandt.us>

Tue, Nov 25, 2008 at 2:10 PM

Hey John, We are paying Shellbrook Plantation but Dad said that we can't pay the other 2. You told us last month that you would try to get something worked out if we paid 1 more payment. We did and now you are saying we need to wait on the appraisals to come in and make another payment. We still have no guarantee the bank will help us. Our other banks are working with us now. We can't rob Peter to pay Paul. We are doing everything we can. We have reduced prices and cut cost but we are still needing your help. You can call Dad if you need to. I know you are trying to help and we do appreciate everything you do.

Thanks, Leah

[Quoted text hidden]

Wood, John B <john.wood@firstcitizenonline.com>
 To: Leah Winton <leah@clandt.us>
 Cc: Renee Gilreath <renee@clandt.us>

Tue, Nov 25, 2008 at 2:49 PM

Leah,

I hear you but that's not exactly how I remember things, recall Ken pulled two no-shows on meetings for lunch to discuss these issues and it was not until the last meeting the three of us had that y'all even expressed any concern over being able to honor your obligations, what I told you then was I couldn't go to my credit folks and ask for forbearance this late in the game, then it took a series of e-mails and calls from

me to get the 11/14 meeting scheduled. That was the first time he's ever acknowledged y'all had a problem, he's always been very "positive". What we said in our meeting on the 14th was that there was no way that we could get this done prior to month end due to the new appraisal requirements and that we needed one more payment, your Dad said, "okay", held up one finger and said "one more payment". That's how Ron and I have proceeded and presented our extension, therefore this will put us in an awkward position and may alter how we can proceed.

Anyway, I know y'all are doing what you can, but I'm very disappointed. We'll reconvene when we have the appraisals in and let you know how and if we can proceed.

Another thing to think about is this will kill your Dad's "Beacon" score if he carries 1.9MM past due over 30 days, Maybe things are too far gone for that to be a worry at this point, but I needed to mention it.

Thanks for making Shellbrook and responding on the other two,

John.

From: Leah Winton [mailto:leah@clandt.us]
Sent: Tuesday, November 25, 2008 2:11 PM
To: Wood, John B
Cc: Renee Gilreath
Subject: Re: FW:

[Quoted text hidden]

[Quoted text hidden]

11/25/08, 14:49:26



Renee Gilreath <renee@clandt.us>

Survival/Restructure Plan

1 message

Wood, John B <john.wood@firstcitizenonline.com>
 To: Leah Winton <leah@clandt.us>
 Cc: Renee Gilreath <renee@clandt.us>

Fri, Dec 5, 2008 at 10:22 AM

Leah,

The remaining two appraisals should be in today and I'm trying to get everything pulled together for a portfolio review meeting on Tuesday morning. As stated the "Clifton" loans will get much attention due to the 30+ days delinquency status on the Plantation Holdings of Greenville, LLC loan. One thing that is absolutely critical is that y'all have a budget and plan that is reasonable and shows the Bank(s) that you can meet all of your obligations and the sources of those operating funds whether they be lines of credit, savings, the timely liquidation of assets (real estate, equipment, toys, whatever) with some absolute dates. An example might be : absolute auction for Edgewater to be held on or before "this date" by "company X". I'm not looking for a War & Peace novel but just a spreadsheet (like your cash flow summary) of your deals/properties with how you will liquidate or carry them. It has to provide detail-amounts, limits, maturity dates, etc. Reducing prices on the website is good but obviously it's going to take some big time elbow grease, to move properties in this economy.

Once we have this and the appraisals, I think we should be able to respond very quickly on whether or not we can extend these loans. The key to this request, is a realistic, achievable written "plan/budget", not just conversation. I hate to hit you with this on a Friday morning but this is the third time that I've asked for this dating back to 11/13/08 (second request below). It is a "must have" and a non negotiable item in the eyes of the Bank.

Thanks,

John

Ladies,

Per our conversation with Ron Derrick on the 11/14/08, we need to get the October payment, to move forward with the renewal and payment deferral. Stone & Associates was the low bidder on the three appraisal and Melissa should be contacting you for the details. I referred her to your excellent website for maps, locations, plats, surveys, price lists, etc.

Payments past due for October :

Plantation Holdings of Greenville, LLC	due for 10/29/08 i/a/o \$6,788.22
Ken Clifton/Lake Hartwell	due for 10/29/08 i/a/o \$1,791.85
Shellbrook Plantation, LLC	due for 10/31/08 i/a/o

\$5,818.60

TOTAL = \$14,398.67

It is essential that we get these payments processed this week before the Thanksgiving break. With month end following a busy holiday we really need to get everything posted by Wednesday. Thanks for your help on this. The bank will be open all day on Wednesday and Friday.

Also, Ron asked me to follow up with you on item # 8 (8) A budget that shows all scheduled payments, sources of income or access to lines of credit to make these payments, cover basic overhead, etc)

Thanks again and Happy Thanksgiving,

John

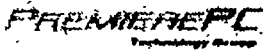
Mr. John B. Wood, Jr.
Senior Vice President
First Citizens
P.O. Box 3028 (29602-9773)
325 West McBee Avenue (29601)
Greenville, South Carolina
Direct Dial: 864-240-5877
Fax Number: 864-255-3730

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=====

12/05/08, 10:22:27



Renee Gilreath <renee@clandt.us>

[Fwd: Clifton loans]

2 messages

Leah Winton <leah@clandt.us>
 To: Renee C Gilreath <renee@clandt.us>

Thu, Jan 29, 2009 at 12:42 PM

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

Subject: Clifton loans

Date: Thu, 29 Jan 2009 12:41:13 -0500

From: Leah Winton <leah@clandt.us>

To: John Wood <john.wood@firstcitizensonline.com>

Hey John,

I hope your doing well. I just wanted to update you on what we are doing for our first citizens loans.

Shellbrook Plantation - Our partner Benji agreed to pay this loan with our shellbrook investment funds if we can get it renewed. I talked to Palmetto about refinancing this loan but they are having capital problems. David with Plametto said he would go to his board about using the funds and will get back to me. We have enough in this loan to pay both loans for one year.

Plantation Holdings- We have met with several investors and one has made an offer for one acre on the north west side of the property for \$375,000.00. They need a 30 day inspection period and 45 additional days to close. Is First Citizens willing to work with us to get this parcel sold off?

Edgewater- I talked to the Mazuma group that bought lot 12 and asked if they would become partners. They would like to but they can't get it financed. Would it be possible to renew the loan if they will sign with Ken and they make the payments?

Give me a call if you need more information.

Thanks,

Leah

**Leah C. Winton**

leah@clandt.us

www.clandt.us

Office: 864.241.8132

Mobile: 864.933.3075

Fax: 864.241.8134

Leah Winton <leah@clandt.us>
 To: Renee C Gilreath <renee@clandt.us>

Thu, Jan 29, 2009 at 1:05 PM

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

Subject: Re: Clifton loans**Date:** Thu, 29 Jan 2009 13:04:29 -0500**From:** Wood, John B <john.wood@firstcitizensonline.com>**To:** leah@clandt.us**CC:** Derrick, Ronald <ronald.derrick@firstcitizensonline.com>, jcassidy@roacassidy.com

Leah,

Thank you for the update. The loans are due and payable as has been previously communicated thru Jim Cassidy.

Thanks,

John

From: Leah Winton**To:** Wood, John B**Sent:** Thu Jan 29 12:41:13 2009**Subject:** Clifton loans

Hey John,

I hope you're doing well. I just wanted to update you on what we are doing for our first citizens loans.

Shellbrook Plantation - Our partner Benji agreed to pay this loan with our shellbrook investment funds if we can get it renewed. I talked to Palmetto about refinancing this loan but they are having capital problems. David with Palmetto said he would go to his board about using the funds and will get back to me. We have enough in this loan to pay both loans for one year.

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Give me a call if you need more information.

Thanks,

Leah.

**Leah C. Winton**

leah@clandt.us

www.clandt.us

Office: 864.241.8132**Mobile:** 864.933.3075**Fax:** 864.241.8134

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hwhiteman@charter.net

Mail

Move to inbox

More

COMPOSE

Please review renewal docs

Inbox 1

Inbox (15,823)

Important

Sent Mail

Drafts (306)

[imap]/Drafts

[imap]/Sent

More

Sign into chat

Search people

Ken Clifton

Leah Winton

Matthew A. Rydzak

Tammi Anderson

Troy Gilreath

BRICE CLAY

Christman, Kelly

First Choice Cust..

Jeff Fox

mandline55

Heather Conquest <heatherc@bankoftravelersrest.com>
to hwhiteman, ken, me, Randy

11/19/09

I have attached the modification / renewal documents for Clifton Land & Timber, LLC for you to review prior to your loan closing on Tuesday November 24th. Please note that the attorney will also be preparing some of the documents, and he will need to forward those documents to you.

Heather ConquestBank of Travelers Rest

Administrative Assistant

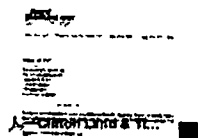
PO Box 1067

Travelers Rest SC 29690

E-MAIL: heatherc@bankoftravelersrest.com

PH: 864.660.7627

FX: 864.634.5276



Renee Gilreath <renee@clandt.us>

11/19/09

to Linda

For your review.

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

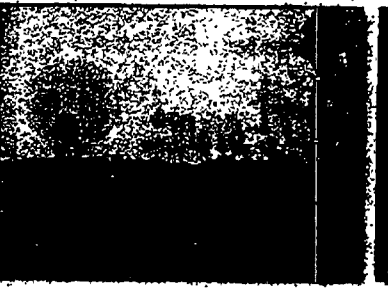
Subject: Please review renewal docs

Date: Thu, 19 Nov 2009 11:08:39 -0500

From: Heather Conquest <heatherc@bankoftravelersrest.com>

To: hwhiteman@charter.net <hwhiteman@charter.net>; hwhiteman@clandt.us <hwhiteman@clandt.us>; renee@clandt.us <renee@clandt.us>

A black and white photograph showing a dense forest. Sunlight filters through the canopy of tall trees, creating bright patches and deep shadows. The image is somewhat grainy and has a high-contrast, artistic feel.



A black and white photograph showing a dense forest. The trees are tall and thin, with a thick canopy of leaves. The ground is covered in a layer of fallen leaves and branches. The overall scene is dark and somewhat somber.

The State of South Carolina

#8



Office of Secretary of State Mark Hammond

Certificate of Existence

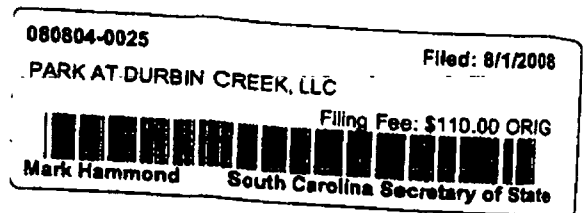
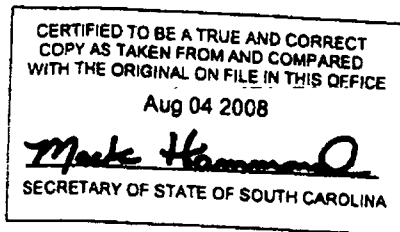
I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

PARK AT DURBIN CREEK, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on August 1st, 2008, with a duration that is at will, has as of this date filed all reports due this office, including its most recent annual report as required by section 33-44-211, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed a certificate of cancellation as of the date hereof.

Given under my Hand and the Great Seal of the
State of South Carolina this 4th day of August,
2008

Mark Hammond

Mark Hammond, Secretary of State



STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION
FOR A
LIMITED LIABILITY COMPANY

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the South Carolina Code of Laws, as amended

- 1 The name of the limited liability company which complies with Section 33-44-105 of the 1976 South Carolina Code of Laws, as amended is PARK AT DURBIN CREEK, LLC
- 2 The address of the initial designated office of the Limited Liability Company in South Carolina is
12 LAVINIA AVE
Street Address
GREENVILLE SC 29601
City Zip Code
- 3 The initial agent for service of process of the Limited Liability Company is
KENNETH E. CLIFTON Electronically filed on SCBOS.
Name Signature not required.
Signature
and the street address in South Carolina for this initial agent for service of process is
12 LAVINIA AVE
Street Address
GREENVILLE SC 29601
City Zip Code
4. The name and address of each organizer is
 - a) KENNETH E CLIFTON
Name
12 LAVINIA AVE
Street
GREENVILLE SC US 29601
City State Zip Code
 - b) LINDA WHITEMAN

**Signature Page Attachment to South Carolina Business One Stop
(SCBOS) for the State of South Carolina Secretary of State**

This page must be completed, scanned, and submitted as an attachment when filing on SCBOS.

Type of Filing: ARTICLES OF ORGANIZATION (Limited Liability Company)
As Of: August 01, 2008 12:53 PMMember run

Name of Limited Liability Company:

Park at Durbin Creek, LLC

Signature of Each Organizer:

Kenneth E Clifton

Name

Date

Linda Whiteman

Name

Date

8/1/08

Signature

Signature

Fax or e-mail your completed forms to:

SC Secretary of State
(803) 734-1610
SCBOS@SOS.SC.GOV(Please e-mail signature forms in the following file
formats only: Adobe .PDF, .GIF, or .JPEG
extensions.)

AGREEMENT

#9

This agreement, dated 8/1/2008 between Kenneth E. Clifton and Linda G. Whiteman is to clarify the financial arrangement between Clifton and Whiteman as it pertains to Whiteman's investment in Gardens at Batesville Road subdivision.

1. On 7/9/2008, Linda Whiteman invested \$40,000 in the development of Gardens at Batesville Road subdivision. Whiteman agrees to allow Clifton to borrow in his name only \$125,000 on Hwy 14 (property owned 50/50 jointly by Clifton and Whiteman) to be used solely for interest payments on the land purchase/development loan with Cornerstone Bank as it is drawn upon. Whiteman will not be obligated on the note and will sign the mortgage so that the property can be pledged as security.
2. Whiteman will have to approve the agreement between Clifton and Godfrey Developers which outlines a timeline, Ken's total control and oversight of development, i.e. awarding contracts, paying bills, scheduling, repayment schedule.
3. Nothing will be in anyone's name other than Clifton's (no ownership of land, no ability to contract in Clifton's behalf, final decisions to be Clifton's).
4. Clifton will assure that he will maintain ability to override any decision or take charge if need arises to assure that the project is completed according to an approved timeline.
5. Whiteman's \$40,000 investment plus interest at same rate Cornerstone is charging, will be returned according to the agreement between Clifton and Godfrey Developers.
6. All return of funds from the development will be in accordance with the agreement between Clifton and Godfrey Developers. Godfrey Developers will be paid last, after all interest on debt/investment funds, profit to Clifton, costs, etc.
7. Note from Clifton to Whiteman for \$40,000 indicating repayment plus interest at same rate bank loan to Clifton on line-of-credit on Hwy 14 loan and according to the schedule for payout between Clifton and Godfrey Developers on Gardens at Batesville Road, dated 7/9/08, but no later than two years from this agreement. \$40,000 return guaranteed to Whiteman.
8. Profit to Clifton, as outlined in agreement between Godfrey Developers and Clifton dated 8/9/08, to be divided half and half between Clifton and Whiteman.

Kenneth E. Clifton
Witness

Kenneth E. Clifton
Kenneth E. Clifton 7/9/2008

Linda G. Whiteman
Witness:

Linda G. Whiteman
Linda G. Whiteman 7/9/2008

STATE OF SOUTH CAROLINA)
) DEVELOPMENT AGREEMENT
COUNTY OF GREENVILLE)

This agreement, dated July, 9th 2008 between Henry M. Spann, Roy Palmer and Joe Welchel (hereinafter referred to as "Developers"), and Gardens at Batesville, LLC (hereinafter referred to as the "Investor").

In consideration of \$10.00 earnest money, the receipt and sufficiency whereof is hereby acknowledged. Developers hereby agree to develop 6.86 acres at Batesville Road and Godfrey Road in Greenville County (see exhibit B) for Investor and

Points for agreement between developer and investor:

1. Investor shall be to provide all funds required for the aforementioned project and to provide all accounting services as well. In this regard, Investor shall provide updated copies of Profit and Loss Statements on a quarterly basis and shall handle all distributions of all funds and have final say on service providers scheduling etc.
2. Developer assures investor that all zoning matters have been finalized.
3. Investor will provide initial investment of \$40,000 which will be repaid according to schedule below (interest will be calculated at same rate bank is charging on the \$800,000 loan).
4. Time is of the essence in this agreement. therefore we the developers plan to adhere to the proposed attached schedule A.
5. Investor will advance interest payments on the \$800,000 loan, and be reimbursed according to schedule below.
6. According to schedule below, investor will receive \$280,000 profit over and above reimbursement for \$40,000 plus interest and interest payments advanced on the \$800,000 loan. The funds used to pay the interest on the \$800,000 will come from the line of credit obtained on investor's property on Hwy 14. Interest on this line of credit will also be reimbursed.

Schedule /Order for repayment of debt (from lot sales)

1. All funds from sales will go first to the principal on the \$800,000 loan until paid in full.
2. Next funds will go to repay the \$40,000 to investor (plus interest at the same rate bank charged on \$800,000 loan).
3. Next to repayment of line of credit obtained by investor for interest payments (plus interest paid by investor on the line of credit).
4. Next to any other advanced interest outside of funds obtained from line of credit.
5. Profit to investor in the amount of \$280,000.
6. Profit to developer.

**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED
BY THE FOLLOWING:**

Renee Gilbreath
WITNESS

Henry M. Spann
Henry M. Spann

Renee Gilbreath
WITNESS

Roy Palmer
Roy Palmer

Renee Gilbreath
WITNESS

Joe Whelchel
Joe Whelchel

Renee Gilbreath
WITNESS

Gardens at Batesville, LLC
By: Kenneth E. Clifton

AGREEMENT

Ken Clifton
Purchase of
Whiteman
Rest

This agreement is to confirm the understanding between Kenneth E. Clifton and Linda G. Whiteman regarding Whiteman's willingness to allow property located on Highway 14 (jointly owned by Clifton and Whiteman) to be pledged as security for a line of credit issued to Kenneth E. Clifton.

Clifton will obtain a line of credit in the amount of \$ 173,000.00 from The Bank of Travelers Rest (closing on 8/1/08).

Whiteman will not be obligated in any way on the note, but will sign the mortgage to pledge the property as security for the line of credit.

The purpose of the loan is to advance funds up to \$130,000.00 for the interest payments on a development loan on the Gardens at Batesville (see Development Agreement dated 7/9/2008 between Henry M. Spann, Roy Palmer and Joe Whelchel and Gardens at Batesville, LLC).

It is agreed to and understood that any funds above the \$130,000.00 or any amount above the actual interest payments due on the development loan will not be drawn without the written authorization of Linda G. Whiteman and Kenneth E. Clifton. No POA will be used by any Attorney in Fact to draw any funds for any purpose other than the interest on the development loan of Gardens at Batesville, nor will any POA be used to draw funds exceeding the \$130,000.00 agreed upon limit.

Witness: Terry [Signature] Kenneth E. Clifton Date: 7/31/08

Witness: Terry [Signature] Renee C. Gilreath Date: 7/31/08

Witness: Terry [Signature] Leah Winton Date: 7/31/08
Witness: Terry [Signature] Linda G. Whiteman Date: 7/31/08

Sworn to and subscribed to before me this 31st day of July, 2008, by Kenneth E. Clifton, Renee C. Gilreath, & Linda G. Whiteman.
Notary Public
My commission expires 11-30-2008

KENNETH E. CLIFTON FINANCIAL STATEMENT

(10)				
1099-C-	Personal Residence and 2 lots Deerland Plantation - foreclosed	\$1,280,000.00	1,000,000.00	1,000,000.00
	12 Lavinia Avenue - office building - 2nd mtg.	\$250,000.00	150,000.00	150,000.00
	Lake Keowee lot (50%) - partner-owns	\$250,000.00	70,000.00	70,000.00
	2 acre lot on E. Georgia Rd - sold	\$95,000.00	paid	0
	Highway 14 - 6 acres (50% interest) - owed-partner owns	\$300,000.00	43,500.00	43,500.00
	512 acres, Enoree, SC (35% interest) Federal Land Bank (2 1/2 shares of 8)	\$700,000.00	15,000.00	15,000.00
	One-A Long Beach Properties - septic spray site	\$75,000.00	paid	0
	Pelham Road - 1.58 acres (50% interest) - owed-partner owns	\$350,000.00	paid	0
	370 acres - Laurens County (50% interest) - LLC owns	\$1,570,000.00	paid	0
	240 acres-Laurens County - foreclosed	\$2,040,000.00	699,600.00	750,000
	90 acres - Ashmore Bridge Road - foreclosed	\$5,000,000.00	1,134,000.00	1,134,000.00
	95 acres - Woodruff, SC with 2 rental on site - Deed in Lieu	\$500,000.00	226,000.00	226,000.00
	Carrington Subdivision (2 rental houses) - sold	\$260,000.00	210,000.00	210,000.00
	Pelham Pointe, LLC (Villa & Pelham - 2 acre commercial corner) (75%) - foreclosed	\$1,350,000.00	750,000.00	750,000.00
	Plantation Holdings, LLC (Villa & Pelham-Commercial Lots) - foreclosed	\$2,800,000.00	1,500,000.00	1,500,000.00
	Five Forks Plantation Subdivision (50 lots) Phase I/ PHASE II (70 lots) - foreclosed	\$11,590,000.00	\$3,910,000.00	4,400,000.00
	Five Forks Plantation Subdivision Phase III - foreclosed	\$800,800.00	560,600.00	560,600.00
	Porta Rossa new 32 lot subdivision - sold	\$1,280,000.00	545,000.00	580,000.00
	Shellbrook Plantation Phase I (17 lots) - foreclosed	\$1,122,000.00	690,000.00	690,000.00
	Asheton Lakes Phase III Land - Deed in Lieu	\$1,500,000.00	390,000.00	400,000.00
	Asheton Lakes Subdivision (14 lots)	\$1,400,000.00	250,000.00	250,000.00
	Savannah Subdivision (1 Lot) - sold	\$85,000.00	paid	0
	Edgewater lot 13	\$315,000.00	240,000.00	240,000.00
	Edgewater Subdivision (Hartwell Lake-24 lots) - foreclosed	\$1,948,000.00	400,000.00	400,000.00
	Waverly Hall Subdivision (1 Lots) - mtg.	\$65,000.00	paid	0
	Captain's Watch, Tybee Island (75% Ownership) - foreclosed	\$10,500,000.00	6,375,000.00	7,000,000.00
1099-C	Waccamaw Landings - Commercial Development (8 lots) - foreclosed	\$5,000,000.00	2,550,000.00	2,550,000.00
1099-C	Waccamaw Trace - Litchfield Beach (15 Lots) - foreclosed	\$6,090,000.00	769,767.63	\$2,100,000.00
	Waccamaw Trace Beach House - sold	\$1,200,000.00	367,000.00	367,000.00
	680 Springs Ave. oceanfront & Creek front (5 Bdrm, 5 Bath - Rental) - foreclosed	\$4,500,000.00	2,017,000.00	2,000,000.00
	746 Springs Ave. Oceanfront & Creekfront (4 Bdrm, 2 Bath - Rental) - foreclosed	\$2,000,000.00	1,550,000.00	1,550,000.00
	Litchfield Beach - Condo unit BW 215 - served papers	\$700,000.00	340,000.00	340,000.00
1099-C	Litchfield Beach - Condo unit Sandpiper Run B1F - foreclosed	\$775,000.00	434,000.00	300,000.00
1099-C	Litchfield Beach - Condo unit BW 423 (50%) - foreclosed	\$187,500.00	155,000.00	155,000.00
	Oak Island, NC Beach House (50% interest) - owed LLC couldn't pay	\$400,000.00	120,000.00	120,000.00
	Litchfield Beach - Condo unit BW 126 - Deed in Lieu	\$350,000.00	220,000.00	20,000.00
	Tybee Island Oceanfront House (75%) - served papers	\$1,725,000.00	975,000.00	75,000.00
1099-C	Down by the River- Mountain House (50% interest) - foreclosed	\$325,000.00	170,000.00	70,000.00
	Bank Building in Buford, Georgia (50%) - partner owns	\$475,000.00	245,000.00	45,000.00
	Toto Creek Building (50%) - partner owns	\$115,000.00	65,000.00	65,000.00
	Banks County land (33.3%) - partner owns	\$283,333.00	146,666.00	46,666.00

6A properties are either owned by partners, sold or up for renewal and will be foreclosed soon

Lake Lanier 10 lots (25%) - <i>CW</i>	\$300,000.00		
Bonner-Allen LLC - <i>served papers</i>		paid	
Lake Lanier 20 lots (50%) - <i>CW</i>	\$2,111,111.00	950,000.00	950,000.00
Advance Auto Parts, Vidalia, GA - <i>CW</i>	\$600,000.00	paid	
228 acres and rental house in Lyons, GA - <i>sold</i>	\$800,000.00	194,000.00	194,000.00
*196 acres and Sports Bar w/9ac.'s (Rental income) Lyons, GA <i>sold</i>	\$400,000.00	15,000.00	15,000.00
*119 acres and General Store on U.S. Hwy #1, Lyons, GA - <i>sold</i>	\$410,000.00	154,000.00	154,000.00
200 acres and renovated historical house - <i>sold</i>	\$230,000.00		
5 acres and farm house on Hwy 147 Georgia Farm - <i>up for renewal</i>	\$400,000.00	paid	0
487 acres, Lyons GA, Phillips tract - <i>CW</i>	\$400,000.00	150,000.00	150,000.00
1007 acre tract on Hwy 147 Georgia Farm Hunt Club - <i>up for renewal</i>	\$1,200,000.00	400,000.00	400,000.00
	\$2,720,000.00	\$	1,200,000.00
TOTAL REAL ESTATE	\$81,122,744.00	\$2,496,198.68	34,985,766.00
TOTAL REAL ESTATE ASSETS			\$48,626,610.37

2007 Chev. Suburban - <i>sold</i>		
1969 Baron 55 - <i>sold</i>	60,000.00	59,000.00
1980 Cessna 172 - <i>sold</i>	\$210,000.00	
2006 Chrysler 300 Limo - <i>reacended sold to pay lien</i>	\$60,000.00	
2001 Suburban - <i>sold</i>	\$68,000.00	
2005 Ford Truck King Ranch - <i>sold</i>	\$30,000.00	
	\$35,000.00	
*Computer System - <i>out of date</i>		
*Software " "	\$10,000.00	
*Computer accessories " "	\$750.00	
	\$300.00	

CASH ON HAND	<i>gone</i>	
Stocks <i>Coal mine investment lost money</i>	\$550,000.00	
INSURANCE - \$4,000,000.00 (Cash Value) <i>cancelled</i>	\$300,000.00	
	\$100,000.00	
TOTAL OTHER ASSETS	\$1,014,080.00	
TOTAL ASSETS	\$82,186,794.00	

Mr. Clifton owns 9 1/2 shares of the total 36 in BONNER-ALLEN, LLC - a historical mall located in Gainesville, Georgia on approximately 20 acres with existing buildings. This is valued at \$8,000,000.00 with an outstanding debt of \$3,800,000.00. There is currently a fifteen (15) year lease on the property. The monthly rental income is \$25,000.00.

Date

Kenneth E. Clifton

10-Jan-08

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

J. Calhoun Pruitt, Jr.
S.C. Bar No. 4588
PRUITT & PRUITT
101 N. Murray Ave.
Anderson, South Carolina 29625
(864) 224-3121
Attorney for Appellants

April _____, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

MAY 13 2015

Case No. 2010-CP-30-1141
Appellate Case No. 2014-002295

SC Court of Appeals

First Citizens Bank and Trust Company, Inc. Respondent,

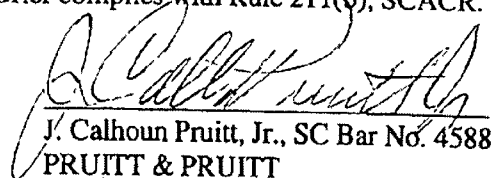
v.

Park at Durbin Creek, LLC; Kenneth E. Clifton; and
Linda G. Whiteman Defendants,

Of Whom Park at Durbin Creek, LLC and Kenneth E. Clifton are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.


J. Calhoun Pruitt, Jr., SC Bar No. 4588
PRUITT & PRUITT

101 N. Murray Ave.
Anderson, SC 29625
(864) 224-3121
Attorney for Appellants

May 7, 2015